

Act No. 170
Public Acts of 2008
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Brown, Stamas, Jansen, Van Woerkom, Allen, Birkholz and Barcia

ENROLLED SENATE BILL No. 867

AN ACT to amend 1974 PA 198, entitled "An act to provide for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain facilities; to impose and provide for the disposition of an administrative fee; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of the state tax commission and certain officers of local governmental units; and to provide penalties," by amending sections 2, 9, and 15 (MCL 207.552, 207.559, and 207.565), sections 2 and 9 as amended by 2007 PA 146 and section 15 as amended by 1996 PA 513.

The People of the State of Michigan enact:

Sec. 2. (1) "Commission" means the state tax commission created by 1927 PA 360, MCL 209.101 to 209.107.

(2) "Facility" means either a replacement facility, a new facility, or, if applicable by its usage, a speculative building.

(3) "Replacement facility" means 1 of the following:

(a) In the case of a replacement or restoration that occurs on the same or contiguous land as that which is replaced or restored, industrial property that is or is to be acquired, constructed, altered, or installed for the purpose of replacement or restoration of obsolete industrial property together with any part of the old altered property that remains for use as industrial property after the replacement, restoration, or alteration.

(b) In the case of construction on vacant noncontiguous land, property that is or will be used as industrial property that is or is to be acquired, constructed, transferred, or installed for the purpose of being substituted for obsolete industrial property if the obsolete industrial property is situated in a plant rehabilitation district in the same city, village, or township as the land on which the facility is or is to be constructed and includes the obsolete industrial property itself until the time as the substituted facility is completed.

(4) "New facility" means new industrial property other than a replacement facility to be built in a plant rehabilitation district or industrial development district.

(5) "Local governmental unit" means a city, village, or township located in this state.

(6) "Industrial property" means land improvements, buildings, structures, and other real property, and machinery, equipment, furniture, and fixtures or any part or accessory whether completed or in the process of construction comprising an integrated whole, the primary purpose and use of which is the engaging in a high-technology activity,

operation of a strategic response center, operation of a motorsports entertainment complex, operation of a logistical optimization center, operation of qualified commercial activity, operation of a major distribution and logistics facility, the manufacture of goods or materials, creation or synthesis of biodiesel fuel, or the processing of goods and materials by physical or chemical change; property acquired, constructed, altered, or installed due to the passage of proposal A in 1976; the operation of a hydro-electric dam by a private company other than a public utility; or agricultural processing facilities. Industrial property includes facilities related to a manufacturing operation under the same ownership, including, but not limited to, office, engineering, research and development, warehousing, or parts distribution facilities. Industrial property also includes research and development laboratories of companies other than those companies that manufacture the products developed from their research activities and research development laboratories of a manufacturing company that are unrelated to the products of the company. For applications approved by the legislative body of a local governmental unit between June 30, 1999 and December 31, 2007, industrial property also includes an electric generating plant that is not owned by a local unit of government, including, but not limited to, an electric generating plant fueled by biomass. Industrial property also includes convention and trade centers over 250,000 square feet in size. Industrial property also includes a federal reserve bank operating under 12 USC 341, located in a city with a population of 750,000 or more. Industrial property may be owned or leased. However, in the case of leased property, the lessee is liable for payment of ad valorem property taxes and shall furnish proof of that liability. Industrial property does not include any of the following:

(a) Land.

(b) Property of a public utility other than an electric generating plant that is not owned by a local unit of government and for which an application was approved by the legislative body of a local governmental unit between June 30, 1999 and December 31, 2007.

(c) Inventory.

(7) "Obsolete industrial property" means industrial property the condition of which is substantially less than an economically efficient functional condition.

(8) "Economically efficient functional condition" means a state or condition of property the desirability and usefulness of which is not impaired due to changes in design, construction, technology, or improved production processes, or from external influencing factors that make the property less desirable and valuable for continued use.

(9) "Research and development laboratories" means building and structures, including the machinery, equipment, furniture, and fixtures located in the building or structure, used or to be used for research or experimental purposes that would be considered qualified research as that term is used in section 41 of the internal revenue code, 26 USC 41, except that qualified research also includes qualified research funded by grant, contract, or otherwise by another person or governmental entity.

