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BILL



ANALYSIS

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Senate Bill 1210 (as introduced 7-18-12)  
Sponsor: Senator Mike Kowall  
Committee: Economic Development

Date Completed: 8-15-12

### **CONTENT**

The bill would amend the Brownfield Redevelopment Financing Act to do the following:

- Create the "State Brownfield Redevelopment Fund" to fund a grant and loan program for the costs of eligible activities on eligible property.
- 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 (SET) that were captured under the brownfield plan, and require the Department to deposit that amount in the proposed Fund.
- Delete a December 31, 2012, deadline for approval of a work plan, as required when an authority uses tax increment financing (TIF) revenue from school operating taxes.
- Allow the chairperson of the Michigan Strategic Fund to approve projects totaling \$500,000 or less.
- Make exceptions to brownfield plan preapproval requirements for certain unanticipated response activities, and for eligible activities subsequently included in an approved plan.
- Revise restrictions on the use of TIF revenue, including revenue from taxes levied for school operating purposes captured from eligible property.
- Allow an increase in the amount of TIF revenue an authority may use for administrative and operating expenses and certain activities conducted on property before approval of a brownfield 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 TIF revenue for additional types of projects.
- Delete requirements that notice of certain public hearings be published in a newspaper.
- Delete a requirement that an authority separately account for money deposited into a local site remediation revolving fund that is directly derived from TIF revenue levied for school operating purposes.
- Revise certain reporting and audit requirements for the brownfield redevelopment program.
- Allow a brownfield plan to be abolished or terminated if the project in the plan failed to occur for five years following its approval, and otherwise revise provisions concerning the abolishment or termination of a brownfield plan.

The 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.

#### State Brownfield Redevelopment Fund

The bill would create the State Brownfield Redevelopment Fund as a revolving fund within the Department of Treasury. The State Treasurer would have to direct the Fund's investment. Money in the Fund at the close of the fiscal year would have to remain in it and could not lapse to the General Fund.

The State Treasurer would have to credit to the Fund money from the following:

- All amounts deposited into the Fund under the bill's requirement that an amount equal to three mills of the taxes levied under the State Education Tax be deposited into the Fund, for a brownfield plan that included the capture of taxes levied for school operating purposes.
- The proceeds from repayment of a loan from the Fund, including interest on those repayments.
- Interest on funds deposited into the Fund.
- Money obtained from any other source authorized by law.

The Fund could be used only for the following purposes:

- To pay administrative costs of the Michigan Strategic Fund (MSF) and the Department of Environmental Quality (DEQ) to implement the Act and the administrative costs of 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 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.

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

#### Grant & Loan Program

The MSF would have to create and operate the program to provide grants and loans to fund eligible activities on eligible property. The MSF would have to develop and use a detailed application, approval, and compliance process adopted by resolution of the MSF board. The process would have to be published and available on the MSF website. Program standards, guidelines, templates, or any other forms to implement the grant and loan program would have to be approved by the board. The MSF could delegate its approval authority to a designee.

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

When an application was approved, the MSF would have to enter in a written agreement with the applicant. The agreement would have to provide all the conditions imposed on the applicant and the terms of the grant or loan. The agreement also would have to provide for penalties if the applicant failed to comply with its provisions. After the MSF and the applicant entered into a written agreement, the MSF would have to distribute the proceeds to the applicant according to the terms of the agreement.

Any proceeds from repayment of a loan, including interest on those repayments, would have to be paid into the State Brownfield Redevelopment Fund.

#### Historic Resource & Infrastructure Improvements

The bill would include a historic resource within the Act's definitions of "eligible property" and "eligible activity". "Historic resource" would mean that term as defined in Section 90a of the MSF Act. (Under that provision, "historic resource" means 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.)

Eligible activities under the Brownfield Redevelopment Financing Act include infrastructure improvements that benefit eligible property. Infrastructure improvements include various types of improvements designed and dedicated to use by, for the benefit of, or for the protection of the public. The bill specifies that infrastructure improvements would include one or more of the following, whether publicly or privately owned or operated:

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

#### Restrictions on Use of TIF Revenue

The Act requires the MSF to approve a work plan before January 1, 2013, if a brownfield plan includes the capture of taxes levied for school operating purposes if 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. If the activities to be conducted are eligible activities under Part 201 of NREPA, they must be consistent with a work plan approved by the DEQ before January 1, 2013, in order for an authority to use captured school operating taxes.

The bill would retain these requirements for approval of a work plan, but delete the requirement that a plan be approved before January 1, 2013. In the case of plans that require approval by the MSF, the bill would authorize the MSF chairperson to approve work plans for eligible activities totaling \$500,000 or less, according to the Act's criteria for approval by the MSF.

The Act prohibits the use of taxes captured from eligible property to pay for eligible

activities conducted before approval of the brownfield plan, except for certain specified costs. Under the bill, this restriction would not apply in the situations described below.

For TIF revenue attributable to taxes levied for school operating purposes, the restriction would not apply to eligible activities associated with unanticipated response activities conducted on eligible property before inclusion of those activities in the brownfield plan. This exception to the TIF spending restriction would apply if the DEQ were consulted on the unanticipated response activities before the activities were conducted and the costs were subsequently included in an approved brownfield plan and work plan.

