Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 919 (Substitute S-3 as passed by the Senate)
Senate Bill 920 (Substitute S-3 as passed by the Senate)
Senate Bill 922 (Substitute S-3 as passed by the Senate)
Senate Bill 923 (Substitute S-2 as passed by the Senate)
Senate Bill 924 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Loren Bennett (S.B. 919)
Senator Bill Schuette (S.B. 920 & 924)
Senator Philip E. Hoffman (S.B. 923)
Senator Leon Stille (S.B. 922)
Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 7-10-96

RATIONALE

Over the past few years, Michigan has made a number of changes to its natural resources and environmental protection laws to address the myriad problems associated with cleaning up and restoring contaminated commercial and industrial sites and preventing future pollution of the State's waterways, recreational areas, and other natural resources. Public Act 71 of 1995, for example, amended the Natural Resources and Environmental Protection Act (NREPA) to eliminate liability for owners or operators who did not cause contamination at a facility. Previous to the 1995 amendments, the NREPA had stated that if there were a release or threatened release of contaminated or contaminating substances from a facility that caused response activity costs to be incurred, the persons liable for the costs were the owner or operator of the facility, the owner or operator of the facility at the time of disposal of a hazardous substance, and the owner or operator of the facility since the time the hazardous substance was disposed of who was not included in those categories, i.e., everyone who owned or operated the property at the time of or since the release, regardless of whether the person caused the contamination. This liability, based on the "status" of the property rather than on who was responsible for the "causation" of the contamination, reportedly made many potential investors reluctant to purchase commercial or industrial property for fear that it might be contaminated and they would be burdened with the costs and responsibility of remediating the land. It was much safer and less costly, they believed, for them to develop pristine areas or "greenfields" than to try to redevelop contaminated urban areas or "brownfields". The elimination of "status" liability in favor of liability based on causation reportedly has helped eliminate one of the statutory obstacles to the private development of brownfields. It also has resulted, however, in the need to provide procedures and funding mechanisms for the cleanup of "orphan sites" or "orphan shares", i.e., contaminated commercial or industrial sites or sections of sites for which no culpable party can be found, or for which the culpable party no longer exists. It has been suggested that statutory provision be made to treat brownfield areas in a manner similar to the treatment of tax increment financing and other economic development districts and to provide funding for cleanup activities at orphan sites and brownfields from a variety of sources.

CONTENT

Senate Bills 919 (S-3), 920 (S-3), 922 (S-3), and 924 (S-2) would amend various acts to provide for redevelopment of contaminated industrial sites; create a revitalization loan program, a response activities program, and a cost-share grant program; establish revitalization and cleanup and redevelopment funds; require that money from the Bottle Deposit Fund be allocated to the Cleanup and Redevelopment Fund; provide for a single business tax credit for an owner or lessee of eligible property within a brownfield redevelopment zone; and

provide for the sale of surplus State-owned land. Senate Bill 923 (S-2) would create the "Brownfield Redevelopment Financing Act" to allow municipalities to create brownfield redevelopment zone authorities and provide for financing of redevelopment activities within the zones.

Following is a more detailed description of the legislation.

Senate Bill 919 (S-3)

Brownfield Redevelopment Board

The bill would amend Part 201 of the NREPA, which governs environmental response, to create the Brownfield Redevelopment Board within the Department of Environmental Quality (DEQ). The board would consist of the Director of the DEQ, the Director of the Department of Management and Budget, and the chief executive officer of the Michigan Jobs Commission, or their designees.

A majority of the board members would constitute a quorum for the transaction of business at a meeting of the board. The board would be subject to the Open Meetings Act and the Freedom of Information Act and would have to implement the duties and responsibilities specified in the bill and as otherwise provided by law.

Cleanup and Redevelopment Fund

The bill would delete provisions that established the Environmental Response Fund and, instead, would create the Cleanup and Redevelopment Fund. The State Treasurer could receive money and other assets from any source for deposit into the Fund. He or she would be responsible for directing the investment of the Fund and would have to credit to the Fund any interest and earnings from Fund investments. Further, the bill specifies that civil fines imposed by the circuit court and collected and placed in the Fund could be earmarked by the DEQ for use at specific sites.

The State Treasurer could establish subaccounts within the Fund, and would have to establish a subaccount for all money in the former Environmental Response Fund on the effective date of the bill. Proceeds of all cost recovery actions taken and settlements entered into under Part 201, excluding natural resource damages, by the DEQ or the Attorney General, or both, would have to be credited to this subaccount.

The NREPA currently allows money to be appropriated from the Environmental Response Fund only for response activities at facilities that have been subjected to the risk assessment process described in the Act. The bill would allow money from the Cleanup and Redevelopment Fund to be appropriated only for response activities at sites subjected to the risk assessment process. The bill also would delete a provision that allows the Environmental Response Fund to be used for match, operation, and maintenance purposes as required under the Federal Superfund Act and that requires the Governor to recommend an annual appropriation for the Fund in his or her annual budget recommendations to the Legislature. Instead, the bill would require the DEQ to submit annually to the Governor a request for appropriation from the Cleanup and Redevelopment Fund. The request would have to include a list of the sites where the DEQ was proposing to spend funds. The list would have to include the common name of the site, the name of the owner of the site, the nature of the project, the amount of funds requested for each site, and the purpose for which the funds would be used. The Legislature would have to approve by law the sites to be addressed and the funding for each site. Any funds that were not spent within two years of their authorization would have to lapse into the Fund and the authorization for expenditures at that site would have to be revoked.

Money from the Fund, upon appropriation, could be used for the following as determined by the DEQ:

-- National priority list Municipal Landfill Cost-Share Grants to be approved by the board.
-- Superfund match, which would include funding for any response activity that was required to match Federal dollars at a Superfund site as required under the Superfund Act.
-- Response activities to address actual or potential public health or environmental problems.
-- Completion of response activities initiated by the State using environmental protection bond funds or completion of response activities at facilities initiated by a person who was liable under Part 201 prior to Public Act 71 of 1995, but who was not liable if response activities had ceased.
-- Response activities at sites that would facilitate redevelopment.
-- Emergency response actions for sites to be determined by the DEQ.

Money in the Fund would have to be spent first for the Superfund match and emergency response actions and response activities related to acute health and environmental problems. Following these expenditures, at least 50% of the remaining money would have to be spent for response activities that facilitated redevelopment of urbanized areas. All additional expenditures would have to be made after the specified expenditures. "Urbanized area" would mean an urbanized area as determined by the Economics and Statistics Administration, United States Bureau of Census, according to the 1990 census.

The total amount of funds spent by the DEQ for national priority list Municipal Landfill Cost-Share Grants could not exceed 12% of the funds appropriated from the Fund in a fiscal year or $6 million in a fiscal year, whichever was less.

Revitalization Revolving Loan Fund

The bill would create the Revitalization Revolving Loan Fund within the State Treasury and require the State Treasurer to direct its investment. The State Treasurer could receive money or other assets from any source for deposit into the Fund, and would have to credit to the Fund interest and earnings from Fund investments. An unspent balance within the Fund at the close of the fiscal year would have to be carried forward to the following fiscal year.

The DEQ annually would have to submit to the Governor a request for a lump-sum appropriation from the Fund for loans to be made under the proposed Revitalization Revolving Loan Program. Further, the DEQ could spend money from the Fund, upon appropriation, only for the Revitalization Revolving Loan Program.

Revitalization Loan Program

The DEQ would have to create a Revitalization Revolving Loan Program to provide loans to certain local units of government for eligible activities at certain properties in order to promote economic redevelopment. To be eligible for a loan the applicant would have to be a county, city, township, or village, or an authority under the proposed Brownfield Redevelopment Financing Act. The municipality that created the authority would have to commit to secure the loan with a pledge of the municipality's full faith and credit. Further, the application would have to be for eligible activities at a property within the applicant's jurisdiction that was a facility or that was suspected to be a facility based on current or historic use. The application would have to be completed and submitted on a form provided by the DEQ, be received by the deadline established by the DEQ, and be for eligible activities only. (Under the NREPA, "facility" refers to an area, place, or property where a hazardous substance in excess of specified concentrations has been released, deposited, disposed of, or otherwise come to be located.)

Eligible activities would be limited to evaluation and demolition at the property or properties in an area-wide zone, and interim response activities required to facilitate evaluation and demolition conducted prior to redevelopment of a property or properties in an area-wide zone. Eligible activities would include only those activities necessary to facilitate redevelopment; they would not include activities necessary only to design or complete a remedial action that fully complied with the requirements of the NREPA pertaining to cleanup criteria and remedial actions. All eligible activities would have to be consistent with a work plan or remedial action plan approved in advance by the DEQ. Unless otherwise approved by the Director, only activities carried out and costs incurred after execution of a loan agreement would be eligible.

