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BILL ANALYSIS

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Senate Bills 1061-1065 (as introduced 9-7-16)
Sponsor: Senator Ken Horn (S.B. 1061)
Senator Jack Brandenburg (S.B. 1062)
Senator Jim Stamas (S.B. 1063)
Senator Peter MacGregor (S.B. 1064)
Senator Steven Bieda (S.B. 1065)
Committee: Economic Development and International Investment

Date Completed: 9-8-16

CONTENT

Senate Bill 1061 would amend the Brownfield Redevelopment Financing Act to do the following:

-- Allow the board of a brownfield redevelopment authority to implement a transformational brownfield development plan with the approval of the Michigan Strategic Fund (MSF) and the governing body of the municipal that created the authority.
-- Require a transformational brownfield plan to be for mixed use development and be expected to generate a specified level of capital investment, based on the population of the municipality.
-- Allow a transformational brownfield plan to authorize the use of sales and use tax capture revenue, income tax capture revenue, and tax increment revenue for eligible activities described in the bill.
-- Allow a plan to consist of a single development on eligible property or a series of developments on eligible property that were part of a related program of investment, whether or not located on contiguous parcels, and allow the plan to be amended to apply to additional parcels of eligible property.
-- Allow the brownfield authority and the MSF to reimburse advances made by a municipality, a land bank fast track authority, or any other person or entity for costs of eligible activities included within a transformational brownfield plan using sales and use tax capture revenue or income tax capture revenue attributable to that plan.
-- Allow eligible activities conducted on eligible property before approval of the transformational brownfield plan to be reimbursed from sales and use tax capture revenue and income tax capture revenue under certain circumstances.
-- Provide for income tax exemptions under the Michigan Renaissance Zone Act to cease if a transformational brownfield development plan overlapped with a renaissance zone, upon the request of the owner or developer, the local government unit, the MSF, and a city, if reimbursement requirements were met.
-- Prescribe requirements governing the determination of whether to approve a plan including financial analyses by the MSF.
-- Allow a municipality to approve not more than one transformational brownfield plan and allow the MSF to approve not more than five transformational brownfield plans in a calendar year, except under certain circumstances.

- **-- Require the State Treasurer to deposit annually from the General Fund into the State Brownfield Redevelopment Fund an amount equal to the sales and use tax capture revenue and income tax capture revenue due to be transmitted under all transformational brownfield plans to each applicable authority.**

<u>Senate Bill 1062</u> would amend the Income Tax Act to provide that, from collected income tax revenue, an amount equal to the income tax capture revenue attributable to transformational brownfield plans adopted under the Brownfield Redevelopment Financing Act would have to be deposited each State fiscal year into the State Brownfield Redevelopment Fund.

<u>Senate Bill 1063</u> would amend the General Sales Tax Act to require an amount equal to the sales tax portion of the sales and use tax capture revenue attributable to transformational brownfield plans adopted under the Brownfield Redevelopment Financing Act to be deposited each State fiscal year into the State Brownfield Redevelopment Fund.

<u>Senate Bill 1064</u> would amend the Use Tax Act to provide that, from the money received and collected under the Act for the State share, an amount equal to the use tax portion of the sales and use tax capture revenue attributable to transformational brownfield plans adopted under the Brownfield Redevelopment Financing Act would have to be deposited each State fiscal year into the State Brownfield Redevelopment Fund.

<u>Senate Bill 1065</u> would amend the Michigan Renaissance Zone Act to state that, where a portion of a renaissance zone was included within a transformational brownfield plan under the Brownfield Redevelopment Financing Act, upon the request of the property owner and the local government unit, and the approval of the Michigan Strategic Fund and the city levying an income tax within the zone, exemptions from the Income Tax Act and the City Income Tax Act would not apply within that portion of the renaissance zone.

Senate Bills 1062, 1063, and 1064 are tie-barred to Senate Bill 1061.

<u>Senate Bill 1061</u> is described in further detail below.

