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BILL ANALYSIS

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Senate Bills 533 through 539 (as introduced 5-24-07)

Sponsor: Senator Jason E. Allen (S.B. 533)
Senator Randy Richardville (S.B. 534)
Senator Gilda Z. Jacobs (S.B. 535)
Senator Buzz Thomas (S.B. 536)
Senator Tupac A. Hunter (S.B. 537)
Senator Jud Gilbert, II (S.B. 538)
Senator Alan Sanborn (S.B. 539)

Committee: Economic Development and Regulatory Reform

Date Completed: 6-13-07

CONTENT

Senate Bill 533 would amend the Natural Resources and Environmental Protection Act (NREPA) to include the president of the Michigan Strategic Fund or his or her designee, as a member of the Brownfield Redevelopment Board within the Department of Environmental Quality (DEQ).

Senate Bills 534 through 539 would amend the Brownfield Redevelopment Financing Act to do all of the following:

- Revise the definitions of "eligible activities" and "eligible property".
- Extend for four years the date by which the DEQ or the Michigan Economic Growth Authority (MEGA) must approve a work plan or remedial action plan, if a brownfield development authority will use taxes levied for school operating purposes.
- Expand the factors the DEQ must consider when reviewing a work plan or remedial action plan.
- Revise and expand exceptions to the Act's limitations on the use of captured tax revenue, including the amount that may be used to cover an authority's administrative and operating expenses and certain other costs.
- Require that a city's, village's, or township's concurrence with the

provisions of a county's brownfield plan be accomplished by resolution.

- Require a municipality to mail a copy of its resolution creating a brownfield authority to each taxing jurisdiction whose millage would be captured.
- Require the State Tax Commission to submit its annual report on the activity of brownfield development authorities to the Senate committee responsible for economic development.

The bills are described in detail below.

Senate Bill 533

Under NREPA, the chief executive officer of the former Jobs Commission or his or her designee is listed as a member of the Brownfield Redevelopment Board. Executive Reorganization Order No. 2003-1 transferred that position to the Director of the Department of Labor and Economic Growth (DLEG) or his or her designee, and provides that the DLEG Director or the Director's authorized representative serves as the chairperson of the Board (MCL 445.2011). Under the bill, the president of the Michigan Strategic Fund or the president's designee, rather than the DLEG Director or the Director's designee, would serve on the Board.

Senate Bill 534

The Brownfield Redevelopment Financing Act allows municipalities (cities, villages, townships, and counties) to establish brownfield redevelopment zones and brownfield redevelopment zone authorities, which may implement brownfield plans for the redevelopment of commercial or industrial property. The Act specifies financing sources for authority activities, including the capture of tax increment revenue (that is, revenue from the incremental increase in property values within a zone). The revenue may be used to pay the costs of eligible activities on eligible property within a zone.

"Eligible activities" or "eligible activity" means one or more of certain activities listed in the Act, e.g., baseline environmental assessment activities; due care activities; additional response activities; and, for property meeting various criteria, infrastructure improvements, demolition of structures that is not response activity under Section 20101 of NREPA, lead or asbestos abatement, or site preparation. ("Response activity" under Section 20101 means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, the environment, or natural resources.)

Under the bill, the term would mean one or more of the listed activities, regardless of whether the activity occurred before or after the adoption of a work plan. The list of eligible activities also would include reasonable costs for preparation and administration of brownfield plans and work plans.

In addition, for eligible activities on eligible property that was not located in a qualified local governmental unit and that was a facility, functionally obsolete, or blighted, as determined by resolution of the governing body, the list would include demolition of structures that was not response activity under Section 20101, and lead or asbestos abatement.

Under the Act, the list of eligible activities includes relocation of public buildings or operations for economic development purposes, with prior approval of the Michigan Economic Development Authority.

The bill would delete that requirement for prior approval.

The bill specifies that "eligible property" would include qualified agricultural property exempt from taxation under Section 7ee of the General Property Tax Act that was a facility or otherwise was contaminated, was serviced by municipal sewer and water infrastructure, was included in a master plan, and was zoned residential, commercial, or industrial. Otherwise, as currently provided, eligible property would not include qualified agricultural property exempt under Section 7ee from the tax levied by a local school district for school operating purposes. (Section 7ee provides for that exemption under specific circumstances, to the extent allowed under the Revised School Code.)

Senate Bill 535

The Brownfield Redevelopment Financing Act allows a brownfield redevelopment authority established by a county to exercise its powers with respect to eligible property within a city, village, or township only if the city, village, or township has concurred with the provisions of a brownfield plan that apply to the eligible property within the city, village, or township. Under the bill, the concurrence of the city, village, or township would have to be by resolution.

Senate Bill 536

The Act allows a municipality, by resolution adopted by a majority of the members of its governing body, to declare its intention to create and provide for the operation of a brownfield authority. The resolution of intent must set a date for holding a public hearing on the adoption of a proposed resolution creating the authority. Within 30 days after the public hearing, if the governing body intends to proceed, it must adopt a resolution establishing the authority by a majority vote of its members elected and serving. The resolution must be filed with the Secretary of State promptly after its adoption. The bill also would require that a copy of the resolution be mailed to each taxing jurisdiction whose millage would be captured by the authority.

