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TO: COUNCIL MEMBERS

FROM: David Whitaker, Director   
Legislative Policy Division Staff

DATE: February 15, 2022

RE: **DPS Exemption from Abatements**

In the January 13, 2022 meeting of the Planning and Economic Development Committee, the committee assigned the Legislative Policy Division (LPD) to address the memo from Council President Mary Sheffield, requesting that LPD research and provide a report on the process for removing Detroit Public Schools as a taxing jurisdiction on City Tax Abatements and Brownfields.

In addition to this request, the Council received a letter via the City Clerk's Office, dated December 17, 2021, with the names of the Detroit School Board members and the DPS superintendent at the end, with the heading, "*Re: Formal Objection to Tax Abatements Due [o Negative Funding Impact on Detroit Public Schools and Detroit Public Schools Community District.*" The letter did not have any form of letterhead, and the letter was unsigned.

This report is LPD's response to the Council President's inquiry and to the issues raised in the aforementioned "*DPS letter.*"

**Removing DPS/DPSCD from City Tax Abatements and Brownfields**

Removing DPS/DPSCD from City Tax Abatements and Brownfields is no simple task. The Michigan Legislature enacted Public Act 206 of 1893, the General Property Tax Act (MCL 211.1 - 211.157). An ACT to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property. The Act provides under MCL 211.1 :

That all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.

Further, the Michigan Constitution provides that the legislature shall provide for uniform general ad valorem taxation on real and tangible personal property and that its taxing authority cannot be surrendered, suspended or contracted away. Thereby, the Michigan Constitution prohibits any other governmental unit from determining taxation.

In *United States Cold Storage Corporation v Board of Assessors of City of Detroit*, 349 Mich. 81, 84 N.W.2d 487 (1957), the Court described the authority of the legislature regarding taxation stating:

'In Michigan the legislature has the power of prescribing the subjects of taxation and exemption, notwithstanding the Constitution of the state requires the legislature to provide a uniform rule of taxation, except on property paying specific taxes... The power of exemption would seem to imply the power of discrimination, and in taxation, as in other matters of legislation, classification is within the competency of the legislature.' (Citations omitted, Id at 91)

Under the analysis of the Court and the Michigan Constitution, the Michigan Legislature has the exclusive authority to tax and to determine who receives exemptions and discrimination on what taxes can be abated. This authority being exclusive precludes the City of Detroit from carving out taxing jurisdictions from exemptions or abatements granted by the State.

Therefore, removing DPS/DPSCD from City Tax Abatements and Brownfields would require direct action in the form of a change in Michigan state law by the Michigan legislature.

### **Issues raised in the "DPS letter"**

In its letter, DPS raised the assumption, "that many of those (economic development) projects receive tax abatements that have a long-term and negative financial impact on school funding.' Given this assumption, DPS concluded, ". . . that all school funding be exempted from future tax abatement grants issued by the City."

**First of all, tax abatements do not have a long-term negative impact on School funding.** Tax abatements, which are for the most part given out by local municipalities, are authorized through state enabled Public Acts with the purpose of retaining business within Michigan as well as attracting new business to the state. The statement "*long term negative impact on School funding,* " implies that funds are taken from DPS and given over to private developers through tax abatements. Tax abatements are State authorized programs that allow for tax breaks on the improvements to buildings or new buildings. There are no tax abatements on land.

When it comes to tax abatements, the City of Detroit operates primarily on a cost benefit - "but for " bases, which simply means that abatements for the most part are not extended by the City, unless it is first determined that the subject project is not financially feasible - but for the abatement; therefore, without the abatement the impacted project would not go forward. Secondly, tax abatements are given for a finite period of time. For instance, most abatements authorized by State statute have a maximum term of no more than 12 years. Again, once the abatement expires, for all tax abatement authorities, including the City of Detroit and DPS, the full ad valorem <sup>1</sup> tax is charged. The development community have advised for years that the high property tax rate, in Detroit in particular, results in many projects not being economically

viable absence a tax abatement. This being the case, many of the projects likely would not have occurred absence a tax abatement. Once a tax abatement term expires, the full ad valorem tax springs forth, this ultimately leads to increased tax revenue to DPS. One prime example of a project that would not have occurred, is the \$740 million development of the Michigan Central Train Station by the Ford Motor Company. The train station remained shuttered, neglected and blighted for 30 years, prior to the City of Detroit and the State of Michigan agreeing to provide incentives to revitalize the site. This mammoth redevelopment effort was devised to create more than 5,000 high skilled, high paying job opportunities in the City of Detroit. Upon its completion, this tax incentivized project will result in the development of a total of 1.2 million gross square feet of office, retail, parking, and residential space across five sites within the Corktown neighborhood and having to a truly catalytic effect on that community.<sup>2</sup>

