



COUNTY ADMINISTRATOR
220 NORTH MAIN STREET, P.O. BOX 8645
ANN ARBOR, MICHIGAN 48107-8645
(734) 222-6850
FAX (734) 222-6715

TO: Andy LaBarre, Chair
Ways and Means Committee

FROM: Gregory Dill
Interim County Administrator

DATE: October 5, 2016

SUBJECT: Authorize the use of P.A. 88 fund balance and County general fund to fund a number of projects which were formerly funded by P.A. 88

BOARD ACTION REQUESTED:

It is requested that the Board of Commissioners authorize a resolution to partially fund a number of projects which were formerly funded by P.A. 88 through the use of P.A. 88 fund balance and the County general fund. Also, the resolution shall serve as notification of past and current recipients of P.A. 88 funding that the County will no longer levy, collect or distribute P.A. 88 funds.

BACKGROUND

In 1913, the Michigan legislature enacted Public Act 88 (MCLA 46.161), which allows counties to levy a millage not to exceed 5 cents on each \$100.00 of taxable value to promote economic activity in the county, region or state through several activities including advertising agricultural and industrial advantages, exhibiting products and industries, encouraging immigration and increased trade and advertising for tourists. The Act also specifies that a county board of commissioners may appropriate the millage funds raised to a not-for-profit organization which is engaged in advertising the advantages of conducting trade within the county, region or state. The power of a county to approve an agriculture and economic development millage under Public Act 88 is not subject to the voting requirement of the Headlee Amendment to the Michigan Constitution because the legislative authority to approve such a millage pre-dates Headlee by 65 years. The Washtenaw County Board of Commissioners has annually approved a Public Act 88 millage beginning in the fall of 2009.

DISCUSSION:

Washtenaw County has been levying an agricultural and economic development millage pursuant to Public Act 88 of 1913, beginning in 2009 (with the collected funds first being used in 2010). P.A. 88 is a pre-Headlee authorized millage which the County has viewed as not being subject to the Headlee Amendment to the Constitution and was initially levied as a stop gap measure in poor economic times to insure that certain services, such as MSU Extension and its 4H program, continued to be funded. The County has continued to collect the P.A. 88 levy on an annual basis, continually through 2015 (for use in 2016). The amounts collected under the P.A. levy have annually increased from an initial levy of \$603,000.00 for use in 2010 to \$1,383,750.00 for use in 2016.

On January 5, 2016, the Michigan Legislature enacted P.A. 138 of 2015 which amended P.A. 88 to indicate that for those counties currently levying under the Act (including Washtenaw County), such levies would only be permitted through 2019, and beginning in 2020, any levies under P.A. 88 would need to be approved by the Washtenaw County electorate. On October 21, 2015, the Michigan Attorney General published an opinion concerning, in part, the legal validity of the County's levy of P.A. 88. The Attorney General opined that while the County did not violate the Headlee Amendment to the Constitution by levying P.A. 88 without a vote of the electorate, it was still prohibited from levying the tax because the levy caused the County to exceed its constitutional mill limitation under the Michigan Constitution.

In April of 2016, the County was sued in the Michigan Court of Appeals by Taxpayers United Michigan Foundation alleging that the County violated the Headlee Amendment by levying P.A. 88 without a vote of the Washtenaw County electorate and that the levy of P.A. 88 caused the County to improperly exceed its constitutional mill limit under the Michigan Constitution. In an Order dated August 17, 2016, the Court of Appeals dismissed Plaintiff's Complaint, holding that the County did not violate the Headlee Amendment by levying P.A. 88 without a vote of the electorate, and dismissing the constitutional mill limit claim on procedural grounds without addressing the merits of the claim.

Given the Amendment to the Statue, Attorney General's Opinion and potential for additional lawsuits, it now appears to be the proper time for the County to transition away from levying P.A. 88.

Therefore it is now proposed that the County not levy P.A. 88 in 2016 (for use in calendar year 2017), but rather fund certain important projects during fiscal year 2017 only, and consider 2017 as a transitional year. Any fund balance within the P.A. 88 fund will first be utilized to support these activities.

The County is proposing to expend \$944,752 to fund projects utilizing the P.A. 88 fund balance and the remaining will come from the County General Fund as follows:

- Spark--\$500,000
- MSU Extension--\$166,752
- Farm Council - \$15,000
- LiveYpsi - \$60,000
- Growing Hope - \$88,000
- Office of Community and Economic Development--\$115,000.00; and

Finally, this Resolution shall serve as notice that the Washtenaw County Board of Commissioners no longer intends to levy P.A. 88 in the future, thus giving past and current recipients of such funds time to secure alternative funding.

IMPACT ON PERSONNEL:

Elimination of 1.0 FTE – Grade 32, Non-Union.

IMPACT ON BUDGET:

Use of P.A. 88 fund balance and the remaining will come from the County General Fund.

IMPACT ON INDIRECT COSTS:

None.

IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:

Funding for certain agencies will continue at a modified level for fiscal year 2017 only. The County will notify all agencies that received funding in fiscal year 2016 that funding is either being denied for 2016 or limited funding will continue for fiscal year 2017 only.

