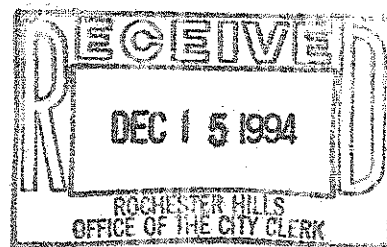
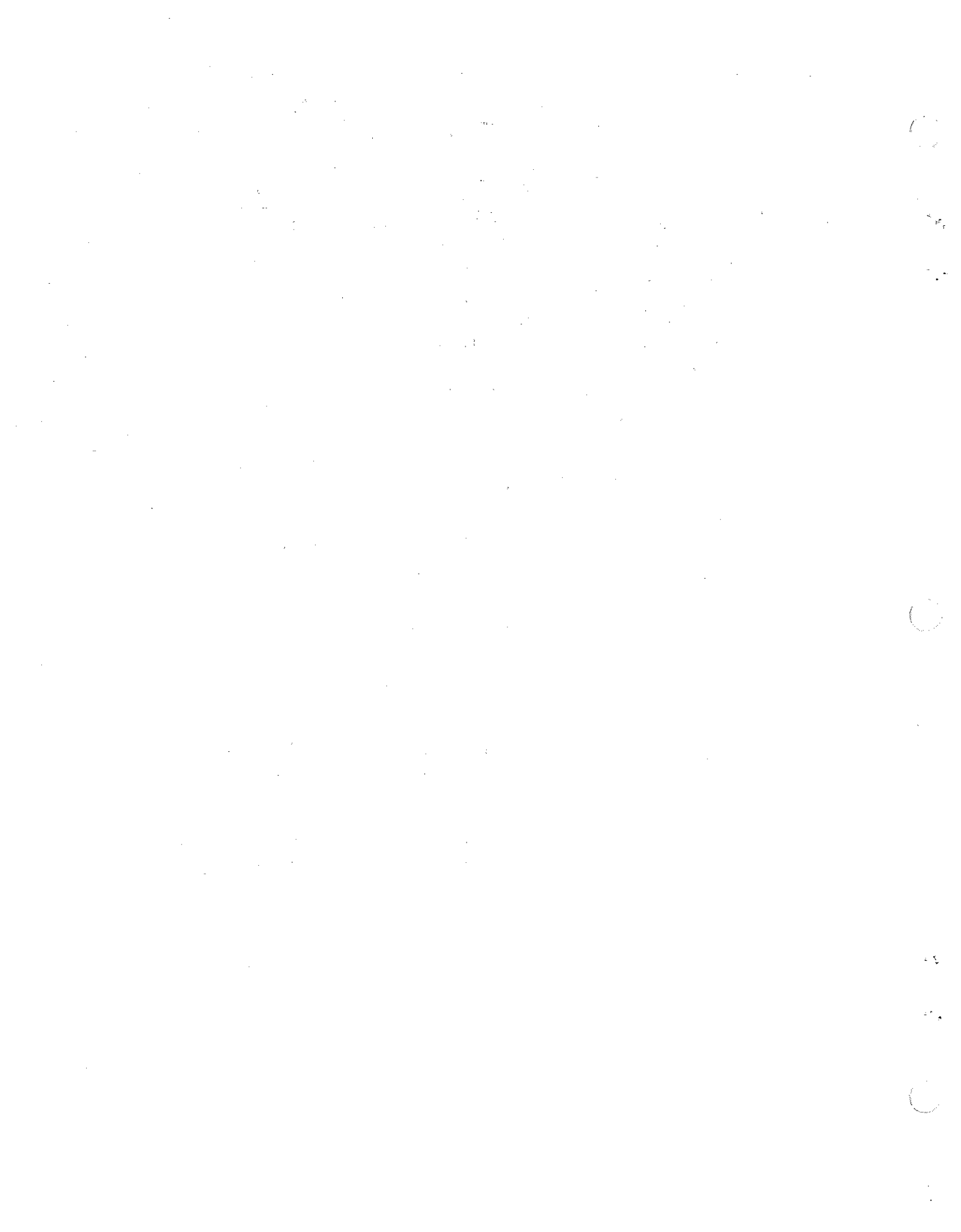


# Special Assessment Practices in Michigan



Number 24 in a continuing series produced for

**THE MICHIGAN CITY MANAGEMENT ASSOCIATION**



# **SPECIAL ASSESSMENT PRACTICES IN MICHIGAN**

by

**James Fralick**

sponsored by:

**The Michigan City Management Association**

in conjunction with:

**The Institute of Public Policy Studies**

**The University of Michigan**

and

**The Michigan Municipal League**

October 1994

**The Michigan City Management Association**

**1675 Green Road**

**Ann Arbor, Michigan 48106**

**(313) 662-3246**

**Additional copies of this report may be purchased for \$10.00**

(

2

3

(

4

5

6

(

The following report is the product of a graduate research assistantship established by the Michigan City Management Association and the Institute of Public Policy Studies at the University of Michigan. The Board of Directors of the Michigan City Management Association selected this project as beneficial to the members of the Association and to the academic and professional development of the graduate student involved. The Michigan Municipal League cooperated with the Michigan City Management Association and the Institute of Public Policy Studies in the formation of this project.

Mr. James Fralick, a graduate student enrolled in the University of Michigan, undertook the study during the 1993-94 academic year. He expects to graduate in May 1995 with a Master degree in Public Policy and a Master degree in Business Administration.

The data for this study was obtained from questionnaires from 144 municipalities throughout Michigan. In addition, Mr. Fralick called upon his academic and professional experience in public financial management.

Grateful acknowledgement is extended to all Michigan officials who assisted in this study; to the Michigan Municipal League staff who assisted Mr. Fralick in his endeavor; and to Ms. Helene McCarren, Assistant Director of the Institute of Public Policy Studies, for her support.

**MICHIGAN CITY MANAGEMENT ASSOCIATION**

John A. O'Keefe  
Secretary-Treasurer



# **Special Assessment Practices in Michigan**

## **Table of Contents**

|   |           |
|---|-----------|
| <b>Introduction: Overview of Report</b>                                 | <b>1</b>  |
| <b>Section I: Special Assessments versus other Financing Mechanisms</b> | <b>3</b>  |
| Problems of interpretation  |           |
| Summary   |           |
| <b>Section II: Michigan's Experience with Non-Tax Revenue Sources</b>   | <b>6</b>  |
| Michigan's use of non-tax revenue versus other states                   |           |
| Michigan's use of special assessments                                   |           |
| Summary   |           |
| <b>Section III: Implementing Special Assessments in Michigan</b>        | <b>12</b> |
| Overview of special assessment procedures                               |           |
| Phase I: Initiation and Investigation                                   |           |
| Phase II: Determination and Allocation                                  |           |
| Phase III: Rolls, Financing, Collection and Construction                |           |
| Summary   |           |
| <b>Conclusion: The Future of Special Assessments in Michigan</b>        | <b>20</b> |
| <b>Appendix A: Special Assessment Survey</b>                            | <b>21</b> |



During the 1980's, as federal and state revenue contributions decreased and local governments were forced to play a more active role in financing public services, many Michigan municipalities turned to property taxes. Fueled by booming property values and increased construction activity, local property taxes as a percent of total government revenue remained relatively constant in Michigan. For a number of years, Michigan's municipalities were able to provide public services despite the decline in intergovernmental transfers by relying on property tax revenues.

