

**BROWNFIELD: CAPTURE SCHOOL
TAXES FOR LANDFILL CLEANUP**

**Senate Bill 718 (Substitute H-1)
First Analysis (10-28-03)**

**Sponsor: Sen. Nancy Cassis
House Committee: Local Government
and Urban Policy
Senate Committee: Finance**

THE APPARENT PROBLEM:

According to an investigative report from Detroit's ABC-affiliate Channel 7 aired on October 10, 2003, some homeowners in the southeast corner of Milford have contaminated drinking water. Toxins are in their water because of a former landfill—which while in operation was often in violation of state law and unfit to handle the hazardous waste that was poured into it—whose contaminants have now seeped into the aquifer beneath it. Directly under the former landfill (now park land), the Department of Environmental Quality has found contaminant levels to be more than 600 times higher than Michigan's safe drinking water criteria. In the water of nine homes nearby, state lab results showed low levels of vinyl chloride, freon-like substances, trichloroethylene, and dichloroethylene, the by-products of industrial solvents and degreasers. In high quantities they can cause liver and kidney damage, as well as birth defects. Individually, none of the toxins exceeded the state's safe drinking water standards, but the well water has more than one contaminant, and no one has studied the combined effects of the toxins, to estimate the risk of harm.

The site of the landfill has been owned by CSX Railroad since the 1840s. However, the Village of Milford and Milford Township entered into an operating agreement for a regional landfill—more commonly called a 'dump'—in 1939. Later, the Oakland County Road Commission joined the landfill partnership. According to committee testimony, the operators of the dump followed the available guidelines that governed landfills during that era, guidelines that are now known to have been inadequate. However, other reports say that the operators were cited repeatedly for violating waste disposal laws. Hundreds of barrels were seen being buried at the site, and there were several fires—including one that burned for three months.

The dump in Milford was closed in 1978, and sealed. In 1987 the Environmental Protection Agency studied the site and determined "the potential for contaminants to migrate off site and cause damage...via the groundwater route."

The neighbors near the old landfill whose water is contaminated have filed a class action lawsuit against CSX Railroad (noting that the city government is protected from suit by governmental immunity). For these residents, the village of Milford is considering a million-dollar connection to the village water supply, and village officials have appropriated funds to monitor the contamination in the water supply.

The cost to clean up the landfill site is estimated to be in the tens of millions of dollars, while the city of Milford's total budget is about \$1.4 million, annually. In order to raise money and begin the clean-up, officials from the local governmental units have proposed that the state's brownfield redevelopment law be amended to allow the Village of Milford to create a Brownfield Redevelopment Authority that would cleanup the site, using captured school operating taxes from the site to payoff bonds that city officials would issue.

THE CONTENT OF THE BILL:

The bill would amend the Brownfield Redevelopment Financing Act to allow a municipality that established a local brownfield redevelopment authority to use captured school operating taxes for environmental response activities associated with a landfill. The provision would apply for taxes levied after 2004.

Under the act, municipalities may establish brownfield redevelopment zones and brownfield authorities. A brownfield authority may "capture" property tax revenue based on increases in the

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assessed value of eligible property in a zone, and use the revenue for the costs of eligible activities on eligible property. An authority may capture taxes levied for school operating purposes if the eligible activities are consistent with a work plan or remedial action plan approved by the Department of Environmental Quality.

The act prohibits an authority from using captured school operating taxes for “response activities” that benefit a party liable for certain costs under Section 20126 of the Natural Resources and Environmental Protection Act (NREPA), for particular violations of NREPA. The bill would create an exception to that prohibition, as described above. (Under NREPA, a response activity is an evaluation, interim response activity, remedial action, demolition, 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 by the State.)

MCL 125.2665

HOUSE COMMITTEE ACTION:

The House Local Government and Urban Policy Committee adopted one amendment to the Senate-passed version of the bill. That amendment makes two changes: (1) first, it specifies that school operating taxes could be captured from eligible property for response activities *associated with a landfill* regulated under the Natural Resources and Environmental Protection Act; and (2) second, it specifies that the capture would apply for taxes levied *after 2004*.

BACKGROUND INFORMATION:

The U.S. Environmental Protection Agency has identified 67 national priority list sites located in Michigan, including four other dumps and one manufacturing site in Oakland County. For a complete list and map of the sites, visit the website of the Department of Environmental Quality at <http://www.deq.state.mi.us/spad/> and the website the Environmental Protection Agency at <http://www.epa.gov/superfund/sites/npl/mi.htm>

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would minimally increase School Aid Fund expenditures and minimally increase local unit

revenues, both by an unknown amount. The bill is not expected to affect a large number of municipalities or affect a significant portion of revenue related to school operating taxes.

The agency notes that this estimate is preliminary and will be revised as new information becomes available. (10-10-03)

The House Fiscal Agency notes that as written, the bill should not have any significant impact on state or local revenues. (10-20-03)

ARGUMENTS:

For:

The legislation will help the Milford community and others in similar circumstances to develop a landfill clean-up plan, and then capture school operating tax revenue from the contaminated site in order to pay-off the bonds that city officials would sell, to raise clean-up funds. Milford residents have a toxic landfill in their community that has been closed since 1978, and the village and township budgets do not have the money to clean up the site. In order to raise money for a cleanup fund, the officials in the Village of Milford have proposed the creation of a Brownfield Redevelopment Authority, and, together with the Department of Environmental Quality, a cleanup plan to remove or seal the contamination at the DEQ-regulated site. This legislation would allow the community to respond to a clear and present health and safety risk, since toxins have been found at high levels in the aquifer that lies under the former landfill, and trace amounts of some toxins have been found in the water supply on nine homes near the site.

Against:

The legislation exposes the State School Aid Fund to the risk of reduced revenue, and the reduction would be of a magnitude that cannot be known. Further, the risk of reduced revenue comes at a time when the state’s budget is in dire straits and there is an inadequate amount of money in the School Aid Fund to appropriate to local school districts.

Response:

The legislation was amended in the House Committee to limit the exposure of the State School Aid Fund during these precarious budget times. To protect the fund during the coming year, the amendment specifies that a municipality could not capture school operating funds from a contaminated landfill site until after 2004.

Against:

The legislation is too narrowly drafted, now that it contains the House amendments. In contrast, the Senate-passed version of the bill would have allowed a municipality to create a Brownfield Redevelopment Authority, capture school operating revenues, and then use the earmarked revenue to payoff bonds that officials would issue for many kinds of environmental response activities, not just landfill cleanups. In particular, two cleanups in the City of Detroit of two sites that served as transportation work yards would have been eligible under the original bill. This legislation should be amended so other kinds of cleanup projects can be undertaken.

POSITIONS:

The Department of Treasury supports the bill as amended. (10-28-03)

The Michigan Townships Association supports the bill. (10-28-03)

The Village of Milford supports the bill. (10-28-03)

Milford Township supports the bill. (10-28-03)

The Michigan Municipal League supports the bill. (10-28-03)

The Grand Valley Metro Council supports the bill. (10-28-03)

The Michigan Association of Counties supports the bill. (10-28-03)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.