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BILL ANALYSIS

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Senate Bill 908 through 913 (as introduced 4-21-16)
Sponsor: Senator Wayne Schmidt (S.B. 908 & 909)
Senator Margaret O'Brien (S.B. 910)
Senator Ken Horn (S.B. 911)
Senator David Knezek (S.B. 912)
Senator Tom Casperson (S.B. 913)
Committee: Commerce

Date Completed: 5-10-16

CONTENT

Senate Bill 908 would amend the Brownfield Redevelopment Financing Act to do the following:

-- Require additional local tax and school operating tax increment revenue captured under a brownfield plan to be deposited into a local brownfield revolving fund only under certain conditions.
-- Require the Michigan Strategic Fund (MSF) to approve or deny a grant or loan to fund eligible activities on eligible property within 60 days.
-- Modify the Act's provisions pertaining to the contents of a brownfield plan, and the recovery and use of money from tax increment financing.
-- Provide a procedure for abolishing or terminating a brownfield plan or plan amendment, and allow termination in two years, instead of five years.
-- Prohibit the Department of Environmental Quality (DEQ) from conditioning a work plan approval on modifications pertaining to activities funded by certain tax increment revenue.
-- Allow the MSF chairperson to approve plans that addressed eligible activities totaling $1.0 million, rather than $500,000.

The bill also would repeal Sections 21 and 22 of the Act, which prohibit an authority from capturing tax increment revenue from taxes levied before December 31, 1996, and specify an effective date for the Act, respectively.

Senate Bill 909 would amend Part 195 (Environmental Protection Bond Implementation) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

-- Require the DEQ, for grant projects approved for funding from the Environmental Protection Bond Fund on or after the bill's effective date, to apply the same application requirements provided for a grant or loan from the Clean Michigan Initiative Bond Fund.
-- Require grant or loan recipients to comply with the requirements applicable to recipients of a grant or loan from the Clean Michigan Initiative Bond Fund.
-- Prohibit the Department from implementing or enforcing administrative rules related to a grant or loan authorized or approved on or after the bill's effective date.

Senate Bill 910 would amend Part 196 (Clean Michigan Initiative Implementation) of NREPA to do the following:

- **Require money deposited into the Clean Michigan Initiative Bond Fund to be used for eligible activities at facilities and Part 213 (Leaking Underground Storage Tanks) property.**
- **Require the Department of Environmental Quality to create a clean Michigan initiative grant and revolving loan program.**
- **Specify the requirements and conditions for making a grant or loan under the program.**

Senate Bill 911 would amend Part 195 of NREPA to do the following:

- **Require money deposited into the Environmental Protection Bond Fund to be used to clean up sites identified under Part 213.**
- **Require the DEQ, after the bill's effective date, to apply criteria used for projects funded under the Clean Michigan Initiative Bond Fund for grant projects funded under the Environmental Protection Bond Fund.**

Senate Bill 912 would amend Part 196 of NREPA to do the following:

- **Specify the application requirements for grants and loans funded through the Clean Michigan Initiative Bond Fund.**
- **Prescribe the criteria to be used for review of grant and loan applications.**
- **Prescribe the provisions to be included in a grant or loan agreement between the Department and the recipient.**

Senate Bill 913 would amend Part 201 (Environmental Remediation) of NREPA to eliminate certain language and require loan funds from the revitalization revolving loan program to be issued for the purposes and using the criteria provided in Part 196.

Senate Bills 909 through 913 are tie-barred to each other and Senate Bill 908. Each of the bills would take effect 90 days after its enactment. Senate Bills 908 through 912 are discussed in further detail below.

Senate Bill 908

Definitions

The bill would amend the definition of "eligible activities" or "eligible activity" as described below.

For all eligible property, eligible activities would include all of the following: a) Department specific activities; b) relocation of public buildings or operations for economic development purposes; c) reasonable costs of environmental insurance; d) reasonable costs incurred to develop and prepare brownfield plans, combined brownfield plans, or work plans for the eligible property, including legal and consulting fees that are not in the ordinary course of acquiring and developing real estate; e) reasonable costs of brownfield plan and work plan implementation, including tracking and reporting of data and plan compliance and the reasonable costs incurred to estimate and determine actual costs incurred, whether those costs are incurred by a municipality, authority, or private developer; f) demolition of structures that is not a response activity; g) lead, asbestos, or mold abatement; and h) the repayment of principal of and interest on any obligation issued by an authority to pay the costs of eligible activities attributable to an eligible property.