In the early 1990's, however, many municipalities suffered a decline in revenue when the recession pushed property values down. Some municipalities, who tried to balance their budgets with property tax increases, had to deal with strong public opposition.<sup>1</sup> The passage of Proposal A in 1993 which eliminated the portion of the property tax that paid for schools may indicate that Michigan's municipalities can expect to face the same kinds of challenges that municipalities faced in California after Proposition 13.<sup>2</sup>

Today, the property tax, while still the most significant source of municipal revenue, is no longer considered to be the same old "war horse of taxes."<sup>3</sup> In an effort to reduce the risks associated with increasingly uncertain economic conditions and, in many cases, rebellious tax paying property owners, municipalities have tried to diversify their sources of revenue. Municipal finance professionals are working to find balance in their tax systems by taking advantage of non-tax revenue sources like user fees, special assessments and service charges.<sup>4</sup>

### Overview of Report

Since the early 1980's, the Michigan City Management Association (MCMA) has recognized the effort to reduce the dependence on property taxes and has sponsored research projects designed to investigate alternative sources of revenue. In 1981, Robert Dakers wrote a report that evaluated the benefits associated with service charges. In 1991, Gary Snoonian added to the exploration of non-tax sources of revenue by analyzing user fee practices in Michigan.<sup>5</sup> In an attempt to examine an additional non-tax source of revenue, this report will focus on special assessments. This report will:

- Compare special assessments with other known financing mechanisms.
- Compare Michigan's use of special assessments with that of other states.
- Identify ways in which Michigan municipalities have used special assessments to provide services.
- Outline and describe how a special assessment is implemented.

---

<sup>1</sup> At least a dozen municipalities have approved property tax limits since 1990. Ganette News Service, April 7, 1993.

<sup>2</sup> When Michigan's voters passed Proposal A, they amended the General Property Tax Act (MCL 211.24c et al.) and revised the state's school financing system by reducing the reliance on local property taxes and a limit on assessment increases. House Legislative Section, *Proposal A Implementation*, 1993.

<sup>3</sup> *Local Revenue Diversification: Advisory Commission on Intergovernmental Transfers*, 1987.

<sup>4</sup> *Local Revenue Diversification: Advisory Commission on Intergovernmental Transfers*, 1987.

<sup>5</sup> The reports written by Mr. Dakers and Mr. Snoonian were the products of graduate research assistantships sponsored by the Michigan City Management Association and the Institute of Public Policy Studies at the University of Michigan. Copies of their reports may be obtained from the Michigan Municipal League.

## **Section I: Special assessments versus other known revenue sources.**

As an introduction to special assessments, Section I will provide a brief description of the sources of revenue that are available. It will review special assessments, general property taxes, narrow-based benefit taxes, license fees, user fees and service charges.

## **Section II: Michigan's experience with non-tax revenue sources and special assessments.**

Having defined special assessments, Section II will compare Michigan's experience with special assessments to other states. In addition, this section will provide data on the historical trend towards non-tax sources of revenue.

## **Section III: Implementing Special Assessments in Michigan**

Based on data collected from a survey of 144 municipalities in Michigan, this section will examine the various special assessment practices and procedures used in Michigan. This section will examine: 1) legislation and use, 2) initiation and investigation, 3) determination and allocation of benefits and 4) rolls, financing and collection.

## **Summary**

In conclusion, this report will try to draw some general conclusions about the future of special assessments in Michigan. It will review the legislation as it relates to different municipalities and provide relevant information on the purposes of the special assessments, methods of initiation, need for voter approval, levy limitations and the types of properties subject to special assessments.

This paper will attempt to suggest additional ways for municipalities to take advantage of the special assessment alternative. It will look for additional services that could be funded by special assessments and properties that should be paying them.

## **Section I: Special Assessments Versus Other Known Financing Mechanisms**

---

Municipalities collect revenue by requiring residents to make 1) compulsory payments which are used to finance the costs of public programs as members of the community and 2) payments which are used to cover the cost of the goods and services that they specifically use. The first approach describes a general tax that is levied on all residents in a community simply because they share the general benefits associated with most publicly provided goods and services. The second approach describes a specific charge that is imposed on only those residents who benefit specifically from the use or availability of a particular public good or service.

Municipalities justify their ability to collect revenue to fund municipal activities by proving that their collection systems ask residents to pay their fair share of the costs. Complaints about the tax system can develop when, for example, a municipality has not found an acceptable balance between specific benefit based charges and general benefit taxes. Municipalities have always had problems finding such a balance since it is difficult to measure how much various individuals are willing to pay for the benefits they receive from public goods. The rationale underlying the use of benefit based collection methods stems from the belief that it is inappropriate to use the general revenues to finance capital improvements that do not benefit the entire community. Instead, specific benefit based methods finance such improvements by directly charging property owners for the costs associated with the special benefit they receive.

Given this, there are a number of financing approaches that collect revenue differently depending on whether or not residents receive specific or general benefits. Table 1 illustrates the financing alternatives that range from specific benefit based assessments such as utility charges and user fees to general benefit taxes such as sales and property taxes. Just exactly where special assessments lie on this specific - general benefit spectrum has been a source of confusion. In 1952, Professor William Winter from Southern Illinois University wrote, "in some respects the special assessment resembles a tax; in others, a service charge; in still others, a combination of tax and service charge."<sup>6</sup>

It is important to understand that some clear differences exist between special assessments and general property taxes. Special assessments are assigned based on specific benefits received and as such they allow property owners to pay the costs of the goods and services that only benefit them. The differences between a special assessment and a general tax are outlined in Table 2.

---

<sup>6</sup> William Winter, *The Special Assessment with Emphasis on the Michigan Experience*, 1952.

**Table 1: Alternative Local Revenue Sources**

| <b>Revenue Source</b>      | <b>Characteristics</b>  | <b>Examples</b>   |
|----------------------------|---|---|
| Utility charges            | Similar to private market prices; benefits accrue to identifiable individuals; charges vary with consumption  | Charges for sewer, water and publicly provided electricity                                |
| User fees                  | Similar to private market prices but may involve a subsidy to specific users; payments normally based on an individuals consumption of goods and services   | Fees for swimming pools and trash collection  |
| Special Assessments        | Compulsory payments imposed on real property for specific benefits generated by public investments or services; in theory, costs are allocated based on benefits received   | Local assessments for sidewalks, street paving and lighting                               |
| License fees               | Payments required to cover the costs of government regulation of private activities; considered an excise tax if charges exceed reasonable costs of regulation  | Automobile inspection fees, building permit and inspection charges, professional licenses |
| Narrow-based benefit taxes | Taxes on specific activities or purchases which are generally, but often indirectly, related to the use of public facilities such as highways; revenues are usually earmarked for particular expenditure categories | Motor vehicle and fuel taxes  |
| General Taxes              | Compulsory payments which are used to finance general government programs; tax payments are not linked, directly or indirectly, with an individual's consumption of specific goods and services                     | Sales, income and property taxes  |

Source: Local Revenue Diversification, Advisory Commission on Intergovernmental Relations, 1987.

