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BILL ANALYSIS



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Senate Bill 970 (as enacted)

House Bills 5688 and 5705 (as enacted)

Sponsor: Senator Bert Johnson (S.B. 970)

Representative Maureen Stapleton (H.B. 5688)

Representative John Walsh (H.B. 5705)

Senate Committee: Government Operations

House Committee: Tax Policy (S.B. 970)

Local, Intergovernmental, and Regional Affairs (H.B. 5688 & 5705)

PUBLIC ACT 394 of 2012
PUBLIC ACTS 392 & 393 of 2012

Date Completed: 4-5-13

CONTENT

Senate Bill 970 amended the City Income Tax Act to do the following with respect to Detroit's city income tax:

- Specify a maximum rate of 2.4% on residents (retaining the rate set in July 2012), and discontinue a requirement that the rate be lowered annually until it reached 2.0%.
- Lower the maximum rate on residents to 2.2% after indebtedness issued by a lighting authority has been paid.
- Require a portion of the tax revenue to be deposited into the budget for the city's police department, and require the city to use that revenue exclusively to retain or hire police officers.

House Bill 5688 enacted the "Municipal Lighting Authority Act" to:

- Allow Detroit to incorporate a lighting authority for acquiring, constructing, operating, or maintaining a lighting system and providing lighting services.
- Require the authority to be governed by a board of five members, appointed as prescribed in the Act.
- Require the board, every two years, to prepare a plan for the next three fiscal years.
- Require the board to submit the plan to the city council, and to revise the plan if it is rejected.

- Require the board to provide monthly progress reports to the mayor and city council, and annual progress reports to the Legislature.
- Permit the authority to borrow money and issue revenue bonds and notes.
- Require bonds issued under the Act to be sold to the Michigan Finance Authority.
- Allow the lighting authority and the city to enter into a contract providing for the construction, acquisition, improvement, enlargement, or extension of a lighting system.
- Require the contract to provide for the rates and charges for the city.
- Allow the city to pledge its full faith and credit for the obligation and, if it does so, include an amount in its annual tax levy to pay the obligation.
- Allow the contract to provide for the city to raise funds by other methods, including special assessments, user charges, and a pledge of revenue that it otherwise would receive under the City Utility Users Tax Act.
- Allow the transfer of city employees to the authority, and provide for collective bargaining.

House Bill 5705 amended the City Utility Users Tax Act to do the following:

- Require Detroit, if it forms a lighting authority, to pay \$12.5 million

annually to that authority from the proceeds of the utility users tax.

- Provide that, if the lighting authority issues bonds pursuant to a contract with the city and pledges revenue from the city utility users tax, the revenue must be deposited and used as provided in the Act.**

All of the bills were tie-barred to each other and took effect on December 19, 2012.

(Each of the Acts refers to a city with a population of 600,000 or more, or more than 600,000. Detroit is the only city in Michigan meeting that criterion.)

Senate Bill 970

Previously, beginning July 1, 1999, and each July 1 after 1999 (except in 2008 and 2009), the City Income Tax Act required Detroit's maximum income tax rate on resident individuals to be reduced by 0.1 until the rate was 2.0%. (As a result, on July 1, 2012, the resident rate was reduced to 2.4% and the nonresident rate was reduced to 1.2%.) Under the bill, this requirement does not apply after July 1, 2012.

The bill provides that beginning January 1, 2013, and for each subsequent year, the maximum tax rate is 2.4% on residential individuals and 1.2% on nonresident individuals.

Beginning January 1 of the year immediately following the year in which all bonds, obligations, and other evidence of indebtedness issued by a lighting authority have been fully paid, and each subsequent year, the bill sets the maximum rate at 2.2% on resident individuals and 1.1% on nonresident individuals.

The bill requires the city, if it forms a lighting authority under the Municipal Lighting Authority Act, each year to deposit the revenue collected from 0.2% of the rate levied on residents and 0.1% of the rate levied on nonresidents into the budget for the city's police department. The city must use this revenue exclusively to retain or hire police officers.

