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BILL ANALYSIS

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Senate Bills 919, 923, and 924 (as enrolled) **PUBLIC ACTS 380, 381, & 382 of 1996**
House Bills 5672 and 5673 (as enrolled) **PUBLIC ACTS 383 & 384 of 1996**
Sponsor: Senator Loren Bennett (S.B. 919)
Senator Philip E. Hoffman (S.B. 923)
Senator Bill Schuette (S.B. 924)
Representative Howard J. Wetters (H.B. 5672)
Representative Alvin H. Kukuk (H.B. 5673)
Senate Committee: Economic Development, International Trade and Regulatory Affairs
House Committee: Conservation, Environment and Great Lakes

Date Completed: 3-27-97

CONTENT

Senate Bill 919 and House Bill 5672 amended Part 201 (Environmental Response) of the Natural Resources and Environmental Protection Act (NREPA). The bills created the Cleanup and Redevelopment Fund to pay for response activities at contaminated sites and transferred money to that Fund from the Environmental Response Fund. The bills also created the Revitalization Revolving Loan Fund to provide loans to local units of government and brownfield authorities for eligible activities at certain properties to promote economic development; the State Site Cleanup Fund to finance response activities at facilities where the State is liable; and the Municipal Cost-Share Grant Program to make loans to local units for response activities at municipal solid waste landfills.

Senate Bill 923 created the Brownfield Redevelopment Financing Act to allow municipalities to establish brownfield redevelopment zones and brownfield redevelopment zone authorities, which may implement brownfield plans. The bill specifies financing sources for authority activities, including the capture of tax increment revenue, proceeds of notes and bonds, and revenue in a Local Site Remediation Revolving Fund; and requires the Department of Environmental Quality (DEQ) to approve of a work plan or remedial action plan before an authority may capture taxes levied for school operating purposes.

Senate Bill 924 amended the Single Business Tax (SBT) Act to allow taxpayers owning eligible property in brownfield redevelopment zones to take a credit equal to 10% of the cost of investments in eligible property. The credit is available for tax years beginning after 1996 and before 2001.

House Bill 5673 amended the beverage container deposit law to create the Cleanup and Redevelopment Trust Fund; direct revenue to it from the Unclaimed Bottle Deposit Fund; and require the State Treasurer to disburse money from the Trust Fund to the Cleanup and Redevelopment Fund for three fiscal years. The bill also created the Community Pollution Prevention Fund to make grants to local units, health departments, and regional planning agencies for pollution prevention purposes.

The bills took effect on July 24, 1996. Following is a more detailed description of the legislation.

Senate Bill 919

Cleanup and Redevelopment Fund

The bill deleted provisions that established the Environmental Response Fund and, instead, the bill created the Cleanup and Redevelopment Fund. The State Treasurer may receive money and other assets from any source for deposit into the Fund. He or she must direct the investment of the Fund and credit to it 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 may be earmarked by the DEQ for use at specific sites.

(The NREPA defines "site" as the location of "environmental contamination", i.e., the release of a hazardous substance, or the potential release of a discarded hazardous substance, in a quantity that is or may become injurious to the environment or to the public health, safety, or welfare.)

The State Treasurer may establish subaccounts within the Fund, and must 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, must be credited to this subaccount.

The NREPA previously allowed money to be appropriated from the Environmental Response Fund only for response activities at facilities that had been subjected to the risk assessment process described in the Act. The bill allows money from the Cleanup and Redevelopment Fund to be appropriated only for response activities at sites subjected to the risk assessment process. (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 includes demolition in that definition.) The bill also deleted a provision that allowed the Environmental Response Fund to be used for match, operation, and maintenance purposes as required under the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund), and that required the Governor to recommend an annual appropriation for the Fund in his or her annual budget recommendations to the Legislature.

Instead, the bill requires the DEQ to submit annually to the Governor a request for appropriation from the Cleanup and Redevelopment Fund, including a lump sum amount for the purposes of national priority list municipal landfill cost-share grants, and a lump sum amount for the purposes of emergency response actions for sites to be determined by the DEQ. For the purposes of other appropriations from the Fund (described below), the request must include a list of the sites where the DEQ is proposing to spend funds. The list must include the following information for each site: the site's common name; the response activities that are planned to be conducted; and the estimated amount of money that is needed to conduct those activities. The bill specifies that the Legislature must approve by law the list of sites to be addressed and to provide a lump sum appropriation for those sites based on the total estimated amount needed for the approved sites.

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

-- National priority list municipal landfill cost-share grants to be approved by the Brownfield Redevelopment Board.
-- Superfund match, including funding for any response activity that is required to match Federal dollars at a Superfund site as required under CERCLA.
-- 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 is not liable if response activities have ceased.
-- Response activities at sites that will facilitate redevelopment.
-- Emergency response actions for sites to be determined by the DEQ.

Money in the Fund must be spent first for the Superfund match and emergency response actions and response activities related to acute health or environmental problems. Following these expenditures, at least 50% of the remaining money must be spent for response activities that facilitate redevelopment of urbanized areas. All additional expenditures must be made after the specified expenditures. ("Urbanized area" means 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 may not exceed 12% of the funds appropriated from the Fund in a fiscal year or $6 million in a fiscal year, whichever is less.