For eligible property located in a qualified local unit of government, or an economic opportunity zone, or that is a former mill, "eligible activities" would include: a) the activities described above, b) infrastructure improvements that directly benefit eligible property, and c) site preparation that is not a response activity.

For eligible property that is owned or under the control of a land bank fast track authority or a qualified local unit of government or authority, eligible activities would include: a) the eligible activities described above; b) 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 land bank fast track authority if the acquisition is for economic development purposes; and c) assistance to a qualified local governmental unit or 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 authority or the acquisition of property by a qualified local governmental unit or authority if the acquisition is for economic development purposes.

"Department specific activities" would mean baseline environmental assessments, due care activities, response activities, and other environmentally related actions that are eligible activities and are identified as part of a brownfield plan that are in addition to the minimum due care activities required by Part 201, including: a) response activities that are more protective of the public health, safety, and welfare and the environment than required by specified sections of NREPA; b) removal and closure of underground storage tanks under Part 211 (Underground Storage Tanks) or 213; c) disposal of solid waste, as defined in Part 115 (Solid Waste Management), from the eligible property, provided it was not generated or accumulated by the authority or developer; d) dust control related to construction activities; e) removal and disposal of lake or river sediments exceeding Part 201 criteria from, at, or related to an economic development project where the upland property is a facility or would become a facility as a result of the deposition of dredged spoils; f) industrial cleaning; g) sheeting and shoring necessary for removal of materials exceeding Part 201 criteria at projects requiring a permit under Part 301 (Inland Lakes and Streams), 303 (Wetlands Protection), or 325 (Great Lakes Submerged Lands) of NREPA; and h) lead or asbestos abatement when lead or asbestos pose an imminent and significant threat to human health.

Local Brownfield Redevelopment Fund

The Brownfield Redevelopment Financing Act allows a brownfield redevelopment authority to establish a local site remediation revolving fund. The fund must consist of money available from capturing additional tax increment revenue, and may consist of money appropriated or otherwise made available from public or private sources. Where the Act refers to a local site remediation revolving fund, the bill would refer to a local brownfield revolving fund. The fund would have to consist of money appropriated or otherwise made available from public or private sources, or additional local tax and school operating tax increment revenue captured under an approved brownfield plan from an eligible property in excess of the amount authorized for eligible expenses under Section 13(4) and 13b(4) only when all of the following conditions were met:

-- The excess capture occurred during the time of capture for the purpose of paying the costs permitted under Section 13(4).
-- The excess capture occurred for not more than five years after the time that capture was required for the purpose of paying permitted costs.
-- The excess capture could not exceed the total of the cost of eligible activities approved in the brownfield plan.

When the excess capture occurred after the time that capture was required to pay the costs permitted by statute, it would remain subject to the three-mill capture specified in Section 13b(12). The tax increment revenue from eligible property for deposit in the local brownfield

revolving fund could include tax increment revenue attributable to taxes levied for school operating purposes in an amount not greater than the tax increment revenue levied for school operating purposes capture from eligible property under Section 13(4).

(Section 13(4) requires the use of tax increment revenue related to a brownfield plan only for specified eligible activities attributable to the eligible property. Proposed Section 13b(4) specifies conditions that would apply if a brownfield plan included the use of taxes levied for school operating taxes for eligible activities that were not Department-specific activities. Section 13b(12) would allow a brownfield authority to capture taxes for the payment of interest, under certain conditions.)

State Brownfield Redevelopment Fund

The Act establishes the State Brownfield Redevelopment Fund as a revolving fund within the Department of Treasury. Money in the Fund may be used to fund a grant and loan program created and operated by the Michigan Strategic Fund for the costs of eligible activities on eligible property. A person may apply to the MSF for approval of a grant or loan to fund eligible activities on eligible property, which the MSF must approve or deny within 90 days. Under the bill, the MSF would have to approve or deny the application within 60 days.

Currently, any proceeds from repayment of a loan, including interest, must be paid into the State Brownfield Redevelopment Fund. Under the bill, proceeds and interest would have to be paid either to the State Brownfield Redevelopment Fund, or the fund from which the loan was generated.

Brownfield Plan

The board of a brownfield redevelopment authority may implement a brownfield plan. Each plan or an amendment to a plan must be approved by the governing body of the municipality, and must include the information required by the Act, including an estimate of the impact of tax increment financing on the tax revenue of all taxing jurisdictions in which the eligible property is located. The bill would require an estimate of the future tax revenue of all taxing jurisdictions in which the eligible property was located to be generated during the term of the plan.