The DEQ would have to provide for at least one application cycle per fiscal year. Prior to each application cycle, the DEQ would have to develop written instructions for prospective applicants including the criteria that would be used in application review and approval. The DEQ would have to make final application decisions within four months of the application deadline.

A complete application would have to include a description of the proposed eligible activities, an itemized budget for the proposed eligible activities, a schedule for the completion of the proposed eligible activities, location of the property, current ownership and ownership history of the property, current use of the property, a detailed history of the use of the property, and existing and proposed future zoning of the property. The application also would have to include:

-- A description of the property's economic redevelopment potential.
-- A resolution from the local governing body of the applicant committing to repayment of the loan.
-- Other information as specified by the DEQ in its written instructions.

If the property were not owned by the applicant, the application would have to include a draft of an enforceable agreement between the property owner and the applicant that committed the property owner to cooperate with the applicant, including a commitment to allow access to the property to complete, at a minimum, the proposed activities.

To receive loan funds, approved applicants would have to enter into a loan agreement with the DEQ. At a minimum, the loan agreement would have to contain all of the following provisions:

-- The approved eligible activities to be undertaken with loan funds.
-- The loan interest rate, terms, and repayment schedule as determined by the DEQ.
-- An implementation schedule.
-- If the property were not owned by the recipient, an executed agreement that had been approved by the DEQ that committed the property owner to cooperate with the applicant.
-- A commitment that the loan was secured by a full faith and credit pledge of the applicant. If the applicant were an authority established under the Brownfield Redevelopment Financing Act, the commitment and pledge would have to be made by the municipality that created the authority.
-- Reporting requirements. At a minimum, the recipient would have to submit a progress status report to the DEQ every six months during the implementation schedule, and within three months of completing the loan-funded activities would have to provide a final report that contained documentation of project costs and expenditures, including invoices and proof of payment.
-- Other provisions as considered appropriate by the DEQ.

If an approved applicant failed to sign a loan agreement within 90 days of a written loan offer by the DEQ, the DEQ could cancel the loan offer. The applicant could not appeal or contest a cancellation.

The DEQ could terminate a loan agreement and require immediate repayment of the loan if the recipient used loan funds for any purpose other than for the approved eligible activities specified in the loan agreement. The DEQ would have to provide written notice 30 days prior to the termination.

Loans would have an interest rate of not more than 50% of the prime rate as determined by the DEQ as of the date of approval of the loan. Loan recipients would have to repay loans in equal annual installments of principal and interest beginning not later than five years, and concluding not later than 15 years, after execution of a loan agreement. Loan payments and interest would have to be deposited into the Revitalization Revolving Loan Fund.

Upon default of a loan, or upon the request of the loan recipient as a method to repay the loan, the Department of Treasury would have to withhold State payments from the loan recipient in amounts consistent with the repayment schedule in the loan agreement until the loan was repaid. The Department of Treasury would have to deposit these withheld funds into the Revitalization Revolving Loan Fund until the loan was repaid.

State Site Cleanup Fund

The bill would establish a State Site Cleanup Fund within the Department of State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the State Site Cleanup Fund. The State Treasurer would have to direct the investment of the Fund, and would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and could not lapse to the General Fund. The State Site Cleanup Fund would have to be used for the following purposes at sites that had been subjected to the risk assessment process: national priority list Municipal Landfill Cost-Share Grants, Superfund match, response activities for actual or potential public health or environmental problems, completion of certain response activities, emergency response actions, and response activities to facilitate redevelopment.

Response Activities Program

The bill would require the DEQ to establish a program for the implementation of response activities at facilities where the State was liable as an owner or operator, or where the State had licensure or decommissioning obligations as an owner or possessor of radioactive materials regulated by the Nuclear Regulatory Commission. Money spent for the State Sites Cleanup Program could not be used to pay fines, penalties, or damages.

Six months after the effective date of the bill, and by October 1 of each year thereafter, each State executive department and agency would have to provide to the DEQ a detailed list of all facilities for which the department or agency was liable as an owner or operator. Subsequent lists would not have to include facilities identified in a previous list. A list would have to include the following information for each facility:

-- The facility's name and location.
-- A history of the use of the facility.
-- A detailed summary of available information regarding the source, nature, and extent of the contamination at the facility, and of any public health or environmental impacts at the facility.
-- A detailed summary of available information on the resale and redevelopment potential of the facility.
-- A description, and estimated cost, of the response activities needed at the facility, if known.

Within 12 months after the effective date of the bill and by February 1 of each year thereafter, the Brownfield Redevelopment Board would have to develop a list of the identified facilities according to priority. Sites posing the greatest risk to the public health, safety, welfare, or the environment and those having high resale and redevelopment potential would have to be given the highest priority. For each facility, the list would have to include the facility's priority order, the response activities to be completed at the facility, the estimated cost of the response activities, and the State executive department or agency that was liable as an owner or operator.

All State executive departments and agencies that were liable as an owner or operator would be responsible for undertaking and paying for all necessary response activities that could not be addressed with money appropriated to the DEQ to implement these provisions, or any money appropriated to the DEQ specifically for the purpose of response activities at facilities for which the State was liable as an owner or operator. The existence of these funds would not affect the liability of any person under Part 201 or any State or Federal law.

The DEQ would have to submit an annual report to the Governor and the Legislature on the status of the response activities being conducted with money appropriated to the DEQ to implement the bill, and the need for additional funds to conduct future response activities.

Long-Term Maintenance Trust Fund

The Long-Term Maintenance Trust Fund currently consists of money from the Unclaimed Bottle Fund and is used for the operation, maintenance, and monitoring of sites, as deemed necessary by the DEQ; the enforcement of Part 201 (Environmental Response) or Part 115 (Solid Waste Management) of the NREPA; and any project that the Long-Term Maintenance Trust Fund board determines as having for its purpose the prevention of environmental contamination. The bill provides that the Trust Fund could receive money from any source and that interest and earnings of the Fund would have to be credited to it. Further, the bill specifies that for 10 years after the effective date of the bill, money in the Fund could not be spent. Beginning 10 years after the effective date of the bill, interest and earnings of the Fund, upon appropriation, could be spent only for the purposes specified in the Act.

Cost-Share Grant Program

The bill would establish a Municipal Landfill Cost-Share Grant Program to make grants to reimburse local units of government for a portion of the response activity costs at certain municipal solid waste landfills. The program would be administered by the Brownfield Redevelopment Board, which would have to provide for at least one application cycle per fiscal year. Prior to each application cycle, the board would have to develop written instructions for prospective applicants, including the criteria that would be used in application review and approval.

To be eligible for a cost-share grant, the applicant would have to be a local unit of government, and the application, which could be only for eligible response activity costs, would have to be completed and submitted on a form provided by the board by the established deadline. (The NREPA defines "response activity" as evaluation, interim response activity, remedial action, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. The bill would include demolition in that definition.)

A complete application would have to include the following:

-- The landfill name and brief history.
-- The reason the applicant incurred the response activity costs.
-- An analysis of the local unit of government's insurance coverage for the response activity costs at the landfill and any available documentation that supported the analysis.
-- A brief narrative description of the overall response activities completed or to be completed at the landfill.

The application also would have to include a list and narrative description of all eligible costs incurred by the applicant for which it was seeking a grant, including all of the following:

-- A demonstration that each eligible cost was consistent with a work plan or remedial action plan that had been approved by the DEQ or the U.S. Environmental Protection Agency (EPA), or had been ordered by a State or Federal court. The demonstration would have to relate each cost for which reimbursement was being sought to a specific element of the approved work plan or remedial action plan. A copy of the plan and documentation of approval or court order of the plan would have to be included with the application.
-- Documentation that the costs had been incurred by the applicant, including itemized invoices that clearly listed each cost and proof of payment of each invoice by the applicant.
-- A resolution passed by the governing body for the local unit of government attesting that it had not received reimbursement for any of the costs for which it was seeking a grant from any other sources.

Further, the application would have to include a list of persons the applicant believed could be liable for response activities under the NREPA or the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) for a substantial portion of the response activity costs at the landfill, as well as any available supporting documentation.

The board would have to allocate the funds available for cost-share grants to eligible facilities in the following order of priority: facilities posing a risk to public health; facilities posing a risk to the environment; facilities in which the local unit of government had taken steps to identify environmental contamination at the facility or caused by the facility; facilities in which remedial action measures had been implemented in accordance with a remedial action plan approved by the DEQ; and facilities in which the local unit of government had implemented appropriate measures to effect proper closure of the facility.