(10) "Manufacture of goods or materials" or "processing of goods or materials" means any type of operation that would be conducted by an entity included in the classifications provided by sector 31-33 — manufacturing, of the North American industry classification system, United States, 1997, published by the office of management and budget, regardless of whether the entity conducting that operation is included in that manual.

(11) "High-technology activity" means that term as defined in section 3 of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803.

(12) "Logistical optimization center" means a sorting and distribution center that supports a private passenger motor vehicle assembly center and its manufacturing process for the purpose of optimizing transportation, just-in-time inventory management, and material handling, and to which all of the following apply:

(a) The sorting and distribution center is within 2 miles of a private passenger motor vehicle assembly center that, together with supporting facilities, contains at least 800,000 square feet.

(b) The sorting and distribution center contains at least 950,000 square feet.

(c) The sorting and distribution center has applied for an industrial facilities exemption certificate after June 30, 2005 and before January 1, 2006.

(d) The private passenger motor vehicle assembly center is located on land conditionally transferred by a township with a population of more than 25,000 under 1984 PA 425, MCL 124.21 to 124.30, to a city with a population of more than 100,000 that levies an income tax under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787.

(13) "Commercial property" means that term as defined in section 2 of the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2782.

(14) "Qualified commercial activity" means commercial property that meets all of the following:

(a) An application for an exemption certificate approved by the local governmental unit is filed for approval by the state tax commission not later than April 30, 2006.

(b) At least 90% of the property, excluding the surrounding green space, is used for warehousing, distribution, and logistics purposes that provide food for institutional, restaurant, hospital, or hotel customers.

(c) Is located within a village and is within 15 miles of a Michigan state border.

(d) Occupies 1 or more buildings or structures that together are greater than 300,000 square feet in size.

(15) "Motorsports entertainment complex" means a closed-course motorsports facility, and its ancillary grounds and facilities, that satisfies all of the following:

(a) Has at least 70,000 fixed seats for race patrons.

(b) Has at least 6 scheduled days of motorsports events each calendar year, at least 2 of which shall be comparable to nascar nextel cup events held in 2007 or their successor events.

(c) Serves food and beverages at the facility during sanctioned events each calendar year through concession outlets, a majority of which are staffed by individuals who represent or are members of 1 or more nonprofit civic or charitable organizations that directly financially benefit from the concession outlets' sales.

(d) Engages in tourism promotion.

(e) Has permanent exhibitions of motorsports history, events, or vehicles.

(16) "Major distribution and logistics facility" means a proposed distribution center that meets all of the following:

(a) Contains at least 250,000 square feet.

(b) Has or will have an assessed value of \$5,000,000.00 or more for the real property.

(c) Is located within 35 miles of the border of this state.

(d) Has as its purpose the distribution of inventory and materials to facilities owned by the taxpayer whose primary business is the retail sale of sporting goods and related inventory.

Sec. 9. (1) The legislative body of the local governmental unit, in its resolution approving an application, shall set forth a finding and determination that the granting of the industrial facilities exemption certificate, considered together with the aggregate amount of industrial facilities exemption certificates previously granted and currently in force, shall not have the effect of substantially impeding the operation of the local governmental unit or impairing the financial soundness of a taxing unit that levies an ad valorem property tax in the local governmental unit in which the facility is located or to be located. If the state equalized valuation of property proposed to be exempt pursuant to an application under consideration, considered together with the aggregate state equalized valuation of property exempt under certificates previously granted and currently in force, exceeds 5% of the state equalized valuation of the local governmental unit, the commission, with the approval of the state treasurer, shall make a separate finding and shall include a statement in the order approving the industrial facilities exemption certificate that exceeding that amount shall not have the effect of substantially impeding the operation of the local governmental unit or impairing the financial soundness of an affected taxing unit.

(2) Except for an application for a speculative building, which is governed by subsection (4), the legislative body of the local governmental unit shall not approve an application and the commission shall not grant an industrial facilities exemption certificate unless the applicant complies with all of the following requirements:

(a) The commencement of the restoration, replacement, or construction of the facility occurred not earlier than 12 months before the filing of the application for the industrial facilities exemption certificate. If the application is not filed within the 12-month period, the application may be filed within the succeeding 12-month period and the industrial facilities exemption certificate shall in this case expire 1 year earlier than it would have expired if the application had been timely filed. This subdivision does not apply for applications filed with the local governmental unit after December 31, 1983.

