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Senate Bill 671 (as introduced 9-30-21)
Sponsor: Senator Ken Horn
Committee: Economic and Small Business Development

Date Completed: 10-13-21

CONTENT

The bill would amend the Brownfield Redevelopment Financing Act to do the following:

- **Allow the Michigan Strategic Fund (MSF) to waive a requirement that a transformational brownfield plan be for mixed-use development if the plan resulted in certain levels of capital investment depending on the population size of the municipality in which the plan would be located.**
- **Require the State Treasurer to develop guidelines that based the withholding tax capture revenue attributable to an individual for a calendar year on the amount of time the individual was employed on-site versus working remotely.**
- **Delete a requirement that a governing body and the MSF consider whether, based on an economic and fiscal impact analysis, a transformational brownfield plan would result in an overall positive fiscal impact to the State.**
- **Increase, from \$1.5 million to \$10 million, the amount in any year that a transformational brownfield plan proposed to use in withholding tax capture revenue and income tax capture revenue that served as a threshold after which the MSF would have to require a third-party underwriting analysis to determine the plan's reasonableness.**
- **Extend, from December 31, 2022, to December 31, 2027, the sunset after which the MSF could not approve any new transformational brownfield plans.**

Under the Act, "transformational brownfield plan" means a brownfield plan that meets the requirements of a transformational brownfield plan and its approval by a governing body and the MSF as prescribed by the Act and, as designated by resolution of the governing body and approved by the MSF, will 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 will result from the plan. The Act specifies that a transformational brownfield plan, to be designated as such, must be for mixed-use development and must result in certain levels of capital investment depending on the population size of the municipality. Under the bill, to be designated as such, a transformational brownfield plan would have to be for mixed-use development unless waived by the MSF for a brownfield plan that resulted in \$15.0 million of capital investment in a municipality that was not a county and that had a population of less than 25,000.

The Act defines "withholding tax capture revenues" as the amount for each calendar year by which the income tax withheld under Part 3 of the Income Tax Act from individuals employed within the eligible property subject to a transformational brownfield plan exceeds the initial withholding tax value. The Act specifies that the State Treasurer or the MSF must do the

following to calculate withholding tax capture revenues for a calendar year under a transformational brownfield plan:

- The State Treasurer must require the owner or developer of the eligible property to provide the Department of Treasury with notice within 10 days from the date an employer commences or terminates occupancy within the eligible property.
- The State Treasurer would have to develop methods and processes that are necessary for each employer occupying the eligible property to report the amount of withholding under Part 3 of the Income Tax Act from individuals employed within the eligible property.
- The MSF must include certain provisions in the development or reimbursement agreement for any transformational brownfield plan that uses withholding tax capture revenue.

In addition, the State Treasurer, in determining the amount of withholding tax capture revenue, would have to develop guidelines that provided that the amount of withholding tax capture revenue attributable to an individual for the amount of withholding reported as described above would be based on the percentage that the individual was employed on-site versus working from a remote location.

(Part 3 of the Income Tax Act concerns the levy of income tax on certain employers and flow-through entities.)

The Act provides criteria by which the governing body and the MSF must determine whether to approve a transformational brownfield plan. The governing body must make an initial determination as to whether the transformational brownfield plan constitutes a public purpose in accordance with Act. If it does so, the governing body may approve or reject the transformational brownfield plan, or approve it with modification, by resolution based on certain considerations. Among other considerations, the Act requires the governing body to consider whether, based on an economic and fiscal impact analysis, the transformation brownfield plan will result in an overall positive fiscal impact to the State. The bill would delete this consideration.

The Act prohibits the MSF from approving a transformational brownfield plan under the consideration described above unless the MSF determines that the transformational brownfield plan will result in an overall positive fiscal impact to the State. In making that determination, the MSF must consider the potential displacement of tax revenue from other areas of the State and the effects of the transformational brownfield plan on economic development in the surrounding area. The bill would delete this language.

