

# Legislative Analysis

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## BROWNFIELD TIFA REVISIONS & EXTENSION

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**House Bill 4711 (Substitute H-1)**  
**Sponsor: Rep. Bill Huizenga**

**House Bill 4712 (Substitute H-1)**  
**Sponsor: Rep. Ed Clemente**

**House Bill 4713 (Substitute H-1)**  
**Sponsor: Rep. John Espinoza**  
**Committee: New Economy and Quality of Life**

### First Analysis (6-5-07)

**BRIEF SUMMARY:** 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," and also the term "eligible property."
- 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 requirement 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 and Economic Development committees to the list of committees to which the State Tax Commission must send its annual brownfield report.

**FISCAL IMPACT:** Because it is not known to what degree the tax increment financing will be used, it is not possible to determine a fiscal impact. The revenue reductions would occur primarily at the local level, although to the extent that state and local school operating taxes are captured, there would be an impact on the School Aid Fund.

### **THE APPARENT PROBLEM:**

Many communities—perhaps nearly all—contain abandoned industrial and commercial facilities that, while once vital in an earlier local economy, now sit idle and unused within their borders. These facilities are often an eyesore, and since they are no longer profit-making enterprises, they contribute little to the taxable value of the community. To

encourage redevelopment of such sites, local units of government sometimes partner with the Michigan Economic Development Corporation and the Department of Environmental Quality to offer land developers incentives, such as reduced property taxes, if they agree to redevelop a site.

For example, 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. These "eligible activities" include such efforts as baseline environmental assessments, due care activities, and additional response activities. Further, in certain "core communities," captured incremental tax revenues can also be used for demolition, infrastructure improvements, site preparation, and lead and asbestos abatement. See Background Information.

One recently approved site serves as an example. In May 2007, the Michigan Economic Development Corporation announced that Ashley Grand Rapids LLC will use a state brownfield tax credit of \$5,425,368 to redevelop a 206.4-acre industrial property formerly owned by Steelcase, and located at 36<sup>th</sup> and 44<sup>th</sup> streets and Eastern Avenue. The project, to be undertaken in 12 phases, requires demolition of three obsolete factories, redevelopment of 15 industrial and support structures, plus construction of a mixed-use retail, R&D, and light industrial complex. The development is advertised as leading to the creation of nearly 3,600 jobs.

The Department of Environmental Quality notes that efforts to assess the precise location, type, and amount of contamination on a site are sometimes scant and too hasty. As the site is being prepared for a new use, the vestige of the contaminants that remain must be contained or removed, in order to protect the health and welfare of citizens, as well as the quality of the soils and water.

To encourage that greater care be taken to determine the presence of contaminants, legislation has been introduced that would strengthen local brownfield authorities, extending their ability to capture TIF revenues until January 1, 2018; allow non-core communities to participate in the program; streamline the state's review process for brownfield plans; and provide incentives to site developers that would enable them to be reimbursed if they undertook more thorough and complete environmental assessments.

### ***THE CONTENT OF THE BILLS:***

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," and also the term "eligible property."
- 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 requirement 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 and Economic Development committees to the list of committees to which the State Tax Commission must send its annual brownfield report.

A more detailed explanation of each bill follows.

House Bill 4713 (H-1) would amend the Brownfield Redevelopment Financing Act (MCL 125.2652) to modify the definition for "eligible activity" or "eligible activities" in four ways, and also would modify the definitions of "eligible property," and "specific taxes."

First, with regard to "eligible activity," the bill would allow assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying property owned or under the control of, a land bank fast track authority, "or the *acquisition* of property by the land bank fast track authority, if the acquisition of the property was for economic development purposes."

Second, 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.

Third, currently the terms "eligible activity" or "eligible activities" include *the relocation of public buildings or operations for economic development purposes with prior approval of the Michigan Economic Development Authority*. The bill would retain this provision, but eliminate the need for prior approval from the Michigan Economic Development Authority.

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

In addition, the bill modifies the definition for "eligible property" to specify that the term means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, or residential purposes, including personal property located on the property (if in the plan), and that is one or more of the following:

- Is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted and includes parcels that are adjacent or contiguous to that property if the

development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

- Is not in a qualified local governmental unit and is a facility, functionally obsolete, or blighted and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.
- Is tax reverted property owned or under the control of a land bank fast track authority.
- Is not in a qualified local governmental unit, is a qualified facility, and is a facility, functionally obsolete, or blighted, if the eligible activities on the property are limited to the eligible activities identified in accordance with the law.
- Is not in a qualified local governmental unit and is a facility, functionally obsolete or blighted, if the eligible activities on the property are limited to the eligible activities identified in accordance with the law.

The bill specifies that eligible property does *not* include qualified agricultural property exempt under section 7ee of the General Property Tax Act from the tax levied by a local school district for school operating purposes to the extent provided under the Revised School Code.

Finally, the bill would add the Commercial Rehabilitation Act (Public Act 210 of 2005) to the definition of "specific taxes."

House Bill 4712 (H-1) 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 twice in a local newspaper, and appear at least 14 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 that not less than 20 days before the hearing on the brownfield plan, the local governing body also provide notice to the Department of Environmental Quality and the Michigan Economic Growth Authority, if the brownfield plan involved the use of taxes levied for school operating purposes to pay for eligible activities that required the approval of a work plan by the department and the authority.