By December 31 each year, the DEQ must provide to the Governor, the Senate and House standing committees with jurisdiction over issues pertaining to natural resources and the environment, and the Senate and House Appropriations Committees a list of all projects financed under Part 201 through

the preceding fiscal year. The list must include the project site and location, the nature of the project, the total amount of money authorized, the total amount spent, and project status.

Revitalization Revolving Loan Fund

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

The DEQ annually must submit to the Governor a request for a lump-sum appropriation from the Fund for loans to be made under the Revitalization Revolving Loan Program (established by House Bill 5672). Further, the DEQ may spend money from the Fund, upon appropriation, only for that Program.

State Site Cleanup Fund

The bill established the State Site Cleanup Fund within the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the State Site Cleanup Fund. The State Treasurer must direct the investment of the Fund, and credit to it interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year must remain in the Fund and may not lapse to the General Fund. Money in the State Site Cleanup Fund must be used for the State Sites Cleanup Program.

The bill requires the DEQ to establish a State Sites Cleanup Program for the purpose of spending money in the Fund, including the $20 million appropriated by the Legislature for State site cleanup pursuant to Public Act 265 of 1994 (which made appropriations to the Department of Natural Resources). The DEQ must spend the money appropriated for State site cleanup only for response activities at facilities where the State is liable as an owner or operator under the NREPA or where the State has licensure or decommissioning obligations as an owner or possessor of radioactive materials that are regulated by the Nuclear Regulatory Commission. Money spent for the State Sites Cleanup Program may not be used to pay fines, penalties, or damages. (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.)

Six months after the bill's effective date, and annually thereafter by October 1, each State executive department and agency must provide to the DEQ a detailed list of all facilities where the department or agency is liable as an owner or operator. Subsequent lists do not need to include facilities identified in a previous list. This list must include the following information for each facility: the facility name; location; use history of the facility; a detailed summary of available information regarding the source, nature, and extent of the contamination at the facility; a detailed summary of available information on any public health or environmental impacts at the facility; a detailed summary of available information on the facility's resale and redevelopment potential; and a description and estimated cost of the response activities needed at the facility, if known.

Within 12 months after the bill's effective date and by February 1 of each subsequent year, the Brownfield Redevelopment Board must develop a prioritized list of the facilities identified. Sites posing the greatest risk to the public health, safety, welfare, or the environment and those having high resale and redevelopment potential must be given the highest priority. The list must include the following information for each facility: its priority order; response activities to be completed at the facility; estimated cost of the response activities; and the State department or agency that is liable as an owner or operator.

All State executive departments and agencies that are liable as an owner or operator are responsible for undertaking and paying for all necessary response activities that cannot be addressed with money appropriated to the DEQ for State site cleanup as described above, or any money appropriated to the DEQ specifically for the purpose of response activities at facilities for which the State is liable as an owner or operator. The existence of these funds does not affect the liability of any person under Part 201 or any State or Federal law.

The $20 million appropriated by Public Act 265 of 1994 and to be spent under these provisions must be carried over to succeeding fiscal years. The bill specifies that the unspent portion of the appropriation is considered a work project appropriation, and any unencumbered or

unallotted funds are carried forward to the succeeding fiscal year. The bill also states that the following is in compliance with Section 451(3) of the Management and Budget Act:

-- The purpose of the project to be carried forward is to provide for contaminated site cleanups.
-- The project will be accomplished by contracts.
-- The total estimated cost of the project will be $20 million.
-- The tentative completion date is September 30, 1999.

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

Transfers to Cleanup and Redevelopment Fund

The NREPA previously required 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 specified that up to $150 million had to be used for solid waste projects. The bill provides that any of the $150 million that is available but not appropriated or that is appropriated and reverts to the Environmental Response Fund must be transferred to the Cleanup and Redevelopment Fund. Further, the bill transfers to that Fund any interest and earnings from investment of the proceeds of any bond issue. Previously, the interest and earnings were allocated in the same proportion as earned on the investment of the proceeds of the bond issue.

In addition, the bill requires 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. Previously, the Act required 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

The bill repealed provisions of the NREPA that established the Michigan Unclaimed Bottle Fund (MCL 324.20109). The bill also repealed provisions that established the Long-Term Maintenance Trust Fund and the Long-Term Maintenance Trust Fund Board (MCL 324.20110 and 324.20111).

In addition, the bill repealed Enacting Section 3 of Public Act 315 of 1996. (Public Act 315 amended the NREPA to prohibit a person from obstructing or interfering in the lawful taking of aquatic species. Enacting Section 3 tie-barred that legislation to Senate Bill 964, which was not enacted.)

Senate Bill 923

Brownfield Redevelopment Zone Authorities

The bill allows a municipality to establish one or more brownfield redevelopment zone authorities. Each authority must exercise its powers in its zone or zones. The authority is a public body corporate that may sue and be sued in a court of competent jurisdiction. Further, the authority possesses all the powers necessary to carry out the purpose of its incorporation. The enumeration of a power in the bill does not limit the general powers of the authority. The powers granted by the bill to an authority may be exercised whether or not bonds are issued by the authority. (The bill defines "municipality" as a city; a village; a township in those areas of the township outside of a village; a township in those areas of a township that are in a village upon the concurrence by resolution of the village in which the zone would be located; or a county upon the concurrence by resolution of the city or village or township in which the zone would be located.)

