Legislative Analysis

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BROWNFIELD TIFA REVISIONS & EXTENSION

House Bill 4711 as enrolled
Public Act 201 of 2007
Sponsor: Rep. Bill Huizenga

House Bill 4712 as enrolled
Public Act 202 of 2007
Sponsor: Rep. Ed Clemente

House Committee: New Economy and Quality of Life
Senate Committee: Economic Development and Regulatory Reform

Second Analysis (7-11-08)

BRIEF SUMMARY: The bills would revise the Brownfield Redevelopment Financing Act in numerous ways, including to extend until 2013 (from 2008) the capture of school operating taxes for eligible activities under work plans approved by the DEQ and/or MEGA; allow an authority to use school operating taxes without DEQ approval of a plan if the funds are used for certain purposes; revise the DEQ work plan approval process; alter the notice requirement for local brownfield plan hearings; and raise the limits (depending on the number of active projects) on the amount of increment revenue an authority may use for certain purposes. The bill would also delete references to remedial action plans (leaving only references to work plans).

FISCAL IMPACT: Because it is not known to what degree the tax increment financing will be used, it is not possible to determine a fiscal impact. The revenue reductions would occur primarily at the local level, although to the extent that state and local school operating taxes are captured, there would be an impact on the School Aid Fund.

THE APPARENT PROBLEM:

Many communities contain abandoned industrial and commercial facilities that, while once vital in an earlier local economy, now sit idle and unused. These facilities are often contaminated and an eyesore, and since they are no longer profit-making enterprises, they contribute little to the taxable value of the community. To encourage redevelopment of such sites, local units of government sometimes partner with the Michigan Economic Development Corporation and the Department of Environmental Quality to offer land developers incentives, such as reduced property taxes, if they agree to redevelop a site.

For example, the state's Brownfield Redevelopment Program provides funding and tax incentives for the cleanup and redevelopment of contaminated, blighted, and functionally obsolete properties with the aim of making them economically viable. As part of the program, the Brownfield Redevelopment Financing Act allows brownfield authorities created by local units of government to use tax increment financing to pay for certain

"eligible activities" on eligible property. These "eligible activities" include such efforts as baseline environmental assessments, due care activities, and additional response activities. Further, in certain "core communities," captured incremental tax revenues can also be used for demolition, infrastructure improvements, site preparation, and lead and asbestos abatement. See Background Information.

One recently approved site serves as an example. In May 2007, the Michigan Economic Development Corporation announced that Ashley Grand Rapids LLC will use a state brownfield tax credit of $5,425,368 to redevelop a 206.4-acre industrial property formerly owned by Steelcase, and located at 36th and 44th streets and Eastern Avenue. The project, to be undertaken in 12 phrases, requires demolition of three obsolete factories, redevelopment of 15 industrial and support structures, plus construction of a mixed-use retail, R&D, and light industrial complex. The development is advertised as leading to the creation of nearly 3,600 jobs.

The Department of Environmental Quality notes that efforts to assess the precise location, type, and amount of contamination on a site are sometimes scant and too hasty. As the site is being prepared for a new use, the vestige of the contaminants that remain must be contained or removed, in order to protect the health and welfare of citizens, as well as the quality of the soils and water.

To encourage that greater care be taken to determine the presence of contaminants, legislation has been introduced that would strengthen local brownfield authorities, extending their ability to capture TIF revenues until January 1, 2012; allow non-core communities to participate in the program; streamline the state's review process for brownfield plans; and provide incentives to site developers that would enable them to be reimbursed if they undertook more thorough and complete environmental assessments.

THE CONTENT OF THE BILLS:

The bills would revise the Brownfield Redevelopment Financing Act, among other things, to do the following:

- Set the duration on a Brownfield Plan, during which tax increments are captured, at no longer than 35 years.
- Extend until 2013 (from 2008) the capture of school operating taxes for eligible activities under work plans approved by the DEQ and/or MEGA.
- Allow an authority to use school operating taxes without DEQ approval of a plan, if the funds are used for certain purposes.
- Revise the DEQ work plan approval process.
- Alter the notice requirement for brownfield plans.
- Raise the limits (dependent upon the number of active projects) on the amount of increment revenue an authority may use for certain purposes.
- Delete references to remedial action plans, leaving only references to work plans.

The bills were tie-barred to each other so that neither could go into effect unless both were enacted. The bills also were tie-barred to Senate Bills 534 and 539, which also amended the Brownfield Redevelopment Program.

Senate Bill 534 (Public Act 204 of 2007) would amend the Brownfield Redevelopment Financing Act (MCL 125.2652) to revise the definitions of "eligible activities," "eligible property," and "blighted."