**Table 2: Distinction between Special Assessments and General Property Taxes**

| <b>General Taxes</b>                                   | <b>Special Assessments</b>  |
|--|---|
| Levied on real and tangible personal property          | Levied only on land and premises                                      |
| Levied on an entire assessing jurisdiction             | Levied only on properties that exist within a particular benefit area |
| Levied according to the value of the property involved | Usually, levied based upon front footage or land area                 |
| Subject to state constitutional restrictions           | Not subject to state constitutional restrictions                      |

Sources: Memorandum to the Headlee Amendment Blue Ribbon Commission, Citizens Research Council of Michigan (1993)  
Ordinance Analysis #11: Michigan Municipal League, 1987

## **Problems of Interpretation**

As described in Table 2, the difference between special assessments and ad valorem property taxes is that special assessments allocate costs based on the benefits received while taxes allocate costs based on property values. For most publicly provided goods and services, it is difficult to determine the degree to which each resident benefits. Groups such as the Citizens Research Council of Michigan, a public policy research organization with offices in Detroit and Lansing, argue that some local governments use special assessments to escape the constitutional and statutory restrictions that apply to ad valorem taxes.<sup>7</sup>

Recall that Table 1 showed the range of alternative revenue sources that are available to local governments and that special assessments were positioned close to the line separating tax and non-tax sources of revenue. The confusion surrounding which public goods and services can be financed with special assessments has discouraged some local government officials from diversifying revenue collection through the use of special assessments and other non-tax revenues. It is important for elected or municipal officials to understand these issues and to carefully evaluate the relevant legal issues before attempting to implement a special assessment.

## **Summary**

Understanding the alternative sources of revenue available to local government is becoming increasingly important given the risks associated with changing economic conditions and tax payer discontent. This section has outlined the variety of revenue sources that are available to municipalities.

---

<sup>7</sup> Memorandum to the Headlee Amendment Blue Ribbon Commission, Citizens Research Council of Michigan, 1993.

## **Section II: Michigan's Experience with Non-Tax Revenues and Special Assessments**

### **Michigan's Use of Non-Tax Revenue Sources Relative to Other States**

As the amount of federal funding available to support municipal services has declined, municipalities have changed how they collect revenue. This section will provide historical data on changes in municipal revenues and will look specifically at the changing use of the various financing techniques outlined in Table 1. In particular, this section will compare Michigan's experiences with non-tax revenue relative to those of other states. This section will also examine whether or not Michigan's municipalities have found special assessments to be reliable sources of revenue.

In the early 1980's, there was a dramatic shift in how municipalities collect revenue. Prior to the 1980's, municipalities used taxes to collect almost two-thirds of all revenue. However, since the early 1980's, tax revenue as a percent of total revenue declined by almost 10% while municipalities began to use non-tax revenue sources such as user fees increasingly more often. Charts 1 and 2 illustrate this shift in municipal revenue collection.

For Michigan and other states in the Midwest, the change in how municipalities collect revenue was not as dramatic as it was for states that experienced severe tax revolts. When Californians passed Proposition 13 in 1978, tax revenue as a percent of total revenue decreased by 15%. In response to this reduction, many municipalities in California took advantage of non-tax revenue sources. Between 1977 and 1982, California municipalities increased their dependence on non-tax revenue by 15%. (See Chart 1)

This shift away from taxes has been fueled largely by reductions in property taxes. The national dependence on property taxes, which accounted for approximately 55% of total revenue in 1962, declined to 28% in 1987. During this period, Michigan's reliance on the property tax as a source of revenue also decreased. However, as shown in Chart 3, Michigan's dependence on property taxes was almost 10% higher than US and Midwest averages in 1987.

Relative to other states, Michigan's municipalities have used non-tax revenue sources more frequently. The historical shift from tax revenues to non-tax revenues has occurred for a number of reasons. In some cases, this shift came suddenly as municipalities were forced to respond to dramatic changes in local public finance regulations. In other cases, this shift developed slowly over time as public finance officials adopted the non-tax alternatives. As municipalities in most states have shifted towards using non-tax sources of revenue, Michigan has led the way as its use of non-tax revenue as a percent of total revenue has historically been higher than either the US or Midwest averages. (See Chart 2)

The nationwide trend towards using non-tax revenue sources has been fueled by the increased revenue associated with utility charges and user fees. The shift to non-tax revenue has not been fueled by an increase in the use of special assessments. In fact, special assessment revenue as a percent of total revenue has declined over the past 30 years. Chart 4 shows that special assessment revenue as a percent of total revenue has decreased in Michigan from 4% to 1%.

For the most part, Michigan municipalities have found that special assessments are a valuable source of revenue. Although special assessment revenue has decreased as a percentage of total revenue

collected, the total amount of revenue collected every year has been increasing.<sup>8</sup> In addition, more Michigan municipalities are using special assessment revenue to secure tax-exempt bond issues used to pay for the costs of capital improvement projects.<sup>9</sup>

### **Michigan's Use of Special Assessments**

Municipalities use special assessments in different ways depending on some important factors. In addition to constitutional and statutory limitations, whether or not a municipality chooses to use a special assessment depends on its need for capital improvement projects, ability to pay some of the project costs, ability to obtain financing from local banks or from the tax-exempt financial markets and ability to convince residents that a certain project is worth paying for. No two municipalities are alike in their use or implementation of special assessments. This section will outline some of the general issues that determine how municipalities use special assessments.

How often a municipality uses special assessments to finance capital improvements depends on the need for capital improvement projects. A city that is experiencing stable economic development and population growth is not likely to use special assessments as a primary source of revenue. A survey of 144 municipalities in Michigan found that 50% of respondents characterized their need for capital improvements as a function of a need to "maintain the infrastructure necessary to serve relatively stable development and population growth." As shown on Chart 7, the survey also found that when a municipality has the authority to use a special assessment to fund a capital improvement project, it is three times more likely to have the authority to fund construction rather than maintenance and repair activities.

To what extent a municipality can take advantage of special assessment opportunities depends on whether or not a municipality has the authority to levy a special assessment to fund a particular project. Our survey found that there are 15 particular types of projects that can be funded with a special assessment and that some municipalities had authority to levy special assessments to fund only a small number of projects while others had the authority to fund more. Almost two-thirds of those responding to the survey had the authority to levy special assessments to fund storm water projects as well as street and sidewalk projects. Following these in popularity were projects involving waterworks systems, street lighting, sewage disposal and parking facilities. Chart 8 illustrates the variety of projects for which the responding municipalities had authority to levy special assessments.

### **Summary**

Comparing Chart 8 with Chart 9 shows that, for the most part, municipalities have not taken full advantage of their authority to use special assessments to fund capital improvement projects. According to the survey, special assessments have been a popular approach to funding only street, sidewalk, sewage disposal and waterworks projects.

---

<sup>8</sup> Total revenue collected through special assessments increased by 42% between 1977 and 1987. US Department of Commerce, Bureau of the Census, *Government Finances*.

<sup>9</sup> Michigan ranks second to California in terms of number of municipalities (more than 40) who use special assessment revenues to secure tax-exempt bond issues. The Bond Buyer, 1993.

