

TRANSFORMATIONAL BROWNFIELD PLANS

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Senate Bill 289 (H-4) as passed by the House

Sponsor: Sen. Jeremy Moss

House Committee: Economic Development and Small Business

Senate Committee: Economic and Community Development

Complete to 6-20-23

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

(Enacted as Public Act 89 of 2023)

SUMMARY:

Senate Bill 289 would amend the Brownfield Redevelopment Financing Act to allow a local brownfield redevelopment authority (BRA) to capture revenue from sales and use taxes to pay for eligible activities through the state's transformational brownfield program.¹ The bill would also increase the caps on annual and total allowable reimbursements and amend the population targets under the program.

The Brownfield Redevelopment Financing Act authorizes BRAs to use captured tax revenues to pay for certain activities that benefit or develop eligible brownfield properties. A transformational brownfield plan (TBP) is a brownfield plan created under the act that, among other requirements, must be for a mixed-use development that involves a minimum level of capital investment depending on the population of the municipality.²

TBPs can currently authorize the capture and use of three kinds of income tax revenues, in addition to property tax increments, to finance an array of eligible activities: construction period tax capture revenue, withholding tax capture revenue, and income tax capture revenue. Under Senate Bill 289, *sales and use tax capture revenues* could also be captured under a TBP.³

Sales and use tax capture revenues would mean, for each eligible property subject to a TBP, the amount for each calendar year by which the sales and use taxes collected from persons within the eligible property exceeds the initial sales and use tax value for the tax year in which the property is added to the TBP.⁴

Transformational brownfield plans

A BRA that plans to capture sales or use tax revenues to pay for eligible development activities would have to submit a TBP to the Michigan Strategic Fund (MSF) for approval, and a written development or reimbursement agreement between the BRA, MSF, and the property owner or developer would generally have to be in place before tax increment financing can be used. The TBP would have to include a description of the costs intended to be paid for with those

¹ For an overview of Michigan's transformational brownfield program, see <https://www.miplace.org/4957ea/globalassets/documents/tbp/tbp-guidelines.pdf>.

² For the current investment minimums, see <https://www.miplace.org/49ac00/globalassets/documents/tbp/tbp-fact-sheet.pdf>.

³ Use taxes would include both the local community stabilization share tax and the state share tax under the Use Tax Act.

⁴ For persons with multiple business locations, the applicable amount of sales tax and use tax would only be the sales and use tax collections attributable to businesses that are located within the eligible property.

revenues and the beginning and end dates of capture for each eligible property. If a plan provides for the use of a portion of captured sales or use tax revenues, it would have to specify the portion that would be used over the duration of the plan.

When reviewing a TBP for approval, MSF and the governing body of the municipality that created the BRA would have to determine whether the amount of proposed sales and use tax capture is reasonable, and MSF could not approve any use of sales or use tax revenues beyond the amount that it determines to be necessary for the project to be economically viable.⁵

To calculate the amount of sales and use tax revenue captured in a year under a TBP, the state treasurer would have to develop methods and processes for reporting the amount of sales and use tax from each location subject to the plan.

Independent analysis

Any plan proposing to use more than \$10.0 million of captured tax revenue from any sources in a year currently requires an independent third-party underwriting analysis. The bill would require an additional analysis for any TBP that includes sales and use tax capture revenues, which would be paid for by the owner or developer of the eligible property.

The bill would also provide that a BRA may not submit a request for approval of a work plan or a combined brownfield plan for a TBP until all required financial analyses are complete.

Development and reimbursement agreements

MSF would have to include the following provisions in a development or reimbursement agreement for any TBP that utilizes sales and use tax capture revenues:

- The owner or developer of the eligible property must require each applicable occupant of the property to comply with the act's reporting requirements through a contract or lease requirement or other similar means.
- The reimbursement of sales and use tax capture revenues is limited to reported amounts and the state has no obligation with respect to sales and use tax capture revenues that are not reported or paid.

Tax capture

Once a TBP is approved and a development or reimbursement agreement is in place, a BRA could use captured sales and use tax revenues that it receives under a TBP to finance eligible activities, including any demolition, construction, restoration, alteration, renovation, or improvements of buildings, any site improvements on eligible property, and any infrastructure improvements that directly benefit the property.

A BRA generally could not use captured sales or use tax revenues to pay for any eligible activities that are conducted before the TBP for those activities is approved, unless the costs and property are included in the TBP and development or reimbursement agreement and the expenses were incurred within 90 days of MSF's approving the plan.