Once a complete application had been submitted and approved by the board, applications submitted by the same applicant for the same landfill, in subsequent application cycles would have to include only updated information that was not in the original application, including:

-- An updated list of eligible costs incurred by the applicant for which it was seeking a grant, and for which it was not approved to receive grant funds in a preceding grant cycle.
-- Supporting documentation that the costs had been properly incurred.
-- Any other information needed to update information in the original application.

A cost-share grant could not exceed 50% of the total eligible costs. A local unit of government could not receive more than one grant for the same municipal landfill during each application cycle.

A recipient of a cost-share grant would have to provide timely notification to the DEQ if it received money or any other form of compensation from any other source to pay for, or compensate it for, any of the response activity costs for which it was liable. Sources of money or compensation could include, but would not be limited to, the Federal government, other liable persons, or insurance policies. The notice would have to include the source of the money or compensation; the amount of money or dollar value of the compensation; the reason the local unit of government received the money or compensation; any conditions or terms associated with the money or compensation; documentation of the costs incurred by the local unit to obtain the funds or compensation; and the amount of money to be repaid to the State based on the formula specified in the bill. The notice also would have to include a detailed estimate of the total eligible response costs at the landfill for which the local unit was seeking a grant that were consistent with a work plan or remedial action plan that had been approved by the DEQ or the EPA, or had been ordered by a State or Federal court, as well as documentation of those costs that had been incurred.

A recipient that received money or compensation from any other source, would have to repay the DEQ an amount of money not to exceed the grant amount based on a formula specified in the bill. All documentation of costs and the calculations and assumptions used by the recipient to determine the amount of money to be repaid would have to be submitted to the Brownfield Redevelopment Board and would be subject to its review and approval. The money would have to be repaid to the DEQ within 60 days of board approval of the documentation, calculations, and assumptions. Funds repaid to the DEQ would have to be placed into the Cleanup and Redevelopment Fund.

To receive a cost-share grant, approved applicants would have to enter into an agreement with the board. The agreement would have to contain, at a minimum, a list of board-approved eligible costs for which the recipient would be reimbursed up to 50%; the agreement period; a resolution passed by the governing body for the local unit of government committing to make reasonable efforts to pursue any insurance coverage for the eligible costs; and grant repayment provisions. Upon execution of a grant agreement, the DEQ would have to disburse grant funds within 45 days. If a local unit failed to sign a grant agreement within 90 days of a written grant offer by the board, the board could cancel the grant offer. The local unit could not appeal or contest cancellation of a grant.

The bill specifies that the existence of the grant program would not in any way affect the liability of any person under Part 201 of the NREPA or any other State or Federal law. The State, the board, and the Fund would not be liable or in any way obligated to make grants for eligible costs, if funds were not appropriated by the Legislature for that purpose, or if the funds were insufficient. The availability of the grant program could not be used by any liable person as a basis to delay necessary response activities.

Funds granted to local units of government under the Municipal Landfill Cost-Share Grant Program would have to be considered response activity costs incurred by the State. The State could pursue recovery or a claim for contribution of the grant funds from persons other than the grant recipient who were liable for response activities. In addition, a local unit could pursue recovery or a claim for contribution from liable persons for the costs it had incurred but for which it had not received grant funds. The bill specifies that these provisions would not in any way affect a local unit of government's eligibility to make a claim for insurance for any response activity costs, including the costs for which it received a grant.

"Municipal solid waste landfill" would mean a landfill that, as of the effective date of the bill, was on the national priority list, or was proposed by the Governor for inclusion on the national priority list, as defined in the Superfund Act (CERCLA).

"Eligible costs" or "eligible response activity costs" would mean response activity costs, excluding all fees for the services of a licensed attorney, that met all of the following criteria:

-- The costs were incurred by a local unit of government after the date of the bill's enactment.
-- The DEQ had determined that the costs to be borne by a local unit of government were reasonable considering the rationale provided in the application, the existence of other persons liable for response activities or the Superfund Act, and the need for the local unit to proceed with the response activity.
-- The costs were consistent with a work plan or remedial action plan that was approved by the DEQ or the EPA, or was ordered by a State or Federal court before the work was conducted.
-- The costs were incurred for response activities that were part of a cost-effective remedy consistent with the requirements of Part 201 of the NREPA.
-- The costs were incurred for work that was competitively bid and performed by the lowest-priced responsive bidder.

These provisions could not take effect until the effective date of reauthorization of the Federal Superfund Act or 12 months after the effective date of the bill, whichever was earlier.

Following reauthorization of the Superfund Act, if a Federal cost-share program similar to the Municipal Landfill Cost-Share Grant Program were established, a grant under this section of the bill could not be made for any response activity cost until the EPA made a final determination that the response activity cost would not be paid for under the Federal program.

Report

By December 31 of each year, the DEQ would have to provide to the Governor, the Senate and House of Representatives standing committees with jurisdiction over issues pertaining to natural resources and the environment, and the Senate and House of Representatives Appropriations Committees a list of all projects financed under Part 201 through the preceding fiscal year. The list would have to include the project site and location, the nature of the project, the total amount of money authorized, the total amount of money spent, and project status.

Transfers to Cleanup and Redevelopment Fund

The NREPA currently requires that the total proceeds of all bonds issued under Part 193 of the Act (concerning environmental protection bond authorization) be deposited into the Environmental Response Fund, and specifies that up to $150 million must be used for solid waste projects. The bill would require that any of the $150 million that was available but was not appropriated or that was appropriated and reverted to the Environmental Response Fund be transferred to the Cleanup and Redevelopment Fund. Further, the bill would transfer to the Cleanup and Redevelopment Fund any interest and earnings from investment of the proceeds of any bond issue. Currently, the interest and earnings are allocated in the same proportion as earned on the investment of the proceeds of the bond issue.

In addition, the bill would require that, with some exceptions, all repayments of principal and interest earned under a loan program created with the money allocated for solid waste projects be transferred to the Cleanup and Redevelopment Fund. Currently, the Act requires the repayments of principal and interest earned under a loan program to be credited to the appropriate restricted subaccounts of the Environmental Response Fund.

Repealer/Tie-Bar

The bill would repeal provisions of the Act that established the Michigan Unclaimed Bottle Fund (MCL 324.20109).

The bill is tie-barred to Senate Bill 923.

Senate Bill 920 (S-3)

The bill would amend the beverage container deposit law to require that 75% of the money in the Bottle Deposit Fund be allocated to the Cleanup and Redevelopment Fund (proposed by Senate Bill 919) for fiscal years 1996-97, 1997-98, and 1998-99, rather than to the Michigan Unclaimed Bottle Fund as currently provided. For fiscal years 1999-2000 through 2008-2009, 75% would have to be deposited in the Long-Term Maintenance Trust Fund. For fiscal years 2009-2010 and thereafter, 75% would have to be deposited into the Cleanup and Redevelopment Act. The bill also would delete provisions pertaining to the use of the money in the Unclaimed Bottle Fund; audits of the records of distributors and manufacturers to determine the accuracy of their reports concerning bottle deposits and refunds; and penalties for failure to file the report or for misrepresenting information on the report; and would allow the Department of Treasury to audit, assess, collect, and enforce unclaimed bottle deposits according to the revenue Act. The bill would allow a manufacturer that no longer originated deposits to carry the value of an overredemption back for prior years in order to use its overredemption credit, and reduce the amount of underredemption owed to the Department of Treasury on a one-time basis only for reporting years beginning in 1990. In addition, the bill would delete provisions that require that 1) during the first 10 years of its existence any money received by the Unclaimed Bottle Fund, and interest earned on that money, remain permanently in the Fund, and 2) any money received by the Fund thereafter, plus any interest on that money and any interest on the money deposited during the first 10 years, be disbursed annually according to the provisions in Natural Resources and Environmental Protection Act that established the Fund.

The bill is tie-barred to Senate Bill 919.

Senate Bill 922 (S-3)

The bill would amend the Management and Budget Act to require the head of each State department having control and supervision over State-owned land, the sale or disposition of which was not otherwise provided for by law, to notify the Director of the Department of Management and Budget (DMB), in writing, whether or not there was any State-owned land under the control and supervision of that department that was no longer needed, and the reasons why it was no longer needed. This requirement would not apply to property under the jurisdiction of the Departments of Natural Resources, Transportation, and Military Affairs and State institutions of higher education.

"State owned land" would mean all improved and unimproved real property belonging to the State, other than land escheated to the State or land in which the sale or disposition was otherwise provided by law.

The DMB Director would have to determine whether any of the land should be declared surplus and offered for sale or otherwise disposed of by transferring custodial control to other State departments. If the DMB Director determined that any State-owned land was no longer needed for State purposes, he or she would have to certify it as surplus and dispose of it.

Before offering any surplus State-owned land for sale, however, the DMB Director would have to determine its fair market value primarily by having it appraised. An appraisal of State-owned land would have to be based on its highest and best use and be prepared by the State Tax Commission or an independent fee appraiser at the discretion of the Director.