Under the bill, "eligible activities" would include reasonable costs of developing and preparing brownfield plans and work plans, as well as reasonable costs of environmental insurance. The bill also would include certain demolition activities; lead or asbestos abatement; certain activities at a former mill located along a river that is a Federal Superfund site; and certain activities at a redevelopment site north of the 45th Parallel where at least $250 million of new capital investment was made. The bill would revise the definition of "eligible property" to encompass property on which eligible activity could occur under the bill's expanded definition of "eligible activities," including property that was used for public purposes, as well as the purposes currently authorized under the act (commercial, industrial, or residential). "Blighted" refers to property that meets certain criteria indicating its non-use. The bill would include property that has substantial subsurface demolition debris buried on site so that the property is unfit for its intended use.

Senate Bill 539 (Public Act 203 of 2007) would amend the Brownfield Redevelopment Financing Act (MCL 125.2666) to require the Auditor General to conduct and report a performance post-audit on the effectiveness, efficiency, and economy of the brownfield redevelopment program, at least every three years beginning not later than June 30, 2008.

Copies of the performance post-audits would have to be provided to the governor, the secretary of the Senate, the clerk of the House, and the chairpersons of the Senate and House standing committees on commerce and economic development.

In addition, the act requires the State Tax Commission to collect the financial reports submitted annually by each brownfield development authority, compile and analyze the information in them, and submit annually a report based on that information to various standing committees of the Legislature. The bill would require the reports from the authorities to include the amount of tax increment revenue attributable to taxes levied for school operating purposes used for certain activities. The bill also would require the State Tax Commission to submit its annual report to the Senate committee responsible for economic development and the House committees responsible for commerce and economic development, in addition to the committees that currently must be given the report.

A more detailed explanation of each House bill follows.

House Bill 4711

House Bill 4711 would amend the Brownfield Redevelopment Financing Act (MCL 125.2665 and 125.2666) in several ways.

School Tax Capture. Currently, school operating taxes can only be captured if the eligible activities to be conducted are consistent with a work plan or remedial action plan approved by the DEQ before January 1, 2008. Under the bill, this provision would be extended to January 1, 2013, and the bill would remove the reference to the "remedial action plan'" specifying instead only that eligible activities be consistent with a "work plan." The bill would specify, however, that an authority could use taxes levied for school operating purposes captured from eligible property *without* the approval of a work plan by the DEQ for the reasonable costs of one or more of the following:

- Site investigation activities required to conduct a baseline environmental assessment and to evaluate compliance with the Natural Resources and Environmental Protection Act.
- Completing a baseline environmental assessment report.
- Preparing a plan for compliance with the Natural Resources and Environmental Protection Act.

Work Plan Approval Process. The bill would revise the way in which the Department of Environmental Quality reviews a local work plan. Currently, the DEQ can respond to a work plan with unconditional approval, conditional approval, or a finding that a plan lacks sufficient information and a request for additional information.

Under the bill, the department must deny activities if the property is not eligible or if the work plan contemplates a prohibited use of school operating taxes. Other denial options also are described. The bill specifies that the department must accompany a denial with a letter that specifically states the reason. If a portion or all of a plan is denied, the authority may, however, resubmit the plan.

The bill also specifies the conditions under which the department may approve a work plan. The department must meet the following conditions:

- Determine whether some or all of the activities constitute due care activities or additional response activities other than activities exempt from the work plan approval process.

- Determine whether the due care activities or additional response activities, (other than exempt activities) are protective of the public health, safety, and welfare and the environment. The department could approve additional response activities that are *more protective* of the public health, safety, and welfare and the environment than required by the Natural Resources and Environmental Protection Act, if those activities provide public health or environmental benefit. With regard to these kinds of activities, the department's considerations may include, but are not limited to, all of the following: (1) proposed new land use and reliability of restrictions to prevent exposure to contamination; (2) cost of implementation activities minimally necessary to achieve due care compliance, the incremental cost of all additional response activities relative to the cost of all response activities, and the total cost of all

response activities; and (3) long-term obligations associated with leaving contamination in place and the value of reducing or eliminating these obligations.

- After making the above determinations, then determine whether the estimated costs for the activities as a whole are reasonable for the stated purpose.

Currently under the law, if the department fails to provide a written response within 60 days after receipt of a request for approval of a work plan, the authority may proceed with the activities as outlined. House Bill 4711 would retain this provision. Further, the bill specifies that the department must review, within 45 days after receiving additional information requested from an authority, any additional information and provide one of the three responses described above (unconditional approval, conditional approval, or a finding that a plan lacks sufficient information and a request for additional information). If the department did not respond within 45 days, the activity would be considered to be approved.