Revenue from sales and use taxes could only be used for the costs of eligible activities in accordance with the act, including costs of principal and interest on any obligations to pay the costs of those activities, costs of preparing TBPs and related documents, and any additional

⁵ MSF would have to account for the impact of any sales and use tax exemptions in determining the amount of revenues that are required for a project to be economically viable.

administrative or operating expenses of the BRA or municipality that are specifically associated with plan implementation.

Once MSF approves the inclusion of an eligible property in a TBP, all approved sales or use tax capture would generally have to begin within five years. A BRA could amend the beginning date of capture for an eligible property located within a ***related program of investment*** to a date later than five years after MSF approval if the governing body and MSF determine that the developer of the related program of investment has proceeded in good faith and has made reasonable and substantial progress in the implementation of that program.

TBPs can consist of a series of developments on eligible property that are part of a ***related program of investment***. A series of developments on noncontiguous parcels is considered a related program of investment if the following criteria are met:

- The developments are proposed to be undertaken concurrently or in reasonable succession.
- If the developments are under unrelated ownership, the developments are reasonably contiguous and part of a program of investment in a logically defined geography, such as a principal shopping district, business improvement district, or logically related areas whose developments would promote infill development.
- If the developments are under unrelated ownership, they are part of a master development plan, area plan, or similar development plan that has been approved or adopted by a resolution of the relevant local governing body.
- The designation of the development as a related program of investment is consistent with the purposes of the act and is not a combination of unrelated or minimally related projects calculated to meet the minimum investment threshold.

Capture could not continue after the year in which the total permitted costs under the TBP were met or after 20 years from the start of the capture.

Sales and use tax revenue would be deposited into and distributed from the State Brownfield Redevelopment Fund. The Department of Treasury would have to distribute the sales or use tax revenues to a BRA, or the owner or developer of an eligible property to which revenues are attributable, in accordance with the act and the terms of the development or reimbursement agreement for each TBP.

Maximum capture amounts

Currently, the total amount of *income tax capture revenue* and *withholding tax capture revenue* that may be reimbursed each year under all TBPs is capped at \$40.0 million, and if the amount reimbursed in a calendar year is less than \$40.0 million, the unused portion rolls over into subsequent calendar years. MSF is prohibited from committing, and the Department of Treasury cannot disburse, a total amount of income and withholding tax capture revenue that exceeds \$800.0 million.

MSF also cannot approve more than a total of \$200.0 million in *construction period tax revenues* and in *projected sales and use tax exemptions*. If the value of construction period tax revenues and sale and use tax exemptions exceed the \$200.0 million limit by a substantial amount, as determined by the state treasurer, the state treasurer must take corrective action and can reduce future disbursements to achieve compliance with the annual limit and with the

\$800.0 million total limit listed above. However, any corrective action cannot reduce a disbursement for an individual TBP by an amount that is greater than the amount by which the value of the sales and use tax exemptions for property in the plan exceeded the amount included in the plan.

Senate Bill 289 would increase the annual cap for captured income and withholding tax revenues to \$80.0 million and would include captured sales and use tax revenues. Additionally, the \$800.0 million total limit on captured income and withholding tax revenues would be increased to \$1.6 billion, including sales and use tax capture revenues.

If an amount authorized to be committed for a calendar year has not been committed, the uncommitted amount for that calendar year would remain available to be committed and disbursed in a subsequent calendar year in addition to the annual limits. However, no more than \$30.0 million could be committed or disbursed in any calendar year above the \$80.0 million annual limit as a result, and all commitments and disbursements would remain subject to the overall limitation.

If an amount has been committed under an approved TBP but has not been disbursed, the undisbursed amount for that year would be available for disbursement in a subsequent calendar year and would be in addition to the annual limit.

The bill would remove the corrective action provisions described above and would provide that the \$200.0 million limit only applies to construction period tax capture revenues.

Population requirements

Currently, MSF must set a target that at least 35% of all transformational brownfields be located in municipalities with a population of under 100,000. Senate Bill 289 would change the target to between 33% and 38%, and it would additionally require MSF to set a target that 33% to 38% of transformational brownfields be located in municipalities with a population between 100,000 and 225,000.

MCL 125.2652 et seq.

FISCAL IMPACT:

The bill could reduce state revenue by an unknown, but potentially significant, amount over the life of the TBP program expansion authorized under the bill. By lifting the \$800.0 million cap to \$1.6 billion on the *post-construction* side of the program and increasing the annual tax capture to \$80.0 million from its current \$40.0 million level, the total revenue impact over the life of the post-construction portion of the program (through at least FY 2052-53), after accounting for the projects already approved, could approach \$950.0 million if the entire amount was authorized. Also, removing the sales and use tax exemption for tangible personal property that would be affixed to and made a structural part of the real property or infrastructure improvements from the \$200.0 million cap on *construction* side of the program would increase the revenue loss from sales and use tax exemptions when compared to current law.

