
TO: City of Evert

DRAFT

FROM: Varnum LLP

RE: Funding for Fire Protection

DATE: March 5, 2019

Our Memorandum to the City of Evert dated February 18, 2019 reviewed the existing Interlocal Agreement for the Evert Area Joint Fire Department and Joint Administrative Fire Board and the Urban Cooperation Act under which it was established. Neither the Agreement nor the Urban Cooperation Act provided sufficient support for a successful bond sale. While the Agreement could be amended to allow bonds to be issued, it would be necessary for each local unit to commit to providing its share of the debt service on the bonds, and such commitment would need to apply throughout the term of the bonds – not just based on the annual budget. Furthermore, it appears unlikely that adequate funds would be available to the local units based on existing millage rates.

This Memorandum looks at funding alternatives through Act No. 33 of the Michigan Public Acts of 1951, as amended, MCL 41.801 et seq. ("Act 33") and Act 57 of the Michigan Public Acts of 1988, as amended, MCL 124.601 et. seq. ("Act 57").

Special Assessments Under Act 33.

Act 33 permits a township, or adjoining townships acting jointly (whether or not in the same county), incorporated villages and certain "qualified cities"¹ to levy a special assessment for police and fire protection. The special assessment may apply to police services, fire services, or both police and fire services. For purposes of the memorandum, we are reporting only on assessments for fire services.

Act 33 allows the township boards² of adjoining townships, acting jointly, to provide annually by resolution for the appropriation of general or contingent funds for maintenance and operation of fire departments. They may also provide that the costs for purchasing and housing equipment, for the operation of the equipment, or both, be defrayed by special assessment on the lands and premises in the townships to be benefitted. The assessment may be used to fund the maintenance and operation of the fire department and to purchase fire motor vehicles, apparatus,

¹ A "qualified city" is defined as either (a) a city with a population of less than 15,000 or (b) a city with a population of 15,000 or more and less than 70,000 if located in a county with a population of more than 200,000 and less than 235,000. For qualified cities in the second category, a special assessment must be approved by a majority of the electors in the city's special assessment district. Voter approval of a special assessment for fire services is not required under Act 33 for a qualified city, such as Evert, with a population of less than 15,000.

² Act 33 provides that if a reference is made in the Act to "townships," that reference is also deemed to apply to townships, incorporated villages and qualified cities. If a reference is made in Act 33 or this memorandum to "townships" or "township boards," that reference also applies to a qualified city, such as Evert, and the legislative body of a qualified city, as applicable.

equipment, and housing. The appropriation for the fire motor vehicles, apparatus, equipment, and housing in a one-year period cannot exceed 10 mills of the taxable value of the area in each municipality for which the fire protection is to be furnished. There is no limit in Act 33 for the amount of an assessment for operations.

A special assessment district established under Act 33 may be township-wide or cover just a portion of the township. Most special assessment districts under Act 33 cover the entire geographic boundaries of the applicable city or township. The township board or city council may submit the question of establishing the district to the electors, but such approval is not required under the statute. There is also provision for a special assessment district to be initiated by petitions signed by the owners of 10% of the land to be made into the proposed special assessment district. If such petitions are filed, the question of establishing the district must be submitted to the electors.

This Memorandum does not discuss the details of the procedures for establishing a special assessment district. We are happy to provide that information upon request. There will be public hearings and proceedings which must be followed in order to establish the district initially, as well as annual public hearings on the estimated costs and expenses of the fire department and the estimated annual levy.

Special assessments under Act 33 may be based on either a millage rate or a per unit rate (i.e. a uniform special assessment for each parcel in a specific category). The amount of the per unit rate might be higher for industrial or commercial property than it is for residential property. The amount of a special assessment must bear a reasonably proportionate relationship to the benefit accruing to the property being assessed. *Dixon Rd. Group v. Novi*, 426 Mich. 390, 402-403 (1986). While Act 33 allows a special assessment to be levied based on the taxable valuation of the property in the special assessment district, it is not considered a general ad valorem tax. In the case of *Niles Township v. Berrien County Board of Commissioners and Barry County*, (March 2004), the Michigan Court of Appeals held that a special assessment levied for the operation of a fire department was a special assessment and not a tax, notwithstanding the decision in *Bolt v. Lansing*, 459 Mich. 152 (1998). The Court cited the case of *St. Joseph Township v. Municipal Finance Commission*, 351 Mich. 524 (1958), which upheld a township-wide special assessment district which used the value of the property assessed as the measure of benefit to that property. The Court held that a special assessment does not become a tax simply because the value of the property assessed was used to determine the amount of the benefit or because the assessment was levied upon all real property within the township.³

Assessments based on a millage rate are levied on the taxable value of the real property in the special assessment district. The special assessment is not levied on personal property. Beginning in 2002, property which is exempt from the collection of general property taxes cannot be charged for a special assessment under Act 33. Assessments are due and collected at the same time as other township taxes. If the township levies in July, the July levy may not exceed 2 mills. Act 33 limits the duration of special assessments to 15 equal annual installments.

