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BROWNFIELD REDEVELOPMENT

House Bill 4400 as passed by the House
Sponsor: Rep. Randy Richardville

House Bill 5443 as passed by the House
Sponsor: Rep. Clark Bisbee

House Bill 5444 as passed by the House
Sponsor: Rep. Cameron Brown

House Bill 5445 as passed by the House
Sponsor: Rep. Stephen Ehardt

Committee: Economic Development
Second Analysis (3-29-00)

THE APPARENT PROBLEM:

In 1996, the legislature enacted a package of bills that together form the Brownfield Redevelopment Program. The aim of the program was to provide additional funding and tax incentives for the cleanup and redevelopment of contaminated land, especially land in urban areas, so that it can become economically viable. The incentives are supposed to make “brownfield” property better able to compete with “greenfield” property, the name given to undeveloped land where businesses often prefer to locate because there are fewer obstacles to development. The components of the 1996 package included a revolving fund for low-interest loans to local units to provide funds for cleanup activities at contaminated sites; brownfield redevelopment zones in which special cleanup plans can be implemented; redevelopment authorities through which local units can capture increases in tax revenues from redevelopment for cleanup purposes; and single business tax (SBT) credits for owners of property in brownfield redevelopment zones.

Supporters of these programs say they have been successful in addressing contamination-related obstacles to redevelopment but need broadening if they are to be effective in further promoting economic development in brownfield areas, particularly in the state’s core cities. For example, currently there are limits on how “captured” taxes and other revenues can be used by redevelopment authorities; the purposes to which the funds can be used are restricted to certain specified “eligible activities.” These are defined to

include only assessment and response activities related to environmental contamination. But redevelopment requires going beyond these to address other site preparation work, infrastructure improvements, and the removal of obsolete and blighted buildings. These activities should become eligible as well, say state economic development specialists. Furthermore, in some cities the need is for the redevelopment of blighted and obsolete property rather than contaminated property. These sites should also be eligible for activities paid for out of captured taxes.

The SBT credit, to cite another example, is currently capped at \$1 million per site. Brownfield administrators say this cap is not sufficient to bring in “marquee” projects and should be significantly expanded. Further, the SBT credit is limited to one per taxpayer, even though some firms might want to engage in several brownfield projects. The credit should be project-based not taxpayer-based, say economic development specialists. And the credit is available only to the property developer. Sometimes, say administration spokespersons, a developer may have no tax liability for a credit to offset while a tenant or lessee of the property does. The credit should in some circumstances be transferable, they say.

Property tax abatements could also be useful in promoting redevelopment of brownfield sites, but they are not available as part of the current redevelopment programs. Tax abatements for buildings and

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improvements in newly created obsolete property tax rehabilitation districts have been proposed to promote economic development in core communities. A related proposal would allow local units to exempt personal property (e.g., equipment and machinery) at any brownfield site.

Legislation has been proposed by the Engler Administration to address these and other economic development issues.

THE CONTENT OF THE BILLS:

The package of bills contains the following major provisions and key definitions. The analysis includes references to provisions in Senate Bill 269, which is still in the Senate. That bill would amend the Single Business Tax Act and is an essential component of the legislative package. (The analysis is based on the S-3 version of Senate Bill 269, which was available to the House during its deliberations. Subsequently [on 3-28-00], the Senate Economic Development, International Trade and Regulatory Affairs Committee reported out an S-7 version of the bill, which contains significant differences.)

Brownfield SBT Credit

** Currently, brownfield SBT credits are available only through the year 2000. The proposal would extend them through the year 2003.

** The brownfield SBT credit is currently available for eligible investments in a project at property classified as contaminated under the Natural Resources and Environmental Protection Act (NREPA). The proposal would allow the credit to be available as well to projects at “blighted” and “functionally obsolete” property, but only in certain specified core communities, referred to as “qualified local governmental units” in the proposed legislation. (These terms are defined later under “Key Definitions.”)