Before offering surplus State-owned land for public sale, the Director first would have to offer it for sale for fair market value to the local units of government in which it was situated. If a local unit wanted to purchase surplus State-owned land, it would have to submit a written offer to the Director by a specified time. If more than one local unit tendered an offer, the Director would have to determine which local unit would receive the property, based on the best interest of the State.

State-owned land determined surplus by the Director and not sold to a local unit would have to be offered for public sale. Each piece of surplus State-owned land would have to be sold for fair market value as determined by the Director. Sales would have to continue until all parcels were sold, or until the Director ordered a reappraisal, withdrew the remaining pieces of State-owned land from sale, or determined that the land should be sold for less than fair market value because it was not in the best interest of the State to continue to hold and maintain the land. All closing costs, including title insurance, recording fees, legal fees, and documentary stamp tax, would be the responsibility of the purchaser of the land. State-owned land and improvements would have to be sold "as is" with no warranties or representations other than those required by State or Federal law.

The Director could sell surplus State-owned land on land contract subject to terms and conditions that he or she determined to be in the best interest of the State. Further, the Director could subdivide surplus State-owned land as necessary or appropriate for sale.

The State could reserve for its own use all rights to coal, oil, gas, and other minerals, excluding sand, gravel, clay, or other nonmetallic minerals, found on, within, or under all State-owned land that was sold, and any land contract or quitclaim deed could contain a clause reserving all such minerals for the use of the State.

Unless otherwise provided by law, net proceeds from the sale of surplus State-owned land that were received each fiscal year, up to $1 million, would have to be transmitted to the State Treasurer and then credited to the Revitalization Revolving Loan Fund. The remaining net proceeds received each State fiscal year would have to be credited to the Surplus State Land Revolving Fund. "Net proceeds" would mean the proceeds from the sale of the property less reimbursement for any costs associated with the sale of the property.

The bill would create the Surplus State Land Revolving Fund in the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, would direct the investment of the Fund, and would have to credit to the Fund interest and earnings from Fund investments.

The DMB would have to use money in the Fund to pay for its expenses in preparing surplus State-owned land for sale, including employee salaries and benefits, land surveys, appraisals, legal services, advertising, demolition, and other contractual services. If money were left after expenses, the DMB could use it for response activities on surplus State-owned land. Money in the Fund at the close of the fiscal year would have to remain in the Fund and could not lapse to the General Fund.

Senate Bill 923 (S-2)

Brownfield Redevelopment Zone Authorities

The bill would allow a municipality to establish one or more brownfield redevelopment zone authorities. Each authority would have to exercise its powers in its zone or zones. The authority would be a public body corporate that could sue and be sued in a court of competent jurisdiction. Further, the authority would possess all the powers necessary to carry out the purpose of its

incorporation. The enumeration of a power in the bill would not limit the general powers of the authority. The powers granted by the bill to an authority could be exercised whether or not bonds were issued by the authority. ("Municipality" would mean a city, a village, a township in those areas of the township outside of a village or upon the concurrence by resolution of the village in which the zone would be located, or a county with the concurrence by resolution of the city or village or township in which the zone would be located.)

A governing body could declare by resolution adopted by a majority of its members elected and serving its intention to create and provide for the operation of an authority. ("Governing body" would mean the elected body having legislative powers of a municipality creating an authority under the bill.) In the resolution, the governing body would have to set a date for holding a public hearing on the adoption of a proposed resolution creating the authority and designating the boundaries of the zone. Notice of the public hearing would have to 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. The notice would have to state the date, time, and place of hearing, and would have to describe the area or areas of the municipality to be included within the proposed zone. The areas to be included within a proposed zone could include noncontiguous parcels of property, all of which would have to be considered within the boundaries of the zone. At the hearing, a citizen, a taxpayer, a property owner of the municipality, or an official from a taxing jurisdiction whose millage could be subject to capture under a brownfield plan in the proposed zone would have the right to be heard in regard to the establishment of the authority and the boundaries of the proposed zone. The governing body of the municipality could not incorporate land into the zone not included in the description contained in the notice of public hearing, but it could eliminate described lands from the zone in the final determination of the boundaries without additional notice.

Not more than 30 days after the public hearing, if the governing body planned to proceed with the establishment of the authority, it would have to adopt, by majority vote of its members elected and serving, a resolution establishing the authority and designating the boundaries of the zone within which the authority could exercise its powers. The adoption of the resolution would be subject to all applicable statutory or charter provisions with respect to the approval or disapproval by the chief executive or other officer of the municipality and the adoption of a resolution over his or her veto. The resolution would have to be filed with the Secretary of State promptly after its adoption. ("Chief executive officer" would mean the mayor of a city, the village manager of a village, the township supervisor of a township, and the county executive of a county or, if the county did not have an elected county executive, the chairperson of the county board of commissioners.)

The governing body could alter or amend the boundaries of the brownfield redevelopment zone to include or exclude lands from the zone in accordance with the same requirements prescribed for adopting the resolution creating the authority. The proceedings establishing an authority would be presumptively valid unless contested in a court of competent jurisdiction within 60 days after the filing of the resolution with the Secretary of State.

The exercise by an authority of the powers conferred by the bill would be considered to be an essential governmental function and benefit to, and a legitimate public purpose of, the State, the authority, and the municipality or units.

Authority Board

Each authority would be supervised and controlled by a board chosen by the governing body of the municipality. The governing body could designate one of the following to constitute the board:

-- The board of directors of the economic development corporation of the municipality.
-- The trustees of the board of a downtown development authority, if the zone included an area within the boundaries of the district of that downtown development authority.
-- The trustees of the board of a tax increment financing authority, if the zone included an area within the boundaries of the district of that tax increment financing authority.
-- The trustees of the board of a local development financing authority, if the zone included an area within the boundaries of the district of that local development financing authority.
-- Not less than five or more than nine persons appointed by the chief executive officer of the municipality subject to the approval of the governing body. Appointed members would serve three-year staggered terms. Further, appointed members would serve without compensation, but would be

reimbursed for reasonable actual and necessary expenses.

Before assuming the duties of office, a member would have to take and subscribe to the oath of office specified in the State Constitution of 1963.

The board would have to adopt rules governing its procedure and the holding of regular meetings, subject to the approval of the governing body. Special meetings could be held when called in the manner provided in the rules of the board. The board would be subject to the Open Meetings Act and the Freedom of Information Act.

After notice and an opportunity to be heard, a member of the board appointed by the chief executive officer of the municipality could be removed before the expiration of his or her term for cause by the governing body. Removal of a member would be subject to review by the circuit court.

The board could employ and fix the compensation of a director of the authority, who would be its chief officer, subject to the approval of the governing body creating the authority. The director would serve at the pleasure of the board. A member of the board would not be eligible to be the director. Before entering upon the duties of the office, the director would have to take and subscribe to the oath of office and post a bond in the sum specified in the resolution establishing the authority. Subject to the board's approval, the director would have to supervise, and be responsible for, the preparation of plans and the performance of the functions of the authority. The director would have to attend the meetings of the board and submit to the board and to the governing body a regular report covering the activities and financial condition of the authority. The director would have to furnish the board with information or reports governing the operation of the authority, as the board required.

The board also could appoint or employ a treasurer and secretary, and could employ and retain personnel and consultants as it considered necessary, including legal counsel. The employees of an authority could be eligible to participate in municipal retirement and insurance programs of the municipality as if they were civil service employees.

Upon request, the municipality would have to assist the authority in the performance of its powers and duties.

Powers of an Authority

The bill would grant an authority the power to:

-- Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.
-- Incur and spend funds to pay, or reimburse a public or private person for, costs of eligible activities attributable to an eligible property.
-- As approved by the municipality, incur costs and spend funds from the Local Site Remediation Revolving Fund.
-- Make and enter into contracts.
-- Own, mortgage, convey, or otherwise dispose of, or lease, land and other property, or rights or interests in the property, and grant or acquire licenses, easements, and options with respect to the property.
-- Incur costs in connection with the performance of its authorized functions, including administrative costs and architect, engineer, legal, or accounting fees.
-- Study, develop, and prepare the reports or plans the authority considered necessary to help it exercise its powers under the bill and to monitor and evaluate the progress made in the development of the zone.
-- Invest the money of the authority at the authority's discretion in obligations determined proper by the authority, and name and use depositories for its money.
-- Make loans, buy and sell loans and mortgages at public or private sale, purchase property that was the subject of the mortgage at a foreclosure or other sale, and acquire and take possession of the property.
-- Borrow money and issue its notes under the Municipal Finance Act, in anticipation of the collection of tax increment revenues.