The Act requires the MSF to approve or reject a transformational brownfield plan, or approve it with modification, by resolution based on criteria prescribed by the Act within 90 days of the completion of an administratively complete application and certain analyses, including the analysis to determine that a transformational brownfield plan will result in an overall positive fiscal impact to the State as described above. The bill would delete the requirement that this analysis be completed.

The MSF must require an independent, third-party underwriting analysis to determine whether the amount of captured taxable value and certain revenue estimated to result from adoption of the transformation brownfield plan are reasonable and an independent, third-party fiscal and economic impact analysis for the analysis to determine whether a transformational brownfield plan will result in an overall positive fiscal impact to the State for any plan that proposes to use more than \$1.5 million in any year in withholding tax capture revenue and incomes tax capture revenue, as determined by the first full year of tax capture under the plan. Instead, under the bill, the MSF would have to require an independent, third-party underwriting analysis to determine whether the amount of captured taxable value and certain

revenue estimated to result from adoption of the transformational brownfield plan were reasonable for any plan that proposed to use more than \$10.0 million in any year in withholding tax capture revenue and income tax capture revenue, as determined by the first full year of tax capture under the plan. The bill would require the cost of the independent, third-party underwriting analysis to be paid by the owner or developer of the eligible property. The bill would delete a requirement that the State Treasurer concur that the plan will result in an overall positive fiscal impact to the State in order for the plan to be approved.

The Act prohibits the MSF from approving a transformational brownfield plan that proposes to use more than 50% of the withholding tax capture revenue or 50% of the income tax capture revenue unless the income tax capture revenue are attributable to an election made under Section 13c(13). The MSF may modify the amount of withholding tax capture revenue and income tax capture revenue before approving a transformational brownfield plan in order to bring the transformational brownfield plan into compliance with the requirement that the plan will result in an overall positive fiscal impact to the State, among other requirements necessary for compliance. The bill would delete a reference to the requirement that a plan result in an overall positive fiscal impact.

(Section 13c(13) of the Act allows the MSF, at the request of an owner or developer of eligible property under the Act that has been designated as a renaissance zone under the Michigan Renaissance Zone Act, to terminate the exemptions, deductions, or credits associated with that designation and to reimburse the owner or developer of the eligible property an annual amount equal to the income tax capture revenue that otherwise would have been collected for each tax year without the termination.)

The Act prohibits the MSF from approving more than five transformational brownfield plans in a calendar year, except that if the MSF approves fewer than five plans in a calendar year, the unused approval authority may carry forward into future calendar years and may remain available until December 31, 2022. The MSF must ensure an equitable geographic distribution of plans, which must achieve a balance between the needs of municipalities of differing sizes and differing geographic areas of the State. Subject to receiving qualified transformational brownfield plans that meet the criteria under the Act, the MSF must set a target that at least 35% of the total transformational brownfield plans approved under the Act before December 31, 2022, will be located in cities, villages, and townships with a population of less than 100,000. The MSF may not approve any new transformational brownfield plans after December 31, 2022. The bill would modify, from December 31, 2022, to December 31, 2027, the dates described above.

MCL 125.2652 et al.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have no long-term fiscal impact on the State and an indeterminate fiscal impact for local governments. The bill would not increase the total cap for all awards under the Act, so it would not increase the total fiscal impact of the Act. The bill would make several changes that, overall, likely would make it easier for projects to be approved. That could change the timing of awards, and the projects awarded could be different than the ones that would be approved under current law. Also, by generally making it easier for projects to be approved, the bill would increase the likelihood that the aggregate limit would be reached. By extending the window for awards, the effects of the bill would extend farther into the future.

While the long-term fiscal impact for the State would remain unchanged, the fiscal impact for a local unit could be affected if the bill resulted in the approval of different projects compared to those approved under current law. Local revenue would be affected by the terms of a

transformational brownfield plan, including the degree to which a plan reimburses a local unit for brownfield administrative expenditures and project advances, and the possible use of tax increment revenue for additional purposes under the bill, including construction, restoration, and renovation of buildings.

Fiscal Analyst: Ryan Bergan
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.