When taxes levied for school operating purposes are subject to capture, the percentage of all 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 Public Act 197 of 1975 (the downtown development authority Act), Tax Increment Finance Authority Act, or the Local Development Financing Act, must not be greater than the combination of plans' percentage capture and use of all local taxes levied for purposes other than the payment of principal of and interest on obligations approved by the electors or obligations pledging the unlimited taxing power of the local unit of government. The bill would remove the references to tax increment finance plans under other acts.

Except as otherwise provided, tax increment revenue related to a brownfield plan must be used only for eligible activities attributable to the eligible property and the reasonable costs of preparing a brownfield plan, combined brownfield plan, or a work plan for the eligible property. Under the bill, tax increment revenue related to a brownfield plan would have to be used only for one or more of the following: a) costs of eligible activities attributable to the eligible property that produced the tax increment revenue, or b) eligible activities attributable to any eligible property for property that was owned by or under the control of a land bank fast track authority or a qualified local unit of government.

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 permitted to be funded with tax increment revenue under the Act. Under the bill, this would apply, except that a brownfield plan could authorize the capture of additional local and school operating tax increment revenue from eligible property if one or both of the following applied:

-- During the time of capture for the purpose of paying costs of eligible activities attributable to the eligible property.
-- For not more than five years after the date specified for payment to the local brownfield revolving fund.

Recovery of Funds

Under the Brownfield Redevelopment Financing Act, costs of a response activity paid with tax increment revenue that is captured may be recovered from a party that is responsible for causing a release. The State or an authority may undertake cost recovery for tax increment revenue captured. Before an authority may institute a cost recovery action, it must provide 120 days' notice. Under the bill, 60 days' notice would be required.

Prohibited & Permitted Use of Funds

Under the bill, tax increment revenue captured from taxes levied by the State under the State Education Tax Act, or taxes levied by a local school district could not be used to assist a land bank authority with clearing or quieting title, acquiring, selling, or conveying property, except as described below.

If a brownfield plan included the use of taxes levied for school operating purposes captured from eligible property for eligible activities that were not Department-specific activities, then one or more of the following provisions would apply.

A combined brownfield plan or a work plan would have to be approved by the MSF and a development or reimbursement agreement between the municipality or authority and an owner or developer of eligible property would be required before such tax increment could be used for infrastructure improvements that directly benefited eligible property, demolition of structures that was not response activity, site preparation that was not response activity, relocation of public buildings or operations for economic development purposes, or acquisition of property by a land bank fast track authority if the acquisition were for economic development purposes.

Approval of a combined brownfield plan or a work plan by the MSF would be required to use the tax increment revenue to assist a land bank authority or qualified local governmental unit with clearing or quieting title, acquiring, selling, or conveying property. The combined brownfield plan or work plan would have to be in a form prescribed by the MSF. The eligible activities to be conducted and described would have to be consistent with the combined brownfield plan or work plan submitted by the authority to the MSF. The Department's approval would be required for the capture of taxes levied for school operating purposes for eligible activities.

If a brownfield plan included the use of taxes levied for school operating purposes captured from eligible property for Department-specific activities, a combined brownfield plan or a work plan would have to be approved by the Department.

An authority could not do any of the following:

-- Use taxes captured from eligible property to pay for eligible activities conducted before approval of the brownfield plan.

-- Use taxes captured from eligible property to pay for the authority's or municipality's administrative and operating activities, with some exceptions.
-- Use taxes levied for school operating purposes captured from eligible property unless the eligible activities to be conducted on the property were eligible Department-specific activities, consistent with a combined brownfield plan or a work plan approved by the Department after July 24, 1996.

An authority could use local taxes captured from eligible property to pay for one or more of the following administrative and operating expenses: a) reasonable and actual administrative and operating expenses of the authority; b) Department-specific activities conducted by or on behalf of the authority related directly to work conducted on prospective eligible property prior to approval of the brownfield plan; or c) reasonable costs of developing and preparing brownfield plans, combined plans, or work plans for which tax increment revenue could be used, including legal and consulting fees that were not in the ordinary course of acquiring and developing real estate.

An authority could use taxes levied for school operating purposes for one or both of the following administrative and operating expenses: a) reasonable costs of developing and preparing brownfield plans, combined plans, or work plans for which tax increment revenue could be used, including legal and consulting fees that were not in the ordinary course of acquiring and developing real estate, not to exceed $30,000; or b) reasonable costs of brownfield plan or work plan implementation, including, tracking and reporting of data and plan compliance, not to exceed $30,000. The amount of tax increment revenue attributable to local taxes that an authority could use would remain the same as currently specified under the Act.

