Michigan's Use of Ad Valorem Special Assessments

Michigan House of Representatives
Local Government Committee

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- Founded in 1916
- Statewide
- Non-partisan
- Private not-for-profit
- Promotes sound policy for state and local governments through factual research
- Relies on charitable contributions of Michigan foundations, businesses, and individuals
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Differences in Characteristics of Taxes and Traditional Special Assessments

- **General Property Taxes** are levied upon both real and tangible personal property not otherwise exempt by law
- **Traditional Special Assessments** are levied only upon land and premises.
  - Real property which is exempt from general property taxation is not exempt from special assessment unless the statute authorizing the special assessment so provides.

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Three Classes of Taxation

- **Taxes on income** – personal income taxes, corporate income taxes, estate taxes, etc.
- **Taxes on sales** – sales tax, use tax, liquor taxes, hotel-motel taxes, etc.
- **Taxes on the ownership of property** – property taxes, Michigan's motor vehicle registration tax, etc.
  - **Ad Valorem Tax**: A tax computed from the value of a property.

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Differences in Purpose of Tax and Special Assessment

- **Tax** – The cost of those municipal services which provide a general benefit to all residents of a unit of government should be borne through taxation imposed upon the general public.
- **Traditional Special Assessment** – The cost of construction and maintenance of local public improvements should be borne the local impositions upon property in its immediate vicinity and levied with reference to special benefits to the property assessed.

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Bolt vs City of Lansing provisions related to definition of a tax:

A tax:

1. Is to be levied to raise revenue for the general operation of government;
2. Is to be levied to benefit the general public; and
3. Is compulsory in nature.

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Differences in Characteristics of Taxes and Traditional Special Assessments

- **General Property Taxes** are levied throughout an entire unit of local government
  - A city, village, township, or county for example
- **Traditional Special Assessments** are levied only within a special assessment district comprised of the land and premises especially benefited by the public improvement being financed.
  - A sub-region of the local government

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Differences in Characteristics of Taxes and Traditional Special Assessments

- **General Property Taxes** are levied on real and personal property except properties statutorily exempted (churches, hospitals, charities, etc.)
- **Traditional Special Assessments** are levied only on real property and do not provide for exemptions of non-profit entities except in a few cases

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Differences in Characteristics of Taxes and Traditional Special Assessments

- **General Property Taxes** are levied on a modified acquisition value basis (taxable value) until there is a transfer in ownership
- **Traditional Special Assessments** are levied upon the basis of proportionate front footage or land area.

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Differences in Characteristics of Taxes and Traditional Special Assessments

- **General Property Taxes** support basic municipal services
- **Traditional Special Assessments** are essentially a financial tool used to repay debt that is incurred to finance physical improvements to infrastructure

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Differences in Characteristics of Taxes and Traditional Special Assessments

- **General Property Taxes** are open-ended and are levied at rates to fund public services
  - What are public services is subject to debate (this is why we elect representatives and subject their meetings to open meetings requirements)
  - Constitutional limitations adopted to create safeguards
- **Traditional *Special* Assessments** are <u>not</u> open-ended
  - A limited financial obligation not exceeding the cost of the improvement to infrastructure being financed

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Differences in Characteristics of Taxes and Traditional Special Assessments

- **General Property Taxes** are subject to numerous constitutional and statutory restrictions
  - uniformity and equalization requirements
  - limitations on the rate and duration of millage
  - millage rollback provisions
  - voter approval requirements
  - a cap on annual property tax increases
  - truth in taxation
  - truth in assessment
- **Traditional Special Assessments** are not subject to these constitutional and statutory requirements.

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Ad Valorem Special Assessments: Blurring the Differences

- Starting in 1950s, legislation broadened beyond public improvements the purposes for which special assessments could be imposed
- Change had the effect of eroding the connection between special assessments and public improvements which, in turn, undermined the distinction between special assessments and general taxes.

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Ad Valorem Special Assessments: Blurring the Differences

- Lines further blurred by abandoning traditional means of spreading the costs (frontage, land area, etc.) in favor of an ad valorem distribution
  - Ad valorem special assessments do not honor the historical connection between special assessments and public improvements.
  - The ad valorem value of property bears no consistent relationship to the benefits received from basic governmental services.

