Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 289 (Substitute S-1 as reported)
Sponsor: Senator Jeremy Moss
Committee: Economic and Community Development

CONTENT

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

-- Define "sales tax", "use tax", "initial sales and use tax value", and "sales and use tax capture revenues".
-- Prescribe the process by which the State Treasurer would calculate sales and use tax capture revenues for a Transformational Brownfield Plan (TBP).
-- Require the Michigan Strategic Fund (MSF) to include certain provisions in any development or reimbursement agreement for a TBP that used sales and use tax capture revenues.
-- Include sales and use tax capture revenues in provisions that allow for, and prescribe requirements for, the use of construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, and tax increment revenues.
-- Add a provision allowing a brownfield redevelopment authority to amend the beginning date of capture of certain revenues for an eligible property included within a related program of investment to a date later than five years following the date of approval if the governing body and MSF determined that the developer had made progress in the implementation of the related program of investment.
-- Extend the cap on total annual capture from $40.0 million to $80.0 million.
-- Require that, if the amount of total annual tax capture committed or dispersed in a calendar year was less than the amount committed and scheduled to be dispersed for that year under approved TBPs, the undispersed amount for that year would be available to be dispersed in subsequent calendar years, in addition to annual limits otherwise applicable.
-- Delete the $800.0 million cap on the total amount of income tax capture revenues and withholding tax captures revenues that the MSF and Department of Treasury could commit.
-- Delete a requirement that the State Treasurer take corrective action if the value of the actual sales and use tax exemptions and construction period tax capture revenues under all TBPs exceeded the limit of $200.0 million.
-- Require the MSF to include cities, villages, and townships with a population of less than 225,000 in its 35% target of TBPs by December 31, 2027.

MCL 125.2652 et al.

BRIEF RATIONALE

The transformational brownfield program is the sole program supporting redevelopment in cities and town centers. Many communities with a brownfield site could benefit from a TBP; however, these communities vary. Some are older, economically challenged, or diverse. Others are young and growing. Cities and towns have different priorities, which, some believe, are not all represented by the transformational brownfield program. Accordingly, it has been suggested that the program be modified to deliver a wider range of assets and amenities.

Legislative Analyst: Abby Schneider

FISCAL IMPACT

The initial fiscal analysis of the legislation was revised on May 19, 2023, based in part on guidance from the Department of Treasury. That guidance was subsequently altered in June 2023 and the analysis below reflects the estimated impact based on the most recent information.

The bills would reduce State General Fund revenue in fiscal years (FY) 2022-23 through at least FY 2052-53 by an unknown and significant amount that could total $1.6 billion or more. The actual amount of revenue loss could be lower depending on the degree of activity associated with transformational brownfield areas. The estimated $1.6 billion figure excludes: 1) the revenue loss from any sales and use tax exemptions that, when combined with construction period tax captures, would exceed the $200.0 million limit under current law for the combined value of construction period tax captures and the value of sales and use tax exemptions granted during the construction period; and 2) the impact of any potential delays to the year in which tax captures must begin. To the extent that either of these conditions occur, the total revenue loss under the bill could exceed $1.6 billion.

Under current law, the combined value of construction period tax captures and sales and use tax exemptions may not exceed $200.0 million. Under the bill, the $200.0 million limit would be retained but would only apply to construction period tax captures. As a result, the bill would provide an unlimited exemption for sales and use taxes during the construction period. While the exemption would be unlimited, sales and use tax revenue would only decline relative to current law if the value of the exemptions, plus the value of the construction period captures, were to exceed $200.0 million.

The bill would repeal the current aggregate limit of $800.0 million applied to captured individual income tax (IIT) and withholding revenue across all years. Currently, the State has approved commitments for IIT and withholding capture totaling $668.4 million, meaning that an additional $131.6 million in capture is available under current law. The $1.6 billion estimate above reflects new commitment authority granted under the bill.