In each fiscal year of an authority, the amount of tax increment revenue attributable to local taxes that the authority could use for the bill's purposes would be determined as currently described by the Act.

The bill's limitations on the use of taxes levied for school operating purposes would not apply to the costs of one or more of the following incurred by a person other than an authority:

-- Site investigations activities required to conduct a baseline environmental assessment and to evaluate compliance with Sections 20107a and 21304c of NREPA.
-- Completing a baseline environmental assessment.
-- Preparing a plan for compliance with Sections 20107a and 21304c of NREPA.
-- Performing predemolition and building hazardous material surveys.
-- Asbestos, mold, and lead surveys and abatement.

(Section 20107a specifies the duties of a property owner or operator with respect to hazardous substances at the property he or she knows is a "facility". Section 21304c specifies responsibilities of an owner or operator of property that he or she knows is contaminated.)

The bill's limitations on use of taxes levied for school operating purposes would be the same as those currently in the Act.

The bill would allow a brownfield authority to reimburse various advances and capture taxes for the payment of interest, on a basis similar to what is currently allowed.

Notwithstanding anything to the contrary in the Brownfield Redevelopment Financing Act, for a brownfield plan that includes the capture of taxes levied for school operating purposes from each eligible property included in a plan after January 1, 2013, the authority must pay an amount equal to three mills of the tax levied under the State Education Tax Act to the Department of Treasury each year. Under the bill, those payments would have to continue until the expiration of the earlier of the following: a) 25 years of capture of tax increment

revenue from such eligible property; or b) the later of the date of repayment of all eligible expenses relative to the eligible property or the date excess capture was terminated.

The duration of capture under a brownfield plan must not exceed the earlier of the period authorized under the Brownfield Redevelopment Financing Act, or 30 days from the beginning date of the capture. Under the bill, the beginning date of capture would have to be the earlier of the year following the date development work was completed at the eligible property, or five years following the date of the resolution including the property in the brownfield plan, as is currently the case.

Termination of a Brownfield Plan

A brownfield plan or plan amendment may be abolished or terminated by the governing body upon finding that the purpose for which the plan was established was accomplished.

The governing body also may terminate a brownfield plan or plan amendment for eligible property for which eligible activities identified in the brownfield plan or plan amendment failed to occur with respect to the eligible property for at least five years following the date of the resolution approving the plan or plan amendment. Under the bill, termination would be allowed if the project failed to occur for at least two years following the date of the resolution, provided the governing body first gave 30 days' written notice to the developer at its last known address by certified mail or other method that documented proof of delivery attempted, and gave the developers an opportunity to be heard at a public meeting.

Approval of Work Plan

To seek Department approval of a work plan, a brownfield redevelopment authority must submit information for each eligible property, including a copy of the brownfield plan, current ownership information, current and historical use information, and a summary of the proposed redevelopment. Upon receiving the request for approval of a work plan, or a portion of a work plan that pertains only to baseline environmental assessment activities, due care activities, or both, the Department must review the work plan and issue a response. The bill would refer to Department-specific activities instead of baseline environmental assessment.

The Department may issue a conditional approval that delineates specific modifications to the plan to meet the Act's requirements. Under the bill, the Department could not condition its approval on deletions from or modifications of the work plan relating to activities to be funded solely by tax increment revenue not attributable to taxes levied for school operating purposes.

MSF Review of Work Plan

To seek MSF approval of a work plan, a brownfield redevelopment authority must submit information for each eligible property similar to what is required for Department approval. In its review, the MSF must consider a variety of criteria, including the cost gap that exists between a site and a similar greenfield site. The bill would eliminate that criterion.

If the MSF fails to provide a written response to a request for approval within 65 days of receiving the request, the eligible activities may be considered approved, and the authority may proceed with eligible activities as outlined by the work plan. Under the bill, the MSF would have to respond within 60 days.

If a brownfield plan includes the capture of taxes levied for school operating purposes, the chairperson of the MSF may approve combined brownfield plans and work plans that address eligible activities totaling $500,000 or less. Under the bill, the chairperson could approve combined brownfield plans and work plans that addressed eligible activities totaling $1.0 million, or less, without a meeting of the Fund board.