Certain projects are more likely to obtain special assessment funding relative to other projects depending on the 1) type of project, 2) ability to join with other communities, 3) general fund restrictions and 4) debt capacity. These factors are described in more detail below:

**Type of Project:** In some cases, municipalities may not use a special assessment to fund a project because the project does not involve a capital improvement. Some municipalities have the authority to use special assessments to fund services like police and fire protection but ultimately turn to other types of financing for these activities because it is often difficult to determine how the various properties in the area benefit specifically. Typically, municipalities have found ways to fund services such as fire/police protection, garbage collections, parks and libraries. In cases where municipalities have been able to successfully fund public services, they have been able to create a general benefit district and levy a special assessment on all properties that lie within the community. The survey found that 60% of the municipalities responding have the authority to levy assessments on all properties in their area and that among them, 10% reported having actually created a general benefit district for police or fire services.

**Ability to Join with Others:** In other cases, smaller municipalities may be unable to fund an important public improvement because their size prevents them from being able to collect enough to pay for the costs of the project. In these cases, some municipalities have joined with other municipalities or townships to create a special assessment district. The survey found that 50% of those responding have the authority to join with other municipalities in funding capital improvement projects.

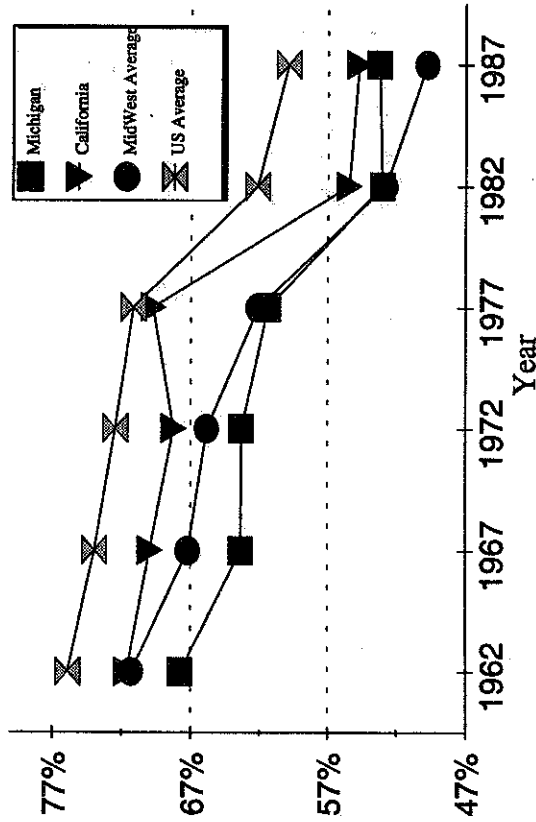
**General Fund Restrictions:** Most special assessment projects are funded from 1) special assessment rolls and 2) funds from the municipalities general fund. Our survey found that 55% of municipalities finance capital improvement projects when general funds are available and that few municipalities have the ability to provide more than 10% of the revenue required to a fund large scale capital improvement project through their general fund.

**Debt Capacity:** In cases where special assessment rolls are not sufficient to pay for all project costs and a municipality is unable to provide the additional funds necessary to insure project completion, the municipality will typically borrow from a local bank or issue a tax-exempt municipal bond. The survey found that when municipalities finance capital improvement projects, 45% of them choose to borrow and pay debt service. Sometimes, lenders require municipalities to agree to secure the outstanding debt with a pledge of general fund revenues if the revenue collected from the special assessment is not sufficient to cover debt service payments. For the most part, Michigan municipalities have the capacity to pledge general fund revenues to secure special assessment financings. The survey, which found that 85% of respondents have pledged less than 50% of their general funds to secure debt, indicates that opportunities to use general fund revenues to secure special assessment financings continue to exist.

# Sources of Municipal Revenue

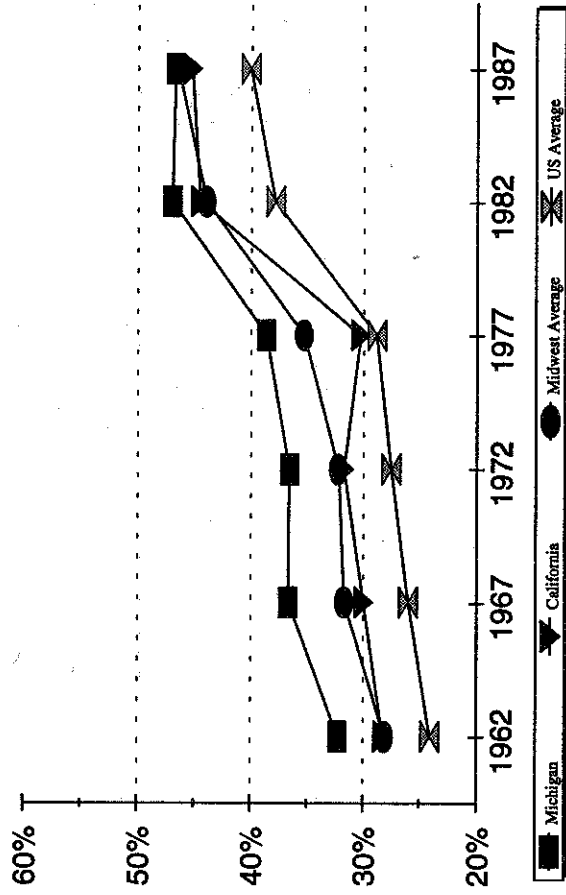
## Tax versus Non-Tax Sources of Revenue

**Chart 1: Tax Revenue as a Percent of Total Revenue**



Source: US Department of Commerce, Bureau of the Census, *Government Finances*.

**Chart 2: Non-Tax Revenue as a Percent of Total Revenue**

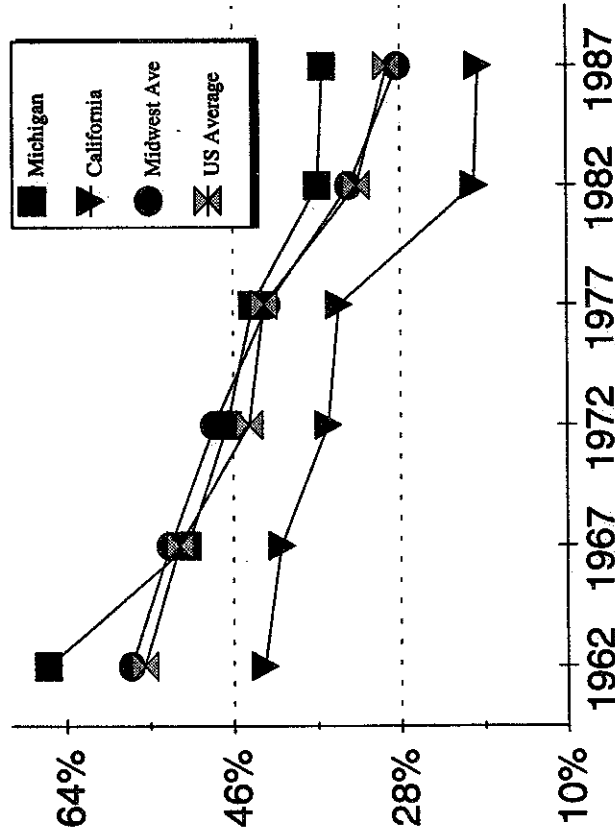


Source: US Department of Commerce, Bureau of the Census, *Government Finances*.

