Much Ado About Commercial Property Taxes

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Having worked for ISAC now for a year and a half, I've learned that one of the biggest legislative challenges facing local governments involves the reform of Iowa's property tax structure. The 2011 legislative session proved no different with an attempt to modify the commercial property tax system. But after a six-month long battle between the House, the Senate, and the Governor, a compromise could not be reached and no legislation was enacted.

In the months leading up to the 2011 session, it was clear that commercial property tax reform would be on the legislature's agenda; Governor Branstad had been campaigning on this premise throughout his run for office. His plan was to roll back values on existing commercial properties by 8% each year over five years, with the value reaching 60% in year five. New commercial properties would be taxed at 60% immediately. Rolling back commercial property tax values, he said, would result in significant statewide economic growth and the creation of 200,000 new jobs.

2011 Legislative Session

The Beginning - The first bill on commercial property tax reform introduced early on in session was HF 9. Although this bill did not roll back commercial property values, it had a negative impact on local governments. The bill required a city or county whose property tax or other revenue is reduced to first reduce funding for non-essential services. Thankfully, the House later struck this language after they became inundated with calls and e-mails from local government officials expressing their concern about the language. HF 9 also coupled commercial property with agriculture and residential properties, and limited all properties to the lowest increase in valuation under a 4% cap. The bill was voted out of the House Ways and Means committee, with no further action. ISAC was opposed to this bill.

The next bill, HSB 129, was filed in late February. This bill was the Governor's proposal to roll back commercial property tax values to 60%, and to tax new commercial property at 60% beginning in 2012. HSB 129 did not include replacement dollars for the loss in local government property tax revenue. A subcommittee met on the bill, with no further action. ISAC was opposed to this bill as well.

Moving into March, action in the House had quieted down, and the Senate's plan for commercial property tax reform was unclear. ISAC remained hopeful that the Senate would not consider the bills coming from the House. Then on March 31, SSB 1205 was filed.

The Middle - SSB 1205, crafted by Senator Joe Bolkcom (D-Johnson), took a completely different approach than the House bills. It established a Business Property Tax Credit Fund for commercial, industrial and rail properties, and appropriated to this fund from the state's General Fund $50 million annually beginning in FY 2012. For FY 2013 and each year thereafter, the bill appropriated an amount equal to the total amount appropriated in the previous fiscal year. Also for FY 2013 and beyond, the bill appropriated an additional $50 million if the Revenue Estimating Conference (REC) certified that the total amount of General Fund revenues had grown by at least 4% compared to the previous fiscal year. The total appropriation to the fund was not to exceed $200 million in any one fiscal year.

SSB 1205 was a good bill, one that ISAC registered in favor of. It had no fiscal impact on local governments and it supported small businesses. The approach was similar to the Homestead Tax Credit. It was estimated that during the first year the tax credit was in effect, it would be worth $600 for property valued at $30,000 and higher. The bill would tax the first $32,000 of property as if it were residential property, or at 50.4%. SSB 1205 was renamed SF 522 and was voted out of the Senate on April 13.

The next couple of weeks remained relatively quiet – a little too quiet considering the end of session was fast-approaching. Then on April 27, two days before what was supposed to be the last day of the 2011 session, HSB 240 was filed.

HSB 240 was effectively the Governor's bill, HSB 129, with one exception – it included city and county budget limitations. The bill replaced the general and rural basic levies with a revenue limitation based on the Midwest Consumer Price Index. The bill also specified that counties could only exceed their revenue limitation if approved at a special election. Finally, the bill encouraged counties not to have ending unreserved or undesignated fund balances over 25% of budgeted expenditures. Anything in excess of 25% was to be explicitly reserved or designated for a specific purpose.

The Bitter End - Over the next couple of weeks, with no compromise in site, it was down to two very different proposals to commercial property tax reform: HSB 240, now HF 691, and SF 522. While SF 522 had been passed by the Senate, the House had not yet acted on HF 691. On May 10, the

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House would consider SF 522. Upon taking up the bill for debate, the House amended the contents of HF 691 into SF 522, and then passed SF 522. SF 522 now included the House commercial property tax reform proposal and none of the language pertaining to the Senate's proposal.

While the House stood their ground on the commercial property tax rollback, the Senate also remained firm on their plan to create a business property tax credit, and negotiations continued. Throughout the remainder of May and June and through endless attempts to compromise, the commercial property tax language continued to be amended by both chambers, eventually ending up in a 700-page omnibus budget bill, and finally the standings appropriations bill where an amendment was adopted during a late-night conference committee to strike the language altogether. Commercial property tax reform was dead for the year.

Looking Ahead

Even though last-ditch negotiation efforts failed, the House and Senate did make changes to each of their proposals in an attempt to compromise. The following bullet points detail their positions in the final days of session, and the legislation that was considered but not enacted. It's unclear whether these ideas or compromises will hold true for the 2012 session, but they're probably good indicators of what lies ahead.

Rollback vs. Business Property Tax Credit

- The House remained firm on reducing the value at which commercial, industrial and rail property is taxed, but did amend their proposal to roll back the value to 75% instead of 60%.
- The Senate remained firm on not rolling back commercial, industrial, and rail values, and continued their push for a new business property tax credit for each of these classes of property. The Senate did set a floor on residential property values to roll back no less than 50%. The House showed interest in the Senate proposal, but not enough to accept it and give up the commercial, industrial and rail rollback.

Replacement Dollars

- To make up for the loss in local government property tax revenue, in a final piece of legislation, the House created a Commercial and Industrial Property Tax Replacement Fund and appropriated from the state's General Fund $30 million per year, up to $150 million. This was an improvement over earlier House bills that did not include replacement dollars, or included language that specified it would be their "intent" to appropriate funding.
- The Senate's proposal of creating a new business property tax credit did not require the need for replacement dollars. Their proposal appropriated $50 million annually up to $200 million to a newly created Business Property Tax Credit Fund.

Revenue Limitations

- In a final piece of legislation, the House eliminated the supplemental levy, but allowed counties to levy for supplemental purposes within revenue limitations. The Senate did not eliminate the supplemental levy.
- The Senate provided that counties could exceed their revenue limitation if approved at a second public hearing instead of a special election, as proposed by the House. The Senate also said that the new limitation would take effect with budgets starting July 1, 2013 as opposed to 2012 like the House proposed.
- The Senate compromised with the House on the ending fund balance language, with some exception to the terminology used.

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i. The governing body of a drainage or levee district as provided in chapter 468, including a board as defined in Iowa Code §468.3, regardless of how the district is organized.
j. An advisory board, advisory commission, advisory committee, task force, or other body created by an entity organized under chapter 28E, or by the administrator or joint board specified in a chapter 28E agreement, to develop and make recommendations on public policy issues.

If it appears your economic development entity would fall under this definition – most likely through subsection "c" or "j," – then your economic development entity should work closely with your county attorney to know and understand when Iowa Code §21.5 will allow a meeting to be closed. If the proper procedure is followed, meetings can be closed to discuss the purchase or sale (with the "or sale" being a new addition in 2011) of particular real estate, where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. Proper use of the statute allowing a meeting to be closed may help alleviate concerns of making sensitive economic development negotiations public.