A governing body may 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" means the elected body having legislative powers of a municipality creating an authority under the bill.) In the resolution, the governing body must 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 must 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 must state the date, time, and place of hearing, and describe the area or areas of the municipality to be included within the proposed zone. The areas to be included may include noncontiguous parcels of property, all of which must 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 may be

subject to capture under a brownfield plan in the proposed zone has 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 may not incorporate into the zone land not included in the description contained in the notice of public hearing, but it may 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 intends to proceed with the establishment of the authority, it must 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 is to exercise its powers. The adoption of the resolution is 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 must be filed with the Secretary of State promptly after its adoption. ("Chief executive officer" means the mayor of a city, the village manager of a village, the township supervisor of a township, or the county executive of a county or, if the county does not have an elected county executive, the chairperson of the county board of commissioners.)

The governing body may 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 will 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.

An authority's exercise of the powers conferred by the bill is to be considered 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 must be supervised and controlled by a board chosen by the governing body of the municipality. Subject to the following provision, the governing body may 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 (DDA), if the zone includes an area within the boundaries of the district of that DDA.
-- The trustees of the board of a tax increment financing authority (TIFA), if the zone includes an area within the boundaries of the district of that TIFA.
-- The trustees of the board of a local development financing authority (LDFA), if the zone includes an area within the boundaries of the district of that LDFA.
-- 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 are to serve three-year staggered terms. Further, appointed members will serve without compensation, but are to be reimbursed for reasonable actual and necessary expenses.

In a municipality in which a downtown development authority, tax increment financing authority, or local development financing authority has been established, the governing body of the municipality must designate the trustees of one of those boards to constitute the brownfield authority board. This provision applies only in the event a DDA, TIFA, or LDFA board is authorized to serve as the board of the brownfield authority and all the parcels in the brownfield zone are in the existing DDA, TIFA, or LDFA.

The board must adopt rules governing its procedure and the holding of regular meetings, subject to the approval of the governing body. Special meetings may be held when called in the manner provided in the rules of the board. The board is 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 may be removed before the expiration of his or her term for cause by the governing body. Removal of a member is subject to review by the circuit court.

The board may employ and fix the compensation of a director of the authority, who will be its chief officer, subject to the approval of the governing body creating the authority. The director will serve at the pleasure of the board. A member of the board is not eligible to be the director. Before

entering upon the duties of the office, the director must 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 is to supervise, and be responsible for, the preparation of plans and the performance of the functions of the authority. The director must 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 must furnish the board with information or reports governing the operation of the authority, as the board requires.

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

Upon request, the municipality may assist the authority in the performance of its powers and duties.

Powers of an Authority

The bill grants 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 considers 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.
-- Do all other things necessary or convenient to achieve the purposes of the authority, the bill, or other laws that relate to the purposes and responsibilities of the authority.

A municipality may transfer private property taken under the Uniform Condemnation Procedures Act to the authority for use as authorized in the brownfield plan, on terms and conditions it considers appropriate. The taking, transfer, and use are to be considered necessary for public purposes and for the benefit of the public. A municipality also may transfer its funds to an authority or to another person on behalf of the authority in anticipation of repayment by the authority.

The authority must determine the captured taxable value of each parcel of eligible property that is included in a zone. The captured taxable value of a parcel may not be less than zero. (The bill defines "eligible property" as a facility as defined in Part 201 of the NREPA and adjacent or contiguous parcels, if the development of the parcels is estimated to increase the captured taxable value of the facility for which eligible activities are proposed under a brownfield plan. Eligible property includes, to the extent included in the brownfield plan, personal property located on the facility. "Captured taxable value" means the amount in one year by which the current taxable value of an eligible property subject to a brownfield plan, including the taxable value or assessed value, as appropriate, of the property for which specific taxes are paid in lieu of property taxes, exceeds the initial taxable value of that eligible property. The State Tax Commission must prescribe the method for calculating captured taxable value.

"Initial taxable value" means 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 is adopted, as shown bythe most recent assessment roll for which equalization has been completed at the time the resolution is adopted. Property exempt from taxation at the time the initial taxable value is determined must be included with the initial taxable value of zero. Property for which a specific tax is paid in lieu of property tax may not be considered exempt from taxation. The State Tax Commission must prescribe the method for calculating the initial taxable value of property for which a specific tax was paid in lieu of property tax.

"Specific taxes" means 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 allows an authority to establish a Local Site Remediation Revolving Fund. The Fund is to consist of excess tax increment funds and also may consist of money appropriated or otherwise made available from public or private sources. The authority must account separately for money deposited to the Fund that is derived directly from tax increment revenues levied for school operating purposes. The Fund may be used only to pay the costs of eligible activities on eligible property that is located within the zone of an authority established by a municipality.

An authority, or a municipality on behalf of an authority, may incur an obligation for the purpose of funding a Local Site Remediation Revolving Fund.

(The bill defines "tax increment revenues" as the amount of ad valorem property taxes and specific 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 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 taxes attributable to those ad valorem property taxes. Tax increment revenues attributable to eligible property also exclude the amount of ad valorem property taxes or specific taxes captured by a DDA, TIFA, or LDFA if those taxes were captured 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 must 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 and/or proceeds of tax increment bonds and notes, subject to limitations imposed by the bill.
-- Proceeds of revenue bonds and notes.
-- 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 may 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 may be financed by the issuance of revenue bonds or notes may 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 have developed. The authority may 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 are exempt from all State taxes except estate and transfer

taxes, and the interest on the bonds or notes is exempt from all State taxes. The interest, however, may be subject to Federal income tax.