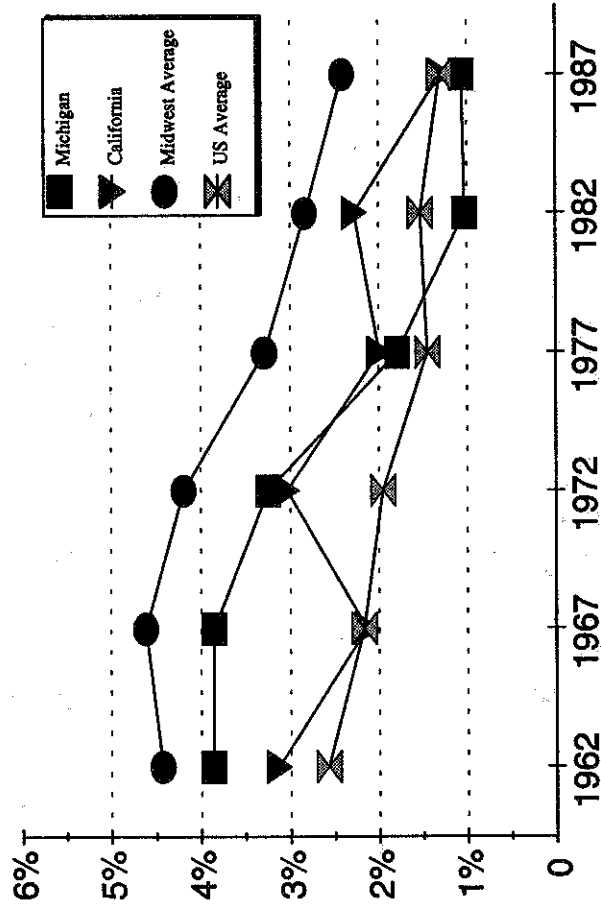
# Sources of Municipal Revenue

## Property Tax Revenue versus Special Assessment Revenue

**Chart 4: Special Assessment Revenue as a Percent of Total Revenue**



Source: US Department of Commerce, Bureau of the Census, *Government Finances*.



Source: US Department of Commerce, Bureau of the Census, *Government Finances*.

# Uses of Special Assessments to Fund Capital Improvements

Chart 7: Capital Planning Purposes

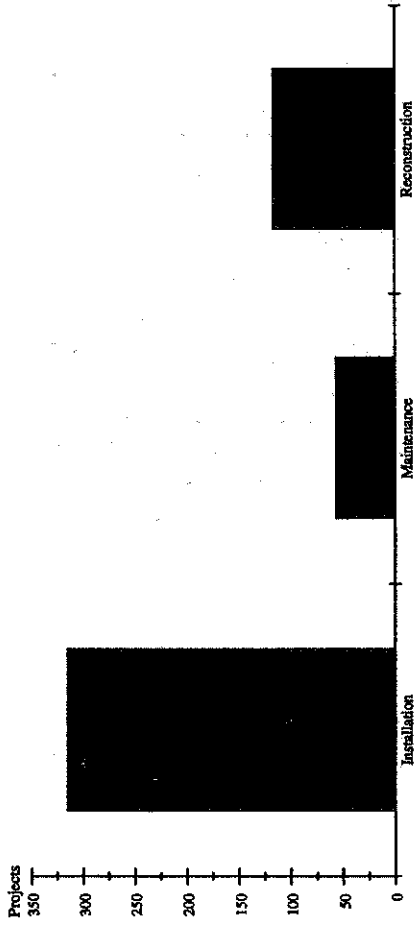


Chart 8: Respondents with Authority

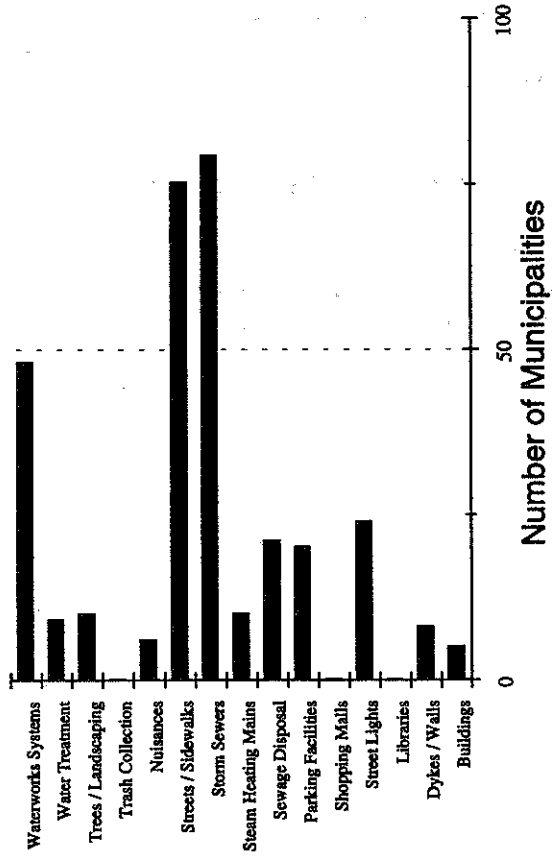
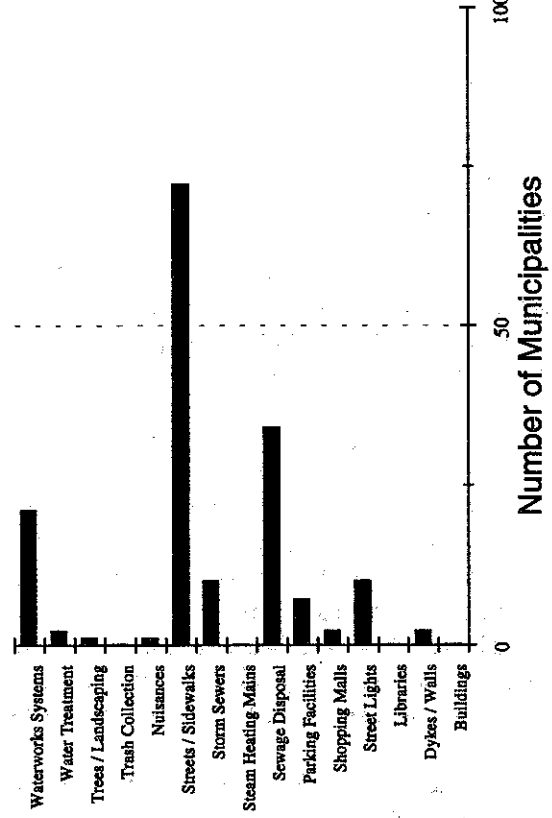


Chart 9: Respondents Indicating Usage



### **Section III: Implementing Special Assessments in Michigan**

---

Whether or not special assessments are used to fund capital improvement projects depends on a municipalities' capital improvement needs, legal authorization and financial limitations. In addition, the survey also found that many municipalities were not inclined to use special assessments because of concerns with public opinion.

Municipalities should be concerned with public opinion and special assessments for several reasons. First, under a special assessment project, residents are not given an opportunity to vote and, in some cases, they never get an opportunity to voice their concerns with a particular project. Residents opposed to a particular special assessment project may argue that the municipality is using special assessments to escape the restrictions that apply to ad valorem taxes. (See Section I: Problems of Interpretation). More than 10% of those responding to the survey indicated that they have tried to limit their use of special assessments due to concerns over public opposition. To a certain extent, the concerns with public opposition are justified as the survey found that 10% of responding municipalities had been sued by property owners over the use of a special assessment within the last five years.