For TIF revenue attributable to local taxes, the restriction would not apply to any eligible activities conducted on eligible property or prospective eligible properties before approval of the brownfield plan, if those costs and the eligible property were subsequently included in an approved brownfield plan.

For TIF revenue attributable to taxes levied for school operating purposes, the restriction would not apply to eligible activities involving infrastructure improvements conducted on eligible property or prospective eligible properties before approval of the brownfield plan, if those costs and the eligible property subsequently were included in an approved brownfield plan and work plan.

Under the Act, in each fiscal year, the amount of TIF revenue attributable to local taxes that an authority may use for reasonable and actual 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 the brownfield plan, is limited to the following amounts:

- \$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.
- \$300,000, for authorities with 26 or more active projects.

"Active project" means a project in which an authority is currently capturing taxes under the Act. Under the bill, those amounts could 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 entered into a written agreement with one or more municipalities within the country to serve as the only authority for those other municipalities.
- The authority entered into a written agreement with one or more other authorities to administer one or more administrative operations of those other authorities.

#### SET Revenue

For a brownfield plan that included the capture of taxes levied for school operating purposes, within 30 days after receiving that TIF revenue, the bill would require an authority to pay to the Department of Treasury an amount equal to three mills of the taxes levied under the State Education Tax (SET) that were captured under the brownfield plan. The Department would have to deposit those funds in the State Brownfield Redevelopment Fund.

If an authority paid to Treasury an amount equal to three mills of the taxes levied under 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 could 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 mills levied under SET on that parcel were not paid to the Department.

#### Notice of Public Hearings

The Act allows a local unit's governing body, by resolution adopted by a majority of its members elected and serving, 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 would delete 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, before approving a brownfield plan for an eligible property, to hold a public hearing on the plan. The bill would delete 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 TIF revenue and money appropriated or otherwise made available from public or private sources. The bill would delete a requirement that an authority separately account for money deposited into the fund that is directly derived from tax increment revenue levied for school operating purposes.

#### Reports & Audits

The Act requires 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, the report would have to be to the local governing body, the DEQ, and the MSF. The report must include the captured taxable value realized by the authority; the bill would require that information for each eligible property subject to the brownfield plan. Under the bill, the report also would have 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.

Currently, the report also must include information concerning any transfer of ownership of or interest in each eligible property. The bill would delete that requirement.

The Act requires 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. Under the bill, the DEQ and MSF would have to collect the reports, compile a combined report based on those individual reports, and submit an annual report based on that information to each member of the Legislature.

The bill would require the owner or developer for an active project included within a brownfield plan to submit annually to the authority a report on the status of the project. The report would have to be in a form developed by the authority and contain information necessary for the authority to submit its financial report. The authority could waive this requirement.

Beginning on January 1, 2013, the DEQ and the MSF, on a quarterly basis, would have to post on their websites the name, location, and amount of TIF revenue, including taxes levied for school operating purposes, for each project the DEQ approved under the Act during the immediately preceding quarter.

The Act requires the Auditor General to conduct and report a performance audit, not less than once every three years, on the effectiveness, efficiency, and economy of the brownfield development program. Under the bill, that audit would have to report only on the effectiveness of the program.

#### Abolishment or Termination of a Brownfield Plan

Currently, a governing body may abolish a brownfield plan when it finds that the purposes for which the plan was established were accomplished, but not until the principal and interest on bonds issued under the Act and all other obligations to which the TIF revenue is pledged have been paid or funds sufficient to make the payment have been segregated. The bill would delete that provision.

Under the bill, a brownfield plan or plan amendment could be abolished or terminated subject to all of the following:

- The governing body could abolish a brownfield plan when it found that the purposes for which it was established were accomplished.
- The governing body could terminate a brownfield plan or plan amendment for an eligible property if the project in the plan or amendment failed to occur with respect to the eligible property for at least five years following the date of the resolution approving the plan or amendment.
- A brownfield plan or amendment could not be abolished or terminated until the principal and interest on bonds issued under the Act and all other obligations to which the TIF revenue were pledged had been paid or funds sufficient to make the payment had been identified or segregated.

If a brownfield plan or amendment were terminated because a project failed to occur, the governing body could approve a new brownfield plan or amendment for the eligible property for up to 30 years.

MCL 125.2652 et al.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would establish the State Brownfield Redevelopment Fund. This Fund would be authorized to receive revenue from several sources, primarily the revenue equivalent to three mills of captured brownfield tax increment finance revenue from taxes for school operating purposes. Currently, this revenue goes to local brownfield development authorities with approval to capture school operating taxes. Uses of the Fund would 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 and the Department of Environmental Quality related to the programs. Use of the proposed Fund for administrative costs would be limited to 15.0% of the annual revenue to the Fund. The bill does not specify how the money in

the Fund would 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 would be lower. The amount of revenue would depend on local authority activity, the pace of development, and the amount of captured taxable value. Local brownfield redevelopment authorities would have less revenue under the bill due to this shift of a portion of the captured school operating taxes to the proposed State Brownfield Redevelopment Fund, potentially delaying repayments to developers or other eligible local projects. The proposed Fund would 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.

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

Fiscal Analyst: Elizabeth Pratt

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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.