Senate Bill 537

If a brownfield plan includes either the capture of taxes levied for school operating purposes or the use of tax increment revenue related to a brownfield plan for the cost of eligible activities attributable to more than one eligible property that is adjacent and contiguous to all other eligible property covered by a development agreement (whether or not the captured taxes are levied for school operating purposes), the Act requires the approval of a work plan by MEGA before January 1, 2008, to use school operating taxes, and a development agreement between the municipality and an owner or developer of eligible property, if the revenue will be used for any of the following:

- Infrastructure improvements that directly benefit eligible property.
- Demolition of structures that is not response activity under Part 201 (Environmental Remediation) of NREPA.
- Lead or asbestos abatement.
- Site preparation that is not response activity under Section 20101 of NREPA.

The eligible activities to be conducted under this provision must be consistent with the work plan submitted by the brownfield authority to MEGA. The DEQ's approval is not required for the capture of taxes levied for school operating purposes for those eligible activities.

Under the bill, these provisions would apply only if a brownfield plan included the capture of taxes levied for school operating purposes, and MEGA would have to approve the work plan before January 1, 2012, rather than January 1, 2008.

The Act prohibits the use of captured tax increment revenue for certain purposes. Those limitations do not apply, however, to \$75,000 in each fiscal year of an authority for the following purposes for tax increment revenue attributable to local taxes:

- Reasonable and actual administrative and operating expenses of the authority.
- Baseline environmental assessments, due care activities, and additional response activities related directly to work conducted on prospective eligible property before approval of the brownfield plan.

The bill would delete the \$75,000 figure and refer instead to the amount in the schedule below. It also would refer to baseline environmental assessments, due care activities, and additional response activities, conducted by or on behalf of the authority, related directly to work conducted on prospective eligible property before approval of the brownfield plan.

In each fiscal year of a brownfield authority, the limitations upon an authority's use of tax increment revenue would not apply to the costs and expenses described above, to the following extent, based on the number of authority projects that captured taxes under the Act:

- Five or fewer, \$75,000.
- Six to 10, \$100,000.
- 11 to 15, \$125,000.
- 16 to 20, \$150,000.
- 21 to 25, \$175,000.
- 26 or more, \$200,000.

Currently, the limitations on the use of tax increment revenue also do not apply to reasonable costs of preparing a work plan or remedial action plan or the cost of the review of a work plan for which tax increment revenue may be used. Under the bill, the limitations also would not apply to reasonable costs of administering a brownfield plan.

In addition, the limitations would not apply to the reasonable costs of site investigations, baseline environmental assessments, and due care activities, conducted by or on behalf of a person other than the brownfield authority, related directly to work conducted on prospective eligible property before approval of the brownfield plan.

Senate Bill 538

Under the Act, except as otherwise allowed with MEGA approval of a work plan (as described above in Senate Bill 537), a brownfield development authority may not use taxes levied for school operating purposes captured from eligible property unless the eligible activities to be conducted on the eligible property are eligible activities under Part 201 of NREPA, consistent with a work plan or remedial action plan approved by the DEQ after July 24, 1996, and before

January 1, 2008. Under the bill, a work plan or remedial action plan would have to be approved by the DEQ before January 1, 2012.

The Act requires the DEQ to consider all of the following in its review of a work plan or remedial action plan:

- Whether the individual activities included in the plan are sufficient to complete the eligible activity.
- Whether each individual activity included in the plan is required to complete the eligible activity.
- Whether the cost for each individual activity is reasonable.

The bill would require the DEQ also to consider all of the following:

- Whether the work plan or remedial action plan was clear that the DEQ approval of the work plan did not automatically authorize reimbursement for an eligible activity.
- Whether the work plan or remedial action plan was clear that the financial risk on whether an expense was an eligible activity was on the developer.
- Whether the plan proposed eligible activities that exceeded the standards developed by the DEQ.

If a plan proposed activities that exceeded DEQ standards, then the DEQ would have to approve those eligible activities if they were reasonable and provided meaningful environmental or public health benefits as determined by the Department.

Senate Bill 539

The Act requires the State Tax Commission to collect financial reports submitted annually by each brownfield development authority, compile and analyze the information in those reports, and submit annually a report based on that information to various standing committees of the Legislature. In the Senate, the report must be submitted to the committees responsible for natural resource management, conservation, environmental protection, and taxation. The bill also would require the report to be submitted to the committee responsible for economic development.

MCL 324.20104a (S.B. 533)
125.2652 (S.B. 534)

125.2653 (S.B. 535)
125.2654 (S.B. 536)
125.2663 (S.B. 537)
125.2665 (S.B. 538)
125.2666 (S.B. 539)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bills 533, 535, 536, & 539

The bills would have no fiscal impact on State or local government.

Senate Bills 534, 537, & 538

The bills would reduce State and local unit revenue by an unknown amount and increase School Aid Fund expenditures by an unknown amount, depending upon the specific characteristics of the projects affected by the bills. By expanding the definitions of eligible activities and eligible property, as well as increasing the costs not subject to limitations, the bills would increase the amount of taxes subject to capture. The broadened definition of expenses also could increase the duration of any revenue capture. Extending the sunset on the approval of new projects would increase the revenue loss due to additional projects that would be approved after January 1, 2008. The expansions in the bill likely would result in a greater revenue loss than would occur from simply extending the sunset under current law. According to the Department of Treasury, approximately \$300.0 million in State and local tax revenue will be captured under current law by all authorities using tax increment capture (downtown development authorities, local development finance authorities, tax increment finance authorities and brownfield redevelopment authorities) during FY 2006-07. The portion of that attributable to brownfield projects is unknown.

School Aid Fund expenditures would be increased to maintain per-pupil funding guarantees for any captured school operating taxes and/or captured State education tax.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.