Further, currently under the law, the Department of Environmental Quality may reject the portion of a work plan or remedial action 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 all or portions of the plans. Further, the department's approval or rejection of a work plan or remedial action plan is final when a plan's eligible activities captured school operating taxes. House Bill 4711 would eliminate these provisions. Instead, the bill specifies that the department's approval or rejection of a work plan would constitute final agency action in regard to the use of taxes levied for school operating purposes, but would *not* restrict an authority's use of tax increment revenues attributable to local taxes, to pay for eligible activities under a brownfield plan. The bill specifies that if a person were aggrieved by the final decision, then that person could appeal under the Revised Judicature Act.

The bill specifies that the department's approval of a work plan does not imply an entitlement to reimbursement of the costs of the eligible activities if the work plan is not implemented as approved. Also, the applicant and the department can, by mutual agreement and in writing, extend the time period for any review described in this section of the law.

Currently under the law, the DEQ and MEGA must submit a report each year on or before March 1 to each member of the legislature. Under the law, that report must include a compilation and summary of all the information submitted in brownfield work plans and remedial action plans for each eligible property, as well as the amount of revenue the State of Michigan would have received if taxes levied for school operating purposes had not been captured for the previous calendar year. House Bill 4711 would retain these requirements, but modify the second to specify "the amount of tax increment revenues approved by the department in the immediately preceding calendar year, including taxes levied for school operating purposes, to conduct eligible activities."

Currently under the law, each local brownfield authority must annually submit a financial report to its governing body, and the State Tax Commission, on the status of the authority's activities. Under the law, that 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 of interest in, each eligible property, and all information that the governing body or the state tax commission considers necessary. House Bill 4711 would not alter any of these provisions.

House Bill 4712

House Bill 4712 would amend the Brownfield Redevelopment Financing Act (MCL 125.2663) in several ways.

Plan Duration. The bill specifies that the duration of a brownfield plan could not exceed 35 years, and requires that each plan amendment contain the duration of capture of tax increment revenues. Under the bill, the beginning date of the capture of tax increment revenues could be amended by the authority, but not to a date later than five years after the date of the resolution adopting the plan. The bill prohibits the authority from amending the date if the authority had begun to reimburse eligible activities from the capture of tax increment revenue. The authority could not amend the date for the beginning of capture if the amendment would lead to the duration of the tax capture being longer than 30 years. If the date is amended, and the plan includes the capture of tax increment revenues for school operating purposes, then the authority would be required to notify the department and the Michigan Economic Growth Authority within 30 days of the approval of the amendment.

Public Hearing Notice. It would change the public hearing notice requirement for brownfield plans. Currently, before approving a brownfield plan for an eligible property, the governing body must hold a hearing on the plan. (The governing body is the elected body having legislative powers of a municipality that creates a Brownfield Redevelopment Authority.) Notice of the time and place of that hearing must be published twice in a local newspaper, appearing at least 20 days, and not more than 40 days, before the hearing date. Under House Bill 4712, notice of the hearing would have to be published twice in a local newspaper, and appear at least 10 days, and not more than 40 days, before the hearing date. Further, the bill specifies that a governing body could delegate the public hearing process to the authority, or to a subcommittee of the governing body, subject to final approval by the governing body.

Notice to DEQ. Currently under the law, not less than 20 days before the hearing on the brownfield plan, the local governing body must provide notice of the hearing to the taxing jurisdictions that levy taxes that would be subject to capture. House Bill 4712 would require that such notice be given not less than 10 days before the hearing. The bill also would require that not less than 10 days before the hearing on the brownfield plan,

the local governing body also provide notice to the Department of Environmental Quality and the Michigan Economic Growth Authority, if the brownfield plan involved the use of taxes levied for school operating purposes to pay for eligible activities that required the approval of a work plan by the department and the authority.

Limits on Expenditures. Currently, the law limits how certain local tax increment revenues can be spent. The law also specifies instances in which those limitations on costs and expenses do *not* apply. Under the law, a local authority may spend up to $75,000 in each fiscal year for reasonable administrative and operating expenses; baseline environmental assessments, due care activities, and additional response activities; and costs of preparing and reviewing work plans or remedial action plans. The bill would add to the permitted uses: for tax increment revenues attributable to local taxes, the reasonable costs of site investigations, baseline environmental assessments, and due care activities that are incurred by a person *other than the brownfield authority* and that are related directly to work conducted on eligible property or prospective eligible properties prior to approval of the brownfield plan. However, those costs and the eligible property would have to be included in a brownfied plan approved by the authority.