An authority would be considered an instrumentality of a political subdivision for purpose of the Uniform Condemnation Procedures Act. A municipality could take private property under that Act, and transfer it to the authority for use as authorized in the brownfield plan, on terms and conditions it considered appropriate. The taking, transfer, and use would be considered necessary for public purposes and for the benefit of the public.

The authority would have to determine the captured taxable value of each parcel of eligible property that was included in a zone. The captured taxable value of a parcel could not be less than zero. A municipality could transfer its funds, including funds within a local site remediation revolving fund, to an authority or to another person on behalf of the authority in anticipation of repayment by the authority.

("Eligible property" would mean a facility as defined in Part 201 (any area, place, or property where a hazardous substance in excess of the recommended concentrations has been released, deposited, disposed of, or otherwise comes to be located) and adjacent or contiguous parcels on which a development was located, if the development of the parcels were estimated to increase the captured taxable value of the facility for which eligible activities were proposed under a brownfield plan. Eligible property would include, to the extent included in the brownfield plan, personal property located on the facility. "Captured taxable value" would mean the amount in one year by which the current taxable value of an eligible property subject to a brownfield plan, including the taxable value of the property for which specific local taxes were paid in lieu of property taxes, exceeded the initial taxable value of that eligible property. The State Tax Commission would have to prescribe the method for calculating captured taxable value.

"Initial taxable value" would mean the taxable value of an eligible property identified in and subject to a brownfield plan at the time the resolution adding that eligible property in the brownfield plan was adopted, as shown by the most recent assessment roll for which equalization had been completed at the time the resolution was adopted. Property exempt from taxation at the time the initial taxable value was determined would have to be included with the initial taxable value of zero. Property for which a specific local tax was paid in lieu of property tax could not be considered exempt from taxation. The State Tax Commission would have to prescribe the method for calculating the initial taxable value of property for which a specific local tax was paid in lieu of property tax.

"Specific local taxes" would mean a tax levied under the Plant Rehabilitation and Industrial Development Act, the Commercial Redevelopment Act, the Enterprise Zone Act, Public Act 189 of 1953 (which provides for the taxation of users and lessees of tax-exempt property), or the Technology Park Development Act.)

Local Site Remediation Revolving Fund

The bill would allow an authority to establish a Local Site Remediation Revolving Fund. The Fund would consist of excess tax increment funds and also could consist of money appropriated or otherwise made available from public or private grants. The authority would have to account separately for money deposited to the Fund that was derived directly from tax increment revenues levied for school operating purposes. As approved by the municipality, the Local Site Remediation Revolving Fund could be used only to pay the costs of eligible activities on eligible property that was located within the zone of an authority established by a municipality.

An authority, or a municipality on behalf of an authority, could incur an obligation for the purpose of funding a local site remediation revolving fund. Anticipated future captured tax increment revenues and resources of an eligible property, however, could not be used as a pledge for, or to repay, that obligation.

("Tax increment revenues" would mean the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured taxable value of each parcel of eligible property subject to a brownfield plan and personal property located on that property. Tax increment revenues would exclude ad valorem property taxes specifically levied for the payment of principal of, and interest on, either obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit, and specific local taxes attributable to those ad valorem property taxes. Tax increment revenues attributable to eligible property also would exclude the amount of ad valorem property taxes or specific local taxes subject to capture by a downtown development authority, tax increment finance authority, or local development finance authority if those taxes were subject to capture by the other authorities on the date that eligible property became subject to a brownfield plan under the bill.)

Financing Sources

The activities of an authority could be financed from one or more of the following sources:

-- Contributions, contractual payments, or appropriations to the authority for the performance of its functions or to pay the costs of a brownfield plan of the authority.

-- Revenues from a property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to the limitations imposed upon the authority by trusts or other agreements.
-- Tax increment revenues received under a brownfield plan.
-- Proceeds of tax increment bonds and revenue bonds.
-- As approved by the municipality, revenue available in the local site remediation revolving fund.
-- Money obtained from all other sources approved by the governing body of the municipality or otherwise authorized by law for use by the authority or the municipality to finance activities authorized under the bill.

The authority could borrow money and issue its negotiable revenue bonds or notes to finance the costs of eligible activities or another activity of the authority, or to refund or refund in advance its bonds or notes. The costs that could be financed by the issuance of revenue bonds or notes could include the costs of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with an activity authorized under the bill; engineering, architectural, legal, accounting, or financial expenses; the costs necessary or incidental to the borrowing of money; interest on the bonds or notes during the period of construction; a reserve for payment of principal and interest on the bonds or notes; and a reserve for operation and maintenance until sufficient revenues were developed. The authority could secure the bonds and notes by mortgage, assignment, or pledge of the property and all money, revenues, or income received in connection with the property.

Negotiable revenue bonds or notes would be exempt from all State taxes except estate and transfer taxes, and the interest on the bonds or notes would be exempt from all State taxes. The interest, however, could be subject to Federal income tax.

Unless otherwise provided by a majority vote of the members of its governing body, the municipality would not be liable on bonds or notes of the authority and the bonds or notes would not be debt of the municipality.

The bonds and notes of the authority could be invested in by the State Treasurer and all other public officers, State agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and could be deposited with and received by the State Treasurer and all other public officers and the agencies and political subdivisions of this State for all purposes for which the deposit of bonds or notes was authorized.

("Eligible activities" would mean baseline environmental assessment activities, due care activities, and additional response activities. "Baseline environmental assessment activities" would mean those response activities identified as part of a brownfield plan that were necessary to complete a baseline environmental assessment for an eligible property in the brownfield plan. "Baseline environmental assessment" as defined in Part 201 means the evaluation of environmental conditions that exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstance at the facility so that, in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination.

"Due care activities" would mean those response activities identified as part of a brownfield plan that were necessary to allow the owner or operator of an eligible property in the plan to comply with the provisions of Part 201 that require the owner or operator of a facility with hazardous substances to 1) undertake measures necessary to prevent exacerbation of the existing contamination, 2) exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances and allow for the intended use of the facility in a manner that protects the public health and safety, and 3) take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

"Additional response activities" would mean response activities proposed as part of a brownfield plan that were in addition to baseline environmental assessment activities and due care activities for a facility.

"Response activity", as defined in Part 201, means evaluation, interim response activity, remedial action, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or

with the approval of, the Department of Community Health and enforcement actions related to any response activity.)

Brownfield Plan

The bill would allow an authority's board to implement a brownfield plan. The plan could apply to one or more parcels of eligible property within the zone, whether or not those parcels were contiguous, and could be amended to apply to additional parcels of eligible property within the zone. If more than one parcel of eligible property were included within the plan, the tax increment revenues under the plan would have to be determined individually for each parcel of eligible property. Each plan would have to be approved by the governing body of the municipality and would have to contain all of the following:

-- A description of the costs of the plan intended to be paid for with the tax increment revenues.
-- The method by which the costs of the plan would be financed, including a description of any advances made or anticipated to be made for the costs of the plan from the municipality.
-- The maximum amount of note or bonded indebtedness to be incurred, if any.
-- The costs of the plan anticipated to be paid from tax increment revenues.
-- The duration of the brownfield plan, which could not exceed the period authorized or 30 years, whichever was less.
-- An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the eligible property was located.
-- A legal description of each parcel of eligible property to which the plan applied, a map showing the location and dimensions of each eligible property, and a statement of whether personal property was included as part of the eligible property.
-- A description of proposed use of the Local Site Remediation Revolving Fund.

A plan also would have to include an estimate of the captured taxable value and tax increment revenues for each year of the plan from each parcel of eligible property and in aggregate. The plan could provide for the use of part or all of the captured taxable value, including deposits in the Local Site Remediation Revolving Fund, but the portion to be used would have to be stated clearly in the plan. The plan could not provide either for an exclusion from captured taxable value of a portion of the captured taxable value or for an exclusion of the tax levy of one or more taxing jurisdictions, unless the tax levy were excluded either from tax increment revenues or from capture.

In addition, a plan would have to include estimates of the number of persons residing on each eligible property to which the plan applied and the number of families and individuals to be displaced. If occupied residences were designated for acquisition and clearance by the authority, the plan would have to include a survey of the persons to be displaced, including their income and racial composition; a statistical description of the housing supply in the community, including the number of private and public units in existence or under construction, and the condition of those in existence; the number of owner-occupied and renter-occupied units; the annual rate of turnover of the various types of housing and the range of rents and sale prices; an estimate of the total demand for housing in the community, and the estimated capacity of private and public housing available to displaced families and individuals.

The plan also would have to include:

-- A plan for establishing priority for the relocation of persons displaced by implementation of the plan.
-- Provision for the costs of relocating persons displaced by implementation of the plan, and financial assistance and reimbursement of expenses, including litigation expenses and expenses incident to the transfer of title, in accordance with the standards and provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act.
-- A strategy for compliance with Public Act 227 of 1972, which provides for relocation assistance advisory services for persons displaced by the acquisition of property by a State agency.

