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BILL ANALYSIS

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Senate Bill 1210 (as enacted)
Sponsor: Senator Mike Kowall
Senate Committee: Economic Development
House Committee: Commerce

PUBLIC ACT 502 of 2012

Date Completed: 4-4-13

RATIONALE

The Brownfield Redevelopment Financing Act was enacted in 1996 to allow 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 financing sources for authority activities include the capture of tax increment revenue (that is, revenue from the incremental increase in property values within a zone), to pay the costs of eligible activities on eligible property in a zone. While Michigan's brownfield redevelopment law has been widely seen as a success, a work group began to review the Act early in 2012 and identified some aspects that it believed could be improved. For example, although a brownfield authority may capture local tax increment revenue without State approval, it may not capture revenue levied for school operating purposes until it prepares a work plan—in addition to a brownfield plan—and has the work plan approved by either the Michigan Strategic Fund (MSF) or the Department of Environmental Quality (DEQ), depending on the activities in question. Also, as a rule, an authority may not use captured tax revenue before a brownfield plan is approved by the municipality's governing body, and the Act limits the amount of revenue an authority may use for operating expenses and preliminary environmental activities before a plan is approved. In addition, the approval of a work plan had to occur before January 1, 2013, which effectively imposed a sunset on the program. The work group made recommendations to address these and other issues. It also was suggested that a

new source of funding be created to provide grants and loans to brownfield authorities.

CONTENT

The bill amended the Brownfield Redevelopment Financing Act to do the following:

- **Delete the December 31, 2012, deadline for approval of a work plan.**
- **Create the "State Brownfield Redevelopment Fund" to support a grant and loan program that will fund the costs of eligible activities on eligible property, deposits into the Clean Michigan Initiative Bond Fund, and administrative costs.**
- **Require a brownfield authority to pay to the Department of Treasury an amount equal to three mills of the taxes levied under the State Education Tax that are captured under the brownfield plan, for deposit into the new Fund.**
- **Allow an authority to seek approval of a "combined brownfield plan" instead of a work plan.**
- **Allow the chairperson of the Michigan Strategic Fund to approve projects totaling \$500,000 or less.**
- **Allow an authority to use revenue captured from school operating taxes for certain environmental assessment activities before a brownfield plan is approved.**
- **Make additional exceptions to brownfield plan preapproval requirements for certain unanticipated response activities, and for eligible activities**

- subsequently included in an approved plan.**
- **Allow an increase in the amount of local tax increment revenue an authority may use for administrative and operating expenses and preliminary environmental activities before approval of a brownfield plan, for authorities with 31 or more active projects and in situations involving collaborative agreements.**
 - **Discontinue requirements that an authority reimburse the MSF or the DEQ for the cost of reviewing a work plan.**
 - **Include historic resources in the Act's definitions of "eligible property" and "eligible activities".**
 - **Expand the definition of "infrastructure improvements", allowing the use of tax increment revenue for additional types of projects.**
 - **Delete requirements that notice of certain public hearings be published in a newspaper.**
 - **Delete a requirement for work plan approval before an authority may spend money in a local site remediation revolving fund that is derived from school operating taxes.**
 - **Require authorities' annual financial reports to include additional information; require the MSF and the DEQ to submit a joint annual report to the Legislature; and otherwise revise reporting requirements.**
 - **Allow a brownfield plan to be abolished or terminated if a project fails to occur for five years after its approval, and make other changes concerning the abolishment or termination of a plan.**

The bill took effect on December 28, 2012.

State Brownfield Redevelopment Fund

The bill created the State Brownfield Redevelopment Fund as a revolving fund within the Department of Treasury. The State Treasurer must credit to the Fund money from the following:

- All amounts equal to three mills of the State Education Tax deposited into the Fund as required by the bill, for a brownfield plan that includes the capture of school operating taxes.

- The proceeds from repayment of a loan from the Fund, including interest on those repayments.
- Interest on money deposited into the Fund.
- Money obtained from any other source authorized by law.