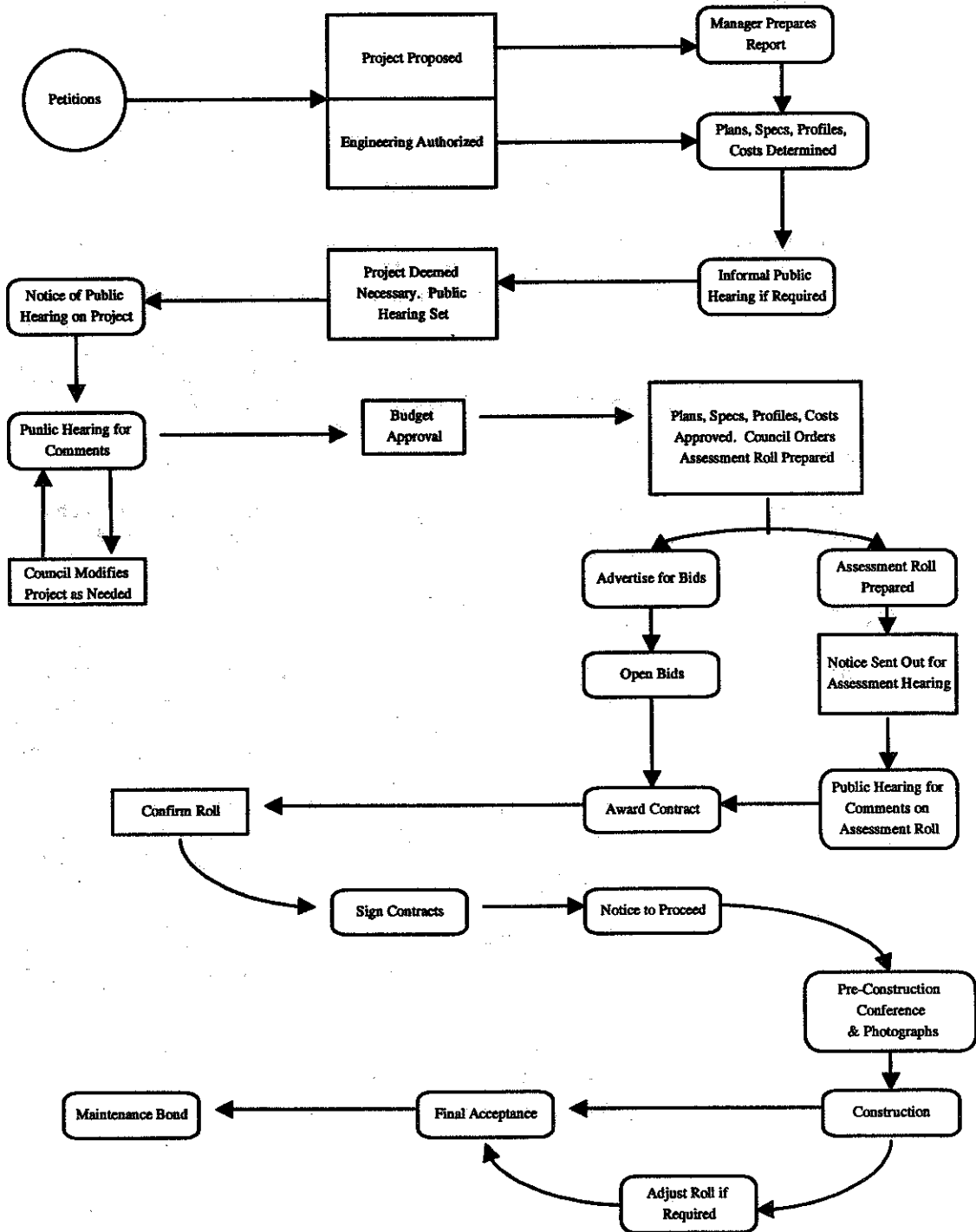
In general, the information provided in the survey suggests that the use of special assessments is a function of factors such as needs and authorization but is also a function of whether or not the municipality feels comfortable with the special assessment process. While this report has already focused on the reasons for using special assessments relative to other financing techniques, this section will focus on the particular aspects of the special assessment process. By understanding the various steps involved in implementing a special assessment, elected or appointed officials will be able to address the important public policy issues that are likely to surface. This section will outline the typical special assessment process and evaluate each activity by describing the goals and objectives of each step in the process. Ultimately, this exercise will provide a description of what is required for successful implementation.

#### **Overview of the Special Assessment Process**

Exhibit 1 outlines the various activities that are central to the special assessment process. In general, the process can be divided into three parts. Table 3 provides a brief overview of the central issues related to each of the three phases of the special assessment implementation process.

# Exhibit 1: Special Assessment Procedures

## Special Assessment Procedures



Source: City of Marysville

**Table 3: Overview of the Special Assessment Process**

| <b>Phase</b>               | <b>Description</b>   |
|----------------------------|--|
| <b>Phase I</b>             |  |
| Initiation                 | To initiate a special assessment, there are some administrative and legislative requirements such as petitions and public hearings that involve the city council and property owners.  |
| Investigation              | In deciding whether or not to support a project, there are a number of important issues that must be considered. A number of individuals or groups are typically involved in making this decision.   |
| Approval                   | Following initiation and investigation, the city council must approve the project. Residents may be involved in this process. Approval requirements differ depending on the municipality.  |
| <b>Phase II</b>            |  |
| Determination / Allocation | Once the project is approved, it is important to determine public benefit. In most cases, the city will pay for a portion of the project costs depending on the level of "public benefit."   |
| <b>Phase III</b>           |  |
| Rolls                      | Once the costs to be allocated to residents have been identified, the city then has to assign these costs to the various properties depending on the "specific benefits" received. The roll is a list of the amount to be assigned to each property that stands to benefit from the project. |
| Financing                  | Depending on the size of the project, residents may not be able to pay project costs immediately. In these cases, the city has to borrow to pay project costs and pay off the debt as assessments are collected over a longer period of time.  |
| Collection                 | Over time, assessments are collected like taxes. They are paid at the same time as taxes and the collection practices for assessments are similar to those for taxes.  |
| Construction               | In some cases, projects cost more or less than initially estimated. In these cases, there are predetermined ways to handle an excess or shortage of funds.   |

## **Phase I: Initiation and Investigation**

An important aspect of the initiation and investigation phase is the interaction that occurs between citizens and their elected or appointed officials. Citizens can petition for the initiation of special assessment proceedings and are able to follow investigation and decision making activities by attending public hearings. The initiation and investigation phase is outlined in more detail below.

- Either property owners or the council can initiate a special assessment project.
- Most cities require that property owners file a petition. In some cases, this petition is signed by at least half of the property owners.
- Although a petition is not required in all cases, a public hearing on the proposed improvement is required for almost all of the municipalities that were surveyed.
- In deciding whether or not to support a project, investigation focuses primarily on project costs with some attention also given to the project's conformance to the city plan. In almost all cases, the investigation process involves the project engineer, the manager / administrator and council.
- Once petitions are received, hearings are held and the investigation process is completed, councils generally have the authority to initiate the special assessment project with the support of only a simple majority of the council members present.
- In half of the cities surveyed, at least 50% of property owners must object in order to block a proposed improvement.
- Even if owners object, many councils have the power to implement proposed projects.