The total impact would depend on the scope and scale of the individual projects approved under the provisions of the bill. While the post-construction annual commitment cap of \$80.0 million presents an annual cap, the law allows unused cap space in any given year to be carried forward, which would allow for annual impacts to vary depending on the amount available to be committed from the current year and any prior year carry-forward. However, limitations

included in the bill that would cap the amount of uncommitted carry-forward to \$30.0 million would lower the potential revenue impact to no more than \$110.0 million in any given fiscal year. Presumably, the ability of disbursements to carry forward into another year would not impact annual revenues because the amounts would have been accounted for at the time they were committed.

The bill also would add sales and use tax revenues as capturable revenues, which could increase the TBP revenue eligible for capture when compared to current law and change the potential scope of future projects. As noted above, however, there is no reliable way to determine the magnitude of this change because the number of plans, and the scope and size of those plans, is not yet known.

The overall net fiscal impact (difference between revenue loss from incentives and revenue gain from net new activity) would depend on the extent to which capturable tax revenue was solely new activity generated by the incentive program compared to existing activity or business activity that would have occurred even without the incentive. However, it cannot be determined how much of the activity would not have occurred but for the development incentives. Generally, it is assumed that some portion of the activity generating capturable tax revenue under the bill would occur to some extent even without the incentives, which would increase the net cost. Moreover, any assumption about the net benefit must consider alternative uses of the revenue. State revenue impacts would be attributable to the general fund.

As noted, the bill would increase the cap on reimbursements in any given year from the current \$40.0 million to \$80.0 million. However, this may not represent a limit on the potential impact on state revenues in any given fiscal year. If increased economic activity generated capturable revenue amounts that exceeded the annual capture amounts stipulated at the time of project authorization it is not known if that would accrue in that fiscal year even if the amount was not completely eligible for disbursement in that fiscal year due to the annual cap on commitments and disbursements. Also, because the overall amount earned may not be known until the end of the fiscal year, the revenue impact may impede the state's ability to accurately account for any revenue captured in a given year.

In the longer term, assuming the economic activity would not have happened without the development incentives, which cannot be ascertained with any degree of certainty, the costs noted above could be offset to some extent over the life of the TBP through new income, sales, and use tax revenue. While the entire cost of the development incentives would be borne by the general fund, the offsetting benefits from new income tax revenue would flow to the general fund (approximately 3/4) and School Aid Fund (approximately 1/4). Sustained economic activity following the expiration of the TBP would result in revenue that would accrue to the state. Distribution of that revenue would depend on its source (e.g., income, sales, or use tax).

The provisions of the bill could also increase local unit of government revenues in the longer term to the extent that it is assumed the projects would not have occurred but for the development incentives. Assuming sustained economic activity beyond the program window, the local government would realize increased property tax revenues. On the other hand, the expanded use of tax increment financing under a TBP for eligible activities could lead to increased expenditures from the School Aid Fund due to the capture of the non-homestead local school operating millages.

Lastly, new economic activity directly attributable to the TBP that created new sales tax revenues in excess of the allowable exemptions and capture would result in increased constitutional revenue sharing payments to local units of government.

The Department of Treasury and MSF would realize increased administrative expenses under the bill, which may be reimbursed by the Brownfield Redevelopment Fund under current law. Any additional administrative expenses required under the provisions of the bill would be subject to legislative appropriation.

POSITIONS:

Representatives of the following entities testified in support of the bill (5-23-23):

- City of Grand Rapids
- City of Pontiac
- Michigan Municipal League
- Renovare Development
- Rocket Companies

The following entities indicated support for the bill:

- Michigan Economic Development Corporation (6-13-23)
- AVB (5-23-23)
- Bonner Advisory Group (5-23-23)
- Business Leaders for Michigan (5-23-23)
- City of Rochester Hills (5-23-23)
- City of Sterling Heights (5-23-23)
- Cornerstone Alliance (5-23-23)
- Economic Development Leaders of Michigan (5-23-23)
- Grand Action 2.0 (5-23-23)
- Grand Rapids Chamber (5-23-23)
- Home Builders Association of Michigan (5-23-23)
- Lakeshore Advantage (5-23-23)
- Lansing Area Economic Partnership (5-23-23)
- Market Van Buren (5-23-23)
- Northern Michigan Chamber Alliance (5-23-23)
- Saginaw Chamber of Commerce (5-23-23)
- Saginaw Future (5-23-23)
- Southwest Michigan First (5-23-23)
- Traverse Connect (5-23-23)

The Mackinac Center for Public Policy indicated opposition to the bill. (5-23-23)

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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.