The Fund may be used only for the following purposes:

- To pay administrative costs of the Michigan Strategic Fund and the DEQ to implement the Act.
- To pay administrative costs of the DEQ to implement Part 196 (Clean Michigan Initiative Implementation) of the Natural Resources and Environmental Protection Act (NREPA).
- To fund a grant and loan program for the costs of eligible activities (for which MSF approval is required) on eligible property.
- To make deposits into the Clean Michigan Initiative Bond Fund created in Part 196 of NREPA, for use only in providing grants under Part 196.

(Part 196 requires a portion of the money in the Clean Michigan Initiative Bond Fund to be used for grants and loans to local units of government and brownfield redevelopment authorities to investigate and remediate sites of known or suspected environmental contamination with redevelopment potential.)

Not more than 15% of the amounts deposited annually into the State Brownfield Redevelopment Fund may be used for the administrative costs described above.

The State Treasurer must direct the Fund's investment. Money in the Fund at the close of the fiscal year is to remain in it and not lapse to the General Fund.

MSF Grant & Loan Program

The bill requires the Michigan Strategic Fund to create and operate a program to provide grants and loans to fund eligible activities requiring MSF approval (for the use of school operating taxes) on eligible property. The Strategic Fund must develop and use a detailed application, approval, and compliance process adopted by resolution of the MSF board. The process must be published and available on the MSF website.

Program standards, guidelines, templates, or any other forms to implement the grant and loan program must be approved by the board or a person designated by the MSF.

A person may apply to the MSF for approval of a grant or loan to fund eligible activities on eligible property. The MSF must approve or deny an application within 90 days after receiving an administratively complete application. If an application is neither approved nor denied within that period, it must be considered by the MSF board, or its designee, for action at or by the next regularly scheduled board meeting. The MSF may delegate the approval or denial of an application to the MSF chairperson or other designees determined by the board.

When an application is approved, the MSF must enter into a written agreement with the applicant. The agreement must provide all the conditions imposed on the applicant and the terms of the grant or loan. The agreement also must provide for penalties if the applicant fails to comply with it. After the Strategic Fund and the applicant enter into a written agreement, the MSF must distribute the proceeds to the applicant according to the terms of the agreement.

Any proceeds from repayment of a loan, including interest, must be paid into the State Brownfield Redevelopment Fund.

State Education Tax Revenue

For a brownfield plan that provides for the capture of taxes levied for school operating purposes from eligible property included in the plan after January 1, 2013, the bill requires the brownfield authority to pay to the Department of Treasury at least once annually an amount equal to three mills of the taxes levied under the State Education Tax (SET) that are captured under the brownfield plan. This amount must be paid for up to the first 25 years that tax increment revenue is captured for each eligible property included in the brownfield plan. The Department must deposit the amount in the State Brownfield Redevelopment Fund. (Under the Act, the term "taxes levied for school operating purposes" includes taxes levied under the State Education Tax Act as well as taxes levied by a local school district for operating purposes.)

If an authority pays to the Department of Treasury an amount equal to three mills of the SET on a parcel of eligible property, the percentage of local taxes levied on that parcel and used to reimburse eligible activities for a project under a brownfield plan may not exceed the percentage of local taxes levied on that parcel that would have been used to reimburse eligible activities for the project if the three SET mills levied on that parcel were not paid to the Department.

If, due to an appeal of any tax assessment, an authority has to reimburse a taxpayer for any portion of the three mills paid to the Department, the Department must reimburse that amount to the authority within 30 days after receiving a request for reimbursement from the authority.

Plan Approval

The Act requires a work plan to be approved by the MSF if a brownfield plan includes the capture of taxes levied for school operating purposes and the taxes will be used for infrastructure improvements that directly benefit eligible property, demolition of structures or site preparation that is not response activity under Part 201 (Environmental Remediation) of NREPA, lead or asbestos abatement, relocation of public buildings or operations for economic development purposes, or acquisition of property by a land bank fast track authority. Eligible activities under Part 201 of NREPA must be consistent with a work plan approved by the DEQ in order for an authority to use captured school operating taxes.

Previously, approval by the MSF or the DEQ had to be granted before January 1, 2013. The bill deleted that deadline. The bill also requires approval of either a work plan or a combined brownfield plan. For plans subject to DEQ approval, the bill deleted a requirement that an authority submit a separate work plan, or part of a plan, for each eligible activity to be undertaken.