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

The bonds and notes of the authority may 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 may 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 is authorized.

(The bill defines "eligible activities" as baseline environmental assessment (BEA) activities, due care activities, and additional response activities. "Baseline environmental assessment activities" means those response activities identified as part of a brownfield plan that are necessary to complete a BEA for an eligible property in the brownfield plan. "Baseline environmental assessment" means that term as defined in Part 201 of the NREPA, i.e., 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.

The bill defines "due care activities" as those response activities identified as part of a brownfield plan that are 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" means response activities proposed as part of a brownfield plan that are in addition to BEA activities and due care activities for a facility.

"Response activity" means that term as defined in Part 201.)

Brownfield Plan/Tax Increment Revenues

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

-- A description of the costs of the plan intended to be paid for with the tax increment revenues, including a brief summary of the eligible activities that are proposed for each eligible property.
-- The method by which the costs of the plan will 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 duration of the brownfield plan, which may not exceed the period authorized or 30 years, whichever is less.
-- An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the eligible property is located.
-- A legal description of each parcel of eligible property to which the plan applies, a map showing the location and dimensions of each eligible property, and a statement of whether personal property is included as part of the eligible property.
-- A description of proposed use of the Local Site Remediation Revolving Fund.
-- Other material that the authority or governing body considers pertinent.

In addition, a plan must contain estimates of the number of persons residing on each eligible property to which the plan applies and the number of families and individuals to be displaced. If occupied residences are designated for acquisition

and clearance by the authority, the plan must include a demography survey of the persons to be displaced; 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 must 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 plan also must 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 may 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 must be stated clearly in the plan. The plan may 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 is excluded from tax increment revenues or from capture.

Tax Increment Revenue Capture. The percentage of taxes levied on a parcel of eligible property for school operating expenses that is 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, may 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 applies only when taxes levied for school operating purposes are subject to capture. ("Taxes levied for school operating purposes" means taxes levied by a local school district for operating purposes; taxes levied under the State Education Tax Act; and that portion of specific taxes attributable to those taxes.)

Generally, tax increment revenues related to a brownfield plan may be used only for costs of eligible activities attributable to the eligible property, the captured taxable value of which produces 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 reasonable costs of preparing a work plan or remedial action plan for the eligible property, including the actual cost of the DEQ's review of the work plan or remedial action plan. Further, a brownfield plan may not authorize the capture of tax increment revenue from eligible property after the year in which the total amount of tax increment revenues captured is 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 reasonable cost of preparing a work plan or remedial action plan for eligible property, and the actual cost of the review of the work plan or remedial action plan by the DEQ.

A brownfield plan may authorize the capture of additional tax increment revenue from eligible property in excess of the amount authorized above during the time of capture for the purpose of paying the costs of eligible activities attributable to that eligible property, or for not more than five years after the time that capture is required for the purpose of paying the costs of eligible activities, or both. Excess revenues captured must 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 is captured by the authority for eligible activities, the revenues captured for deposit in the Local Site Remediation Revolving Fund also may 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.

(The bill defines "work plan" as a plan that describes 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" means a plan that is a remedial action plan as defined in Part 201 of the NREPA, and that describes each individual activity to be conducted to complete an eligible activity and the associated costs of each individual activity.)

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

The costs of eligible activities attributable to eligible property include all costs that are necessary or related to a release from the eligible property, including eligible activities on properties affected by a release from the eligible property. (For the purpose of this provision, "release" means that word as defined in the NREPA.)

Cost Recovery. The costs of a response activity paid with tax increment revenues that are captured to pay for eligible activities, may be recovered from a person who is liable for the costs of eligible activities at an eligible property. The State or an authority may undertake cost recovery for tax increment revenue captured. Before the State or an authority may institute a cost recovery action, it must provide the other with 120 days' notice. The State or an authority that recovers costs must apply those recovered costs first to the reasonable attorney fees and costs incurred by the State or authority in obtaining the cost recovered and then as follows:

-- If an authority undertakes the cost recovery action, the authority must deposit the remaining recovered funds into the Local Site Remediation Fund, if the authority has established such a fund. Otherwise, the authority must disburse the remaining recovered funds to the local taxing jurisdictions in the proportion that their taxes were captured.

-- If the State undertakes a cost recovery action, the State must deposit the remaining recovered funds into the Revitalization Revolving Loan Fund (created by Senate Bill 919).

-- If the State and an authority each undertake a cost recovery action, undertake a cost recovery action jointly, or one on behalf of the other, the amount of any remaining recovered funds must be deposited as described above in the proportion that the tax increment revenues being recovered represent local taxes and taxes levied for school operating purposes.

Plan Approval. Before approving a brownfield plan for an eligible property, the governing body must 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 must fully inform the taxing jurisdictions about the fiscal and economic implications of the proposed plan before the public hearing on the proposed resolution creating the authority. The authority may not enter into agreements with the taxing jurisdictions and the governing body of the municipality in which the zone is 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 will be binding on all taxing units levying ad valorem property taxes or specific taxes against property located in the zone.

At least 10 days after notice of the proposed brownfield plan is provided to the taxing jurisdictions, the governing body must determine whether the plan constitutes a public purpose. If the governing body determines that the plan does not constitute a public purpose, it must reject the plan. If it determines that the plan does constitute a public purpose, it may approve or reject the plan, or approve it with modification, by resolution, based on whether:

-- The plan meets the requirements of the bill.