The percentage of taxes levied on a parcel of eligible property for school operating expenses that was captured and used under a brownfield plan and all tax increment finance plans under the downtown development authority Act, the Tax Increment Finance Authority Act, or the Local Development Financing Act, could not be greater than the combination of the plans' percentage capture and use of all local taxes levied for purposes other than for the payment of principal of

and interest on either obligations approved by the electors or obligations pledging the unlimited taxing power of the local unit of government. This provision would apply only when taxes levied for school operating purposes were subject to capture. ("Taxes levied for school operating purposes" would mean taxes levied by a local school district for operating purposes and taxes levied under the State Education Tax Act.)

Generally, tax increment revenues related to a brownfield plan could be used only for costs of eligible activities attributable to the eligible property, the captured taxable value of which produced the tax increment revenue, including the cost of principal of and interest on any obligation issued by the authority to pay the costs of eligible activities attributable to the eligible property, and the actual cost of the DEQ's review of a work plan or remedial action plan. Further, a brownfield plan could not authorize the capture of tax increment revenue eligible property after the year in which the total amount of tax increment revenues captured was equal to the sum of the costs of eligible activities attributable to the eligible property, including the cost of principal of and interest on any obligation issued by the authority to pay the costs of eligible activities on the eligible property and the actual cost of the review of the work plan or remedial action plan by the DEQ. A brownfield plan could authorize the capture of additional tax increment revenue from eligible property in excess of the amount authorized during the time of capture for the purpose of paying the costs of eligible activities on that eligible property in an amount that was not more than the sum of the costs of eligible activities. Excess revenues captured would have to be deposited in the Local Site Remediation Revolving Fund and used for the purposes authorized in the bill. If tax increment revenue levied for school operating purposes from eligible property were captured by the authority for eligible activities, the revenues captured for deposit in the Local Site Remediation Revolving Fund also could include tax increment revenues levied for school operating purposes in an amount not greater than the tax increment revenues levied for school operating purposes captured from the eligible property by the authority for the eligible activities.

("Work plan" would mean a plan that described each individual activity to be conducted to complete an eligible activity and the associated costs of each individual activity as approved by the DEQ. "Remedial action plan" would mean that term as defined in Part 201 of the Natural Resources and Environmental Protection Act if the plan described each individual activity to be conducted to complete an eligible activity and the associated costs of each individual activity.)

An authority could authorize the capture of additional tax increment revenue from an eligible property for not more than five years after the time capture was required for the purpose of paying the costs of eligible activities on that eligible property in an amount that was not more than that authorized and in the same proportion from each taxing jurisdiction. Revenues captured under this provision would have to be deposited in the Local Site Remediation Revolving Fund and used for purposes authorized for the Fund.

An authority could not spend tax increment revenues to acquire or prepare eligible property, unless the acquisition or preparation were an eligible activity.

The costs of eligible activities attributable to eligible property would include all costs that were necessary or related to a release from the property, whether or not those costs were spent for other property.

Tax increment revenues that were captured to pay the costs of eligible activities, excluding revenues deposited in a Local Site Remediation Revolving Fund, could be recovered from a person who was liable for the costs of eligible activities at an eligible property. The State or a municipality could undertake cost recovery for tax increment revenues captured. Before a municipality could institute a cost recovery action, it would have to give the State 120 days' notice, and would have to coordinate its cost recovery actions with a related State action, if requested to do so. A State or municipality that recovered costs would have to apply those recovered costs first to the reasonable attorney fees and costs incurred by the State or municipality in obtaining the cost recovered and then to the costs incurred by each taxing jurisdiction that captured the tax increment revenues that were the subject of the cost recovery effort, prorated to the proportion of taxes that each taxing jurisdiction captured.

Before approving a brownfield plan for any eligible property, the governing body would have to provide notice and a reasonable opportunity to the taxing jurisdictions levying taxes subject to capture to express their views and recommendations regarding the plan. The authority would have to fully inform the taxing jurisdictions about the fiscal

and economic implications of the proposed plan. The authority could not enter into agreements with the taxing jurisdictions and the governing body of the municipality in which the zone was located to share a portion of the captured taxable value of the zone. Upon adoption of the plan, the collection and transmission of the amount of tax increment revenues would be binding on all taxing units levying ad valorem property taxes or specific local taxes against property located in the zone.

At least 10 days after notice of the proposed brownfield plan was provided to the taxing jurisdictions, the governing body would have to determine whether the plan constituted a public purpose. If the governing body determined that the plan did not constitute a public purpose, it would have to reject the plan. If it determined that the plan did constitute a public purpose, it could approve or reject the plan, or approve it with modification, by resolution, based on whether:

-- The plan met the requirements of the bill.
-- The proposed method of financing the costs of eligible activities was feasible and the authority had the ability to arrange the financing.
-- The costs of eligible activities proposed were reasonable and necessary to carry out the purposes of the bill.
-- The amount of captured taxable value estimated to result from adoption of the plan was reasonable.

Amendments to an approved brownfield plan would have to be submitted by the authority to the governing body for approval or rejection following the same notice necessary for approval or rejection of the original plan. Notice would not be required for revisions in the estimates of captured assessed value or tax increment revenues.

The procedure, adequacy of notice, and findings with respect to purpose and captured assessed value would be presumptively valid unless contested in a court of competent jurisdiction within 60 days after adoption of the resolution adopting the brownfield plan. An amendment, adopted by resolution, to a conclusive plan also would be conclusive unless contested within 60 days after adoption of the resolution adopting the amendment. If a resolution adopting an amendment to the plan were contested, the original resolution adopting the plan would not therefore be open to contest.

Bonds/Brownfield Plan

By resolution of its board, an authority could authorize, issue, and sell its tax increment bonds and notes to finance the purposes of a brownfield plan. The bonds or notes would have to mature within 30 years and would have to bear interest and be sold and payable in the manner and upon the terms and conditions determined, or within the parameters specified, by the authority in the resolution authorizing issuance of the bonds or notes. The bonds or notes could include capitalized interest and a sum to provide a reasonable reserve for payment or principal and interest on the bonds or notes. The terms of the Municipal Finance Act would apply to bonds issued under these provisions.

The municipality, by majority vote of the members of its governing body, could make a limited tax pledge to support the authority's tax increment bonds or notes, or if authorized by its voters, could pledge its unlimited tax full faith and credit for the payment of the principal of and interest on the authority's tax increment bonds or notes. The bonds or notes would have to be secured by one or more sources of revenue identified as sources of financing of activities of the authority, as provided by resolution of the authority. The net present value of the principal and interest to be paid on an obligation issued or incurred by an authority or by a municipality on behalf of an authority to refund an obligation incurred under the bill, including the cost of issuance, would have to be less than the net present value of the principal and interest to be paid on the obligation being refunded as calculated using a method approved by the Department of Treasury.

A bond issued by an authority under the bill could not appreciate in principal amount or be sold at a discount of more than 10%.

The municipal and county treasurers would have to transmit to the authority tax increment revenues. The authority could spend the tax increment revenues received only in accordance with the brownfield plan. All surplus funds not deposited in the Local Site Remediation Revolving Fund of the authority would revert proportionately to the respective taxing bodies. The governing body could abolish the plan if it found that the purposes for which the plan was established were accomplished. The plan could not be abolished, however, until the principal and interest on bonds and all other obligations to which the tax increment revenues were pledged had been paid or funds sufficient to make the payment had been segregated.

DEQ Approval of Work Plan

To seek DEQ approval of a work plan or a remedial action plan, the authority would have to submit a copy of the brownfield plan and a separate work plan or remedial action plan, or part of a work plan or remedial action plan, for each eligible activity to be undertaken at each eligible property. The authority also would have to submit current ownership information for each eligible property and a summary of available information on proposed future ownership, including the amount of any delinquent taxes, interest, and penalties that could be due; a summary of available information on the historical and current use of each eligible property, including a brief summary of site conditions and what was known about environmental contamination; existing and proposed future zoning for each eligible property; a brief summary of the proposed redevelopment and future use for each eligible property; and other material that the authority or governing body considered pertinent.

Upon receipt of a request for approval of a work plan or remedial action plan that pertained to baseline environmental assessment activities or due care activities, or both, or a portion of a plan that pertained only to baseline environmental assessment activities or due care activities, or both, the DEQ would have to provide one of the following written responses to the requesting authority within 60 days:

-- An unconditional approval.
-- A conditional approval that delineated specific necessary modification to the work plan or remedial action plan, including but not limited to individual activities to be added or deleted from the work plan or remedial action plan and revision of costs.
-- If the work plan or remedial action plan lacked sufficient information for the DEQ to respond, a letter stating with specificity the necessary additions or changes to the plan to be submitted before the plan would be considered by the DEQ.