For plans that must be approved by the Strategic Fund, the bill authorizes the MSF chairperson to approve combined brownfield plans and work plans for eligible activities totaling \$500,000 or less, according to the Act's criteria for approval by the MSF.

Previously, an authority had to reimburse the MSF or the DEQ for the cost to review a work plan. Under the bill, this requirement does not apply after December 31, 2012.

Combined Brownfield Plan

The bill allows an authority, instead of seeking approval of a work plan from the MSF or the DEQ, to seek approval of a combined brownfield plan from the Strategic Fund or the Department, subject to the following provisions.

At least 30 days before the hearing on the combined plan, the authority must notify the Michigan Strategic Fund or the Department, as applicable, that it will be seeking approval of a combined plan. (The Act requires the governing body of the municipality that created an authority to hold a public hearing before approving a brownfield plan.)

After the governing body approves a combined brownfield plan, the authority must submit it to the MSF or the DEQ, which will have to review the plan. The MSF or the DEQ must give the authority one of the following written responses within 65 days:

- An unconditional approval that includes an enumeration of eligible activities and a maximum allowable capture amount.
- A conditional approval that delineates specific necessary modifications to the combined plan, including individual activities to be added to or deleted from the plan and a revision of costs.
- A denial and a letter stating with specificity the reason for the denial.

The approval of a combined brownfield plan will be final. If a combined plan is denied, it may be resubmitted.

If the MSF or the DEQ fails to provide a written response within 65 days after receiving a combined plan, the eligible activities must be considered approved as submitted.

When approving or denying a combined plan, the MSF must consider the criteria identified in the Act for approval of a work plan, to the extent reasonably applicable to the type of activities proposed as part of the combined plan.

The DEQ may approve a combined brownfield plan if the authority submits the information that must be submitted for approval of a work plan (except a copy of the brownfield plan) and if the conditions for approval of a work plan are met.

If the MSF or the DEQ approves a combined plan unconditionally or conditionally, the municipality's governing body or its designee may administratively approve any modifications to the combined plan required by the written response, without following the notice and approval process required for amendments to an approved brownfield plan, unless the modifications add one or more parcels of eligible property or increase the maximum amount of tax increment revenue approved for the project.

Brownfield Plan Preapproval Exceptions

Environmental Assessment Activities. As a rule, the Act prohibits an authority from using taxes captured from eligible property to pay for eligible activities conducted before a brownfield plan has been approved by the governing body of the municipality that created the authority. Under the bill, an authority may use taxes levied for *school operating taxes* for the costs of the following activities before a brownfield plan is approved:

- Site investigation activities required to conduct a baseline environmental assessment (BEA) and to evaluate compliance with Section 20107a of NREPA (which sets forth the duties of a person who owns or operates property that he or she knows is a site of contamination).
- Completion of a BEA report.
- Preparation of a plan for compliance with Section 20107a.

Previously, an authority could use tax increment revenue attributable to *local taxes* for those costs before a brownfield plan was approved.

Also, as a rule, an authority may not use taxes levied for school operating purposes for response activities that benefit a party liable under Section 20126 of NREPA (e.g., an owner or operator who is responsible for causing a release). Under the bill, this limitation does not apply to the activities listed above.

Additional Preapproval Exceptions. The bill makes the following exceptions to the prohibition against using captured tax revenue before approval of a brownfield plan.

For tax increment revenue attributable to taxes levied for school operating purposes, the prohibition does not apply to eligible activities associated with unanticipated response activities conducted on eligible property if that property has been included in a brownfield plan, provided the DEQ is consulted on the unanticipated response activities before they are conducted and the costs are subsequently included in a brownfield plan approved by the authority and a combined brownfield plan or a work plan approved by the DEQ.

Also for tax increment revenue attributable to school operating taxes, the prohibition does not apply to eligible activities requiring MSF approval conducted on eligible property or prospective eligible properties before approval of the brownfield plan, if those costs and the eligible property subsequently are included in a brownfield plan approved by the authority and a combined brownfield plan or work plan approved by the MSF.

For tax increment revenue attributable to local taxes, eligible activities may be conducted on eligible property or prospective eligible properties before approval of a brownfield plan, if those costs and the eligible property are subsequently included in an approved brownfield plan.