** The brownfield SBT credit is currently capped at \$1 million per taxpayer. The proposal would allow an SBT credit up to \$30 million. However, no more than 15 credits over \$1 million could be approved each calendar year and, of those, no more than 3 credits could be over \$10 million. A credit of over \$1 million would only be available in “a qualified local governmental unit” (as described in the paragraph above), with two special exceptions cited later. Credits of over \$10 million would be claimed over a ten-year

period, with no more than 10 percent of the credit claimed in any one year. As now, the brownfield SBT credit is based on ten percent of eligible investment and can be carried forward for ten years or until used up, whichever occurs first.

** A brownfield SBT credit over \$1 million would have to be approved by the Michigan Economic Growth Authority and would require the concurrence of the state treasurer. MEGA would have to approve or disapprove an application within 90 days of its receipt. The legislation sets out criteria to be considered in making the decision. An applicant denied a credit could reapply for an over \$1 million credit or could instead apply for a credit of \$1 million or less. To approve a credit over \$10 million, MEGA would have to determine that the project would create at least ten new jobs and that the investment would not occur in the state without the credit. (There would be an exception from the jobs and investment requirements for a project the construction of which began after January 1, 2000 and before January 1, 2001.)

** Among the criteria that MEGA would have to consider in approving a credit over \$1 million and determining the total amount of the credit are: the overall benefit to the public; the extent of reuse of vacant buildings and redevelopment of blighted areas; the substantial creation of jobs; high unemployment in the qualified local unit; the level and extent of contamination alleviated; whether the level of private sector contribution exceeded \$10 million; the cost gap between the site and a similar greenfield site; in cases in which the taxpayer is moving from another part of the state, whether the move will create a brownfield; and the financial soundness of the taxpayer and the economic soundness of the project.

** Up to two of the \$1 million-plus credits each year would be available outside a qualified local governmental unit. The projects would have to involve property that was blighted, posed a direct threat to water quality of the Great Lakes, or was a building or complex of buildings that was once used by a state or federal agency but was no longer being used for the same purpose.

** There would be no limit on the number of credits of \$1 million or less. A taxpayer claiming a credit of \$1 million or less would apply for certification to the Department of Treasury, which would be required to certify the project if all the appropriate criteria were met. (The department has described this as a “self-claiming” credit.)

** Currently, only one brownfield SBT credit is available per taxpayer for all tax years. The proposal would instead allow one credit per project. A taxpayer would be eligible for more than one credit per year (but no more than one per project).

** The proposal would allow an SBT credit to be transferred from a property owner to a lessee of the property under certain circumstances. The property would have to be leased for a minimum term of 10 years, and the credit assignment would be irrevocable.

** To be eligible for a credit currently, property must be located in a brownfield redevelopment zone. The zone concept would be discontinued for future projects; credits now would simply be available to eligible property, and a municipality's brownfield redevelopment authority would exercise its powers over eligible property located in the municipality.

Tax Increment Financing

** In qualified local governmental units (or core communities), tax increment financing arrangements would apply not only for contaminated property but also for blighted and functionally obsolete property.

** Also in those communities, the purposes eligible for financing would be expanded to include infrastructure improvements that directly benefit eligible property, the demolition of structures, lead or asbestos abatement, site preparation, and reasonable administrative and operating activities. Currently, financing is restricted to baseline environmental assessment activities, due care activities, and additional response activities, as those terms are defined in the Natural Resources and Environmental Protection Act.

** If under a brownfield plan, school operating taxes were to be used for the expanded purposes cited above (except for administrative costs), MEGA would have to approve a work plan and there would have to be a development agreement between the municipality and the owner of the property. The approval of the Department of Environmental Quality (DEQ) would not be required for this work plan. Currently, school operating taxes can only be captured if the eligible activities to be conducted on the property are consistent with a work plan or remedial plan approved by the DEQ between July 24, 1996 and January 1, 2001. Under the proposal, this provision would be extended to January 1, 2004 and rewritten to specify that it applies to response (cleanup) activities only and not to

the expanded activities cited in the paragraph above. DEQ approval would still be required for these work plans or remedial plans. School operating taxes, moreover, could not be used for response activities that would benefit a party liable for contamination under NREPA. Further, any excess revenues from school operating taxes could not be captured for deposit in the local site remediation revolving fund.

