

# Legislative Analysis

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## BROWNFIELD TIFA REVISIONS

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### House Bill 4711

Sponsor: Rep. Bill Huizenga

### House Bill 4712

Sponsor: Rep. Ed Clemente

### House Bill 4713

Sponsor: Rep. John Espinoza

Committee: New Economy and Quality of Life

Complete to 5-16-07

## A SUMMARY OF HOUSE BILLS 4711-4713 AS INTRODUCED 5-3-07

The state's Brownfield Redevelopment Program provides funding and tax incentives for the cleanup and redevelopment of contaminated, blighted, and functionally obsolete properties with the aim of making them economically viable. As part of the program, the Brownfield Redevelopment Financing Act allows brownfield authorities created by local units of government to use tax increment financing to pay for certain "eligible activities" on eligible property, such as baseline environmental assessments, due care activities, and additional response activities. In certain "core communities," captured incremental tax revenues can also be used for demolition, infrastructure improvements, site preparation, and lead and asbestos abatement.

The bills would revise the Brownfield Redevelopment Financing Act, among other things, to do the following:

- Modify the definition of the terms "eligible activities" or "eligible activity."
- Allow communities that are not core communities to engage in (as eligible activities) the demolition of structures and lead and asbestos abatement at contaminated, functionally obsolete, and blighted sites (as only core communities currently can).
- Extend until 2017 (from 2008) the capture of school operating taxes for eligible activities under work plans and remedial action plans approved by the DEQ and/or MEGA
- Allow an authority to use school operating taxes without DEQ approval of a plan, if the funds are used for certain purposes.
- Revise the DEQ work plan and remedial action plan approval process
- Alter the notice and hearing requirements for brownfield plans.
- Raise the limits (dependent upon the number of active projects) on the amount of increment revenue an authority may use for certain purposes.
- Add the House and Senate Commerce committees to the list of committees to which the State Tax Commission now sends its annual brownfield report.

A more detailed explanation of each bill follows.

House Bill 4713 would amend the Brownfield Redevelopment Financing Act (MCL 125.2652) to modify the definition for "eligible activity" or "eligible activities" in three ways.

The bill would allow the following activities on contaminated, functionally obsolete, or blighted property "not located in a qualified local governmental unit" (that is, not located in a so-called core community): 1) the demolition of structures that is not response activity under NREPA; and 2) lead and asbestos abatement.

Currently, the terms include *the relocation of public buildings or operations for economic development purposes with prior approval of the Michigan Economic Development Authority*. The bill would make this provision apply "only if taxes levied for school operating purposes will be used to pay for the relocation."

Third, the bill would add another new category of activities described as "all reasonable costs of developing and preparing brownfield plans and work plans."

House Bill 4712 would amend the Brownfield Redevelopment Financing Act (MCL 125.2663) in several ways.

Public Hearing Notice. It would change the public hearing notice requirement for brownfield plans. Currently, before approving a brownfield plan for an eligible property, the governing body must hold a hearing on the plan. (The governing body is the elected body having legislative powers of a municipality that creates a Brownfield Redevelopment Authority.) Notice of the time and place of that hearing must be published twice in a local newspaper, appearing at least 20 days, and not more than 40 days, before the hearing date. Under House Bill 4712, notice of the hearing would have to be published once in a local newspaper, and appear at least 10 days, and not more than 40 days, before the hearing date.

Notice to DEQ. Currently under the law, the local governing body must provide notice of the hearing to the taxing jurisdictions that levy taxes that would be subject to capture. The bill would require, in addition, that the local governing body provide notice to the Department of Environmental Quality if school operating taxes were to be used to pay for activities requiring DEQ approval of a work plan and provide notice to the Michigan Economic Growth Authority (or its designee) if school operating taxes were to be used to pay for activities that require MEGA approval.

Limits on Expenditures. Currently, the law limits how certain local tax increment revenues can be spent. The law also specifies instances in which those limitations on costs and expenses do *not* apply. Under the law, a local authority may spend up to \$75,000 in each fiscal year for reasonable administrative and operating expenses; baseline environmental assessments, due care activities, and additional response activities; and costs of preparing and reviewing work plans or remedial action plans. The

bill would add to the permitted uses: the reasonable costs of site investigations, baseline environmental assessments, and due care activities incurred by a person other than the brownfield authority related directly to work conducted on eligible property.

The bill also would eliminate the flat \$75,000 cap, and specify instead, that in each fiscal year of the authority, the following amounts could be used for those purposes:

- \$75,000 for authorities having up to five projects each requiring an amendment to the brownfield plan.
- \$100,000 for authorities having at least six but fewer than 11 active projects each requiring an amendment to the brownfield plan.
- \$125,000 for authorities having at least 11 but fewer than 16 active projects each requiring an amendment to the brownfield plan.
- \$150,000 for authorities having at least 16 but fewer than 21 active projects each requiring an amendment to the brownfield plan.
- \$175,000 for authorities having at least 21 but fewer than 26 active projects each requiring an amendment to the brownfield plan.
- \$200,000 for authorities having 26 or more active projects each requiring an amendment to the brownfield plan.

School Tax Capture. The bill would extend to 2017 (from 2008) the ability of an authority to capture school operating taxes for activities under a MEGA-approved work plan.

House Bill 4711 would amend the Brownfield Redevelopment Financing Act (MCL 125.2665 and 125.2666) in several ways.

School Tax Capture. School operating taxes can only be captured if the eligible activities to be conducted are consistent with a work plan or remedial plan approved by the DEQ before January 1, 2008. Under the bill, this provision would be extended to January 1, 2017. The bill would specify, however, that school operating taxes could be used without DEQ plan approval for site investigation activities, evaluating due care activities, preparing a baseline environmental assessment, and certain compliance activities.

Work Plan Approval Process. The bill would revise the way in which the Department of Environmental Quality reviews a local work plan, or a remedial action plan. The DEQ can respond to a work plan with unconditional approval, conditional approval, or a finding that a plan lacks sufficient information and a request for additional information. Under the bill, the department would have 14 days after receiving additional information, to provide one of the three responses described above. If the department did not respond within 14 days, the work plan would be considered approved.

The bill specifies that the department would have to review a work plan or remedial action plan as follows:

- Determine whether some or all of the activities constitute due care activities or additional response activities other than activities exempt from the work plan approval process.
- Determine whether the due care activities or additional response activities, (other than exempt activities) are protective of the public health, safety, and welfare and the environment. (The department could not reject an activity on the basis that it was *more protective* of the public health, safety, and welfare and the environment than required by the Natural Resources and Environmental Protection Act.)
- After making the above determinations, then determine whether the estimated costs for the activities as a whole are reasonable for the stated purpose.

Finally, currently under the law, the Department of Environmental Quality may reject the portion of a work plan or remedial action plan that includes additional response activities, and may consider the level of risk reduction that will be accomplished by the additional response activities in determining whether to approve or reject all or portions of the plans. Further, the department's approval or rejection of a work plan or remedial action plan is final when a plan's eligible activities captured school operating taxes. House Bill 4711 would eliminate these provisions. Instead, the bill specifies that the department's approval or rejection of a work plan or remedial action plan would constitute final agency action in regard to the use of taxes levied for school operating purposes, but would *not* restrict an authority's use of tax increment revenues attributable to local taxes, to pay for eligible activities under a brownfield plan.

#### **FISCAL IMPACT:**

The bills are currently being examined to determine the state and local fiscal impact.

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