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Bolt vs City of Lansing provisions related to definition of a tax:

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Ad Valorem Special Assessments

- **Base** – although the term special assessment infers a benefit uniquely provided to a sub-group of the government's population, unit-wide special assessments treat all properties equally.
  - The special benefit principle, which courts repeatedly have held is the foundation on which rests the right to levy special assessments, is reduced to a practical illusion.

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Ad Valorem Special Assessments

- Vocabulary matters
  - *Blake v Metropolitan Chain Stores* (247 Mich 73, 77; 1929) "A charge imposed only on property owners benefited is a special assessment rather than a tax notwithstanding the statute calls it a tax."
- **Rate** – Special assessments are granted unlimited and open-ended revenue-raising authority.
  - Constitutional limitations apply to taxes, and these are not taxes.

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Statutes that Authorize Ad Valorem Special Assessment

- 1909 PA 279 (M.C.L. 117.4d) public improvements and street lighting – cities
- 1923 PA 116 (M.C.L. 41.414) various public improvements – townships and villages
- 1951 PA 33 (M.C.L. 41.801) police/fire equipment and operations – cities with less than 10,000 population, townships, and villages
- 1954 PA 188 (M.C.L. 41.721 et seq.) various public improvements – townships
- 1967 PA 288 (M.C.L. 560.192a) operation and maintenance of storm water retention basins – townships, villages, and cities
- 2012 PA 406 (M.C.L. 123.1241 et seq.) ambulance/fire/police/jail equipment, equipment maintenance and operations – counties, townships, villages, cities, and authorities created to provide these services

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Conclusions and Suggested Remedies

- **Traditional Special Assessments** are a long-standing and readily accepted financing tool available to local governments
  - CRC's last look at this subject counted 34 statutes that authorize special assessments for public improvements
  - All but a few of these statutes conform to standards that differentiate traditional special assessments from general property taxation
- **Unit-Wide Ad Valorem Special Assessments** blur the lines and should be treated different

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Conclusions and Suggested Remedies

- Suggested Remedies for Unit-Wide Ad Valorem Special Assessments:

1. Eliminate all ad valorem special assessments
   - Local governments would have the prerogative of levying a property tax instead
2. Treat ad valorem special assessments as taxes
   - "A tax by any other name is but a tax..."

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Conclusions and Suggested Remedies

3. Establish police and fire authorities to provide services where currently PA 33 special assessments are levied
   - Would subject the millage to constitutional property tax limitations
   - Would require voter approval pursuant to Section 31 of Article IX
   - Would still not be subject to 15, 18, 50 mill limitations

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Appendix B

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 3 of 1895 Chapters VIII and IX	Village incorporation	Improvements: streets and street paving, drains and sewers, other improvements	Pursuant to village ordinance	No	None	Not specified	Property specially benefited
Act 215 of 1895	Fourth class cities	Public improvements	As specified in municipal ordinance	No	None	None	Property specially benefited
Act 278 of 1909	Home rule villages	Public improvements	Specified in village charter	Subject to charter	None		Not specified
Act 279 of 1909	Home rule cities	Public improvements and street lighting	Specified in city charter	Subject to charter	None	None	Public improvements: not specified Street lighting: on lands abutting street. City-wide special assessment district is prohibited if real property in district is assessed on ad valorem basis
Act 283 of 1909	Townships	Improvements to public highways	Pursuant to Act 188 of 1954 (See below)	No	Not specified	Not Specified	Pursuant to Act 188 of 1954
Act 398 of 1919	Townships, cities, or villages in combination	Construction or reconstruction of bridges	By county board of commissioners upon petition by units of local government	No	None	Not specified	Benefited property
Act 116 of 1923	Townships and villages	Public improvements: garbage collection and disposal: police and fire protection and equipment; water mains for fire protection; streets and bridges; sanitary sewers; public transportation; street lighting	By petition by at least 51% of land owners in special assessment district	No	Annual installments for a single assessment cannot exceed 15% of assessed value, nor all assessment more than 45% of assessed value, in any one year	10 to 40 annual installments depending on the type of improvement	Making, levying, and collection pursuant to Act 3 of 1985 Street lighting: front footage basis or levied equally on each parcel of property assessed