This transfer and use of revenue must continue until all bonds, obligations, or other evidence of indebtedness issued by the

lighting authority have been fully paid and revenue is no longer being pledged to the lighting authority from taxes levied under the City Utility Users Tax Act.

House Bill 5688

Authority Incorporation

The Municipal Lighting Authority Act allows the City of Detroit, by a majority vote of its governing body (the city council), to incorporate an authority comprising the territory within its limits for acquiring, constructing, consolidating, purchasing, operating, or maintaining a municipally owned lighting system. The articles of incorporation must be signed by the mayor and city clerk.

The lighting authority will be a public municipal corporation.

The authority may not pay any proceeds or profits to the city but may pay for services provided.

Authority Board

The authority must be governed by a board of directors consisting of five members who are Detroit residents, appointed as follows:

- Two residents appointed by the mayor.
- Two appointed by the city council.
- One appointed by the city council from a list of three names provided by the mayor.

Each member must be appointed for a three-year term except that, for the first appointments, one member appointed by the mayor and one appointed by the city council (not including those recommended by the mayor) must be appointed for a four-year term. A board member's term, however, must expire upon the expiration of the term of the mayor or the city council.

At least one board member must be a licensed professional engineer; at least one must be a licensed certified public accountant, or qualify as a financial expert as defined by a rule of the U.S. Securities and Exchange Commission; and at least one must be an attorney licensed to practice in Michigan.

When he or she is appointed, and then annually by January 31, each board member

must make a certification, signed under penalty of perjury, to the Attorney General. The certification must contain certain statements indicating that the member does not have a conflict of interest with the authority. By the last day of February, the Attorney General must publish a report stating whether each member has filed the required certification. If a member fails to do so by March 3, his or her term will automatically end on March 31.

The board must comply with the Open Meetings Act and the Freedom of Information Act.

Three-Year Plan

By March 15 after the authority is created, and by March 15 of each second year after that, the board must prepare and submit to the city council a plan for the next three fiscal years. The plan must contain the number and placement of streetlights in the city and a budget, which must include at least all of the following:

- Anticipated expenses of administration, operation, and maintenance of the authority and the lighting system.
- Any reserve to be established for the authority's administration, operation, maintenance, and the lighting system.
- A statement showing the amounts necessary to retire all principal and interest on any bonds of the authority maturing during the applicable fiscal years.
- A plan to implement best value practices.
- Any other item specified in the articles of incorporation.

("Best value" means a contract and procurement process that encourages and considers bids from locally headquartered companies and considers use of the local workforce.)

The budget must require the authority to apply and use any money derived from the collection of rates and charges in the manner and priority specified by the Act.

The city council may vote to accept or reject the plan, but may not amend it. Unless the city council votes to reject the plan within 45 days after it is submitted, the plan will be considered approved. If the city council

rejects the plan, it must be revised and resubmitted, and accepted or rejected, as provided in the Act. If the city council rejects the revised plan, it must adopt, by a vote of at least two-thirds of the members, a resolution listing the items that, if altered, would result in a vote to adopt the plan. The authority then must prepare a final proposed plan, which must be sent to the mayor and the city council and made available at a public hearing. The final proposed plan must be voted on and adopted by the board as provided in the Act.

A plan adopted by the authority board may be amended by a vote of four of the five board members.

Authority Financing

For the purpose of constructing, acquiring, improving, enlarging, or extending a lighting system, and after the establishment of the initial service rates and the execution of contracts for the provision of construction services, purchase of power, and other related activities within the corporate limits of the authority, the authority may borrow money and issue revenue bonds and notes. The aggregate principal amount of the bonds and notes may not at any time exceed 5% of the total State equalized valuation of the property assessed in the city.

Bonds must mature within 30 years from the date of the original issuance.