Senate Bill 909

Part 195 of NREPA specifies that the Department may not make a grant or a loan under Section 19508(1)(a) or (b) unless all of the following conditions are met:

-- The applicant demonstrates that the proposed project is in compliance with or will result in compliance with all applicable State laws and rules.
-- The applicant demonstrates to the Department the capability to carry out the proposed project.
-- The applicant provides the Department with evidence that a licensed professional engineer has approved the plans and specifications for the project, if appropriate.
-- The applicant demonstrates to the Department that there is an identifiable source of funds for the future maintenance and operation of the proposed project.

(Section 19508(1)(a) requires money deposited into the Environmental Protection Bond Fund to be used to clean up sites of toxic and other environmental contamination for sites identified through Part 201, (as well as provide grants to eligible communities to investigate whether property within that community is an environmental contamination site. Senate Bill 911 proposes to amend this section. Section 19508(1)(b) prescribes the use of money in Fund that is allocated for solid waste projects.)

A recipient of a grant or a loan must keep an accounting of the money spent on the project or facility in a generally accepted manner, and must obtain authorization from the Department before implementing a change that significantly alters the proposed project or facility. The Department may revoke a grant or loan made by it, or withhold payment, if the recipient fails to comply with the terms and conditions of the loan or grant. The Department may recover a grant if the project for which the grant made never operates, and may withhold a grant or loan until the Department determined that the recipient was able to proceed with the project or facility. To assure timely completion of the project, the Department may withhold 10% of the grant or loan amount until completion.

Under the bill, notwithstanding any other provision, for grant projects approved for funding under Section 19508(1)(a) on or after the bill's effective date, the above conditions or requirements would not apply and the Department would have to apply the same application requirements provided for a grant or loan in Section 19609, and grant or loan recipients would have to comply with the requirements of Section 19612. (Senate Bill 912 would amend Sections 19609 and 19612.)

The Department is permitted to promulgate rules as necessary or required to implement Part 195. The bill specifies that, for grant projects funded under Section 19508(1)(a), the Department could not implement or enforce R 299.5051 to R 299.5061 related to any grant or loan authorized or approved on or after the bill's effective date.

Senate Bill 910

Clean Michigan Initiative Bond Fund

Part 196 specifies the total proceeds of all bonds required to be deposited into the Clean Michigan Initiative Bond Fund, and requires that a maximum of $335.0 million be used for response activities at facilities. Under the bill, the money would have to be used for eligible activities at facilities and Part 213 properties.

"Eligible activities" for projects with funding allocated under Section 19608(1)(a)(iv) would mean:

-- Baseline environmental assessment activities.

-- Investigations.
-- Due care activities.
-- Response activities, including response activities that are more protective of the public health, safety, and welfare and the environment than required by Section 20107a or 21304c.
-- Removal and closure of underground storage tanks under Parts 211 (Underground Storage Tanks) and 213 (Leaking Underground Storage Tanks).
-- Dust control related to construction activities.
-- Industrial cleaning.
-- Sheeting and shoring necessary for removal of material exceeding Part 201 cleanup criteria at projects requiring a permit under Part 301 (Inland Lakes and Streams), Part 303 (Wetlands Protection), or Part 325 (Great Lakes Submerged Lands).
-- The following activities, provided that the total cost of these activities does not exceed the total cost of project-related activities identified above: a) disposal of solid waste from the eligible property, provided it was not generated or accumulated by the authority or the developer; b) lead, asbestos, or mold abatement, and demolition of structures that are not a response activity; or c) removal and disposal of lake or river sediments exceeding Part 201 unrestricted criteria.

"Part 213 property" means property as defined in Section 21303: real estate that is contaminated by a release from an underground storage tank system.

Under Section 19608(1)(a)(iv) the money to be used for eligible activities and Part 213 property must be used to fund, among other things, $75.0 million to provide grants and loans to local units of government and brownfield redevelopment authorities created under the Brownfield Redevelopment Financing Act for response activities at known or suspected facilities with redevelopment potential. The bill would require the $75.0 million to be used to provide grants and loans to local units of government for eligible activities at eligible properties with redevelopment potential. Grants or loans could not be made to a local unit of government that was responsible for causing a release or threat of release under Part 201 or 213, except as otherwise provided.

The Department must publish and disseminate the criteria it will use in evaluating and recommending projects for funding before submitting the first cycle of recommended projects. Under the bill, the Department would have to post the criteria on its website.

"Eligible property" for projects with funding allocated under Section 19608(1)(a)(iv) would mean property that is known or suspected to be a facility under Part 201 or a site or property under Part 213 and that was used or is currently being used for commercial, industrial, public, or residential purposes.