(b) For applications made after December 31, 1983, the proposed facility shall be located within a plant rehabilitation district or industrial development district that was duly established in a local governmental unit eligible under this act to establish a district and that was established upon a request filed or by the local governmental unit's own initiative taken before the commencement of the restoration, replacement, or construction of the facility.

(c) For applications made after December 31, 1983, the commencement of the restoration, replacement, or construction of the facility occurred not earlier than 6 months before the filing of the application for the industrial facilities exemption certificate.

(d) The application relates to a construction, restoration, or replacement program that when completed constitutes a new or replacement facility within the meaning of this act and that shall be situated within a plant rehabilitation district or industrial development district duly established in a local governmental unit eligible under this act to establish the district.

(e) Completion of the facility is calculated to, and will at the time of issuance of the certificate have the reasonable likelihood to create employment, retain employment, prevent a loss of employment, or produce energy in the community in which the facility is situated.

(f) Completion of the facility does not constitute merely the addition of machinery and equipment for the purpose of increasing productive capacity but rather is primarily for the purpose and will primarily have the effect of restoration,

replacement, or updating the technology of obsolete industrial property. An increase in productive capacity, even though significant, is not an impediment to the issuance of an industrial facilities exemption certificate if other criteria in this section and act are met. This subdivision does not apply to a new facility.

(g) The provisions of subdivision (c) do not apply to a new facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in April of 1992 if the application was approved by the local governing body and was denied by the state tax commission in April of 1993.

(h) The provisions of subdivisions (b) and (c) and section 4(3) do not apply to 1 or more of the following:

(i) A facility located in an industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in October 1995 for construction that was commenced in July 1992 in a district that was established by the legislative body of the local governmental unit in July 1994. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16(3).

(ii) A facility located in an industrial development district that was established in January 1994 and was owned by a person who filed an application for an industrial facilities exemption certificate in February 1994 if the personal property and real property portions of the application were approved by the legislative body of the local governmental unit and the personal property portion of the application was approved by the state tax commission in December 1994 and the real property portion of the application was denied by the state tax commission in December 1994. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16(3).

(iii) A facility located in an industrial development district that was established in December 1995 and was owned by a person who filed an application for an industrial facilities exemptions certificate in November or December 1995 for construction that was commenced in September 1995.

(iv) A facility located in an industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in July 2001 for construction that was commenced in February 2001 in a district that was established by the legislative body of the local governmental unit in September 2001. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16. The facility described in this subparagraph shall be taxed under this act as if it was granted an industrial facilities exemption certificate in October 2001, and a corrected tax bill shall be issued by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. If granting the industrial facilities exemption certificate under this subparagraph results in an overpayment of the tax, a rebate, including any interest and penalties paid, shall be made to the taxpayer by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll within 30 days of the date the exemption is granted. The rebate shall be without interest.

(v) A facility located in an industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in December 2005 for construction that was commenced in September 2005 in a district that was established by the legislative body of the local governmental unit in December 2005. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16.

(vi) A facility located in an existing industrial development district owned by a person who filed or amended an application for an industrial facilities exemption certificate for real property in July 2006 if the application was approved by the legislative body of the local governmental unit in September 2006 but not submitted to the state tax commission until September 2006.

(vii) A new facility located in an existing industrial development district owned by a person who filed or amended an application for an industrial facilities exemption certificate for personal property in June 2006 if the application was approved by the legislative body of the local governmental unit in August 2006 but not submitted to the state tax commission until 2007. The effective date of the certificate shall be December 31, 2006.

(viii) A new facility located in an industrial development district that was established by the legislative body of the local governmental unit in September of 2007 for construction that was commenced in March 2007 and for which an application for an industrial facilities exemption certificate was filed in September of 2007.

(ix) A facility located in an industrial development district that was established by the legislative body of the local governmental unit in August 2007 and was owned by a person who filed an application for an industrial facilities exemption certificate in June 2007 for equipment that was purchased in January 2007.

(i) The provisions of subdivision (c) do not apply to any of the following:

(i) A new facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in October 1993 if the application was approved by the legislative body of the local governmental unit and the real property portion of the application was denied by the state tax commission in December 1993.