Limit on Authority Costs

Under the Act, in each fiscal year, the amount of tax increment revenue attributable to local taxes that an authority may use for administrative and operating expenses and baseline environmental assessments, due care activities, and additional response activities related directly to work conducted on prospective eligible properties before approval of a brownfield plan, is limited to the following:

- \$100,000, for authorities with five or fewer active projects.
- \$125,000, for authorities with six to 10 active projects.
- \$150,000, for authorities with 11 to 15 active projects.

- \$175,000, for authorities with 16 to 20 active projects.
- \$200,000, for authorities with 21 to 25 active projects.

Also, the limit previously was \$300,000 for authorities with 26 or more active projects. Under the bill, the \$300,000 limit applies to authorities with 26 or more but fewer than 31 active projects. For authorities with 31 or more active projects, the limit is \$500,000.

(As used in these provisions, "active project" means a project in which an authority is currently capturing taxes under the Act.)

In addition, for authorities with any number of projects, the bill allows the maximum amounts to be increased by 2% for each written agreement entered into by an authority in either of the following situations, up to a total maximum increase of 10%:

- The authority was established by a county and enters into a written agreement with one or more municipalities within the county to serve as the only authority for those other municipalities.
- The authority enters into a written agreement with one or more other authorities to administer one or more administrative operations of those other authorities.

Eligible Property & Activities

The bill includes a historic resource in the Act's definitions of "eligible property" and "eligible activity". The bill defines "historic resource" as that term is defined in Section 90a of the MSF Act (i.e., a publicly or privately owned historic building or structure located within a historic district designated by the National Register of Historic Places, the State Register of Historic Sites, or a local unit acting under the Local Historic Districts Act).

The bill also includes in the definition of "eligible property" property that is located in a qualified local governmental unit and contains a targeted redevelopment area, as designated by resolution of the governing body and approved by the MSF, of not less than 40 and not more than 500 contiguous parcels. A qualified local governmental unit

may not designate more than two targeted redevelopment areas for this purpose in a calendar year. The MSF may not approve more than five redevelopment areas in a calendar year.

Eligible activities under the Brownfield Redevelopment Financing Act include infrastructure improvements that benefit eligible property. Infrastructure improvements include streets, parking facilities, bridges, sewers, utility lines, transit-oriented facilities, and other improvements owned or used by a public agency and designed to benefit the public. The bill specifies that infrastructure improvements also include one or more of the following, whether publicly or privately owned or operated or located on public or private property:

- Underground parking.
- Multilevel parking structures.
- Urban storm water management systems.

Notice of Public Hearings

The Act allows a local unit's governing body, by resolution, to declare its intention to create and provide for the operation of a brownfield redevelopment authority. In the resolution of intent, the governing body must set a date for holding a public hearing on the adoption of a proposed resolution creating the authority. The bill deleted a requirement that notice of the public hearing be published twice in a newspaper of general circulation in the municipality, not less than 20 or more than 40 days before the date of the hearing.

Similarly, the Act requires a governing body to hold a public hearing before approving a brownfield plan. The bill deleted a requirement that notice of the public hearing be given by publication twice in a newspaper of general circulation designated by the municipality, not less than 10 or more than 40 days before the date of the hearing.

Local Site Remediation Revolving Fund

The Act allows an authority to establish a local site remediation revolving fund, consisting of available tax increment revenue and money appropriated or otherwise made available from public or private sources. The bill deleted provisions

under which an authority could not use funds from a local site remediation revolving fund that were derived from school operating taxes unless the activities to be conducted were consistent with a work plan approved by the DEQ or the MSF.

The bill also deleted a requirement that an authority separately account for money deposited into the fund that was directly derived from tax increment revenue levied for school operating purposes.

Reporting Requirements

The Act previously required an authority to submit an annual financial report on the status of the authority's activities to the local governing body and the State Tax Commission. Under the bill, an authority must submit this report to the local governing body, the DEQ, and the MSF. The information to be reported includes the captured taxable value realized by the authority; the bill requires that information for each eligible property subject to the brownfield plan. The bill also requires the report to include the following:

- The amount of actual capital investment made for each project.
- The number of residential units constructed or rehabilitated for each project.
- The amount, by square foot, of new or rehabilitated residential, retail, commercial, or industrial space for each project.
- The number of new jobs created at the project.