Of the money allocated under Section 19607(1)(a), $93.0 million must be used for facilities that pose an imminent or substantial endangerment to the public health, safety, or welfare, or to the environment. The bill also would refer to Part 213 properties that meet the same standard.

Money in the Fund may not be used to develop a municipal or commercial marina. The bill would eliminate that language.

<u>Clean Michigan Initiative Grant and Revolving Loan Program</u>

Section 19608a requires the Department to create a Clean Michigan Initiative Grant Revolving Loan Program for the purpose of making loans to local units of government and brownfield redevelopment authorities.

Under the bill, the Department would have to create the Clean Michigan Initiative Grant and Revolving Loan Program to make grants and loans to local governments under Section 19608(1)(a)(iv) for eligible activities at eligible properties with redevelopment potential. The bill would eliminate the remainder of the current 19608a language, and specifies that grants provided under the Clean Michigan Initiative Grant and Revolving Loan Program that were used solely to determine whether property was a site or a facility, and if so, to characterize the nature and extent of the contamination by means of an assessment or investigation, would have to be issued only if both of the following conditions were met: a) the characterization of the nature and extent of contamination included an estimate of response activity costs in relation to the value of the property in an uncontaminated state and identified future potential limitations on the use of the property based on current environmental conditions; and b) the property had demonstrable economic development potential.

The Department could not make a grant or loan under the program unless all of the following conditions were met: a) the applicant demonstrated that the proposed project was in, or would result in, compliance with all applicable State laws and rules; b) the applicant demonstrated to the Department the capability to carry out the proposed project; c) the applicant demonstrated to the Department that there was an identifiable source of funds for the future maintenance and operation of the activities funded with money from the Fund, if appropriate; d) within the last 24 months, the applicant had successfully undergone an audit conducted in accordance with generally accepted auditing standards or an emergency manager had been appointed for the applicant under the Local Financial Stability and Choice Act; and e) within the last 24 months, the Department had not revoked or terminated a grant to the applicant and the administering State department had not determined that the applicant demonstrated an inability to manage a grant.

Eligibility for Grant or Loan

With respect to grants and loans under Section 19608(1)(a)(vi), all of the following conditions would apply: An applicant would have to be a local unit of government. A recipient would not be eligible to receive, except as otherwise provided, more than one grant per year and one loan per year. The loan or grant could not exceed $1.0 million. Brownfield projects that had significant economic and environmental benefit could be considered for more than one grant or loan over consecutive years, provided that the loan or grant agreement included project-specific benchmarks for eligible activities and failure to satisfy a benchmark would terminate the project's eligibility for additional grant or loan funding, as applicable. A local unit of government could be considered for and awarded more than one grant or loan in a single year relating to multiple unrelated brownfield projects if the projects were determined to have significant environmental or economic benefits to the recipient's municipality or region.

Except for a grant used solely to determine whether property was a site or a facility, the Department could award a grant only if it determined that the property was an eligible property, and the proposed development of the property was expected to result in measurable economic benefit in excess of the grant amount requested by the applicant. The Department could award a loan only if it determined that the property was known or suspected to be an eligible property and the property had economic development potential based on the applicant's planned use of the property.

("Measurable economic benefit" would mean the permanent jobs that are created or retained, the capital invested, or the increased tax base to the applicable county, city, village, and township where the project is located.)

The Department could approve funding for response activities that were more protective of the public health, safety, and welfare and the environment than required if those activities provided public health or environmental benefits. In its review of a work plan that included those activities, the Department could consider all of the following: a) proposed new land use

and reliability of restrictions to prevent exposure to contamination; b) the cost of implementation activities minimally necessary to satisfy due care requirements, the incremental cost of response activities relative to the cost of activities minimally necessary to satisfy due care requirements, and the total cost of all response activities; c) long-term obligations associated with leaving contamination in place and the value of reducing or eliminating those obligations.

A grant or loan could not be used to fund response activities that benefitted a party that was responsible for an activity causing a release at the eligible property, except that a loan could be used to fund appropriate response activities related to redevelopment and due care activities necessary to facilitate redevelopment of the property if the responsible party met all of the following: a) was a local unit of government, b) had a proposed redevelopment for the property with measurable economic benefit, and c) provided a minimum of 50% local matching funds for the project.

A grant or loan could be used to fund due care activities necessary to facilitate redevelopment if the party responsible for an activity causing a release was not the developer of proposed redevelopment.

A loan could be used to fund response activities if a party responsible for an activity causing a release were neither the seller nor the developer of the property to receive funding, and the recipient could show that response activities were appropriate in relation to the redevelopment.