Any bonds issued under the Act must be sold to the Michigan Finance Authority. Lighting authority bonds are not subject to the Revised Municipal Finance Act or the Revenue Bond Act.

With the consent of the Michigan Finance Authority, the authority may enter into ancillary facilities (various types of financing or investment agreements), as it determines necessary or appropriate.

The city council may advance or loan the authority any money required for administrative expenses or for the purpose of obtaining maps, plans, designs, specifications, and cost estimates of a proposed lighting system. An advance or loan may be included as part of any bond issue by the authority and repaid to the city upon the sale of the bonds.

Contract Between Authority & City

The authority and the City of Detroit may enter into a contract providing for the construction, acquisition, improvement, enlargement, or extension of a lighting system, including the payment of engineering, legal, and financing expenses in connection with the system, and after the establishment of the initial service rates and the execution of contracts for the provision of construction services, purchase of power, and other related activities within the corporate limits of the authority.

A contract must provide for the rates and charges for the city, which may pledge its full faith and credit for the payment of the obligation as specified in the contract. If the city makes this pledge, it may include in its annual tax levy an amount sufficient to pay when due the portion of the obligation falling due before the time of the following year's tax collection, subject to constitutional, statutory, and charter limitations.

If the contract or an unlimited tax pledge in support of it has been approved by the city electors, the tax levy may be in addition to any tax that the city otherwise may be authorized to levy, and may be imposed without limitation as to rate or amount, but may not exceed the rate or amount necessary to pay the contractual obligation.

The contract also may provide for other funds to be raised and pledged by the city by the one or more of the following methods:

- The levy of special assessments to the extent legally permitted by the city, without the need for a petition from property owners.
- The levy and collection of charges to users and beneficiaries of the service or services furnished by the lighting system.
- A pledge of revenue that the city would otherwise receive under the City Utility Users Tax Act (as provided below).
- The receipt of money derived from the imposition of taxes by the State, except as expressly prohibited by the State Constitution.
- The receipt of other funds that may be validly used for this purpose.

City Utility Users Tax Pledge

If the authority issues bonds to be paid from revenue from a contract entered into with the city, the city may by resolution or order pledge revenue to be received by the city under the City Utility Users Tax Act to bonds of the authority issued pursuant to the contract.

Before the pledge and contract become effective, the city must enter into a trust agreement with the authority, the Michigan Finance Authority, and a trustee to provide for both of the following:

- The collection of pledged revenue by public utilities and resale customers.
- The direct payment of the pledged revenue to the trustee for the purposes provided in the Municipal Lighting Authority Act.

Also, before the pledge and contract become effective, the city must levy the tax; notify each public utility and resale customer collecting the tax to remit the collections to the trustee; and take all other steps necessary and convenient to arrange for and ensure the orderly collection of the tax.

The pledged revenue collected or to be collected by public utilities and resale customers must be held in trust to be applied for the sole and exclusive benefit of authority bondholders as provided for by the Act, the contract, and the trust agreement, and may not be commingled with any other funds.

The pledged revenue is exempt from being levied upon, taken, sequestered, or applied toward paying the debts or liabilities of the city other than for payment of debt service on the authority bonds and related administrative costs to which the contract and trust agreement apply.

The city may not enter into a contract pledging city utility user tax revenue that would result in outstanding bonds secured by the pledged revenue having an aggregate annual debt service in excess of \$12.5 million in any one year, taking into account any anticipated Federal credits as determined by the authority.

The Act specifies that the property of the lighting authority is public property devoted to an essential public and governmental purpose, and authority income is for a public and governmental purpose.

The authority's property, income, activities, and operations are exempt from all taxes and special assessments of the State or a political subdivision of the State, unless the property, income, activities, and operations are leased to private parties.

The authority may acquire property for a lighting system by purchase, construction, lease, gift, or devise, within or outside its corporate limits. The authority also may hold, manage, control, sell, exchange, or lease the property. If the property came into the authority's ownership or control from the city, however, the authority may not sell, exchange, or otherwise dispose of the property unless the other party to the transaction is the city.