**The Petition:** The survey found that 85% of municipalities surveyed indicated that special assessment projects can be implemented by either the property owners or the council. An initial petition for a special assessment can be used by various municipalities in one of three ways. A "jurisdictional" petition is one where a municipality is legally required to have a certain percent of its residents file a petition. A "mandatory" petition is one where the city must proceed with a certain improvement if a significant number of property owners file a petition. And finally, an "advisory" petition is one where a petition has no legal effect but is used by a council for advisory purposes.<sup>10</sup>

In addition to having similar policies regarding the use of petitions, there also were similarities in the portion of property owner signatures that were necessary to initiate a special assessment project. 90% of the cities responding indicated that they require petitions signed by at least half of the property owners in the effected area.

**The Public Hearing:** Virtually, all municipalities hold a public hearing to discuss the implementation of a special assessment project. Only 1% of the municipalities indicated that public hearings are not required and not held. In the 6.8% of the cases where hearings were not required,

---

<sup>10</sup> *Ordinance Analysis #11: Michigan Municipal League, 1987.*

respondents admitted that they hold hearings even though they are not legally required. 92.7% of the municipalities surveyed indicated that a public hearing is an important part of the process and as such, these hearings are required and are held.

**Criteria Used in Decision Making:** The survey found that the project engineer, manager or administrator and council all play important roles in the investigation process. In deciding whether or not to initiate a special assessment, they are most concerned with the costs of the project. Although most respondents admitted to being concerned with costs, there are differences in what was ranked second in importance. Most municipalities are concerned with making sure that the project conformed with the City's plan and are somewhat less concerned with the impact on unused land and existing property values.

**Authority to Make Final Decisions:** While most municipalities seem to share the same policies regarding petitions, hearings and decision making criteria, they are divided in their policies regarding final approval. To block the implementation of a special assessment, half of the municipalities require a petition signed by more than 50% of the property owners. For the other half of the municipalities, it is not possible for property owners to block a special assessment. In cases where a petition blocks a special assessment project, 35% of councils are able to override objections of property owners with a simple majority vote while more significant council support was required for others.

## **Phase II: Determination and Allocation**

Once the project has received final approval from the council and, if necessary, from the property owners, a municipality must begin the process of allocating the project costs to those who are most likely to benefit. The municipality must decide on the level of public benefit as well as the methods used to allocate costs to various properties to reflect specific benefits received. This phase is an important first step in the process of calculating the special assessment roll and can be critical given that most cities have a second public hearing to discuss the rolls. These issues are outlined below:

- Few municipalities share the same approach to determining public benefit. In most cases, public benefit is determined based on legislative or administrative action, a predetermined formula or some combination.
- Few municipalities contribute the same amount to cover the "public benefit" related costs of special assessment projects. The extent of their participation is distributed evenly from less than 5% to more than 20% of total project costs.
- The engineer, manager / administrator and assessor are all involved in determining the actual value of assessments levied on the various properties.

**Determining Public Benefit:** Once a special assessment project has received approval from the council, the next step is to allocate costs to the various properties that receive "special benefits." However, before allocating the total costs of the project, most municipalities agree to cover a portion of the project costs for three reasons. First, it is difficult to assume that all of the benefits of an improvement project will be shared by everyone in the community. Second, depending on the size of the project, it is sometimes difficult for property owners to pay for all of the costs associated with an improvement

project. And third, since these property owners also pay taxes, it would be fair to allow some portion of their taxes to go towards paying the cost of the improvement project.

The survey found that there is no consistent approach to determining public benefit. 57% of municipalities indicated that public benefit was determined based on legislative or administrative actions while 22% relied on a standard practice or formula. The remaining 21% of the municipalities indicated that they used some combination of these three approaches. The survey also found municipal contributions to range from less than 5% to more than 20% of total project costs. 23.4% of respondents indicated that they typically pay less than 5%, 24.3% pay between 5% and 20% and 39.6% pay more than 20% of total project costs.

**Allocating Costs to Properties:** There is no standard or formal method used to allocate the costs of special assessment projects. To use only one method as a way to allocate costs for all different types of special assessment projects would be unlawful. It is important to understand that in making special assessments, there must be a special benefit to the property assessed that is different from the general benefit that is accruing to the city at large. The properties targeted to benefit from a special assessment project must be chosen on a rational basis and based on existing facts which make such properties different from other properties not included. The assessment method used to allocate the costs between various property owners is not required to be absolutely fair but at least must not be a method which results in arbitrary and unreasonable cost allocations.<sup>11</sup> The following table illustrates the various approaches to allocating costs among different properties that benefit from a typical special assessment project.

| Allocation Method                                    | % of Respondents |
|--|------------------|
| Assessments are based on front footage <sup>12</sup> | 45.4%            |
| Assessments are based on relative benefits received  | 20.9%            |
| All properties pay an equal share of the costs       | 2.7%             |
| Depends on the project                               | 18.2%            |
| Some combination of the above                        | 12.7%            |

### Phase III: Rolls, Financing and Collection

Once the engineer, the assessor and the manager / administrator determine the level of public benefit and allocate project costs to the various properties, a municipality must take steps to obtain funding. In most cases, property owners are unable to pay their portion of the costs and the municipality has to borrow the funds necessary to finance the project and use the revenues from the special assessment to pay debt service. These and other issues central to this phase are outlined below:

- Assessments can be levied either before or after a project begins.

<sup>11</sup> *Ordinance Analysis #11*: Michigan Municipal League, 1987.

<sup>12</sup> While 45.4% of municipalities indicated allocating costs based on front footage, this is not surprising given most of the municipalities surveyed use special assessments to fund street paving projects and that the courts have found front footage to be an appropriate method of allocating special assessment project costs.

- Public meetings are held to hear complaints on special assessment rolls.
- When municipalities borrow to fund special assessment projects, they usually secure the debt with a pledge of general fund revenues.
- Most cities have the ability to create revolving funds but few have used them.
- When project costs exceed original estimates, the municipality will either pay, reassess or do both. If costs turn out to be less than expected, few municipalities will retain the difference.

**Review and Confirmation of the Roll:** Many municipalities are required to hold a public meeting to discuss the roll as developed by the engineer, assessor and manager / administrator. The purpose of this meeting is different from the first meeting which discusses the legality of the proceedings authorizing the improvement and assessment. The purpose of the second "hearing on the roll" is to correct errors in the assessments. Michigan's municipalities are divided over the use of the "hearing on the roll." In cases where there is only one hearing, complaints may be filed over either the legality or the fairness of the assessments. When asked about the hearing on the roll, only 76.9% of respondents indicated that they were required to hold such a hearing. 5.6% indicated that such a hearing was required but was not held and 17.4% indicated that no such hearings were ever held.

**Financing the Private Portion of the Project:** In most cases, property owners are unable to pay for all of the project costs at one time. As a result, the municipality will typically borrow the funds needed to finance the project, secure the debt with a pledge to use general fund revenues and use future special assessment revenues to make debt service payments. The survey found that 43.4% of municipalities who have issued special assessment bonds in the tax exempt markets have secured the bonds with a pledge of revenues from their general fund.