** The proposal adds new public hearing requirements for the adoption of a brownfield plan. (Currently, the law does not specifically require a hearing but requires notice and a reasonable opportunity for affected taxing jurisdictions to express concerns.) The proposal would require that public notice of a hearing be published twice in a newspaper of general circulation at least 20 days before the hearing, with information about the plan and a statement that maps, plats, and a plan description were available for public viewing. Interested persons would have to be given an opportunity to be heard and the local governing body would have to receive and consider written communications about the plan. Further, the local governing body would be required to notify the affected taxing jurisdictions at least 20 days before the hearing and fully inform them about the fiscal and economic implications of the plan. Officials from the affected jurisdictions would have a right to be heard at the public hearing.

** As mentioned above, the zone concept would be discontinued for future projects under the proposal, and a municipality's brownfield redevelopment authority would exercise its powers over eligible property located in the municipality. Zones established under current law would continue to exist and their boundaries could be altered subsequent to a public hearing.

Obsolete Property Tax Abatements

** A new act would be created that would allow tax abatements for commercial facilities, including residential property, undergoing rehabilitation and located in special districts that certain eligible communities ("qualified local governmental units" or core communities, as in the other proposals) could establish. The abatements would be available for blighted, functionally obsolete, and contaminated properties. An exemption certificate could be granted for one to twelve years and would have to be approved by the local legislative body and the State Tax Commission. No certificates could be granted after

December 31, 2010, but an exemption in effect on that date would continue until the certificate expired.

Property owners would be exempted from ad valorem property taxes, except school operating taxes and the state education tax, and instead would have to pay a specific tax, to be called the obsolete properties tax. This tax would be based on the taxable value of the facility before rehabilitation. However, the state treasurer could, with the concurrence of the Michigan Strategic Fund, also exempt some or all of the mills levied for school operating purposes and for the state education tax for a particular facility based on a finding that it was necessary to reduce unemployment, promote economic growth, and increase capital investment in the local unit. Only 25 such school tax exemptions could be granted each year.

Local units would be required to report annually to the State Tax Commission on the status of each exemption, including the current value of exempted property, the number of jobs retained or created, and new residents. The Department of Treasury would use this information in making an annual report to the committees in the Senate and the House responsible for tax policy and economic development issues. After three years, the department would have to submit to those committees an economic analysis of the costs and benefits of the new act in the three local units where the exemption had been used the most.

Personal Property Tax Exemption

** The proposal would amend the General Property Tax Act to allow a local assessing district (a city, village, or township) to enter into an agreement with a taxpayer to exempt from taxation all new personal property owned or leased by the taxpayer to be located at or within certain eligible property (brownfield property); namely, contaminated property and, in core communities, blighted and functionally obsolete property as well. However, the exemption would not be available to personal property of a casino or professional sports stadium or personal property associated or affiliated with a casino or stadium; and would not be available to a multisource commercial hazardous waste disposal well or property associated with or affiliated with such a well.

The agreement would have to be in a form of a resolution adopted by the governing board of the local unit. A resolution would not be effective unless subsequently approved by the State Tax Commission. The assessor and representatives of affected local

taxing units would have to be notified and given an opportunity for a hearing before the resolution could be adopted. If approved at the local level, the resolution would be sent to the State Tax Commission, which would have 60 days to approve or disapprove, using the advice of the state treasurer and the president of the Michigan Strategic Fund as to whether the exemption was necessary to reduce unemployment, promote economic growth, and increase capital investment in the state. Personal property associated with a casino or professional sports stadium would not be eligible for the exemption.