-- The proposed method of financing the costs of eligible activities is feasible and the authority has the ability to arrange the financing.

-- The costs of eligible activities proposed are 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 is reasonable.

Amendments to an approved brownfield plan must 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 is not 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 will 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 will be conclusive unless contested within 60 days after adoption of the resolution adopting the amendment. If a resolution adopting an amendment to the plan is contested, the original resolution adopting the plan is not therefore open to contest.

DEQ Approval of Work/Remedial Action Plan

An authority may not capture taxes levied for school operating purposes from eligible property unless the eligible activities to be conducted on the property are consistent with a work plan or remedial action plan approved by the DEQ after the bill's effective date and before January 1, 2001. An authority also may not use funds from a Local Site Remediation Revolving Fund that are derived from taxes levied for school operating purposes, unless the eligible activities to be conducted are consistent with a work plan or remedial action plan that has been approved by the DEQ after the bill's effective date.

To seek DEQ approval of a work plan or a remedial action plan, the authority must submit all of the following for each eligible property: a copy of the brownfield plan; 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; 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 may 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 is known about environmental contamination; existing and proposed future zoning for each eligible property; and a brief summary of the proposed redevelopment and future use for each eligible property.

Upon receiving a request for approval of a work plan or remedial action plan that pertains to BEA activities or due care activities, or both, or a portion of a plan that pertains only to BEA or due care activities, or both, the DEQ must provide one of the following written responses to the requesting authority within 60 days:

-- An unconditional approval.
-- A conditional approval that delineates 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 lacks 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 will be considered by the DEQ.

In reviewing a plan, the DEQ must consider whether the individual activities included in the plan are sufficient to complete the eligible activity, whether each individual activity included in the plan is required to complete the activity, and whether the cost for each activity is reasonable.

If the DEQ fails to provide a written response within 60 days after receiving a request for approval of a plan that pertains to BEA and/or due care activities, the authority may proceed with the BEA 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 must be considered approved.

The DEQ may issue a written response to a plan that pertains to BEA activities and/or due care activities more than 60 days but less than six months after receiving a request for approval. If the DEQ issues a written response, the authority need not conduct individual activities that are in addition to the individual activities included in the plan as it was submitted for approval, and failure to conduct the additional activities will 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 must be considered part of the plan of the authority and approved as required. Any response by the DEQ, however, that identifies additional individual activities to satisfy the BEA or due care requirements of Part 201 of the NREPA must be satisfactorily completed for the BEA or due care activities to be considered acceptable for purposes

of compliance with Part 201.

If the DEQ issues a written response to a plan that pertains to BEA and/or due care activities and if the DEQ's written response modifies an individual activity proposed by the work plan or remedial action plan of the authority in a manner that reduces or eliminates a proposed response activity, the authority must complete those individual activities included in the BEA or due care activities, or both, 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 apply:

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

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

The authority must 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 must be deposited in the Environmental Response Fund.

By March 1 each year, the DEQ must submit to each member of the Legislature a report that contains all of the following:

-- A compilation and summary of all the information submitted by authorities for approval of a work plan or remedial action plan.
-- The amount of revenue this State would have received if taxes levied for school operating purposes had not been captured by authorities for the previous calendar year.
-- The amount of revenue each local governmental unit would have received if taxes levied for school operating purposes had not been captured for the previous calendar year.

Tax Increment Bonds and Notes

By resolution of its board, an authority may authorize, issue, and sell its tax increment bonds and notes to finance the purposes of a brownfield plan. The bonds or notes must mature within 30 years and 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 may include capitalized interest, an amount sufficient to fund costs of issuance, and a sum to provide a reasonable reserve for payment of principal and interest on the bonds or notes. The terms of the Municipal Finance Act do not apply to bonds issued under these provisions, except for the requirement that the authority receive approval or an exception from approval from the Department of Treasury before issuing bonds.

The municipality, by majority vote of the members of its governing body, may make a limited tax pledge to support the authority's tax increment bonds or notes, or if authorized by its voters, may 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 must be secured by one or more sources of revenue identified as sources of financing 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 this section of the bill, including the cost of issuance, must 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 may not appreciate in principal amount or be sold at a discount of more than 10% unless the bond is sold to the Revitalization Revolving Loan Fund.

The municipal and county treasurers must transmit to the authority tax increment revenues within 30

days after they are collected. The authority may 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 must revert proportionately to the respective taxing bodies. The governing body may abolish the plan if it finds that the purposes for which the plan was established are accomplished. The plan may not be abolished, however, until the principal and interest on bonds and all other obligations to which the tax increment revenues are pledged have been paid or funds sufficient to make the payment have been segregated.

Other Provisions

An authority must 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 must include the amount and source of tax increment revenues received, the amount and purpose of expenditures of tax increment revenues, the amount of principal and interest on all outstanding indebtedness, the initial taxable value of all eligible property subject to the brownfield plan, the captured taxable value realized by the authority, information concerning any transfer of ownership or an interest in each eligible property within the zone, and all additional information that the governing body or the State Tax Commission considers necessary. The DEQ and the State Tax Commission must collect these financial reports, compile and analyze the information contained in them, and submit an annual report based on that information to the Senate Natural Resources and Environmental Affairs Committee, the Senate Finance Committee, the House Conservation, Environment and Great Lakes Committee, and the House Tax Policy Committee.