(ii) A new facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in September 1993 if the personal property portion of the application was approved by the legislative body of the local governmental unit and the real property portion of the application was

denied by the legislative body of the local governmental unit in October 1993 and subsequently approved by the legislative body of the local governmental unit in September 1994.

(iii) A facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in August 1993 if the application was approved by the local governmental unit in September 1993 and the application was denied by the state tax commission in December 1993.

(iv) A facility located in an existing industrial development district occupied by a person who filed an application for an industrial facilities exemption certificate in June of 1995 if the application was approved by the legislative body of the local governmental unit in October of 1995 for construction that was commenced in November or December of 1994.

(v) A facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in June of 1995 if the application was approved by the legislative body of the local governmental unit in July of 1995 and the personal property portion of the application was approved by the state tax commission in November of 1995.

(j) If the facility is locating in a plant rehabilitation district or an industrial development district from another location in this state, the owner of the facility is not delinquent in any of the taxes described in section 10(1)(a) of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2690, or substantially delinquent in any of the taxes described in and as provided under section 10(1)(b) of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2690.

(3) If the replacement facility when completed will not be located on the same premises or contiguous premises as the obsolete industrial property, then the applicant shall make provision for the obsolete industrial property by demolition, sale, or transfer to another person with the effect that the obsolete industrial property shall within a reasonable time again be subject to assessment and taxation under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, or be used in a manner consistent with the general purposes of this act, subject to approval of the commission.

(4) The legislative body of the local governmental unit shall not approve an application and the commission shall not grant an industrial facilities exemption certificate that applies to a speculative building unless the speculative building is or is to be located in a plant rehabilitation district or industrial development district duly established by a local governmental unit eligible under this act to establish a district; the speculative building was constructed less than 9 years before the filing of the application for the industrial facilities exemption certificate; the speculative building has not been occupied since completion of construction; and the speculative building otherwise qualifies under subsection (2)(e) for an industrial facilities exemption certificate. An industrial facilities exemption certificate granted under this subsection shall expire as provided in section 16(3).

(5) Not later than September 1, 1989, the commission shall provide to all local assessing units the name, address, and telephone number of the person on the commission staff responsible for providing procedural information concerning this act. After October 1, 1989, a local unit of government shall notify each prospective applicant of this information in writing.

(6) Notwithstanding any other provision of this act, if on December 29, 1986 a local governmental unit passed a resolution approving an exemption certificate for 10 years for real and personal property but the commission did not receive the application until 1992 and the application was not made complete until 1995, then the commission shall issue, for that property, an industrial facilities exemption certificate that begins December 30, 1987 and ends December 30, 1997. The facility described in this subsection shall be taxed under this act as if it was granted an industrial facilities exemption certificate on December 30, 1987.

(7) Notwithstanding any other provision of this act, if a local governmental unit passed a resolution approving an industrial facilities exemption certificate for a new facility on July 8, 1991 but rescinded that resolution and passed a resolution approving an industrial facilities exemption certificate for that same facility as a replacement facility on October 21, 1996, the commission shall issue for that property an industrial facilities exemption certificate that begins December 30, 1991 and ends December 2003. The replacement facility described in this subsection shall be taxed under this act as if it was granted an industrial facilities exemption certificate on December 30, 1991.

(8) Property owned or operated by a casino is not industrial property or otherwise eligible for an abatement or reduction of ad valorem property taxes under this act. As used in this subsection, "casino" means a casino or a parking lot, hotel, motel, convention and trade center, or retail store owned or operated by a casino, an affiliate, or an affiliated company, regulated by this state pursuant to the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(9) Notwithstanding section 16a and any other provision of this act, if a local governmental unit passed a resolution approving an industrial facilities exemption certificate for a new facility on October 28, 1996 for a certificate that expired in December 2003 and the local governmental unit passes a resolution approving the extension of the certificate after December 2003 and before March 1, 2006, the commission shall issue for that property an industrial facilities exemption certificate that begins on December 30, 2005 and ends December 30, 2010 as long as the property continues to qualify under this act.