The Brownfield Redevelopment Financing Act authorizes municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans and create brownfield redevelopment zones to capture tax revenue attributable to increases in property value within the area or district, and use that money for specific "eligible activities" on "eligible properties" outlined under the Act. The Act also creates the State Brownfield Redevelopment Fund as a revolving Fund within the Department of Treasury.

The bill would permit the board of an authority to implement a transformational brownfield plan, subject to the approval of the governing body and Michigan Strategic Fund. The bill would define "transformational brownfield plan" as a brownfield plan that met the requirements of the bill and was adopted according to the Act and, as designated by resolution of the governing body and approved by the Michigan Strategic Fund (MSF), would have a transformational impact on local economic development and community revitalization based on the extent of brownfield redevelopment and growth in population, commercial activity, and employment that would result from the plan.

To be designated a transformational brownfield plan, a plan would have to be for mixed-used development and be expected to result in the following levels of capital investment in a municipality that is not a county, based on its population:

-- A population of at least 600,000, $500.0 million.
-- A population of at least 150,000 and not more than 599,000, $100.0 million.
-- A population of at least 100,000 and not more than 149,999, $75.0 million.
-- A population of at least 50,000 and not more than 99,999, $50.0 million.
-- A county and that had a population of 50,000 or less, $25.0 million.

("Mixed use" would mean a single development or related series of developments under affiliated ownership that combine residential and retail or commercial elements.)

A transformational brownfield plan could consist of a single development on eligible property or a series of developments on eligible property that were part of a related program of investment, whether or not located on contiguous parcels, and could be amended to apply to additional parcels of eligible property. Each amendment to a transformational brownfield plan would have to be approved by the governing body of the municipality where it was located and the Michigan Strategic Fund.

A transformational brownfield plan could authorize the use of sales and use tax capture revenue, income tax capture revenue, and tax increment revenue for eligible activities described under the bill: any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefited eligible property.

("Eligible property" means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes, including personal property located on the property, to the extent included in the brownfield plan, and meets one or more of the conditions listed in the Act. The bill would include among those conditions undeveloped property that was eligible property in a previously approved brownfield plan abolished as provided in the Act.)

Except as provided for eligible activities conducted before approval of a plan, sales and use tax capture revenue and income tax capture revenue could be used only for the costs of eligible activities included within the transformational brownfield plan to which the revenue was attributable, including the cost of principal of and interest on any obligation to pay the cost of the eligible activities.

A transformational brownfield plan would be a brownfield plan and, except as otherwise provided, would be subject to sections of the Act that require a plan to include certain provisions; require a plan to be determined to be a public purpose; and specify prohibited conduct, specify requirements for a work plan, provide for the reimbursement of costs, and provide for combined brownfield plans. In addition to the information required under the Act for any plan or amendment, the bill describes further information that a transformational brownfield plan would have to contain, including the basis for designating the plan as a transformational brownfield plan, a description of the costs of the plan intended to be paid for with sales and use tax capture revenue and income tax capture revenue, and an estimate of the amount of capture revenue expected to be generated for each year of the plan from the eligible property.

A transformational brownfield plan could provide for the use of part or all of the sales and use tax capture revenue and income tax capture revenue. The portion to be used could vary over the duration of the transformational brownfield plan, but the portion intended to be used would have to be clearly stated in the plan.

Approval of a transformational brownfield plan, or an amendment to it, generally would have to comply with the notice, approval, and public hearing requirements of the Act. If a plan authorized the use of sales and use tax capture revenue or income tax capture revenue, approval of a combined brownfield plan or work plan by the Michigan Strategic Fund and a written development or reimbursement agreement would be required between the owner or developer of the eligible property, the authority, and the MSF. If a plan authorized the use of tax increment revenue for eligible activities described in the bill, other than those described in the current Act, approval of a work plan or combined brownfield plan by the MSF to use tax increment revenue for those additional activities would be required.

Upon approval of a transformational brownfield plan by the governing body and Michigan Strategic Fund, and the execution of the written development or reimbursement agreement, the transfer and distribution of sales and use tax capture revenue and income tax capture revenue as specified under the Act and in the plan would be binding on the State.

A transformational brownfield plan could not authorize the capture or use of sales and use tax capture revenue or income tax capture revenue after the year in which the total amount of the revenue captured under the plan was equal to the sum of the costs permitted to be funded with the revenue under the plan.

The brownfield authority and Michigan Strategic Fund could reimburse advances, with or without interest, made by a municipality, a land bank fast track authority, or any other person or entity for costs of eligible activities included within a transformational brownfield plan using sales and use tax capture revenue or income tax capture revenue attributable to that plan. Upon approval of the MSF, the amount of sales and use tax increment revenue and income tax capture revenue authorized to be captured under a transformational brownfield plan could include amounts required for the payment of interest under these provisions. A written development or reimbursement agreement would have to be entered into before any reimbursement or payment using sales and use tax capture revenue or income tax capture revenue could commence.

Eligible activities conducted on eligible property before approval of a transformational brownfield plan could be reimbursed from sales and use tax capture revenue and income tax capture revenue if those costs and the eligible property were subsequently included in a transformational brownfield plan approved by the governing body and Michigan Strategic Fund, a combined work brownfield plan or work plan approved by the MSF, and a written development or reimbursement agreement.

The duration of the capture of sales and use tax capture revenue and income tax capture revenue under a transformational brownfield plan for a particular eligible property could not exceed the lesser of the period authorized upon approval of the plan and the execution of the written development or reimbursement agreement or 30 years from the beginning date of the capture of sales and use tax capture revenue and income tax capture revenue for that eligible property. The beginning date for the capture of sales and use tax capture revenue and income tax capture revenue for an eligible property could not be later than five years following the date the Michigan Strategic Fund approved the inclusion of the eligible property in a plan. The authority could amend the beginning date of capture under certain circumstances.

A series of developments on parcels that were not contiguous would have to be considered a related program of investment if various conditions were met.

Where undeveloped property included in a transformational brownfield plan had been designated as a renaissance zone under the Michigan Renaissance Zone Act, on request of the owner or developer of the eligible property and the local government unit that designated the zone, the Michigan Strategic Fund, and a city levying a tax under the City Income Tax Act could elect under the Michigan Renaissance Zone Act to terminate exemptions, deductions, or credits provided for in that Act pursuant to the Income Tax and the City Income Tax Act, and reimburse the authority, or owner or developer of the eligible property, an annual amount equal to the revenue collected for each tax year as a result of the termination of the exemptions, deductions, or credits that would otherwise have been in effect.

The governing body and the Michigan Strategic Fund would have to determine whether to approve a transformational brownfield plan as required by the bill. The requirements would include an initial determination by the governing body of whether the plan constituted a public purpose; approval of the plan, or approval with modifications, by the governing board based on various considerations; and approval, approval with modifications, or rejection by the MSF. In determining whether to approve the plan, the MSF would have to conduct a financial analysis and determine that there was a financial need for the income tax revenue, sales and use tax capture revenue, and income tax capture revenue in the amounts provided for in the plan. The MSF could modify those amounts based on its determination of whether the plan resulted in an overall benefit for the State. The MSF would have to presume that a plan that proposed to use 25% or less of the income tax capture revenue satisfied the requirements of these provisions with respect to income tax capture revenue. The MSF could not approve a plan that proposed to use more than 50% of the income tax capture revenue unless the revenue was attributable to an election concerning the termination of exemptions, deductions, or credits for renaissance zone property.

A governing body of a municipality could approve one plan in a calendar year. The Michigan Strategic Fund could not approve more than five plans in a calendar year.

Upon approval by the Michigan Strategic Fund, the minimum investment requirements outlined in the bill and the limitation on the number of designations could be waived if the plan met one of the following criteria: 1) it was for eligible property in an area approved by the State Housing Development Authority as eligible for blight elimination program funding under Federal law; or 2) it was for eligible property in a municipality that was subject to a state of emergency under the Michigan Emergency Management Act issued for drinking water contamination. Under these circumstances, the governing body of a municipality could approve not more than one transformational brownfield plan in a calendar year, and the Michigan Strategic Fund could approve not more than five plans in a calendar year.

Amendments to an approved transformational brownfield plan would have to be submitted by the authority to the governing board and the Michigan Strategic Fund for approval or rejection following the same notice necessary for approval or rejection of the original plan.

The Act contains a list of prohibited activities for an authority. The bill would include in this list the use of sales and use tax capture revenue or income tax capture revenue to pay for eligible activities conducted before approval of the transformational brownfield plan except for certain costs outlined in the bill; and the use of sales and use tax capture revenue and income tax capture revenue for any expense other than as provided for in the bill, except for other costs regarding the administration and operation of the authority or municipality specifically associated with the implementation of a plan.

The bill would require the State Treasurer to deposit annually from the General Fund into the State Brownfield Redevelopment Fund an amount equal to the sales and use tax capture revenue and income tax capture revenue due to be transmitted under all transformational brownfield plans. The Michigan Strategic Fund would have to distribute the sales and use tax capture revenue and income tax capture revenue to an authority, or to the owner or developer of the eligible property to which the revenue was attributable, in accordance with requirements of the bill and the terms of the written development or reimbursement agreement for each plan. Amounts transferred into the State Brownfield Redevelopment Fund attributable to a specific transformational brownfield plan would have to be accounted for separately within the Fund and could not be used for any other purpose or activity or for any plan other than the plan to which the revenue was attributable.

The State Treasurer would have to transfer to the State Brownfield Redevelopment Fund each fiscal year an amount equal to the sales and use tax capture revenue and income tax capture revenue under all approved plans. Funds would have to be transmitted to the authority, or owner or developer of the eligible property to which the revenue was attributable, within 30 days of transfer to the Fund.

The authority, the Department of Environmental Quality, and the Michigan Strategic Fund would have to follow the reporting requirements of the Act with respect to all approved transformational brownfield plans, and would have to provide information on the amount and use of sales and use tax capture revenue and income tax capture revenue to the same extent required for tax increment revenue. The owner or developer of active projects included within a transformational brownfield plan would have to provide the information required for the authority, the Department, and the MSF to satisfy the reporting requirements.

MCL 125.2652 et al. (S.B. 1061) Legislative Analyst: Drew Krogulecki
Proposed MCL 206.51e (S.B. 1062)
MCL 205.75 (S.B. 1063)
205.111 (S.B. 1064)
125.2689 (S.B. 1065)

FISCAL IMPACT

The bills would reduce State General Fund revenue by an unknown, but likely significant amount, and would have an unknown impact on local revenue. The amount of the State revenue reduction would depend on the characteristics of the developments, the terms of the transformational brownfield plans, and the number of plans approved. The bills would increase the administrative costs of the Department of Treasury and the Michigan Strategic Fund. These impacts are discussed further below. Local revenue would be affected by the terms of the transformational brownfield plans, including the degree to which a plan reimbursed a local unit for brownfield administrative expense and advances and the possible use of tax increment revenue for additional purposes pursuant to the bill.

Senate Bill 1061

General Fund Impact

The bill would reduce State General Fund revenue by an unknown, but likely significant amount. The amount of the revenue reduction would depend on the characteristics of the developments, the number of approved transformational brownfield plans (TBPs), the terms of a TBP, and the interpretation of the definition of "sales and use tax capture revenues", which would be based on increases in "…sales and use tax revenue collected from within or attributable to transactions within the eligible property…" subject to a TBP. How broadly revenue was considered to be "attributable to" a TBP would be subject to interpretation.

The specific terms of a TBP would be important to any fiscal estimates. Each TBP would have to specify the amount of sales, use, and income taxes to be "used" under the plan, which could include all of the sales and use tax capture and up to 50% of the income tax capture, or more in some cases involving renaissance zones. The TBP also would have to specify the duration of the tax capture and the amount of the tax capture that would be used by the TBP each year. The amounts returned to the authority, owner, or developer could vary by year, but the duration of the payments would be limited to 30 years. The terms of the TBP and the eligible properties would be subject to amendment during the term of the TBP.