The bill also would eliminate the flat $75,000 cap for those listed expenses, and specify instead, that in each fiscal year of the authority, the following amounts could be used for those purposes:

- $100,000 for authorities having five or fewer active projects. (An "active project" is one where an authority is already capturing taxes.)

- $125,000 for authorities having at least six but fewer than 11 active projects.

- $150,000 for authorities having at least 11 but fewer than 16 active projects.

- $175,000 for authorities having at least 16 but fewer than 21 active projects.

- $200,000 for authorities having at least 21 but fewer than 26 active projects.

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

School Tax Capture. The bill would extend to 2013 (from 2008) the ability of an authority to capture school operating taxes for activities under a MEGA-approved work plan. If a brownfield plan captured school taxes, that revenue could be used to relocate public buildings; for economic development operations; or to acquire property by a land bank fast track authority, if the property were for economic development purposes.

Currently, the law specifies that certain limitations on expenditures noted in the act would not apply to certain costs and expenses. House Bill 4712 adds that among those exempt costs and expenses would be the reasonable costs of site investigations, baseline environmental assessments, and due care activities incurred by a person *other than the authority* as described earlier.

Current law also allows an authority to reimburse advances made by a municipality, a land bank fast track authority, or another person or entity for costs of eligible activities with any source of revenue. House Bill 4712 further specifies that if an authority reimbursed a person or entity costs *and interest*, the authority could capture local taxes for the payment of that interest. Likewise, if an authority reimbursed for an advance for the cost of baseline environmental assessment, due care, and additional response activities *with interest*, and had included that in its work plan approved by the department, then the authority could capture taxes levied for school operating purposes and local taxes for the payment of that interest. The bill would also allow the reimbursement of costs and *interest* for other eligible activities, if the Michigan Economic Growth Authority granted an approval for the capture of taxes levied for school operating purposes to pay such interest.

BACKGROUND INFORMATION:

Currently, 103 qualified local governmental units, or 'core communities' participate in the Brownfield Redevelopment Program, including six townships. A list of all of the communities having local brownfield authorities can be found on the Department of Environmental Quality website at http://www.michigan.gov/deq After arriving at the site, select "Land" from the menu on the left. Then click on "Land Redevelopment" for an introduction and thorough explanation of the Brownfield Redevelopment Program.

ARGUMENTS:

For:

Supporters of Michigan's Brownfield Redevelopment Program say the program has been a success since enactment of the Brownfield Redevelopment Financing Act—Public Act 381 of 1996. Using a combination of grants and tax credits, local brownfield authorities have expanded or redeveloped abandoned, idled, or underused industrial and commercial facilities throughout Michigan. In doing so, they have often been required to establish a method to finance environmental response activities at contaminated properties. The bills in this package, recommended by a workgroup established by the Department of Environmental Quality in 2006, will allow the program to continue and to grow stronger. For example, the bills streamline the approval process for local Brownfield Plans, as they are reviewed by the Department of Environmental Quality. Further, they allow a local Brownfield Authority to use school tax capture for some purposes without the approval of the Michigan Economic Growth Authority. Unless House Bill 4711 is enacted into law to extend school tax capture for five years, the ability to capture school taxes would come to an end soon.

Response:

The Brownfield Redevelopment Program requires school tax capture in order to work effectively. Consequently, the five-year sunset (to January 1, 2013) should be removed entirely.

Against:

According to committee testimony, some local Brownfield Authorities have misused their funds and tax credits, applying them to projects that fall outside the definition of "eligible property," and directing them to vacant lots having no contamination. For example, a former mayor of Traverse City, together with a current Grand Traverse county commissioner, testified that their local brownfield authority has voted to allow tax capture, or TIF financing, for a lease/purchase agreement that would put 216 public parking spaces in downtown Traverse City—a project already declined by the city commission. (A similar project was overwhelmingly defeated at the polls in August 2006 when 71 percent of voters said "no" to issuing bonds for a 530-space parking deck in the downtown.) Those who caution against the expansion of the Brownfield Redevelopment Program note that the members of local brownfield authorities are appointed, not elected. Consequently, they are not directly accountable to the citizens of their communities for their actions.

Response:

In most communities, the bylaws that establish local Brownfield Authorities stipulate that the authorities' decisions are advisory, and as such are forwarded to their locally elected governing boards (city councils or commissions, township boards of trustees) for final approval.

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■ 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.