Although the DPS letter correctly pointing out that, "DPSCD is uniquely positioned as the only 'community district' in the State of Michigan ("State") and is tasked with running the day-to-day operations of Detroit's school district." The letter also pointed out that, ".. DPS still exists for the sole purpose of paying off legacy debt through collection of 13 'Debt' Mills and 18 'Operating' Mills." *Unfortunately, DPS also erred in its assumption that, "[In] 2021 DPS lost \$38.8M in 13 and 18 Mil tax collections due to tax abatements."* In fact, **per page 7 of the DPS 2021 Certified Annual Financial Report (CAFR), "The School district experienced an increase in net position of \$89.3 million (in 2021). The key reason for the change in net position was the excess of property tax receipts over the required debt obligations due for the year. These funds will be used to service future debt obligations."** This statement is obviously inconsistent with a loss to DPS. In addition, on page 24 of the DPS CAFR, the note on tax abatements states, that as a result of PA 198 tax abatements and brownfields, DPS receives reduced property tax revenue of \$35.8 million (not \$38.8 million as indicated in the letter from DPSCD), of which \$11.1 million will be reimbursed through renaissance zone allocations and property tax reimbursements. The word 'reduced' rather than "lost" is used in the notation, which is substantive. By referencing these revenues as either a loss or a reduction is *incorrect, because it implies* the inevitable receipt of funds that more likely than not would have never materialized. Counting these funds as taken from DPS and given to the developer as tax abatements is not a proper characterization. Tax abatements are State authorized economic stimulus programs that allow for tax breaks on the improvements to buildings or new buildings. The property values prior to development are not abated or reduced in any way. There are no tax abatements on land.

As we indicated earlier, when it comes to tax abatements, the City of Detroit operates primarily on a "but for" principle, which means that abatements for the most part are not extended by the City unless the project is financially viable; that is to say, but for the abatement, the subject project would not go forward, such as the Michigan Central Station that sat dormant for 30 years until the right incentive deal, developer and opportunity coalesced. Without the aforementioned tax incentives, the so called, "reduced revenue," more than likely would not

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<sup>1</sup> The Latin phrase ad valorem means "according to value." So, all ad valorem taxes are based on the assessed value of the item being taxed.

<sup>2</sup> The 1.2 million square feet includes the Michigan Central Station & Parking deck at 650K sq. ft., DPS Book Depository (2231 Dalzell St.) at 273k sq. ft., The Brass Factory 240K sq. ft., The Factory Building (1907 Michigan Ave.) 50K sq. ft. and the North Michigan Ave. Parking Deck. *A map of these sites is included in the report.*

exist, because the development project never happens. Therefore, DPS does not experience any loss or reduction of its existing tax revenue.<sup>3</sup>

Per state statute, the State Aid Act, Public Act 94 of 1979 affirms that each school district in the state of Michigan is guaranteed a per pupil foundation funding amount. According to the Act, the amount of each district's foundation (per pupil) allowance for 2015-2016 was based on: (a) The basic foundation allowance of \$8,169.00 and (b) The minimum foundation allowance was \$7,391.00. The State Aid Act required that the State of Michigan close the gaps between shortfalls in property tax collections in a given school district. As in the case of DPS, where in 2016 the State of Michigan supplemented DPS in order for the district to reach its Foundation (per pupil) allocation. This was the funding structure for DPS, prior to the creation of DPSCD and the separation of DPS.

*Effective June 21, 2016, the Michigan Legislature enacted Public Act 192 of 2016, amending The Revised School Code, 1976 PA 451, as amended (MCL 380.1 to 380.1853) with immediate effect. Act 192 provided:*

- *Effective July 1, 2016, the School District of the City of Detroit ("DPS") became a qualifying district under section 12b of the Code, MCL 380.12b, and a community district was created for the same geographic area of DPS to provide public educational services for residents of that geographic area (the "Detroit Public Schools Community District" or "DPSCD") under section 383 of the code, MCL 380.383;*
- *All functions, responsibilities and assets of DPS were transferred to DPSCD;*
- *DPS retains legacy debt and remains a separate, limited entity for the sole purpose of repaying that debt and the emergency loan acquired by the state to fund transitional operating costs;<sup>4</sup>*

## CONCLUSION

Essentially, the debt of DPS is totally separate from the day-to-day operations costs of DPSCD. As negotiated with the Michigan Department of Treasury, once the debt accumulated by DPS is paid off via voter-approved taxes collected annually and the debt has been discharged, DPS will dissolve. It appears that many of the assumptions outlined in the DPS letter, were drawn from a misinterpretation of the 2021 DPS CAFR findings. When it comes to tax abatements, the City of Detroit operates primarily on a "but for" principle, which means that abatements for the most part are not extended by the City unless, but for the abatement, the impacted project would not go forward. Without the aforementioned tax incentives, the additional potential tax revenue might not exist.

The problem with the adequacy/sufficiency of funding that DPSCD has to devote to the education of our children in all the ways that our current complex society demands, that question is not related to tax abatements, it is more so related to how schools are funded in this

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<sup>3</sup> In the case of PA 198 rehabilitation projects, only 50% of the newly realized taxable value is abated for the term of the certificate.

<sup>4</sup> Source: [miller-canfield.pdf\(gongwer.com\)](http://miller-canfield.pdf(gongwer.com))

state. Using property tax collections is an unfair and inequitable method of funding schools. The State of Michigan needs to find alternative ways to fund schools to take away the inherent disparity between poorer school districts like Detroit and their more affluent counterparts. This will also require a basic understanding in Lansing, that when children in any school district in the State of Michigan are underserved, due to a lack of available equitable resources, we all suffer. However, the State's legislative body's ability to effectively brainstorm, debate and develop a successful policy to address the severe disparities in school funding is seriously curtailed by term limits.<sup>5</sup>

Please contact us if we can be of any further assistance.

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<sup>5</sup> <https://www.brooking.edu/blog/fixgov/2018/01/18/five-reasons-to-oppose-congressional-term-limits/>