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 81 of 1925	Any two adjoining cities, or villages, or both	Public improvements	As determined by legislative body	No	None		Benefited property
Act 312 of 1929	Metropolitan districts established by any two or more cities, villages, townships	Acquisition, operation, and maintenance of parks or public utilities used to provide sewage disposal, drainage, water, or transportation	Not specified	Subject to charter	None	Not specified	Not specified
Act 246 of 1931	Townships	Improvements: county roads within townships, sidewalks	By resolution of county road commissioners upon petition by owners of at least 51% of lineal front footage abutting public highway, or upon receipt of resolution from township board	No	None	Not to exceed 10 annual installments	Lands benefited, either individually or to township at large
Act 342 of 1939	Counties or contracting municipalities	Public improvements: water and sewer systems, garbage collection	Pursuant to charter or statutory provision	Not on special assessment, but on contract	None	Not to exceed 40 annual installments	Property benefited by improvement
Act 183 of 1943	Counties	Zoning: acquisition of private property for the purpose of removing nonconforming uses	In accordance with applicable statutory provisions relating to creation and operation of special assessment districts for public improvements in counties			Not specified	Not specified

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits: Amount	Levy Limits: Installments	Property Subject to Assessment
Act 359 of 1947	Charter townships	Local or public improvements: street paving, curbs and gutters, pedestrian bridges, sidewalks, solid waste disposal, storm and sanitary sewers, water systems, highway lighting	Pursuant to Act 188 of 1954	No	Not specified	Not specified	Lands abutting upon and adjacent to or otherwise benefited by the improvement
Act 208 of 1949	Cities, villages, and townships	Improvement of blighted neighborhoods	As part of development of neighborhood betterment plan, with written consent of a majority of the owners of property in the district	No	None		Property which is coterminous with the neighborhood area as set forth in the neighborhood plan
Act 33 of 1951	Townships, incorporated villages, cities with less than 10,000 population	Police and fire equipment and operations	By resolution of township board pursuant to Act 188 of 1954	No	10 mills for equipment; none for operations	Not to exceed 15 annual installments	All lands and premises especially benefited by police or fire protection
Act 188 of 1954	Townships	Public improvements: storm and sanitary sewers, water mains, improvement of public highways, sidewalks, parks, tree removal, garbage collection, lighting, bicycle paths	By resolution of township board after hearing on petition, if required or filed by more than 50% of affected land owners	No	None	One or more installments	Lands benefited in proportion to benefit received
Act 233 of 1955	Authorities established by two or more counties, townships, cities, and villages	Acquisition or operation of water supply or sewage disposal system	Pursuant to charter or statutory provision governing each contracting municipality	Not on special assessment, but on contract with authority	None	None, but 40 year limit on contract	Lands benefited

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 40 of 1956 chapters 20 and 21	Drainage boards; public corporations: the state, counties, cities, villages, townships, metropolitan districts, and authorities	Intracounty and intercounty drainage projects	By action of drainage board with respect to public corporations at large; by resolution of public corporation legislative body pursuant to charter or statutory with respect to that portion of lands therein	No	None	None for assessment s at large; not to exceed 30 installments for assessments by a public corporation	Drainage board assesses public corporations at large; a public corporation may in turn assess lands therein especially benefited
Act 185 of 1957	County or contracting municipality	Public works: acquisition, enlargement, or extension of water supply, sewage disposal, refuse, or ero-control system; lake improvements	By resolution of public works board	No	None	Not to exceed 30 installments; contracts cannot exceed 40 years	Lands benefited
Act 120 of 1961	Cities with a master plan for physical development	Redevelopment of principal shopping area	Pursuant to charter or statutory provision	No	None	Not to exceed 20 annual installments	Levied against land or interests therein on the basis of special benefit to the respective properties
Act 76 of 1965	Counties, cities villages, townships school districts, port districts, metropolitan districts	Construction, operation, and maintenance of waste disposal and water supply system	Not specified	No	None	None	Not specified
Act 288 of 1967	Townships, cities villages	Subdivision control; operation and maintenance of storm water retention basins	By resolution of local governing body	No	None	Not specified	Not specified
Act 169 of 1970	Counties, townships, cities, and villages	Local historic districts	Special assessment districts not authorized	–	–	–	Any property within historic district threatened with "demolition by neglect or upon which work has been done without a permit