(10) Notwithstanding any other provision of this act, if the commission issued an industrial facilities exemption certificate for a new facility on December 8, 1998 but revoked that industrial facilities exemption certificate for that same facility effective December 30, 2006 and that new facility is purchased by a buyer on or before November 1, 2007, the commission shall issue for that property an industrial facilities exemption certificate that begins December 31, 1998 and ends December 30, 2010 and shall transfer that industrial facilities exemption certificate to the buyer. The new facility described in this subsection shall be taxed under this act as if it was granted an industrial facilities exemption certificate effective on December 31, 1998.

(11) Notwithstanding any other provision of this act, if the commission issued industrial facilities exemption certificates for new facilities on October 30, 2002, September 9, 2003, and November 30, 2005 but revoked the industrial facilities exemption certificates for the same facilities effective December 30, 2007 and the new facilities continue to qualify under this act, the commission shall issue for the properties industrial facilities exemption certificates which end respectively on December 30, 2008, December 30, 2009, and December 30, 2011.

Sec. 15. (1) Upon receipt of a request by certified mail to the commission by the holder of an industrial facilities exemption certificate requesting revocation of the certificate, the commission shall by order revoke the certificate in whole or revoke the certificate with respect to its real property component, or its personal property component, whichever is requested.

(2) The legislative body of a local governmental unit may by resolution request the commission to revoke the industrial facilities exemption certificate of a facility upon the grounds that, except as provided in section 7a, completion of the replacement facility or new facility has not occurred within 2 years after the effective date of the certificate, unless a greater time has been authorized by the commission for good cause; that the replacement, restoration, or construction of the facility has not occurred within 6 years after the date the initial industrial facilities exemption certificate was issued as provided in section 7a, unless a greater time has been authorized by the commission for good cause; that completion of the speculative building has not occurred within 2 years after the date the certificate was issued except as provided in section 7a, unless a greater time has been authorized by the commission for good cause; that a speculative building for which a certificate has been issued but is not yet effective has been used as other than a manufacturing facility; that the certificate issued for a speculative building has not become effective within 2 years after the December 31 following the date the certificate was issued; or that the purposes for which the certificate was issued are not being fulfilled as a result of a failure of the holder to proceed in good faith with the replacement, restoration, or construction and operation of the replacement facility or new facility or with the use of the speculative building as a manufacturing facility in a manner consistent with the purposes of this act and in the absence of circumstances that are beyond the control of the holder.

(3) Upon receipt of the resolution, the commission shall give notice in writing by certified mail to the holder of the certificate, to the local legislative body, to the assessor of the assessing unit, and to the legislative body of each local taxing unit which levies taxes upon property in the local governmental unit in which the facility is located. The commission shall afford to the holder of the certificate, the local legislative body, the assessor, and a representative of the legislative body of each taxing unit an opportunity for a hearing. The commission shall by order revoke the certificate if the commission finds that completion except as provided in section 7a of the replacement facility or new facility has not occurred within 2 years after the effective date of the certificate or a greater time as authorized by the commission for good cause; that completion of the speculative building has not occurred within 2 years after the date the certificate was issued except as provided in section 7a, unless a greater time has been authorized by the commission for good cause; that a speculative building for which a certificate has been issued but is not yet effective has been used as other than a manufacturing facility; that the certificate issued for a speculative building has not become effective within 2 years after the December 31 following the date the certificate was issued; or that the holder of the certificate has not proceeded in good faith with the replacement, restoration, or construction and operation of the facility or with the use of the speculative building as a manufacturing facility in good faith in a manner consistent with the purposes of this act and in the absence of circumstances that are beyond the control of the holder.

(4) The order of the commission revoking the certificate shall be effective on the December 31 next following the date of the order and the commission shall send by certified mail copies of its order of revocation to the holder of the certificate, to the local legislative body, to the assessor of the assessing unit in which the facility is located, and to the legislative body of each taxing unit which levies taxes upon property in the local governmental unit in which the facility is located.

(5) A revocation of a certificate issued for a speculative building shall specify and apply only to that portion of the speculative building for which the grounds for revocation relate.

(6) Notwithstanding any other provision of this act, upon the written request of the holder of a revoked industrial facilities exemption certificate to the local unit of government and the commission and the submission to the commission of a resolution of concurrence by the legislative body of the local unit of government in which the facility is located, and if the facility continues to qualify under this act, the commission may reinstate a revoked industrial facilities exemption certificate.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor