

Legislative Analysis



PROVIDING OVERSIGHT TO BROWNFIELD REDEVELOPMENT AUTHORITIES

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House Bill 4159 (proposed substitute H-2)

Sponsor: Rep. Brandt Iden

1st Committee: Local Government and Municipal Finance

2nd Committee: Ways and Means

Complete to 5-19-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4159 would make various changes to the Brownfield Redevelopment Financing Act to increase oversight of brownfield redevelopment authorities (BRAs). The act allows municipalities to create BRAs to develop and implement *brownfield* projects.

Brownfields are defined by the Environmental Protection Agency as properties, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. It is estimated that there are more than 450,000 brownfields in the United States.¹

Tax increment revenues

The act currently allows BRAs to use tax revenue from a number of sources to fund brownfield projects. One such source is *tax increment revenues*.

Tax increment revenues means the amount of ad valorem property taxes and specific taxes attributable to the application of the levy of all taxing jurisdictions upon the captured taxable value of each parcel of eligible property subject to a brownfield plan and personal property located on that property, regardless of whether those taxes began to be levied after the brownfield plan was adopted.

Tax increment revenues as currently defined by the act specifically excludes ad valorem property taxes or specific taxes captured by a downtown development authority, tax increment finance authority, corridor improvement authority, or local development finance authority as respectively defined under the Downtown Development Authority Act, the Tax Increment Finance Authority Act, the Corridor Authority Improvement Act, and the Local Development Financing Act, if those taxes were captured by these other authorities on the date that eligible property became subject to a brownfield plan under the act. The bill would replace this list of acts with a reference to the Recodified Tax Increment Financing Act, which repealed and replaced those acts.²

¹ <https://www.epa.gov/brownfields/overview-epas-brownfields-program>

² House Fiscal Agency analysis of SB 393/2018 PA 57. <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0393-A6285C88.pdf>

Brownfield revolving funds

The act currently allows BRAs to establish local brownfield revolving funds, with funds collected from the following two sources:

- Funds appropriated or otherwise made available from public or private sources.
- Local tax and school operating tax increment revenue captured in excess of the amount authorized for eligible expenses when certain conditions are met.

For the second source, one of the requirements is that the excess capture of taxes for school operating purposes cannot exceed the total of the cost of eligible department-specific activities approved in the applicable brownfield plan, combined brownfield plan, or work plan. The bill would add to this the requirement that the total excess tax capture could not exceed the total of the cost of eligible activities approved in the brownfield plan.

The act also provides that a local brownfield revolving fund may only be used to pay for the costs of the eligible activities within the municipality. The bill would add that any costs covered by the revolving fund must also meet at least one of the conditions set under section 2(o) of the act, which specifies “eligible activities” as including any one of a list of activities involved in brownfield redevelopment (e.g., the removal of lead, asbestos, or mold).

Limitations on the use of funds

The bill specifies that BRAs cannot utilize any funds obtained from taxes levied for school operating purposes captured from eligible property for activities other than those specifically outlined in the act. In the section of the act outlining exemptions from limitations on the use of local taxes and taxes levied for school operating purposes, the bill states that such tax revenue can be used to cover the reasonable cost of developing and preparing brownfield plans, combined brownfield plans, or work plans, including:

- Legal and consulting fees that are not in the ordinary course of acquiring and developing real estate.
- Tracking and reporting of data and plan compliance.

Date of capture

The act requires brownfield plans to include proposed beginning dates of capture. It also specifies that the beginning date of capture cannot be more than 5 years after the plan’s adoption. The bill would instead allow a beginning date of capture more than 5 years after the plan’s adoption, but would state that the maximum number of years of capture would decrease. In either event, the maximum number of years of capture could be no more than 35 years after the date of adoption. Additionally, the bill would remove a requirement that the BRA notify the Department of Environment, Great Lakes, and Energy (EGLE) and the Michigan Strategic Fund (MSF) within 30 days of any change to the beginning capture date.

School operating expenses

Currently, when a brownfield includes the capture of taxes intended for school operating purposes, the chairperson of the MSF can approve combined brownfield plans and work plans that address eligible activities totaling up to \$1.0 million without convening the fund board. The bill would add reimbursement of taxes levied for school operating expenses to this provision.

Reporting requirements

The act currently requires BRAs to submit annual financial reports on their activities over the prior calendar year to their governing body, EGLE, and the MSF. The bill would require BRAs to add the following content to their reports:

- The total amount of local taxes that are approved for capture and the total amount of taxes levied for school operating purposes that are approved for capture for each parcel included in a brownfield plan.
- The amount and source of tax increment revenues received for each active brownfield plan, including the amount of tax increment revenues captured in the most recent tax year and the cumulative amount of tax increment revenues captured for each brownfield plan.
- A copy of all brownfield plan amendments approved by the local unit of government.

MCL 125.2652 et al.

FISCAL IMPACT:

The bill could reduce revenues for local units of government and increase costs for the School Aid Fund (SAF). In both instances the fiscal impact likely would be modest, but would be contingent on the inclusion and cost of the additional uses in the brownfield plan. The expanded uses of tax increment revenues could result increased property tax capture, which would reduce revenues for local units of government. Because brownfield authorities are authorized to capture the State Education Tax (SET) and local school operating taxes, the expanded use of tax increment financing could increase costs for the SAF.

The limitation on delegated authority for the chairperson of the Michigan Strategic Fund board related to brownfield plans that allow for the capture of taxes for school operating purposes would have an unknown fiscal impact. The delegated authority would only apply to those plans with eligible activities under \$1.0 million that provide for the reimbursement of taxes levied for school operating purposes.

A brownfield authority would realize additional costs associated with enhanced reporting requirements. However, these costs presumably would be offset with the tax increment revenues captured as a result of the newly authorized uses.

BRIEF DISCUSSION:

Reportedly, the three main goals of the bill are to allow the developer to be able to claim costs back for environmental insurance, to allow the capture to be used for “reasonable costs” for preparing brownfield plans, and to set the maximum length of capture at no more than 35 years. According to committee testimony, the bill is intended as a cleanup of certain sections last amended in 2016.³

³ 2016 PA 471 (Senate Bill 908) <http://legislature.mi.gov/doc.aspx?2016-SB-0908>

POSITIONS:

A representative of the Department of Environment, Great Lakes, and Energy (EGLE) testified in support of the bill. (3-4-20)

The following entities indicated support for the bill (3-11-20):

Michigan Townships Association

Michigan Municipal League

Michigan Economic Development Corporation

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