In reviewing a plan, the DEQ would have to consider whether the individual activities included in the plan would be sufficient to complete the eligible activity, whether each individual activity included in the plan was required to complete the activity, and whether the cost for each activity was reasonable.

If the DEQ failed to provide a written response within 60 days after receiving a request for approval of a plan, the authority could proceed with the baseline environmental assessment activities or due care activities, or both, as outlined in the plan as submitted for approval. Baseline environmental assessment activities or due care activities conducted pursuant to a plan that was submitted to the DEQ for approval but for which the DEQ failed to provide a written response would be considered approved.

The DEQ could issue a written response to a plan that pertained to baseline environmental assessment activities or due care activities more than 60 days but less than six months after receiving a request for approval. If the DEQ issued a written response, the authority would not be required to conduct individual activities that were in addition to the individual activities included in the plan as it was submitted for approval and failure to conduct the additional activities would not affect the authority's ability to capture taxes for the eligible activities described in the plan initially submitted. In addition, at the option of the authority, the additional individual activities would have to be considered part of the plan of the authority and approved as required. Any response by the DEQ, however, that identified additional baseline environmental assessment or due care requirements of Part 201 of the Natural Resources and Environmental Protection Act would have to be satisfactorily completed for the baseline environmental assessment or due care activities to be considered acceptable for purposes of compliance with Part 201.

If the DEQ issued a written response to a plan that pertained to baseline environmental assessment activities or due care activities and if the DEQ's written response modified an individual activity proposed by the work plan or remedial action plan of the authority in a manner that reduced or eliminated a proposed response activity, the authority would have to complete those individual activities included in the baseline environmental assessment or due care activities in accordance with the DEQ's response in order for that portion of the plan to be considered approved unless one or both of the following conditions applied:

-- Obligations for the individual activity had been issued by the authority, or by a municipality on behalf of the authority, to fund the individual activity prior to issuance of the DEQ's response.

-- The individual activity had commenced or payment for the work had been irrevocably obligated prior to issuance of the DEQ's response.

An authority would have sole discretion to propose to undertake additional response activities at an eligible property under a brownfield plan. The DEQ could not require a work plan or remedial action plan for either baseline environmental assessment activities or due care activities, or both, to include additional response activities. The DEQ could reject a work plan or remedial action plan, or portion of a plan, that included additional response activities and could consider the level of risk reduction that would be accomplished by the additional response activities in determining whether to approve or reject a work plan or remedial action plan. The DEQ's approval or rejection of a work plan or remedial action plan for additional response activities would be final and could not be contested or appealed.

The authority would have to reimburse the DEQ for the actual cost incurred by the DEQ or a contractor of the DEQ to review a work plan or remedial action plan. Funds paid to the DEQ would have to be deposited in the Environmental Response Fund.

Other Provisions

An authority could not 1) capture taxes levied for school operating purposes from an eligible property, or 2) use funds from a Local Site Remediation Revolving Fund that were derived from taxes levied for school operating purposes, unless the eligible activities to be conducted were consistent with a work plan or remedial action plan that had been approved by the DEQ after the effective date of the bill.

An authority would have to submit annually to the governing body and the State Tax Commission a financial report on the status of the activities of the authority. The report would have to 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 bonded indebtedness, the initial taxable value of all eligible property subject to the brownfield plan, the captured taxable value realized by the authority, and all additional information that the governing body or the State Tax Commission considered necessary.

An authority would have to prepare and approve a budget for its operation for the ensuing fiscal year. The budget would have to be prepared in the manner and contain the information required of municipal departments. An authority's budget could not include funds of a municipality except those funds authorized in the bill or by the governing body of the municipality. The governing body of a municipality could assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds of the authority, other than those committed for designated purposes. This cost would have to be paid annually by the authority under an appropriate item in its budget.

An authority that completed the purposes for which it was organized would have to be dissolved by resolution of the governing body, and its property and assets that remained after satisfying its obligations would belong to the municipality or to an agency or instrumentality designated by the municipality.

The State Tax Commission could institute proceedings to compel enforcement of the bill.

An authority could not capture tax increment revenues from taxes levied before December 31, 1996.

The bill is tie-barred to Senate Bill 919.

Senate Bill 924 (S-2)

The bill would amend the Single Business Tax Act to allow a qualified taxpayer, for tax years beginning after December 31, 1996, and before January 1, 1999, to claim 1) a credit against the single business tax equal to 150% of the cost of eligible investment paid or accrued by the qualified taxpayer in the tax year, and 2) a credit equal to the effective tax rate as determined by the Department of Treasury using the most recently available tax year data multiplied by the payroll of qualified employees of the qualified taxpayer.

The proposed credits would have to be calculated after application of all other credits allowed under the Act. The amount of eligible investment available, but not used, to calculate a credit equal to 150% of the cost of eligible investment, and the amount of the credit equal to the effective tax rate that was not used for a tax year could be carried forward and used to calculate credits in subsequent years.

The bill would require the Brownfield Redevelopment Board (proposed by Senate Bill 919), after public hearings, to develop a list of eligible property for purposes of the tax credit that would be equal to the effective tax rate. The board could not include property on this list without the agreement of the local governmental unit or units in which the property was located. The board would have to approve a work plan for response activity for each property on the list and would have to issue a certificate when the work plan was completed to a qualified taxpayer who requested a certificate for purposes of qualifying for the credit that would be equal to the effective tax rate. The board could update the list at any time to add or delete eligible properties. Location within a brownfield redevelopment zone would not be a requirement for inclusion of a property on the list.

"Eligible investment" would mean costs not otherwise reimbursed to the taxpayer or paid on behalf of the taxpayer from any source other than the taxpayer and would include demolition, construction, restoration, alteration, renovation, or improvement of buildings on eligible property; the addition of machinery, equipment, furniture, and fixtures to eligible property; and the cost of response activity conducted. "Eligible property" would mean property that met the definition of "eligible property" in Part 201 of the Natural Resources and Environmental Protection Act and that was included on the list of eligible property. "Response activity" would mean that term as defined in Part 201 of the NREPA.

"Effective tax rate" would mean the effective tax rate for purposes of the State income tax and calculated by determining the gross income tax liability after credits of all income tax payers with adjusted gross income, within the next lower and next higher integral multiple of $5,000 of the average salary of a qualified employee divided by the aggregate adjusted gross income of all income tax payers with adjusted gross income, within the next lower and next higher integral multiple of $5,000 of the average salary of a qualified employee. "Average salary of a qualified employee" would mean the total payroll of a qualified employer for all full-time equivalent qualified employees divided by the number of full-time equivalent qualified employees of the qualified taxpayer. "Payroll" would mean the total compensation subject to withholding under the Income Tax Act before deducting any personal or dependency exemptions. "Qualified employee" would mean a person who was employed by a qualified taxpayer, who was hired after the date a certificate was issued, and whose principal workplace was a facility operated by a qualified taxpayer at a location for which a certificate had been issued.

"Qualified taxpayer" would mean a taxpayer that, for purposes of the 150% credit, owned or leased an eligible property, and that had not been determined by the Department of Environmental Quality to be liable for response activity at an eligible property to which the credit was attributable. For purposes of the effective rate credit, "qualified taxpayer" would mean a taxpayer that conducted business activity on eligible property that was or would be included on the eligible property list and for which a certificate had been issued.

MCL 324.19507 et al. (S.B. 919)
445.573b & 445.573c (S.B. 920)
Proposed MCL 18.1224 & 18.1224a (S.B. 922)
Proposed MCL 208.38d (S.B. 924)

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

The bills would provide effective, much-needed tools to the State in its continuing efforts to address the health, safety, welfare, environmental, and economic problems caused by contaminated commercial and industrial sites. It is common knowledge that as businesses, industry, and other investors abandon contaminated urban sites for pristine greenfield areas, the local communities that host the brownfields suffer a significant loss of jobs, and must contend with a smaller tax base, a waste of the public infrastructures that were built to support the exiting businesses, and the security, health, and aesthetic problems inherent in vacant properties. The flight of companies and industries from the inner-city brownfields also results in loss of habitat for the State's flora and fauna, costly construction of public infrastructure to support the new industries, and overdevelopment of the State's constantly shrinking open space areas, thus resulting in a loss of recreational areas, not only for campers, hikers, and other nature enthusiasts, but also for communities that want to preserve the peace, tranquility, and high quality-of-life standards that are afforded them by their surrounding undeveloped wilderness, wetlands, and other nature areas.