The bill deleted a requirement that the report include information concerning any transfer of ownership of or interest in each eligible property.

The Act previously required the State Tax Commission to collect the financial reports, compile and analyze the information contained in them, and submit an annual report based on the information to certain committees of the Legislature. The bill, instead, requires the DEQ and the MSF to collect the reports; compile a combined report, including the use of local taxes, taxes levied for school operating purposes, and the State Brownfield Redevelopment Fund, based on the individual reports and any additional information considered

necessary; and annually submit a report based on that information to each member of the Legislature.

The bill also requires the owner or developer of an active project included in a brownfield plan to submit annually to the authority a report on the status of the project. The report must be in a form developed by the authority and contain information necessary for the authority to submit its financial report. An authority may waive this reporting requirement.

Beginning on January 1, 2013, the bill requires the MSF and the DEQ, on a quarterly basis, to post on their websites the name, location, and amount of tax increment revenue, including taxes levied for school operating purposes, for each project the Strategic Fund or the Department approved under the Act during the immediately preceding quarter.

Brownfield Plan Abolishment or Termination

A governing body may abolish a brownfield plan when it finds that the purposes for which the plan was established are accomplished, but not until the principal and interest on bonds issued under the Act and all other obligations to which the tax increment revenue was pledged have been paid or funds sufficient to make the payment have been segregated.

The bill also permits a governing body to terminate a brownfield plan or plan amendment for an eligible property if the project in the plan or amendment fails to occur with respect to the eligible property for at least five years after the date of the resolution approving the plan or amendment. If a brownfield plan or amendment is terminated for this reason, the governing body may approve a new brownfield plan or amendment for the eligible property for up to 30 years.

MCL 124.2652 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan's pioneering brownfield redevelopment law has served as a model for other states in encouraging the cleanup and redevelopment of urban areas instead of the development of pristine green spaces. This effort helps to preserve undeveloped property for agriculture, wilderness, and recreational use. Brownfield redevelopment also benefits urban centers by returning contaminated, blighted, or obsolete property to productive use and providing for the generation of tax revenue. After more than 15 years of experience with the Act, several shortcomings with the statutory requirements and limitations were revealed. For example, some municipalities found it cumbersome to prepare two separate plans in order to capture school operating taxes, and the involvement of two different State departments could be confusing. The ban on using captured school operating taxes for activities undertaken before approval of a brownfield plan could be overly restrictive, particularly with respect to environmental assessment activities. In addition, the amount of local tax increment revenue that could be used before approval of a plan, based on the number of active projects, did not always cover operating and administrative expenses.

Suggestions to improve the law and streamline the program were made by a work group consisting of representatives of State and local government, brownfield authorities, environmental practitioners, and a brownfield association. The work group began to review the program in January 2012 and submitted its recommendations in April of that year, and the bill reflects agreed-upon recommendations. In addition to eliminating what amounted to a sunset on the program, the bill removes barriers and simplifies the program in a number of ways.

The bill increases the program's flexibility and effectiveness by allowing the use of school operating taxes before approval of a brownfield plan for environmental assessment activities, for unanticipated response activities (subject to requirements that the site already be included in a brownfield plan and that the DEQ be consulted before the activities are conducted), and for infrastructure activities subsequently included in an approved plan. The bill also improves flexibility and effectiveness by providing the option of a

single combined brownfield plan, instead of a brownfield plan plus a work plan; extending the program to additional activities, such as underground parking structures and storm water management; and providing clarity regarding the termination of a brownfield plan. The bill helps streamline the program by authorizing the MSF chairperson to approve projects that will not cost more than \$500,000.

The revisions to the Act's reporting requirements will make the reports more meaningful, and facilitate better program evaluation. Among other things, authorities' annual reports will have to be made to the local governing body, the DEQ, and the MSF, rather than the State Tax Commission, and will have to contain additional information, including the number of jobs created. Also, the owner or developer of an active project will have to submit annual reports to the local authority, unless the authority waives this requirement.