Senate Bill 911

Under Part 195 of the Natural Resources and Environmental Protection Act, $435.0 million of the money deposited into the Environmental Protection Bond Fund must be used to clean up sites of toxic and environmental contamination. Of that money, $35.0 million must be used to clean up environmental contamination sites that have been identified under Public Act 307 of 1982 (the former Environmental Response Act) or Part 201 that will not be funded until the next fiscal year and have been approved by the Department as having a measurable economic effect. The bill would include sites identified under Part 213. Identified sites also would have to meet either of the following: a) until the bill's effective date, would not be funded in the next fiscal year and had been approved by the Department as having a measurable economic benefit; or b) beginning on the bill's effective date, for projects meeting the criteria of Section 19608 to 19615 (for the Clean Michigan Initiative Bond Fund).

Under Section 19509, the Department of Environmental Quality must promulgate rules necessary to implement grant and loan programs provided in Part 195, and must assure maximum participation by local units of government and private entities by promulgating rules that provide for a grant or loan program, where appropriate. Prior to making a grant or loan, the Department must consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the State. The Department also must require in rules that loans issued to private entities include an interest charge of not less than 5% per year. Under the bill, notwithstanding any other provision of the section, for grant projects considered for funding on or after the bill's effective date, the above provisions would not apply and the Department would have to apply the criteria used for projects under Section 19611 (the extent to which a grant or loan contributes to the achievement of a balanced distributon of grants and loans throughout the State).

An application for a grant or loan authorized under Part 195 must be made on a form prescribed by the Department. The Department may require the applicant to provide any information reasonably necessary to allow it to make a determination. Beginning on the bill's effective date, an application for a grant or loan under Section 19508(1)(a) would be subject to the same requirements listed in Section 19610 for a loan under Section 19608(1)(a)(iv).

(Section 19508(1)(a) requires money in the Environmental Protection Bond Fund that is allocated to clean up sites of toxic and environmental contamination identified through Part 201 (or, under the bill, Part 213) to be spent and recovered by the State in the same manner as provided in that part. Section 19610 lists conditions that must be met before a grant or loan from the Clean Michigan Initiative Bond Fund may be made.)

Senate Bill 912

Grant or Loan Application Requirements

Part 196 of the Natural Resources and Environmental Protection Act requires an application for a grant or a loan from the Clean Michigan Initiative Bond Fund to be made on a form or in a format prescribed by the administering State department. The administering State department may require the applicant to provide any information reasonably necessary to allow it to make a determination required under Part 196.

Under the bill, of the money to be used to provide grants and loans under Section 19608(1)(a)(iv), the following would apply: a) the Department of Environmental Quality would have to accept, and consider for approval, applications for grants and loans throughout the year; and b) the Department would have to make final application decisions within 90 days after it received a complete grant or loan application.

A complete application would have to include all of the following:

-- A description of the proposed eligible activities and the reasons they should be funded.
-- An itemized budget for the proposed eligible activities.
-- A schedule for the completion of the proposed eligible activities.
-- The location of the property.
-- The current ownership and ownership history of the property.
-- The relevant history of the use of the property
-- The current use of the property.
-- The existing and proposed future zoning of the property.
-- If the property were not owned by the applicant, a draft of the enforceable agreement between the property owner and the applicant that committed the property owner to cooperate with the applicant, including a commitment to allow access to the property to complete, at a minimum, the proposed eligible activities.
-- A description of the property's economic redevelopment potential.
-- For loans, a resolution from the governing body of the applicant committing to repayment of the loan.
-- A letter from the chief executive officer or highest-ranking appointed official indicating that the local unit of government supported the brownfield project and that the brownfield project complied with all local zoning and planning ordinances.
-- Any other relevant information the Department required.

Application Review

The bill would eliminate language prohibiting the administering State department from making a grant or loan unless certain conditions are met. Upon receipt of a grant or loan application, for funding provided under Section 19608(1)(a)(iv), the Department would have to review the application based on the following considerations: a) whether the brownfield project proposed to be funded was authorized by Part 196; b) whether the brownfield project was consistent with the local planning and zoning for the area in which the project was located; c) whether the brownfield project provided measurable environmental benefit; d) whether the brownfield project provided measurable economic benefit or would contribute significantly to the local unit of government's economic and community redevelopment or the revitalization of adjacent neighborhoods; e) the viability of the redevelopment plan; f) the level of public

and private commitment and other resources available for the project; g) how the brownfield project related to a broader economic and community development plan for the local unit of government as a whole; and h) other criteria that the Department considered relevant.