For individual years, current law limits the amount of IIT and withholding revenue that can be approved for capture, or disbursed by the State, to $40.0 million per year. The bill would increase those limits to $80.0 million per year and expand the capture limit to apply to captured sales and use tax revenue. Under the provisions of both current law and the bill, if the amounts captured or disbursed in a given year are less than the relevant limits, the difference is rolled over and added to the allowed captures or disbursements for future years. Captured revenue will reduce revenue for the fiscal years in which a capture occurs (and is accrued), rather than the fiscal year in which the captured revenue is disbursed. Given the rollover provisions, the revenue reduction in any given year could thus exceed the $40.0 million (or $80.0 million under the bill) limit. For example, if after 4 years of allowable captures, if actual captures totaled $25.0 million, the allowable maximum capture for year 5 (under the bill) would be $375.0 million.

Under current law, transformational brownfields may be approved until December 31, 2027, and the capture periods for IIT and withholding (and under the bill, also sales and use tax capture) may run as long as 20 years. Revenue captures must begin within five years of a property's approved inclusion in a project, although the bill would allow the five-year period to be extended for any approved length of time. As a result, without any extensions as provided under the bill, captures could run until December 31, 2052 (in FY 2052-53): a project approved on December 31, 2027, would need to begin capturing revenue by December 31, 2032, and could then capture for a maximum of 20 years. The bill's annual limit of $80.0 million per year could thus apply through 2052, for a maximum capture across all years of

$2.4 billion. (Because the existing approved projects are still in the construction period, no projects are currently capturing IIT or withholding revenue). If, under the bill, the beginning capture date were extended for any project such that captures would occur after 2052, the revenue loss from the bill would increase by as much as $80.0 million per year for any capture years after 2052.

The bill would be unlikely to affect local unit revenue. Although the bill would indicate that the local share of use tax revenue would be subject to capture, unless total use capture under the bill were to exceed the General Fund portion of the State share of the use tax, the mechanics of how revenue is directed to the Local Community Stabilization Authority would not be affected. Similarly, capturing sales tax revenue would not affect revenue directed to local units of government under constitutional revenue sharing provisions.

Several aspects of both current law and the bill make it impossible to forecast or budget for any potential revenue reduction. Neither the current statute nor the bill limits the impact of the capture on revenue in any given fiscal year should the rollover provisions increase the allowed annual limits. The actual amount of captured revenue under current law and the bill, will depend on the particular behavior and timing of those affected by the capture, rather than any economic factors. Furthermore, the State is notified of the relevant capture amounts at the end of each calendar year and neither statute nor the bill require periodic reporting of captured amounts. As a result, the magnitude of any capture during a fiscal year will not be known at the time the State enacts the budget for a fiscal year nor will it be an amount that could be accurately forecast. Even under current law, when the authorized capture is limited to $800.0 million, the $800.0 million of capture could be spread out in an unknown distribution between now and FY 2051-52, or could occur in a single fiscal year.

The timing of how revenue would be captured across fiscal years is known but could be affected by several circumstances that could occur under the bill. First, the bill does not indicate how captures should be handled if the economic activity subject to capture were to generate revenue in excess of the capture limits. Presumably, such "excess" revenue would not be captured, but the bill does not specify how to address the situation. Second, the bill would define the sales and use tax capture as the amount by which "sales and use tax collected from persons within the eligible property exceeds the initial sales and use tax value". For traditional sales circumstances, such as an apparel retailer or a restaurant, the relevant sales tax amounts would simply represent sales at those establishments; however, it is unclear how the capture would be affected if a firm such as a public utility or a merchandise wholesaler were to establish operations within the property. The definition makes it unclear if sales transactions by these entities would be included in computing the capture amounts because while the physical transactions would not occur within the property, the taxes would be collected from persons located within the property.

The structure of the tax capture, which would capture revenue over a baseline established in the year in which a project is adopted, would represent an actual revenue loss rather than foregone revenue. Not only do projects already exist under the statute, and under the bill those projects would be able to capture more revenue than under current law, but much of the activity subject to the capture is likely to trade-off with activity that would otherwise occur in an area not subject to capture. For example, if a hotel guest stays at a hotel within a project area; or a customer eats at a restaurant within a project area, that activity would trade-off with a hotel stay or a dining event that would otherwise occur in an area where revenue would not be subject to capture.

The Department of Treasury would incur additional expenses of an unknown magnitude in tracking revenue subject to capture. Under current law and practice, taxpayers do not report sales and use tax revenue by location. The bill would require the Department of Treasury to develop systems that could provide the tracking required to determine sales and use tax capture revenue.

Date Completed: 6-9-23 Fiscal Analyst: David Zin