An authority must prepare and approve a budget for its operation for the ensuing fiscal year. The budget must be prepared in the manner and contain the information required of municipal departments. An authority's budget may 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 may 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 must be paid annually by the authority under an appropriate item in its budget.

An authority that completes the purposes for which it was organized must be dissolved by resolution of the governing body, and its property and assets remaining after the satisfaction of its obligations will belong to the municipality or to an agency or instrumentality designated by the municipality.

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

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

The bill was tie-barred to Senate Bill 919.

Senate Bill 924

For tax years beginning after December 31, 1996, and before January 1, 2001, the bill permits a "qualified taxpayer" to claim a credit against the single business tax equal to 10% of the cost of "eligible investment" paid or accrued by the taxpayer in the tax year. The maximum total credits claimed under the bill for all tax years by each taxpayer that claims a credit may not exceed $1,000,000.

The credit must be calculated after application of all other credits allowed under the SBT Act. If the credit allowed by the bill for a tax year and any unused carryforward of the credit exceed the taxpayer's liability for the tax year, the excess may not be refunded but may be carried forward to offset tax liability in subsequent years for 10 years or until used up, whichever occurs first.

If eligible investment is for the purchase of tangible assets, if their cost will have been used to calculate a credit under the bill, and if the assets are sold or disposed of or transferred from eligible property to any other location, the taxpayer must add 10% of the Federal basis used for determining gain or loss as of the date of the sale, disposition, or transfer, to the taxpayer's tax liability for the tax year in which the sale, disposition, or transfer occurs.

An affiliated group as defined in the SBT Act, a controlled group of corporations as defined in the Internal Revenue Code, or an entity under common control as defined in the Code, must consolidate the eligible investment of the members of the affiliated group, member corporations of the controlled group, or entities under common control, for purposes of determining when the maximum allowable credit limit has been reached.

The Department of Treasury must develop procedures to implement the bill.

The bill defines "eligible activity" as that term is defined in the Brownfield Redevelopment Financing Act. "Eligible investment" means demolition, construction, restoration, alteration, renovation, or improvement of buildings on eligible property and the addition of machinery, equipment, and fixtures to eligible property after the date that eligible activity on that property has started pursuant to a brownfield plan under the Brownfield Redevelopment Financing Act, if the costs of the eligible investment are not otherwise reimbursed to the taxpayer or paid for on behalf of the taxpayer from any source other than the taxpayer.

The bill defines "eligible property" as property that is a facility as defined in Part 201 of the NREPA, or property that was a facility before the completion of eligible activity pursuant to a brownfield plan. "Qualified taxpayer" means a taxpayer that meets both of the following criteria:

-- Owns or leases an eligible property that is located within a brownfield redevelopment zone designated pursuant to the Brownfield Redevelopment Financing Act and on which eligible activity has started pursuant to a brownfield plan.
-- Is not liable for response activity (as defined in the Brownfield Redevelopment Financing Act) at an eligible property to which the credit is attributable.

The bill was tie-barred to Senate Bill 923.

House Bill 5672

Brownfield Redevelopment Board

The bill created the Brownfield Redevelopment Board within the DEQ. The board consists 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 will constitute a quorum for the transaction of business at a meeting of the board. The board is subject to the Open Meetings Act and the Freedom of Information Act, and must implement the duties and responsibilities specified in Part 201 and as otherwise provided by law.

Revitalization Revolving Loan Program

The bill requires the DEQ to create a Revitalization Revolving Loan Program for the purpose of providing 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 must be a county, city, township, or village, or an authority established under the Brownfield Redevelopment Financing Act. The municipality that created the authority must commit to secure the loan with a pledge of the municipality's full faith and credit. Further, the application must be for eligible activities at a property within the applicant's jurisdiction that is a facility or is suspected to be a facility based on current or historic use. The application must 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.

Eligible activities are 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 include only those activities necessary to facilitate redevelopment; they do not include activities necessary only to design or complete a remedial action that fully complies with the requirements of the NREPA pertaining to cleanup criteria and remedial actions. All eligible activities must 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 are eligible.

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

A complete application must include a description of the proposed eligible activities, an itemized budget for the proposed eligible activities, a schedule for their completion, 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 must 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 is not owned by the applicant, the application must include a draft of an enforceable agreement between the property owner and the applicant that commits 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 must enter into a loan agreement with the DEQ. At a minimum, the loan agreement must 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 is not owned by the recipient, an executed agreement approved by the DEQ that commits the property owner to cooperate with the applicant.
-- A commitment that the loan is secured by a full faith and credit pledge of the applicant. If the applicant is an authority established under the Brownfield Redevelopment Financing Act, the commitment and pledge must be made by the municipality that created the authority.
-- Reporting requirements. At a minimum, the recipient must 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 must provide a final report that contains documentation of project costs and expenditures, including invoices and proof of payment.
-- Other provisions as considered appropriate by the DEQ.

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

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

Loans must 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 must 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 must 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 must withhold State payments from the loan recipient in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The Department of Treasury must deposit these withheld funds into the Revitalization Revolving Loan Fund until the loan is repaid.

Cost-Share Grant Program

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

To be eligible for a cost-share grant, the applicant must be a local unit of government, and the application, which may be only for eligible response activity costs at a municipal solid waste landfill, must be completed and submitted on a form provided by the board by the established deadline.

A complete application must 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 supports the analysis.
-- A brief narrative description of the overall response activities completed or to be completed at the landfill.