The amount of development that would occur under a TBP could vary greatly. Designation of a TBP for a municipality that is not a county would require certain levels of "expected" investment based on population, and the MSF could waive these expected investments in some cases. The bill does not include any penalty or "clawback" of payments to an authority, owner, or developer under a TBP if the expected level of investment did not occur. The bill also does not specify an expected level of investment for a TBP undertaken by a county. A

TBP could allow sales, use, and income tax capture related to developments that had already been undertaken. For development not yet undertaken but made possible by the bill, the State and local government would receive increased revenue after the expiration of the transformational brownfield plan. The TBP also could incorporate tax increment financing with the capture of ad valorem and specific taxes for eligible purposes.

Department of Treasury

The bill would have an indeterminate, but extensive administrative cost for the Department of Treasury. Currently, the Department does not track the geographic origin of sales and use tax revenue. Implementing the sales and use tax capture and payments required by the bill would require the development of the capability to identify the source of sales and use tax revenue by location. This would be an issue for all businesses that collect sales and use taxes in multiple locations and multiple TBPs. The Department would need to develop a method for calculating sales and use tax revenue from each TBP individually. The interpretation of the phrase "attributable to" would affect the development and results of that algorithm. The Department also would have additional administrative responsibilities under the bill, including the deposit of an amount of General Fund revenue equal to the captured tax revenue due to be transmitted under a TBP into the State Brownfield Redevelopment Fund and accounting for those funds by each TBP, brownfield authority, or the owner or the developer within 30 days of deposit of the revenue into the Brownfield Redevelopment Fund. The Department also would have to meet the current reporting requirement. All of these changes would likely involve extensive administrative costs in the form of additional FTEs and information technology (IT) services. The bill would not provide any additional revenue to cover the associated costs.

Department of Talent and Economic Development

The bill would result in additional administrative costs to the Michigan Strategic Fund, within the Department of Talent and Economic Development. These costs would be associated with additional responsibilities under the bill, including the approval, approval with modifications, or rejection of TBP within 90 days of approval by the governing body of the authorizing municipality. The Michigan Strategic Fund also would be responsible for distributing captured revenue to an authority or owner or developer of eligible property. These changes would likely require additional FTEs and some IT services. The bill would not provide any additional revenue to cover the associated administrative costs.

Local Government Impact

While the bill does not include city income tax revenue in the definition of "income tax capture revenue", a city with a city income tax and a TBP would experience an impact on local unit revenue. To the extent that Senate Bills 1061 and 1065 provide for ending renaissance zone exemptions from a city income tax, Senate Bill 1061 also would result in the city's forgoing revenue it would otherwise have received (in the event of ending a renaissance zone exemption from city income tax) by directing that revenue according to the terms of a TBP. Similarly, to the extent the bill would expand the purposes for which revenue may be captured under a tax increment plan, it would reduce local unit revenue by an unknown, and potentially significant amount that would depend on the number of TBPs and their specific characteristics.

A brownfield authority or municipality with an approved transformational brownfield plan could receive increased revenue, if the terms of the TBP allowed for a portion of the captured sales, use, and income tax revenue to be used for administrative and operating expenses associated with the TBP, including the repayment of the cost of developing the original TBP or the reimbursement of a municipality for advances made for a TBP project.

Senate Bills 1062, 1063, and 1064

The bills would reduce General Fund revenue by an unknown and potentially significant amount. Factors that would affect the exact amount of any revenue reduction are discussed below.