MEGA SBT Credits (Non-Brownfield)

** A new kind of credit would be created under the proposal for qualified high technology businesses. Up to 50 of these credits could be authorized each year. A high technology business would have to agree to create at least 5 new jobs initially and an additional 25 new jobs within 5 years after the date of the agreement; the 25 jobs would have to be maintained for each year that a tax credit was authorized. The average wage for the jobs would have to be at least four times the federal minimum wage.

** Currently, only 25 MEGA credits can be authorized each year. The proposal would allow any unused credits in one year to be carried over to the next year.

Key Definitions

** The term “qualified local governmental unit” is used in the various brownfield statutes and would apply to a city with a median family income of 150 percent or less of the statewide median family income as of the 1990 census that met one or more of the following conditions: a) was contiguous to a city with a population of 500,000 or more; b) had a population of 10,000 or more and was located outside of an urbanized area; d) contained an eligible distressed area under the Michigan State Housing Development Authority Act; and e) was the central city of a metropolitan area designated by the United States Bureau of the Census. It would also apply to a township with a median family income of 150 percent or less of the statewide median family income that was either 1) contiguous to a city with a population of 500,000 or 2) that met all of the other requirements listed above (other than being a central city).

** A “high-technology business” would be defined as a business whose primary activity is a high-technology activity and that used at least 25 percent of its total

operating expenses for research and development. The term “high-technology activity” would mean advanced computing; advanced materials; biotechnology; electronic device technology; engineering or laboratory testing; technology assisting in the assessment or prevention of threats or damage to human health or the environment; medical device technology; product research and development; advanced vehicles technology, including technology involving electric vehicles, hybrid vehicles, and alternative fuel vehicles.

** “Blighted” property would include property that had been declared a public nuisance under a local housing, building, plumbing, fire, or other code; was an attractive nuisance to children because of physical condition, use, or occupancy; was a fire hazard or otherwise dangerous to persons or property; had utilities, plumbing, heating, or sewerage that was permanently disconnected, destroyed, removed, or rendered ineffective so that the property was unfit to use; or was tax reverted property owned by a local government or the state.

** “Functionally obsolete” property would mean property that could not be used for its intended purpose because of a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself or its relationship with other items constituting a larger property.

House Bill 4400 would amend the Brownfield Redevelopment Financing Act (MCL 125.2625 et al.). House Bill 5443 would amend the Michigan Economic Growth Authority (MEGA) Act (MCL 207.803 et al.). House Bill 5444 would create a new act, the Obsolete Property Rehabilitation Act. House Bill 5445 would amend the General Property Tax Act (MCL 211.9i). Senate Bill 269 would amend the Single Business Tax Act (MCL 208.38g).

BACKGROUND INFORMATION:

The following are cities that are “qualified local governmental units” under the package, according to the Department of Treasury: Adrian, Albion, Alma, Alpena, Ann Arbor, Bangor, Battle Creek, Bay City, Benton Harbor, Big Rapids, Bronson, Burton, Cadillac, Carson City, Caspian, Cheboygan, Coleman, Dearborn, Dearborn Heights, Detroit, Dowagiac, East Lansing, Eastpointe, Ecorse, Escanaba, Ferndale, Flint, Gladstone, Grand Haven, Grand Rapids, Grayling, Hamtramck, Harbor Beach, Harper Woods, Hazel Park,

Highland Park, Holland, Inkster, Ionia, Iron River, Ironwood, Ishpeming, Jackson, Kalamazoo, Lansing, Lincoln Park, Ludington, Manistee, Manistique, Marquette, Melvindale, Midland, Monroe, Mount Morris, Mount Pleasant, Muskegon, Muskegon Heights, Oak Park, Onaway, Owosso, Pinconning, Pontiac, Port Huron, River Rouge, Saginaw, Saint Louis, Sault Ste. Marie, Southfield, Stambaugh, Sturgis, Traverse City, Vassar, Wakefield, Warren, Wayne, Wyandotte, Ypsilanti. Also six urban townships would qualify.