The application also must contain a list and narrative description of all eligible costs incurred by the applicant for which it is seeking a grant, including all of the following:

-- A demonstration that each eligible cost is consistent with a work plan or remedial

action plan that has been approved by the DEQ or the U.S. Environmental Protection Agency (EPA), or has been ordered by a State or Federal court. The demonstration must relate each cost for which reimbursement is 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 must be included with the application.

-- Documentation that the costs have been incurred by the applicant, including itemized invoices that clearly list 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 has not received reimbursement for any of the costs for which it is seeking a grant from any other sources.

Further, the application must include a list of persons the applicant believes may be liable for response activities under the NREPA or CERCLA for a substantial portion of the response activity costs at the landfill, as well as any available supporting documentation.

The board must 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 has taken steps to identify environmental contamination at the facility or caused by the facility, or facilities in which remedial action measures have been implemented in accordance with a remedial action plan approved by the DEQ or the EPA; and facilities in which the local unit of government has implemented appropriate measures to effect proper closure of the facility.

Once a complete application has been submitted and approved by the board, applications submitted by the same applicant for the same landfill, in subsequent application cycles must contain only updated information that was not in the original application, including:

-- An updated list of eligible costs incurred by the applicant for which it is seeking a grant, and for which it was not approved to receive grant funds in a preceding grant cycle.

-- Supporting documentation that the costs have been properly incurred.

-- Any other information needed to update information in the original application.

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

A recipient of a cost-share grant must provide timely notification to the DEQ if it receives 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 is liable. Sources of money or compensation include, but are not be limited to, the Federal government, other liable persons, or insurance policies. The notice must 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 a formula specified in the bill. The notice also must include a detailed estimate of the total eligible response costs at the landfill for which the local unit is seeking a grant that are consistent with a work plan or remedial action plan that has been approved by the DEQ or the EPA, or has been ordered by a State or Federal court, as well as documentation of those costs that have been incurred.

A recipient that receives money or compensation from any other source must 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 must be submitted to the Brownfield Redevelopment Board and are subject to its review and approval. The money must be repaid to the DEQ within 60 days of board approval of the documentation, calculations, and assumptions. Funds repaid to the DEQ must be placed into the Cleanup and Redevelopment Fund.

To receive a cost-share grant, approved applicants must enter into an agreement with the board. The agreement must contain, at a minimum, a list of board-approved eligible costs for which the recipient will 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 must disburse grant funds within 45 days. If a local unit fails to sign a

grant agreement within 90 days of a written grant offer by the board, the board may cancel the grant offer. The local unit may not appeal or contest cancellation of a grant.

The bill specifies that the existence of the grant program does 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 are not liable or in any way obligated to make grants for eligible costs, if funds are not appropriated by the Legislature for that purpose, or if the funds are insufficient. The availability of the grant program may 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 must be considered response activity costs incurred by the State. The State may pursue recovery or a claim for contribution of the grant funds from persons other than the grant recipient who are liable for response activities. In addition, a local unit may pursue recovery or a claim for contribution from liable persons for the costs it has incurred but for which it has not received grant funds. The bill specifies that these provisions do 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.

The bill defines "municipal solid waste landfill" as a landfill that, as of the bill's effective date, was on or proposed by the Governor for inclusion on the national priority list, as defined in CERCLA.

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

-- The costs have been incurred by a local unit of government after the date of the bill's enactment.
-- The costs incurred by a local unit of government are reasonable considering the rationale provided in the application, the existence of other persons liable for response activities or CERCLA, and the need for the local unit to proceed with the response activity.
-- The costs are 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 are 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.

The section of the bill establishing the Municipal Landfill Cost-Share Grant Program may not take effect until the effective date of reauthorization of CERCLA or 12 months after the effective date of the bill, whichever is earlier.

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

House Bill 5673

Collection of Unclaimed Deposits

The bill provides that the Department of Treasury may audit, assess, and collect the amount of money reflecting unclaimed bottle deposits owed to the State, and enforce the obligation to pay the amount of money reflecting unclaimed bottle deposits owed to the State, in the same manner as revenues and according to the provisions of the revenue Act. The bill deleted a requirement that the Department annually determine, for the preceding year, the total value of the deposits collected on beverage containers sold in this State, refunds made on redeemed containers, and the total amount of money owed by underredeemers. ("Underredeemer" means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this State exceeds annual total value of refunds made upon beverage containers redeemed within the State.)

The beverage container deposit law permits an underredeemer who becomes an overredeemer to take a credit against the amount owed to the Department for the value of the overredemption. The value of the overredemption may be carried forward for up to three years or until the credit is completely depleted, whichever occurs first. Under the bill, on a one-time basis only, a manufacturer who no longer originates deposits may carry the value of an overredemption back for prior years in order to use its credit, and reduce the amount of underredemption owed to the Department. Use of this one-time credit may be applied against underredemption amounts owed

for reporting years commencing in 1990.

Cleanup and Redevelopment Trust Fund

The bill created the Cleanup and Redevelopment Trust Fund in the State Treasury, and requires that 75% of the money in the Bottle Deposit Fund be disbursed to the Trust Fund (instead of to the Michigan Unclaimed Bottle Fund). The State Treasurer may receive money or other assets from any source for deposit into the Trust Fund, and must direct the investment of the Fund and credit to it interest and earnings from Fund investments. Money in the Trust Fund at the close of a fiscal year is to remain in the Trust Fund.