Under the bills, captured revenues would be deposited into the State Brownfield Redevelopment Fund and distributed to either: 1) a brownfield authority, which could use the revenue to finance public improvements, environmental remediation activities and/or, as a result of Senate Bill 1061, construction, renovation or improvement of buildings owned by an owner or developer; or 2) the owner or developer of an eligible property. Unlike tax credits distributed to a taxpayer to subsidize an activity, which are not subject to appropriation, the bills would apparently authorize direct expenditure payments to an owner or developer of an eligible property without an appropriation. Furthermore, the captured revenue and distributed payments would not be subject to any legislated maximum level other than equaling the sum of all costs permitted to be funded under the bills. Because those costs would not be limited, and could include costs incurred before the approval of a transformational brownfield plan, the bills would effectively impose no limit on the amount of revenue captured. In the case of a transformational brownfield plan located in a non-county municipality with a population of 600,000 or more, over time the captures could exceed $500.0 million.

Senate Bill 1062 would reduce individual income tax revenue to the General Fund by an unknown and potentially significant amount. The exact amount would depend on both the economic activity affected by the bill's provisions and the yet-to-be-determined methodology the Department of Treasury developed to calculate income tax capture revenue, as well as the interpretation of terms left undefined in the bill and in Senate Bill 1061.

While Senate Bill 1061 would define "income tax capture revenues", when the capture amount is specified to be equal to the amount for one tax year, it is unclear whether the language means that a single tax year would be subject to capture, or whether it refers to the full tax year of capture for each tax year. The definition also is unclear as to whether the income tax revenue under the calculation would be income tax liability before or after credits, particularly the Homestead Property Tax Credit. Assuming that a full tax year was captured each year, given that the individual income tax liability after credits for tax year 2013 averaged $1,500, the bill would reduce General Fund revenue by $1,500 for each resident domiciled within eligible property. As a result, if 10,000 additional returns were from domiciles within eligible property, the bill would reduce General Fund revenue by $15.0 million. To the extent that incomes of existing residents affected by the bill increased as a result of the transformational brownfield plans, the loss of General Fund revenue would be greater. Similarly, if 30,000 additional returns were affected, the reduction in General Fund revenue under Senate Bill 1062 would total at least $45.0 million.

Senate Bills 1063 and 1064 would reduce sales and use tax revenue to the General Fund by an unknown and potentially significant amount. The exact amount would depend on both the economic activity affected by the bills' provisions and the yet-to-be-determined methodology the Department of Treasury developed to calculate sales and use tax capture revenues, as well as the interpretation of terms left undefined in the bills and in Senate Bill 1061.

While Senate Bill 1061 would define "sales and use tax capture revenues", the bill is unclear whether "sales and use tax revenue attributable to transactions within the eligible property" includes sales and use taxes paid (in addition to those collected) or if it in includes "spinoff" transactions related to the transformational brownfield plan, such as transactions made elsewhere in Michigan (or the United States) by residents domiciled within the eligible property, or sales and use tax revenues generated by employees working for a business located within eligible property when they make purchases at a location not within the eligible property.

Adjusted gross income reported in tax year 2013 averaged $63,550. Assuming 40% of that income is spent on items subject to sales or use taxes, if 10,000 additional families had expenditures subject to capture, the bill would reduce General Fund revenue by $15.3 million. Similarly, if 30,000 additional returns were affected, the reduction in General Fund revenue would total at least $45.9 million.

In addition to the revenue loss attributable to individuals, the bills would apparently capture sales and use taxes paid or collected by businesses within eligible property. If 20% of the "expected" levels of capital investment were subject to sales and use taxes, then the revenue loss just from an initial capital investment could total between $300,000 and $6.0 million. If one eligible property from each eligibility level were created, the total reduction in General Fund revenue from the initial investment would equal $9.0 million. To the extent that a higher percentage of the investment was subject to sale and use taxes, or more eligible properties were created, the reduction in General Fund revenue would be greater.

Senate Bill 1065

The bill would allow the levy of State and city income tax in a renaissance zone that was in part within a TBP with MSF and local approval. Affected taxpayers within the renaissance zone would no longer be exempt from State and city income tax. Instead, they would pay the State and city income tax that would be captured for distribution under the terms of the TBP to the authority, owner, or developer. This income tax revenue would be foregone by the State and city levying a city income tax, which otherwise would receive increased revenue if the exemption under the renaissance zone was terminated.

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