FISCAL IMPLICATIONS:

The state treasurer has testified that the brownfield SBT credits would cost \$23 million in foregone revenue in fiscal year 2001 and \$50 million in fiscal year 2002. (Testimony before the Senate Committee on Economic Development, International Trade and Regulatory Affairs on 3-14-00)

ARGUMENTS:

For:

The package of bills would significantly enhance the current brownfield redevelopment program and encourage greater redevelopment of contaminated, blighted, and functionally obsolete property in certain core communities. Administration spokespersons have said that this is part of the “administration’s initiative to assure the revitalization and long-term sustainability of Michigan’s core communities.” The proponents say the package “will significantly advance the state’s efforts to reclaim brownfield properties and maintain greenfield space.” Among other things, the package will:

- – Provide for larger SBT credits than are now available to encourage “marquee” projects and other businesses to locate in brownfields, and allow the credits to be used in core communities not only for development at contaminated sites but also at blighted and functionally obsolete sites. Three of the new credits could be worth up to \$30 million. And credits could be assigned to lessees in certain circumstances.

- – Allow captured tax revenues to be put to expanded uses in core communities and at more sites. In qualifying communities, captured tax revenues could be used for infrastructure improvements, lead and asbestos abatement, site preparation, demolition of structures, and administrative and operating costs, in addition to cleanup activities.

-- Grant new property tax abatements at brownfield sites, with local approval. These would include a special abatement for obsolete property in core communities and the exemption of personal property at all brownfield sites.

-- Make available a new kind of SBT credit for high-technology businesses no matter where located in the state to allow Michigan to compete for coveted research and development enterprises with high paying jobs, particularly small start-up companies and young, growing firms.

Against:

A number of questions and concerns have arisen about various aspects of this package of bills.

-- Is it fair to limit various new tax captures and tax incentives to "qualified local governmental units" in the way the package does? The current definition includes some cities and excludes others with no particular justification. (For example, Ann Arbor makes the list, Livonia doesn't. Grand Haven makes it, but not Romulus.) Could the criteria for participation be made site-specific; that is, define the kinds of sites that deserve to be eligible for these new development tools?

-- Even if enhanced SBT credits are limited to certain core communities, why not allow other local units to engage in expanded activities under brownfield-related tax increment finance arrangements. In that case, local units could make the decision about the loss of local tax revenue.

-- Is it wise to provide the MEGA board and the state treasurer so much discretion in the awarding of tax breaks?

-- One of the requirements for claiming a \$10 million-plus SBT credit is the creation of ten or more jobs. Wouldn't such a credit also be justified in cases in which a major company remains in Michigan with a large workforce, even though there are no additional jobs at the new brownfields facility?

-- Is it necessary to have a "but for" provision in awarding the largest SBT credits? The object ought to be to redevelop brownfield sites and help revitalize urban areas, not to make companies threaten to leave the state in order to get a tax credit.

-- Some people have proposed expanding tax incentives for developing brownfields by reducing

school operating taxes significantly (from the current 24 mills for commercial property). Rather than being a loss in revenue, this would bring in new revenue to schools that otherwise wouldn't exist.

-- Is it fair to include a special exception from the jobs requirement and "but for" requirement that otherwise would be imposed on \$10 million-plus SBT credits? The package would exempt a project under construction in the year 2000.

-- The package allows for an unlimited number of \$1 million or less SBT credits. How will the cost of these credits (in lost or foregone revenue) be kept under control?

Response:

Many of the issues raised above are being discussed as the package moves through the legislative process. It is important to keep a strong focus on core communities where blighted and obsolete (and contaminated) properties predominate and to keep control over cost of the program.

POSITIONS:

The Department of Treasury testified in support of the package on behalf of the Engler Administration before the House Economic Development Committee. (2-29-00)

The Michigan Municipal League supports the concept of the bills. (3-14-00)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.