Redevelopment of brownfields would help significantly in the creation and retention of jobs in the innercities; the reinstatement of the tax base; the reuse of existing public and private infrastructure; prompt attention to, and elimination of, human health and environmental risks; the slowing of urban sprawl and the preservation of greenfield space; and more effective ways to address crime, homelessness, public welfare, and other social problems that are at least partially caused by a lack of economic opportunity.

There are, however, many barriers to brownfield redevelopment. For example, there are more economic incentives for developing greenfield sites than for redeveloping brownfield sites. In today's world markets and with the short lead time for many products, manufacturing firms cannot wait until environmental issues at brownfield sites are resolved. Limited information on the nature and extent of environmental contamination and prior uses at these sites, the concomitant uncertainty as to the cost and liability for site cleanup, and the length of time necessary to accomplish the cleanup before a company can use a site, naturally would prompt most firms to choose a greenfield site without even considering a brownfield area. The bills would provide the financing mechanisms and economic development procedures needed to accelerate the redevelopment process and create redeveloped land-in-waiting to compete with industrial parks and strip malls built on greenfields.

The single business tax credits proposed by Senate Bill 924 (S-2) would give developers a direct incentive to locate or expand in a brownfield site once it was cleaned up. The establishment of brownfield redevelopment zones under Senate Bill 923 (S-2) would provide an organized, comprehensive approach for designating remediation and facilitating the activities necessary to accomplish it. The various funds, loan and grant programs, and the sale of surplus State-owned land proposed by Senate Bills 919 (S-3), 920 (S-3), and 922 (S-3) would provide stable and continuing funding sources that would finance cleanup projects on a "pay as you go" basis, thus obviating the need for new taxes or new debt.

Opposing Argument

The bills would divert vitally needed funds from resource recovery and pollution prevention initiatives. For example, the NREPA currently requires that the total proceeds of all bonds issued under Part 193 of the Act (concerning environmental protection bond authorization) be deposited in the Environmental Response Fund and specifies that up to $150 million must be used for solid waste projects. Senate Bill 919 (S-3), however, would divert to the Cleanup and Redevelopment Fund for response activities anyof the $150 million that was available for solid waste projects but was not appropriated or that was appropriated and reverted to the Environmental Response Fund. Moreover, Senate Bill 920 (S-3) would delete provisions in the NREPA that allocate a portion of the money in the Michigan Unclaimed Bottle Fund to the Clean Michigan Fund, which was designed in part to fund various recycling programs such as a recycling operational grant program, a recycling and composting capital grant program, and an educational program on resource recovery. (The Clean Michigan Fund, which was supplanted by the Solid Waste Alternative Program, provided recycling grants from about 1985 to 1989.) Although the State's Solid Waste Alternative Program has successfully created over 266 jobs and recovers almost 400,000 tons of material annually, there is still a great need for continued solid waste alternative programs. Many Michigan residents and businesses do not have access to recycling or composting facilities in their communities.

Recyclers throughout Michigan are serious about reaching their recovery, reduction, and reuse goals and would prefer that the percentage of unclaimed bottle deposits that originally was earmarked for the Clean Michigan Fund continue to be targeted for resource recovery programs such as statewide promotion and education on the technical aspects and benefits of recycling and composting, low or no-interest loans to entrepreneurial projects that divert waste from landfills, grants for educational programs, and leadership for proactive environmental programs that do not create a public liability. It is not in the public's best interest to divert to costly cleanup activities those funds that are currently earmarked for pollution prevention and resource recovery programs.

Opposing Argument

Michigan businesses and industry already have been relieved of substantial cleanup responsibilities by the weakening of the so-called polluter pay law by Public Act 71 of 1995. These bills would not require businesses and industry to make any kind of significant contribution to the cleanup program. By at least one estimate, some $16 million or one-fifth of the annual cleanup funding is needed to pay for costs that would have been shouldered by private parties before the

polluter pay law was amended. Michigan businesses and industry that continue to use persistent, bioaccumulative toxic substances that pollute the environment should be taxed on the use of those materials to make up the $16 million difference.

Opposing Argument

Senate Bill 922 (S-3) proposes to raise funds for hazardous waste cleanup by selling unneeded State lands, yet fails to provide a definition or standard for determining which lands would be considered surplus. Further, the bill does not even include a public hearing requirement on the designation of surplus land, but rather would leave the decision entirely to the directors of the various State departments. At the very least, the bill should include criteria that would prevent the disposal of public lands that fulfill the wildlife, habitat, and recreational purposes of the Department of Natural Resources, and should require the approval of the Natural Resources Commission for all proposed land sales over five acres.

Opposing Argument

The single business tax credit proposed by Senate Bill 924 (S-2) for 150% of the cost of eligible investments is too generous to be considered good public policy. Since property eligible for the tax credit would include personal property, there would be no incentive for businesses to be economical in their purchase of such nonpollution remediation equipment as office furnishings. Although it is certainly reasonable to offer a corporation a tax credit to make productive use of a brownfield site and stimulate economic recovery in the area, it is neither wise nor necessary to design that credit to enhance--significantly--the profits or assets of the corporation. A 10% tax credit, or even a 50% tax credit, would be a sufficient inducement to a business to locate in a brownfield without causing a financial strain for the local unit of government in which the brownfield was located, or for the unit's taxpayers.

Response: The bill would provide for reasonable and conscientious use of the tax credit. The Brownfield Redevelopment Board that would be established under Senate Bill 919 (S-3) would have to develop a list of eligible property for the tax credit after public hearings and with the approval of the local units of government in which the properties were located.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

Senate Bill 919 (S-3)

The bill would have an indeterminate fiscal impact on State and local government, depending upon the amount and source of funds to be deposited into the Revitalization Revolving Loan Fund, the Cleanup and Redevelopment Fund, the State Site Cleanup Fund, and the Long-Term Maintenance Trust Fund. The bill would result in an indeterminate increase in costs to State government depending upon the amount of funds diverted from cleanup of State sites to other projects.

The bill would redirect approximately $27.8 million in unencumbered environmental bond funds (designated for solid waste alternatives grants) into the Cleanup and Redevelopment Fund. There would be no direct fiscal impact on the solid waste alternatives program, since FY 1995-96 was its last funding cycle and no new grants are anticipated.

The bill would redirect the use of $20 million in unencumbered General Fund money from a 1994 appropriation for cleanup of State-owned sites to other uses. This could result in increased costs to individual departments for cleanup, since they would be responsible.

Administrative costs for the programs would be covered by the Cleanup and Redevelopment Fund, and the Department would be required annually to request appropriations from the Fund to implement programs established in the bill.

The bill does not designate any additional sources of revenue for the above funds. Further fund capitalization, and program expenditures, would be dependent upon the appropriations process.

Senate Bill 920 (S-3)

The bill would redirect revenues from the Unclaimed Bottle Deposit Fund to the Cleanup and Redevelopment Fund, and have an indeterminate fiscal impact on State government, depending upon the amount of revenue and the interest rate on State-invested funds.

Assuming the Department of Environmental Quality estimate that $15 million per year would be diverted from the Bottle Deposit Fund to the

Cleanup and Redevelopment Fund, and a 6% rate on State-invested funds, the bill would result in a revenue loss to the State of approximately $11 million over a 10-year period. This does not include interest earnings due to the State after 10 years that could be generated from the approximately $220 million balance accumulated by that time.

The bill, as amended on the Senate floor, would result in an indeterminate decrease in revenues, depending on the amount of any one-time credits that were granted for overredemption in prior years.

Senate Bill 922 (S-3)

The bill would have an indeterminate fiscal impact on State and local government, depending upon the amount and value of land sold.

The Department of Environmental Quality has estimated that this bill would generate $1 million in revenue to the Revitalization Revolving Loan Fund to provide loans to local units of government for environmental cleanup purposes. Any remaining proceeds would be credited to the Surplus State Land Revolving Fund, to be used to cover administrative costs and cleanup costs on State surplus land.

Senate Bill 923 (S-2)

The bill would have an indeterminate fiscal impact on State and local government, depending on the amount of land in the brownfield redevelopment zones and the eligible personal property included in authorities' plans. The fiscal impact also would depend on a "brownfield's" initial value and its captured assessed value. Authorities or local governments also could issue bonds to fund a local site remediation revolving fund, which would be used to finance the costs of eligible activities.

Senate Bill 924 (S-2)

At this time, it is not possible to estimate the loss in State revenue due to the credits proposed in this bill with any degree of confidence because it is not known 1) how many eligible properties there would be, 2) the cost of restoring, constructing, renovating, and/or improving buildings on the eligible properties, 3) the cost of machinery, equipment, furniture, or fixtures to be used in these buildings, 4) the cost of response activity, or 5) the amount of the payroll that would be paid to workers on these properties once they had been improved.

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