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: for tax increment revenues attributable to local taxes, 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 or prospective eligible properties, prior to approval of the brownfield plan, if those costs and the eligible property are included in a brownfield plan approved by the authority.

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.
- \$300,000 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.

Finally, the bill specifies that as used in this subsection, "active project" means a project in which the authority is currently capturing taxes under this act.

House Bill 4711(H-1) 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 an authority could use taxes levied for

school operating purposes captured from eligible property without the approval of a work plan by the DEQ, for the reasonable costs of one or more of the following:

- Site investigation activities required to conduct a baseline environmental assessment and to evaluate compliance with the Natural Resources and Environmental Protection Act.
- Evaluation of due care activities.
- Completing a baseline environmental assessment report.
- Preparing a plan for compliance with the Natural Resources and Environmental Protection Act.

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 30 days after receiving additional information, to again provide one of the three responses described above. If the department did not respond within 30 days, the work plan would be considered to be approved. However, the bill specifies that the department's approval of a work plan or remedial action plan would not imply an entitlement to reimbursement of the costs of the eligible activities, if the work plan was not implemented as approved. Under the bill, the applicant and the department could, by mutual agreement, extend the time period for any review described in the law. Any such agreement would have to be documented in writing.

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.

Further, 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.

Finally, currently under the law, the Department of Environmental Quality and the Michigan Economic Growth Authority must submit a report each year on or before March 1 to each member of the legislature. Under the law, that report must include a compilation and summary of all the information submitted in brownfield work plans and remedial action plans for each eligible property, as well as the amount of revenue the State of Michigan would have received if taxes levied for school operating purposes had not been captured for the previous calendar year. House Bill 4711 would retain these requirements, but modify the second to specify "the amount of tax increment revenues approved by the department, including taxes levied for school operating purposes, to conduct eligible activities."

In addition, each local brownfield authority must annually submit a financial report to its governing body, and the State Tax Commission, on the status of the authority's activities. Under the law, that report must include the amount and source of tax increment revenues received; the amount and purpose of expenditures of tax increment revenues; the amount of principal and interest on all outstanding indebtedness; the initial taxable value of all eligible property subject to the brownfield plan; the captured taxable value realized by the authority; information concerning any transfer of ownership, or of interest in, each eligible property, and all information that the governing body or the state tax commission considers necessary. House Bill 4711 would retain these provisions, and also require that the report include the amount of tax increment revenues attributable to taxes levied for school operating purposes used for activities described in the legislation.

### ***BACKGROUND INFORMATION:***

Currently, 103 qualified local governmental units, or 'core communities' participate in the Brownfield Redevelopment Program, including six townships. A list of all of the communities having local brownfield authorities can be found on the Department of Environmental Quality website at <http://www.michigan.gov/deq>. After arriving at the site, select "Land" from the menu on the left. Then click on "Land Redevelopment" for an introduction and thorough explanation of the Brownfield Redevelopment Program.

### ***ARGUMENTS:***

#### ***For:***

Supporters of Michigan's Brownfield Redevelopment Program say the program has been a success since enactment of the Brownfield Redevelopment Financing Act—Public Act 381 of 1996. Using a combination of grant funds and tax credits, local brownfield authorities have expanded or redeveloped abandoned, idled, or under-used industrial and commercial facilities throughout Michigan. In doing so, they have often been required to establish a method to finance environmental response activities at contaminated properties. The bills in this package, recommended by a workgroup established by the Department of Environmental Quality in 2006, will allow the program to continue and to grow stronger. For example, the bills streamline the approval process for local

Brownfield Plans, as they are reviewed by the Department of Environmental Quality. Further, they allow a local Brownfield Authority to use school tax capture for certain purposes, without the approval of the Michigan Economic Growth Authority. Unless House Bill 4711 is enacted into law to extend school tax capture for 10 years, the ability to capture school taxes would come to an end soon. What's more, House Bill 4713 will allow non-core communities to take advantage of the program, for select purposes.

***Response:***

The Brownfield Redevelopment Program requires school tax capture in order to work effectively. Consequently, the 10-year sunset (to January 1, 2017) should be removed entirely.

***Against:***

According to committee testimony, some local Brownfield Authorities have misused their funds and tax credits, applying them to projects that fall outside the definition of "eligible property," and directing them to vacant lots having no contamination. For example, a former mayor of Traverse City, together with a current Grand Traverse county commissioner, testified that their local brownfield authority has voted to allow tax capture, or TIF financing, for a lease/purchase agreement that would put 216 public parking spaces in downtown Traverse City—a project already declined by the city commission. (A similar project was overwhelmingly defeated at the polls in August 2006 when 71 percent of voters said "no" to issuing bonds for a 530-space parking deck in the downtown.) Those who caution against the expansion of the Brownfield Redevelopment Program note that the members of local brownfield authorities are appointed, not elected. Consequently, they are not directly accountable to the citizens of their communities for their actions.

***Response:***

In most communities, the bylaws that establish local Brownfield Authorities stipulate that the authorities' decisions are advisory, and as such are forwarded to their locally elected governing boards (city councils or commissions, township boards of trustees) for final approval.

***POSITIONS:***

The Michigan Economic Development Commission supports the bills. (5-17-07)

The Grand Rapids Chamber of Commerce supports the bills in concept. (5-17-07)

The Michigan Municipal League supports the bills. (5-29-09)

The Detroit Regional Chamber of Commerce supports the bills. (5-17-07)

The National Brownfields Association supports the bills. (5-17-07)

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■ 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.