³ It is possible that a court could rule in a subsequent case that the *Bolt* case invalidates a special assessment for fire protection. Under current law, however, the *Niles Township* case provides support for such an assessment and many communities levy special assessments under Act 33 either with or without voter approval.

Bonds may be issued under Act 33 in anticipation of the collection of the special assessments, but the full faith and credit of the township may not be pledged as additional security for payment of the bonds without voter approval.

Act 33 provides for the establishment of an administrative board, with each participating unit appointing two board members from its residents. The administrative board oversees the operations of the fire department, prepares the annual budget which is submitted to each township board for approval, and carries out those duties that are delegated to it. Under Act 33, the provisions regarding the administrative board are not unlike the provisions currently in place for the existing fire department which was established under the Urban Cooperation Act.

Act 57 Emergency Services Authority.

It is also possible for two or more municipalities to create an emergency services authority under Act 57. This act allows two or more counties, cities, villages or townships to create a joint authority to provide emergency services, including fire services. The authority is created by the adoption of articles of incorporation by the legislative body of each incorporating municipality. The authority's jurisdiction is comprised of the total territory within the incorporating municipalities. More information on the procedures for establishment of the authority are available on request. The statute also allows a new governmental unit to become part of an existing authority. If petitions requesting a referendum on the question of becoming part of the authority are filed by not less than 5% of the registered electors residing in a municipality that is not part of the authority, then the question of whether that municipality should become an incorporating municipality must be submitted to a vote of the electors of that municipality at the next general election or special election called for that purpose.

The articles of incorporation for an emergency services authority must include such information as the name of the authority; the names of the incorporating municipalities; the purpose or purposes for which the authority is created; the powers, duties and limitation of the authority and its officers; the method of selecting its governing body, officers and employees; and the person or persons who are charged with the responsibility of causing the articles of incorporation to be published, certified and filed as required by Act 57.

Act 57 specifically authorizes an authority to enter into contracts with the incorporating municipalities for provision of emergency services for a period up to 30 years. An authority may also enter into contracts with other governmental entities that are not an incorporating municipality and may charge higher fees to those entities.

An emergency services authority may levy a tax under Act 57 on all of the taxable property within the jurisdiction of the authority for the purpose of the Act. The tax must first be approved by a majority of the qualified registered electors residing in the authority. The election may be called by resolution of the board of the authority and shall contain a statement of the proposition to be submitted to the electors. Each municipal clerk and all other municipal officials of an incorporating municipality shall undertake those steps to properly submit the proposition to the electors of the incorporating municipality at the election specified in the resolutions of the authority. The results of the election shall be certified to the governing body of

the authority promptly after the date of the election. Not more than one election may be held in an authority in a calendar year for approval of the tax levy. The taxes levied by the authority may not exceed 20 mills for a period as determined by the authority in the resolution calling the election. Under general law principals, the duration of the millage cannot exceed 20 years. The tax rate authorized shall be levied and collected in the way that all ad valorem property taxes are collected in the state. The authority shall determine on which tax roll, if there is more than one, of each incorporating municipality that the taxes authorized by this statute are to be collected. The tax rate authorized may be first levied by the authority as part of the first tax roll of the appropriate municipalities occurring after the election. The tax may be levied and collected on the December roll next following the date of election if the tax is certified to the property tax assessing officials not later than September 15 of the year in which the election is held.

Act 57 provides that an authority may apply for and accept grants, loans or contributions from the federal government or any of its agencies, the state, or other public or private agencies to be used for any purposes of Act 57 and to do any and all things within its express or implied powers necessary or desirable to secure that financial or other aid or cooperation in the carrying out of any of the purposes of this Act. The statute does not otherwise provide express authority for issuing bonds or securing loans on a joint basis.

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