CONFORMITY TO COUNTY POLICIES

The resolution conforms to County policies, and has been reviewed by Corporation Counsel, Finance, Human Resources and County Administration

A RESOLUTION TO FUND FOR CALENDAR YEAR 2017 FROM THE P.A. 88 FUND BALANCE AND THE WASHTENAW COUNTY GENERAL FUND A NUMBER OF PROJECTS WHICH WERE FORMERLY FUNDED BY P.A. 88 AND NOTIFYING PAST AND CURRENT RECIPIENTS OF THIS FUNDING THAT THE COUNTY WILL NO LONGER LEVY, COLLECT OR DISTRIBUTE P.A. 88 FUNDS

WASHTENAW COUNTY BOARD OF COMMISSIONERS

October 19, 2016

WHEREAS, Washtenaw County has been levying an agricultural and economic development millage pursuant to Public Act 88 of 1913, beginning in 2009 (with the collected funds first being used in 2010); and

WHEREAS, P.A. 88 is a pre-Headlee authorized millage which the County has viewed as not being subject to the Headlee Amendment to the Constitution; and

WHEREAS, P.A. 88 was initially levied as a stop gap measure in poor economic times to insure that certain services, such as MSU Extension and its 4H program, continued to be funded; and

WHEREAS, the County has continued to collect the P.A. 88 levy on an annual basis, continually through 2015 (for use in 2016); and

WHEREAS, the amounts collected under the P.A. levy have annually increased from an initial levy of \$603,000.00 for use in 2010 to \$1,383,750.00 for use in 2016; and

WHEREAS, on January 5, 2016, the Michigan Legislature enacted P.A. 138 of 2015 which amended P.A. 88 to indicate that for those counties currently levying under the Act (including Washtenaw County), such levies would only be permitted through 2019, and beginning in 2020, any levies under P.A. 88 would need to be approved by the Washtenaw County electorate; and

WHEREAS, on October 21, 2015, the Michigan Attorney General published an opinion concerning, in part, the legal validity of the County's levy of P.A. 88; and

WHEREAS, the Attorney General opined that while the County did not violate the Headlee Amendment to the Constitution by levying P.A. 88 without a vote of the electorate, it was still prohibited from levying the tax because the levy caused the County to exceed its constitutional mill limitation under the Michigan Constitution; and

WHEREAS, in April of 2016, the County was sued in the Michigan Court of Appeals by Taxpayers United Michigan Foundation alleging that the County violated the Headlee Amendment by levying P.A. 88 without a vote of the Washtenaw County electorate and that the levy of P.A. 88 caused the County to improperly exceed its constitutional mill limit under the Michigan Constitution; and

WHEREAS, in an Order dated August 17, 2016, the Court of Appeals dismissed Plaintiff's Complaint, holding that the County did not violate the Headlee Amendment by levying P.A. 88 without a vote of the electorate, and dismissing the constitutional mill limit claim on procedural grounds without addressing the merits of the claim; and

WHEREAS, given the Amendment to the Statue, Attorney General's Opinion and potential for additional lawsuits, it now appears to be the proper time for the County to transition away from levying P.A. 88; and

WHEREAS, it is now proposed that the County not levy P.A. 88 in 2016 (for use in calendar year 2017), but rather fund certain important projects during fiscal year 2017 only, and consider 2017 as a transitional year; and

WHEREAS, the County is proposing to expend \$944,752.00 to fund the following projects during fiscal year 2017 only, and consider 2017 as a transitional year. Any fund balance within the P.A. 88 fund will first be utilized to support these activities; and

- Spark--\$500,000
- MSU Extension--\$166,752
- Farm Council - \$15,000
- LiveYpsi - \$60,000
- Growing Hope - \$88,000
- Office of Community and Economic Development--\$115,000.00; and

WHEREAS, this Resolution shall serve as notice that the Washtenaw County Board of Commissioners no longer intends to levy P.A. 88 in the future, thus giving past and current recipients of such funds time to secure alternative funding.

NOW THEREFORE, BE IT RESOLVED that the Washtenaw County Board of Commissioners agrees that in lieu of levying P.A. 88, it shall expend \$944,752.00 to fund the following projects which were formerly funded by P.A. 88 through the use of P.A. 88 fund balance, and the remaining will come from the County General Fund:

- Spark--\$500,000
- MSU Extension--\$166,752
- Farm Council - \$15,000
- LiveYpsi - \$60,000
- Growing Hope - \$88,000
- Office of Community and Economic Development--\$115,000.00; and

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners hereby authorizes the 2017 General Fund Budget adjustment:

1. Increase planned use of fund balance up to the amount of \$944,752.
2. Increase appropriations/transfers out up to the amount of \$944,752.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners hereby authorizes the 2017 Economic Development & Agriculture Millage Budget adjustment:

1. Increase the planned use of fund balance and transfers up to the amount of \$944,752.
2. Increase Other Services & Charges, Personal Services and Internal Service Charges up to the amount of \$944,752.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners authorizes the following position elimination.

Position ID	Position Title	Grade	Group	Eliminate
32860001	Economic Development Officer	32	32	1.0 FTE

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners states that this Resolution shall serve as notice to all past and current recipients of P.A. 88 funding that it no longer intends to levy P.A. 88.