Employees

The contents or language of the articles of incorporation must be a permissive subject of collective bargaining between the city and a bargaining representative of its employees. If the city and a bargaining representative engage in collective bargaining before the articles are approved, and they reach an agreement on issues that would obligate an entity that will function as an employer in the authority, the articles must include those obligations.

Before the authority's effective date, the city must affirm to the authority those employees, if any, who will be transferred to it. If any transferred employees are represented by a labor organization, they will be subject to their previous terms and conditions of employment until the terms and conditions are modified or for six months after the transfer, whichever is earlier.

The Act contains additional provisions regarding employee representation, and situations involving multiple labor organizations.

The City Utility Users Tax Act authorizes a city with a population of 600,000 or more, by ordinance, to levy a tax of up to 5% on the amount paid for certain utility services and requires the revenue to be used to hire or retain police officers. Under the bill, if the city enters into a contract with a lighting authority, in which it pledges utility users tax revenue, the city is authorized to levy the tax until all related outstanding bonds of the authority have been paid, notwithstanding the population of the city.

The Act requires revenue generated from the utility users tax to be placed directly in the budget of the city's police department and used exclusively to retain or hire police officers. Under the bill, this applies unless revenue has been otherwise pledged to pay bonds issued by a lighting authority.

The bill requires the city, if it forms a lighting authority, to pay \$12.5 million annually to the authority from the proceeds of the utility users tax. If the authority issues bonds pursuant to a contract with the city under the Act and pledges utility users tax revenue, the revenue must be deposited and used as provided in the Act. After a contract is entered into, the trustee, after setting aside funds as required by the trust indenture, must pay to the lighting authority \$12.5 million, less the amount set aside. The trust indenture must require the remaining revenue to be returned to the city.

All of the following apply if the city enters into a contract with a lighting authority:

- The city must notify each public utility and resale customer to remit taxes collected under the Act to a trustee until notified by the trustee to return the funds to the city.
- After receiving that notice from the city, each public utility and resale customer must remit taxes to the trustee as directed by the notice until notified by the trustee to remit taxes to the city.
- The trustee must notify each public utility and resale customer to remit taxes collected under the Act to the city within 45 days of the retirement of debt service on the bonds issued by the lighting authority.

MCL 141.503 (S.B. 970)
123.1261-123.1295 (H.B. 5688)
141.1152 et al. (H.B. 5705)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 970

The bill will increase local income tax revenue in the City of Detroit and restrict the distribution of that revenue. Under the previous law, the city's income tax rate was scheduled to decrease each July 1, until it reached 2.0% for residents and 1.0% for nonresidents. The bill halted the scheduled rate reductions after July 1, 2012, and freezes the rate at 2.4% for residents and 1.2% for nonresidents until all debts incurred by an authority have been fully paid. Once the debts are paid, the bill fixes the rate at 2.2% for residents and 1.1% for nonresidents. The bill also requires a portion of the revenue generated by the changes to the tax rate to be deposited into the police department budget for the retention or hiring of police officers, rather than being left in the general fund for appropriation to the police department or other departments and expenditures. Based on FY 2011-12 collections for the City of Detroit, the restricted revenue will total approximately \$19.0 million per year.

The bill will have no impact on State revenue or expenditures.

House Bills 5688 and 5705

The bills will increase both local unit revenue and expenditures for the City of Detroit by an unknown amount depending upon the operational decisions of the authority and the terms of any bonds and/or revenue pledges related to it. House Bill 5705 reduces city utility users tax revenue to the City of Detroit police department budget by approximately \$12.5 million per year and directs it to the lighting authority. House Bill 5688 limits the aggregate annual debt service on any bonds issued by an authority to \$12.5 million.

The bills will have no impact on State revenue or expenditure.

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.