The new State Brownfield Redevelopment Fund may be used for multiple purposes, including supplying the up-front money needed to get some projects off the ground. The funding under the grant and loan program will be in addition to the tax increment revenue available to an authority. If the cost of a project totals \$20.0 million, for example, but the authority can capture only \$19.0 million in tax increment revenue, a grant or loan could supply the balance needed.

In addition, the bill will benefit municipalities by eliminating requirements for them to pay the MSF or the DEQ to review a work plan; deleting the requirement for newspaper publication of public hearing notices; and deleting provisions that prevented an authority from spending school operating tax revenue deposited in a local site remediation revolving fund unless the DEQ or MSF had approved a work plan. Also, for authorities with 31 or more active projects, the bill allows up to \$500,000, rather than \$300,000, of local tax revenue to be used for administrative and operating expenses and preliminary environmental activities before approval of a brownfield plan. Grand Rapids, for example, had 36 active projects and a program budget of approximately \$470,000 at the time the bill was enacted. While some of that was covered by application fees and other grant revenue,

the city has relied on local tax revenue to pay most of its overhead. For authorities with any number of projects, the bill encourages regional cooperation by providing a financial incentive for those that enter into collaborative agreements with neighboring communities.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The State Brownfield Redevelopment Fund will be authorized to receive revenue from several sources, primarily the revenue equivalent to three mills of captured brownfield tax increment finance revenue from taxes levied for school operating purposes on each property included in a brownfield plan. This captured revenue will be deposited in the Fund for up to 25 years. Previously, this revenue went to local brownfield development authorities with approval to capture school operating taxes. Uses of the Fund consist of a program of grants and loans for eligible brownfield activities administered by the Michigan Strategic Fund agency, deposits into the Clean Michigan Initiative Bond Fund for grants and loans, and administrative costs of the Michigan Strategic Fund (MSF) and the Department of Environmental Quality (DEQ) related to the programs. Use of the Fund for administrative costs is limited to 15.0% of the annual revenue to the Fund. The bill does not specify how the money in the Fund will be allocated between the Clean Michigan Initiative and the Michigan Strategic Fund agency program of grants and loans for brownfield activities.

Annual revenue to the State Brownfield Redevelopment Fund is estimated at \$1.5 million to \$4.0 million per year; however, initial revenue will be lower and is expected to increase over time. The amount of revenue will depend on local authority activity, the pace of development, and the amount of captured taxable value. Local brownfield redevelopment authorities will have less revenue under the bill due to this shift of a portion of the captured school operating taxes to the Fund, potentially delaying repayments to developers or other eligible local projects. The Fund will make revenue available for grants and loans to local governments for brownfield projects selected by the MSF by board action or delegated authority and according to the

DEQ procedures for distributing funds from the Clean Michigan Initiative Bond Fund. After December 31, 2012, local authorities will no longer be required to reimburse the DEQ or the MSF for the actual costs of plan review. The administrative portion of revenue to the Fund will be available to pay these costs. It is unknown at this time whether the administrative portion of the Fund will be sufficient to cover these costs. Any costs in excess of available revenue will be borne by existing DEQ or MSF resources.

Under the prior law, an authority was prohibited from capturing taxes levied for school operating purposes for any work plan that was not approved by December 31, 2012. The bill removed this sunset provision to allow the continued approval of new work plans or combined brownfield plans to capture taxes levied for school operating purposes.

The expansion of the definition of "infrastructure" under the bill permits the use of captured tax revenue for underground parking, multilevel parking structures, and urban storm water management systems, whether or not those improvements are publicly or privately owned or operated. Otherwise under the law, infrastructure improvements must be either owned or used by a public agency or demonstrate a public benefit for the protection of health, welfare, or safety. This change permits captured tax revenue to be used for privately owned or operated underground parking, multilevel parking structures, or urban storm water management systems without the demonstration of public benefit.

The State Brownfield Redevelopment Fund is created in the Department of Treasury. Money in the Fund will not lapse to the General Fund, but will carry forward at year end, and the Fund will retain interest earnings on its balance. Repayments of loans made under the program will be deposited into the State Brownfield Redevelopment Fund. Administrative costs of the program will be supported from the Fund.

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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.