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BILL ANALYSIS

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Senate Bill 492 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Tom George, M.D.
Committee: Economic Development and Regulatory Reform

Date Completed: 4-29-10

RATIONALE

The Brownfield Redevelopment Financing Act allows municipalities (cities, villages, townships, and counties) to establish brownfield redevelopment zones and brownfield redevelopment zone authorities, which may implement brownfield plans for the redevelopment of commercial or industrial property. The Act specifies financing sources for authority activities, including the capture of tax increment revenue (that is, revenue from the incremental increase in property values within a zone). The revenue may be used to pay the costs of eligible activities on eligible property within a zone. While Michigan's brownfield redevelopment law has been recognized as a model for other states, some people believe that the inability to use brownfield tax increment revenue to acquire property is a significant weakness. Because private developers may be unwilling to take the risk of acquiring former industrial sites that are highly contaminated or have severe title defects, or both, it has been estimated that hundreds of brownfield sites in Michigan might never be redeveloped. It has been suggested that brownfield authorities should be authorized to acquire property with tax increment revenue so they can begin cleanup activities before the property is transferred to private interests for redevelopment.

CONTENT

The bill would amend the Brownfield Redevelopment Financing Act to include in "eligible activities" assistance to a qualified local governmental unit or a brownfield authority in clearing or quieting title to, or conveying property owned or under the control of a

qualified local unit or authority, and the acquisition of property by a qualified local unit or authority for economic development purposes. The bill also would prohibit the use of tax increment revenue captured from school operating taxes for those eligible activities.

For eligible activities on eligible property that was or is used for commercial, industrial, or residential purposes that is in a qualified local governmental unit, that is owned or under the control of a land bank fast track authority, or that is located in an economic opportunity zone, and is a facility, functionally obsolete, or blighted, the term "eligible activities" includes the following:

- Infrastructure improvements that directly benefit eligible property.
- Demolition of structures that is not response activity under Section 20101 of the Natural Resources and Environmental Protection Act (NREPA).
- Lead or asbestos abatement.
- Site preparation that is not response activity under Section 20101 of NREPA.
- Assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a land bank fast track authority or the acquisition of property by the authority for economic development purposes.

The bill would add to that list assistance to a qualified local governmental unit or brownfield authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a qualified local governmental unit or brownfield authority or the acquisition of

property by a qualified local governmental unit or brownfield authority if the acquisition were for economic development purposes. Tax increment revenue captured from taxes levied for school operating purposes could not be used for those eligible activities.

Under the Act, if a brownfield plan includes the capture of taxes levied for school operating purposes, the Michigan Economic Growth Authority must approve a work plan before January 1, 2013, to use those taxes and there must be a development agreement or reimbursement agreement between the municipality or authority and an owner or developer of eligible property, if the taxes levied for school operating purposes will be used for certain activities. Under the bill, those activities would include acquisition of property by a qualified local governmental unit or authority for economic development purposes.

("Qualified local governmental unit" means that term as defined under the Obsolete Property Rehabilitation Act.)

MCL 125.2652 & 125.2663

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan's pioneering brownfield redevelopment law has served as a model for other states in encouraging the cleanup and redevelopment of contaminated urban areas over the development of pristine green spaces. This effort helps to preserve undeveloped property for agriculture, wilderness, and recreational use. Brownfield redevelopment also benefits urban centers by returning contaminated, blighted, and obsolete property to productive use and providing for the generation of tax revenue. Under the Brownfield Redevelopment Financing Act, authorities can use their revenue, including tax increment revenue, for such purposes as infrastructure improvements, demolition, and lead or asbestos abatement. One shortcoming of Michigan's brownfield redevelopment program, however, is that it does not authorize qualified local units or brownfield authorities to acquire property in order to begin cleanup activities before the property

is transferred to a private-sector developer. Often, developers are unwilling to take the risk of obtaining parcels that are highly contaminated or have complicated title defects. Consequently, there are hundreds of former industrial sites in Michigan that may never be redeveloped and returned to the tax rolls, despite the benefits of the State's brownfield redevelopment program.

By allowing tax increment revenue to be used to assist a qualified local unit or brownfield authority to clear or quiet title to property, to sell or otherwise convey property, or to acquire property for economic development purposes, the bill would give local officials an additional tool to facilitate the redevelopment of unused industrial parcels that have been contaminated and/or have problems with their title histories.

Opposing Argument

The bill may be unnecessary and could conflict with the activities of land bank fast track authorities. The Brownfield Redevelopment Financing Act already includes in its definition of "eligible activities" assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a land bank or the acquisition of property by the land bank for economic development purposes. Therefore, brownfield authorities can work with land banks to clear title and sell property for redevelopment.

Response: Officials from Kalamazoo, Lansing, and East Lansing testified before the Senate Economic Development and Regulatory Reform Committee that their brownfield authorities work well with land bank authorities and would continue to do so under the bill. This legislation would grant brownfield authorities powers similar to those currently available to land bank fast track authorities, but land banks focus largely on the redevelopment of residential property while brownfield authorities typically deal with the redevelopment of industrial and commercial property.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would reduce State School Aid Fund and local unit revenue by an unknown amount, depending upon the specific

characteristics of the projects affected by the bill. By expanding the definition of "eligible activities", the bill would increase the amount of taxes subject to capture. The broadened definition also could increase the duration of any revenue capture.

As of January 2010, there were 281 brownfield redevelopment authorities. The Department of Treasury estimated that approximately \$310.0 million in State and local property tax revenue would be captured under the law during FY 2009-10 by all authorities using tax increment capture (downtown development authorities, local development finance authorities, tax increment finance authorities, and brownfield redevelopment authorities). The portion of that amount attributable to brownfield projects is unknown. A 2006 report from the Department of Environmental Quality estimated approximately \$2.6 million in captured State Education Tax revenue and \$6.6 million in captured local school operating property tax revenue, up from \$2.1 million and \$5.2 million, respectively, in 2005.

Fiscal Analyst: David Zin

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