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits: Amount	Levy Limits: Installments	Property Subject to Assessment
Act 139 of 1972	Townships	Maintenance or improvement of private roads	Pursuant to Act 188 of 1954, upon petition by at least 51% of affected property owners	No	Not specified	District cannot last more than 5 years	Property benefited, on a pro rata basis
Act 197 of 1975	Downtown development authority of cities, townships, and villages	Construction, renovation, etc. of public facilities, existing buildings, or multi-family dwellings.	As provided by law	No	None	None	Not specified
Act 639 of 1978	Cities and counties	Port authorities	By resolution of governing body of constituent unit other than a county	No	None	Not to exceed 30 installments	Benefited lands
Act 281 of 1986	Local development finance authorities established by cities, villages, and urban townships	Public facilities designed to reduce, eliminate, or prevent the spread of soil and groundwater contamination	By action of city, village, or urban township which established the local development finance authority	No	Not specified	Not specified	At least 50% of the amount specially assessed must be from parcels owned by parties who are potentially responsible for the indentified groundwater contamination. (At least 50% of the operating costs of the public facility must be paid by special assessment)
Act 83 of 1989	Townships	Permits townships to contract with cities or villages to acquire water for fire protection and other purposes	By resolution of township board in township where lands are serviced by water system financed pursuant to Act 94 of 1933, Act 342 of 1939, or Act 233 of 1955	No	No more than 1/2 of 1% of assessed value in any one year	None	Benefited properties

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits Amount	Levy Limits Installments	Property Subject to Assessment
Act 186 of 1989	Public corporations: counties, cities, villages, townships, districts, or authorities	Acquisition, improvement, enlargement, and operation of solid waste system	By resolution of county board of commissioners: for a public corporation other than a county, pursuant to statute or charter provision of public corporation:	No		Not to exceed 30 installments for public corporation other than a county: a contract cannot exceed 40 years	Lands benefited
Act 173 of 1992	Land reclamation and improvement authorities established by any individual, partnership, corporation, association, governmental entity, or other legal entity	Improvements: construction, maintenance, and repair of storm and sanitary sewers, public roads, parks, bicycle paths, structures for elevated foot travel; garbage collection and disposal; erosion control; tree removal; etc	By resolution of the authority board. A separate but geographically coterminous special assessment may be established for each improvement	No	None	One or more installments, but no installment can be less than 1/2 of any subsequent installment	Property located within the authority district and especially benefited by an improvement
Act 451 of 1994 Part 47	Sewage disposal or water supply districts established by metropolitan districts, counties, cities, townships, and villages	Acquisition, construction, and operation of sewage disposal and water supply system	Pursuant to charter or statutory provision of contracting municipality or water supply district	Not on special assessment, but on creation of sewage disposal	None	None, but 40 year limit on contract	Property benefited
Act 59 of 1995 Part 307 (Act 59 amended Act 451 of 1994)	Counties	Determination and maintenance of inland lake water levels	By resolution of county board of commissioners	No	Sufficient to meet bond and note obligations	None	Property benefited, including privately owned property, political subdivisions of the state, and state owned lands under the jurisdiction of the director of the Michigan Department of Natural Resources

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 59 of 1995 Part 309	Any unit of local government	Improvements to public inland lakes	Action by lake board pursuant to resolution by local governing body	No	None	Not to exceed 30 annual installments	Lands benefited in proportion to benefit received
Act 59 of 1995 Part 341	Counties with a population of 400,000 or less	Irrigation districts and irrigation improvements	Not specified	No	None	Not to exceed 10 annual installments	Lots, premises, and parcels of land benefited by irrigation improvements
Act 153 of 1996	Counties, cities, villages and townships	Park acquisition or improvement	By resolution of legislative body, or upon petition by (1) owners of 2/3 of the land in special assessment district and (2) 2/3 of the land owners	No	None	None	Not specified

Source: Michigan Statutes Annotated; CRC tabulation. In addition to the substantive statutes listed above, there are a number of procedural statutes. These include: Public Act 38 of 1883, which authorizes the establishment of special assessment districts when land is transferred from any city, township, or village to another city, township, or village and there is an outstanding special assessment at the time of the transfer; Public Act 162 of 1962, which prescribes notice of special assessment hearings requirements which supersede those of any charter or other statute; and Public Act 225 of 1976, which permits the deferment of special assessments imposed on homesteads owned and occupied by persons 65 years of age or older.