For each of the State fiscal years 1996-97, 1997-98, and 1998-99, the State Treasurer must disburse up to $15,000,000 from the Trust Fund to the Cleanup and Redevelopment Fund created in the NREPA (pursuant to Senate Bill 919). In addition, each State fiscal year, 80% of the revenues received by the Trust Fund from the Bottle Deposit Fund must be disbursed to the Cleanup and Redevelopment Fund and 10% to the Community Pollution Prevention Fund (described below).

All money in the Trust Fund that is not disbursed as provided above must remain in the Trust Fund until it reaches an accumulated balance of $200,000,000. After the Fund reaches that balance, interest and earnings of the Trust Fund are to be spent, upon appropriation, for the purposes for which the Cleanup and Redevelopment Fund may be used (as provided in Senate Bill 919).

Community Pollution Prevention Fund

The bill created the Community Pollution Prevention Fund in the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund, and must direct the investment of the Fund and credit to it interest and earnings from Fund investments. Money in the Fund at the close of a fiscal year is to remain in the Fund.

The DEQ must spend interest and earnings of the Community Pollution Prevention Fund, upon appropriation, for grants for the purpose of preventing pollution, with an emphasis on the prevention of groundwater contamination and resulting risks to the public health, ecological risks, and public and private cleanup costs. The DEQ must enter into contractual agreements with grant recipients, which are to include county governments, local health departments, municipalities, and regional planning agencies. Activities to be performed by grant recipients and program objectives and "deliverables" must be specified in the contractual agreements. Recipients must provide a financial match of at least 25% but not more than 50%. Not more than $100,000 may be granted in any fiscal year to a single recipient.

Eligible pollution prevention activities include all of the following:

-- Drinking water wellhead protection, including the delineation of wellhead protection areas and implementation of wellhead protection plans pursuant to the Safe Drinking Water Act.
-- The review of pollution incident prevention plans prepared by, and the inspection of, facilities whose storage or handling of hazardous materials may pose a risk to the groundwater.
-- The identification and plugging of abandoned wells other than oil and gas wells.
-- Programs to educate the general public and businesses that use or handle hazardous materials on pollution prevention methods, technologies, and processes, with an emphasis on the direct reduction of toxic material releases or disposal at the source.

By September 30, 1997, and September 30 of each subsequent year, the DEQ must prepare an annual report summarizing the grants made from the Community Pollution Prevention Fund, contractual commitments made and achieved, and a preliminary evaluation of the effectiveness of these provisions. The Department also must provide a copy of this report to the chairs of the Senate and House Appropriations Subcommittees for the DEQ.

Other Provisions

The bill deleted provisions permitting the Department of Treasury to conduct hearings to determine whether a distributor or manufacturer failed to file a required report or misrepresented information in a report; and requiring the Department to assess penalties for those violations.

The bill was tie-barred to Senate Bill 919.

MCL 324.19507 et al. (S.B. 919)
125.2651-125.2672 (S.B. 923)
208.38d (S.B. 924)
324.20101 et al. (H.B. 5672)
445.573b et al. (H.B. 5673)

Legislative Analyst: S. Margules

FISCAL IMPACT

Senate Bill 919

The bill will 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 will 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 redirects approximately $27.8 million in unencumbered environmental bond funds (designated for solid waste alternatives grants) into the Cleanup and Redevelopment Fund. There will 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 redirects the use of $20 million in unencumbered General Fund money from a 1994 appropriation for cleanup of State-owned sites to other uses. This may result in increased costs to individual departments for cleanup, since they will be responsible.

Administrative costs for the programs will be covered by the Cleanup and Redevelopment Fund, and the Department will 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, will depend upon the appropriations process.

Senate Bill 923

The bill will 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 will depend on a "brownfield's" initial value and its captured taxable value. Authorities or local governments also may issue bonds to fund a local site remediation revolving fund, which will be used to finance the costs of eligible activities.

Senate Bill 924

It is difficult to estimate the loss in State revenue due to the credit in this bill because it is not known 1) how many eligible properties there will be, 2) the cost of restoring, constructing, renovating, and/or improving buildings on the eligible properties, and 3) the cost of machinery, equipment, furniture, or fixtures to be used in these buildings. However, it is estimated that this bill will reduce single business tax revenue by $1 million in FY 1996-97 and by $1.3 million in FY 1997-98.

House Bill 5672

Local units or authorities established under the Brownfield Redevelopment Financing Act will be able to enter into loan agreements with the DEQ. The loans will carry an interest rate of not more than 50% of the prime rate. Local units or authorities may also get reimbursed up to 50% of the eligible costs at municipal solid waste landfills under the cost-share grant program. If the local units or authorities receive other money or compensation, then a portion will be reimbursed to the DEQ.

House Bill 5673

The bill redirects revenues from the Unclaimed Bottle Deposit Fund to the Cleanup and Redevelopment Fund, and will 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 will be diverted from the balance of the Bottle Deposit Fund to the Cleanup and Redevelopment Fund (for the next three years) and a 6% rate on State-invested funds, the bill will result in an interest revenue loss to the State of approximately $5.4 million. This does not include earnings due to the State from deposit of $4 million in annual revenue that, if left untouched, could generate $13.2 million in interest revenue over a 10-year period.

The bill will result in an indeterminate decrease in revenues, depending on the amount of any one-time credits that are granted for overredemption in prior years.

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