**Financing the Public Portion of the Project:** In most cases, Michigan municipalities tend to fund their share of the special assessment project by making appropriations from general fund revenues, making appropriations for special funds or issuing tax-exempt municipal bonds. In the first two cases, municipalities must have excess funds available in either the general fund or in a special fund. This typically requires that the municipality has 1) the funds available to finance the project and 2) planned to fund the project at some time previously. The survey found that there was no particularly popular way to finance the public portion of a special assessment and that funding preferences were equally distributed between general and special fund revenues as well as tax-exempt bond financing.

**Monitoring Construction Costs:** Once a special assessment roll has been confirmed based on estimates of expected project costs, the municipality must take appropriate steps when these estimates are found to be either higher or lower than originally anticipated. The survey found that in cases where project cost exceed original estimates, the additional costs are usually paid by the municipality, reassessed or some combination of these two. 25.9% of respondents indicated that the municipality pays when costs exceed original estimates, 25.0% indicated that they will reassess all properties on the special assessment roll and 34.6% indicated that they will do both. In cases where there is a surplus of funds, 44.2% of municipalities responding indicated that the surplus is retained by the city only if the surplus is less than 5% of the original project costs while 30.7% refunded the surplus to the property holders.

## **Summary**

Although special assessment procedures used to finance capital improvement projects are relatively straight forward, some important similarities and differences exist amongst Michigan municipalities.

## **Similarities**

- Almost all municipalities rely on petitions and public hearings as way to get "buy-in" from property owners.
- In deciding whether or not to implement a special assessment, most are concerned primarily with costs and place secondary emphasis on whether or not the project conforms with the city's plan.
- Most allocate project costs to property owners in different ways depending on the properties and the expected benefits received.
- Most pay a portion of the project costs with general fund revenues.

## **Differences**

- The ability to block a special assessment differs among municipalities. Half of the municipalities indicated that property owners could block a special assessment with at least 50% voicing opposition and in these cases, some municipalities gave their council power to override property owners concerns.
- In addition, the survey found that there is no standard approach to determining public benefit. Public benefit is derived subjectively from legislative and administrative actions or objectively from a formula or some combination of these.

## **Conclusion: The Future of Special Assessments in Michigan**

While municipalities in Michigan have frequently used special assessments as a way to finance public improvement projects, this report has found that their use has focused primarily on projects involving streets and sidewalks. Opportunities for future use will depend on changes in legal authorization, the need for capital improvements, the ability to finance those improvements and public opinion regarding the use of property taxes and special assessments.

For the most part, Michigan municipalities have found special assessments to be a valuable source of revenue. 93% of municipalities surveyed felt that special assessments were a valuable approach to financing capital improvements. And 49% mentioned that they expected to use special assessments more often in the future.

44% of the municipalities surveyed (including those who have relied on tax increment financings in the past) indicated that they would be negatively affected by Proposal A which was passed in 1993. As a result, this report comes at a time when the need for non-tax sources of revenue are becoming increasingly important given changing tax laws and the general trend towards non-tax benefit based revenue collection.

By providing an overview of special assessments that focuses on the steps required for successful implementation, this report has tried to educate public and elected officials so that they may be able to diversify their sources of revenue by using special assessments more effectively.

## **Appendix A: Special Assessment Survey**

---

The survey was mailed to more than 500 managers, of whom 144 responded for a response rate of 28.8%. The survey contained a total of 46 questions and was divided into six sections. These sections are described below:

**Section I:** The questions asked in this section were designed to obtain information on the issues that face municipalities. Specifically, this section tried to obtain information on 1) the demand for capital improvements, 2) the financing techniques commonly used and 3) the ability to finance capital improvements in the future.

**Section II:** The questions asked in this section intended to gather information about the use of special assessments. Charts were provided and respondents were asked to complete them by describing how they use special assessments.

**Section III:** The questions asked in this section were designed to gather important information on how municipalities evaluate the feasibility of a project, analyze the impact on property owners and administer / implement the special assessment.

**Section IV:** The questions asked in this section were designed to gather information on how municipalities determine and allocate public benefit. The questions asked for information regarding who participates in determining the special assessment roll, how costs are allocated and what portion is usually paid by the municipality rather than the property owners.

**Section V:** The questions asked in this section were designed to gather information on rolls, financing and collection. It intended to gather information on the hearing on the roll, special assessment exemptions and financing approaches.

**Section VI:** The questions asked in this section were designed to obtain information that would provide and understanding of the future of special assessments in Michigan. Respondents were asked to comment on their plans to use special assessments in the future.

## Communities Responding to the Survey

---

|                   |                     |                  |
|-------------------|---------------------|------------------|
| Adrian            | Gaylord             | Monroe           |
| Algonac           | Gibraltar           | Mount Pleasant   |
| Allen Park        | Gladstone           | Newaygo          |
| Alpena            | Gobles              | Novi             |
| Ann Arbor         | Grand Beach         | Ortonville       |
| Ashley            | Grandville          | Petoskey         |
| Auburn            | Greenville          | Pinckney         |
| Auburn Hills      | Grosse Pointe       | Plainwell        |
| Au Gres           | Grosse Pointe Woods | Port Huron       |
| Bad Axe           | Hanover             | Richmond         |
| Baroda            | Harper Woods        | Riverview        |
| Battle Creek      | Harrisville         | Rochester        |
| Berkley           | Hazel Park          | Rochester Hills  |
| Bessemer          | Hillman             | Rockford         |
| Beverly Hills     | Homer               | Royal Oak        |
| Big Rapids        | Howell              | Saranac          |
| Birch Run         | Hudson              | Sault Ste. Marie |
| Birmingham        | Huntington Woods    | Scottville       |
| Breckenridge      | Imlay City          | South Haven      |
| Brooklyn          | Inkster             | South Lyon       |
| Burton            | Ionia               | South Rockwood   |
| Cadillac          | Iron Mountain       | Sparta           |
| Caseville         | Iron River          | St. Clair        |
| Cedar Springs     | Ishpeming           | St. Clair Shores |
| Center Line       | Ithaca              | St. Joseph       |
| Cheboygan         | Jackson             | Standish         |
| Clare             | Kalamazoo           | Sterling Heights |
| Clarkston         | Kaleva              | Sturgis          |
| Clawson           | Keego Harbor        | Suttons Bay      |
| Clifford          | Lake Angelus        | Swartz Creek     |
| Clio              | Lake Linden         | Tawas City       |
| Coldwater         | Lake Odessa         | Three Oaks       |
| Coopersville      | Lapeer              | Traverse City    |
| Decatur           | Laurium             | Trenton          |
| De Witt           | Linden              | Vernon           |
| Dowagiac          | Livonia             | Vicksburg        |
| East Grand Rapids | Mackinaw City       | Walker           |
| Eau Claire        | Madison Heights     | Walkerville      |
| Empire            | Manistee            | Walled Lake      |
| Escanaba          | Marine City         | West Branch      |
| Ewart             | Marquette           | Westland         |
| Farmington Hills  | Marysville          | Westphalia       |
| Ferndale          | Mason               | Whitehall        |
| Ferrysburg        | Mayville            | Wixom            |
| Fowlerville       | Menominee           | Zeeland          |
| Frankenmuth       | Merrill             |                  |
| Frankfort         | Midland             |                  |
| Fremont           | Milford             |                  |
| Gaines            | Millington          |                  |