The Department would have to issue grants from the Fund for brownfield projects that it determined met requirements of Part 196 and would contribute to the revitalization of underused property.

Grant or Loan Agreement Requirements

For funds to be used to provide grants and loans under Section 19608(1)(a)(iv), all of the following apply:

To receive grant or loan funds, approved applicants would have to enter into a grant or loan agreement with the Department. At a minimum, the agreement would have to contain reporting requirements, including at least the following: a) the grant or loan recipient would have to submit progress status reports to the Department during implementation of the brownfield project that included documentation of project costs and expenditures, at a frequency determined by the Department; and b) the grant or loan recipient would have to provide a final report upon completion of the grant- or loan-funded activities within a time frame determined by the Department.

When entering into a loan agreement, the recipient would have to provide financial assurance of repayment of the loan including pledges or revenue sharing, escrow account, letter of credit, or other acceptable mechanism negotiated with the Department. Use of real property as a means to secure a loan would not be considered an acceptable mechanism. The Department would be authorized to include in the loan agreement a provision that permitted the release of the financial assurance in favor of a pledge of the right of first refusal of the tax increment revenue to the Department if the brownfield project had been substantially completed and the annual tax increment captured relative to the brownfield project were equal to or greater than 125% of the annual loan reimbursement payment.

The grant or loan agreement also would have to contain at least all of the following:

-- The approved eligible activities to be undertaken with grant or loan funds.
-- An implementation schedule for the approved eligible activities.
-- If the property were not owned by the grant or loan recipient, an executed agreement that met the requirements for an enforceable agreement between the property owner and the applicant.
-- Other provisions as considered appropriate by the Department.

All eligible activities would have to be consistent with an approved grant or loan work plan. Unless otherwise approved by the Director of the Department, only activities carried out and costs incurred after execution of a grant or loan agreement would be eligible. Grant funds would have to be disbursed on a reimbursement basis upon receiving appropriate documentation. Loan funds would have to be disbursed in draws based on an approved work plan, and supporting documentation would have to be submitted after expenses were incurred. In either case, the Department would have to prescribe documentation requirements.

Balancing Distribution, Other Requirements

Before making a grant or loan with money from the Fund, the administering State department must consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the State. In determining whether a grant or a loan was appropriate under Section 19608(1)(a)(iv), the

Department would have to consider whether the project was likely to be undertaken without State assistance, the availability of State funds from other sources, the degree of private sector participation in the type of project under consideration, and other factors considered important by the Department.

A loan made with money in the Fund must be made on the terms specified by the Act. Loan recipients must repay loans in equal annual installments of principal and interest beginning not later than five years after execution of a loan agreement and concluding not later than 15 years after execution of a loan agreement. Where the Act refers to "execution of a loan agreement", the bill would refer to "first draw of the loan".

The bill would eliminate language relating to State payments upon default of a loan.

MCL 125.2652 et al. (S.B. 908) Legislative Analyst: Jeff Mann
324.19511-324.19513 (S.B. 909)
324.19601 et al. (S.B. 910)
324.19508-324.19510 (S.B. 911)
324.19609-324.19612 (S.B. 912)
324.20108b (S.B. 913)

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on the Department of Environmental Quality and on local units of government. Generally speaking, the bills would broaden the types sites of eligible for tax increment financing (TIF) for redevelopment as a brownfield to include sites under Part 213 of NREPA (Leaking Underground Storage Tanks), as well as make other changes. Additionally, the bills would expand the types of sites eligible for brownfield grants and loans and provide clarity as to what activities those grants and loans may be used for. The Clean Michigan Initiative (CMI) bonds authorized by voters in 1998 have provided financing for brownfield grants and loans. According to the DEQ, about $3.5 million in CMI loans and $5.0 million in CMI grants remain uncommitted. Also available for redevelopment projects is $1.0 million in the Revitalization Revolving Loan Fund and $125,000 in site reclamation grants. These amounts themselves would not be affected by the bills; rather, the scope of projects eligible for funding through those amounts would be expanded.

It does not appear that the changes in the bills would fundamentally change the nature of work that the DEQ does at a particular brownfield site, but it is possible that with the expansion of the types of sites that would be eligible for a brownfield TIF, the DEQ's workload, and hence its costs, could increase somewhat. According to the DEQ, however, any increases would not be significant to the Department from an operational standpoint.

Fiscal Analyst: Josh Sefton