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

BILL ANALYSIS

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

Senate Bills 908 through 913 (as enacted) **PUBLIC ACT 471-476 of 2016**
Sponsor: Senator Wayne Schmidt (S.B. 908 & 909)
Senator Margaret O'Brien (S.B. 910)
Senator Ken Horn (S.B. 911)
Senator David Knezek (S.B. 912)
Senator Tom Casperson (S.B. 913)
Senate Committee: Commerce
House Committee: Natural Resources

Date Completed: 11-14-17

CONTENT

Senate Bill 908 amended the Brownfield Redevelopment Financing Act to do the following:

- **Require additional local tax and school operating tax increment revenue captured under a brownfield plan to be deposited into a local brownfield revolving fund only under certain conditions.**
- **Require the Michigan Strategic Fund (MSF) to approve or deny a grant or loan to fund eligible activities on eligible property within 60 days.**
- **Modify the Act's provisions pertaining to the contents of a brownfield plan, and the recovery and use of money from tax increment financing.**
- **Modify the procedure for terminating a brownfield plan or plan amendment, and allow termination in two years, instead of five years.**
- **Prohibit the Department of Environmental Quality (DEQ) from conditioning a work plan approval on modifications pertaining to activities funded by certain tax increment revenue.**
- **Allow the MSF chairperson to approve plans that address eligible activities totaling $1.0 million, rather than $500,000.**

The bill also repealed Sections 21 and 22 of the Act, which prohibited an authority from capturing tax increment revenue from taxes levied before December 31, 1996, and specified an effective date for the Act, respectively.

Senate Bill 909 amended Part 195 (Environmental Protection Bond Implementation) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- **Require the DEQ, for grant projects approved for funding from the Environmental Protection Bond Fund on or after the bill's effective date, to apply the same application requirements provided for a grant or loan from the Clean Michigan Initiative (CMI) Bond Fund.**
- **Require grant or loan recipients to comply with the requirements applicable to recipients of a grant or loan from the CMI Bond Fund.**

-- Prohibit the Department from implementing or enforcing administrative rules related to a grant or loan authorized or approved on or after the bill's effective date.

Senate Bill 910 amended Part 196 (Clean Michigan Initiative Implementation) of NREPA to do the following:

-- Require money deposited into the Clean Michigan Initiative Bond Fund to be used for eligible activities at facilities and Part 213 (Leaking Underground Storage Tanks) property.
-- Require the Department of Environmental Quality to create a CMI grant and revolving loan program.
-- Specify the requirements and conditions for making a grant or loan under the program.

Senate Bill 911 amended Part 195 of NREPA to do the following:

-- Require money deposited into the Environmental Protection Bond Fund to be used to clean up sites identified under Part 213.
-- Require the DEQ, after the bill's effective date, to apply criteria used for projects funded under the CMI Bond Fund for grant projects funded under the Environmental Protection Bond Fund.

Senate Bill 912 amended Part 196 of NREPA to do the following:

-- Specify the application requirements for grants and loans funded through the CMI Bond Fund.
-- Prescribe the criteria to be used for review of grant and loan applications.
-- Prescribe the provisions to be included in a grant or loan agreement between the Department and the recipient.

Senate Bill 913 amended Part 201 (Environmental Remediation) of NREPA to eliminate certain language and require loan funds from the revitalization revolving loan program to be issued for the purposes and using the criteria provided in Part 196.

Each of the bills took effect on April 5, 2017. Senate Bills 908 through 912 are discussed in further detail below.

Senate Bill 908

Definitions

The bill amended the definition of "eligible activities" or "eligible activity" as described below.

For all eligible property, eligible activities include all of the following: a) Department-specific activities; b) relocation of public buildings or operations for economic development purposes; c) reasonable costs of environmental insurance; d) reasonable costs incurred to develop and prepare brownfield plans, combined brownfield plans, or work plans for the eligible property, including legal and consulting fees that are not in the ordinary course of acquiring and developing real estate; e) reasonable costs of brownfield plan and work plan implementation, including tracking and reporting of data and plan compliance and the reasonable costs incurred to estimate and determine actual costs incurred, whether those costs are incurred by a municipality, authority, or private developer; f) demolition of structures that is not a

response activity; g) lead, asbestos, or mold abatement; and h) the repayment of principal of and interest on any obligation issued by an authority to pay the costs of eligible activities attributable to an eligible property.

For eligible property located in a qualified local unit of government, or an economic opportunity zone, or that is a former mill, "eligible activities" include: a) the activities described above, b) infrastructure improvements that directly benefit eligible property, and c) site preparation that is not a response activity.

For eligible property that is owned or under the control of a land bank fast track authority or a qualified local unit of government or authority, eligible activities include: a) the eligible activities described above; b) assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a land bank fast track authority or the acquisition of property by the land bank fast track authority if the acquisition is for economic development purposes; and c) assistance to a qualified local governmental unit or authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a qualified local governmental unit or authority or the acquisition of property by a qualified local governmental unit or authority if the acquisition is for economic development purposes.

The bill defines "department specific activities" as baseline environmental assessments, due care activities, response activities, and other environmentally related actions that are eligible activities and are identified as part of a brownfield plan that are in addition to the minimum due care activities required by Part 201, including: a) response activities that are more protective of the public health, safety, and welfare and the environment than required by specified sections of NREPA; b) removal and closure of underground storage tanks under Part 211 (Underground Storage Tanks) or 213; c) disposal of solid waste, as defined in Part 115 (Solid Waste Management), from the eligible property, provided it was not generated or accumulated by the authority or developer; d) dust control related to construction activities; e) removal and disposal of lake or river sediments exceeding Part 201 criteria from, at, or related to an economic development project where the upland property is a facility or would become a facility as a result of the deposition of dredged spoils; f) industrial cleaning; g) sheeting and shoring necessary for removal of materials exceeding Part 201 criteria at projects requiring a permit under Part 301 (Inland Lakes and Streams), 303 (Wetlands Protection), or 325 (Great Lakes Submerged Lands) of NREPA; and h) lead, mold, or asbestos abatement when lead, mold, or asbestos pose an imminent and significant threat to human health.

The bill also amended the definition of "eligible property" to mean, except as otherwise provided, 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 that is one or more of the following: a) in a qualified local governmental unit and is a facility or a site or property, historic resource, functionally obsolete, or blighted and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property; b) not in a qualified local governmental unit and is a facility, historic resource, functionally obsolete, blighted, or a site or property, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property; c) tax reverted property owned by or under the control of a land bank fast track authority; d) a transit-oriented development or transit-oriented property; or e) located in a qualified local governmental unit and contains a targeted redevelopment area. Eligible property does not include qualified agricultural property

exempt under the General Property Tax Act from the tax levied by a local school district for school operating purposes to the extent provided under the Revised School Code.

Local Brownfield Redevelopment Fund

The Brownfield Redevelopment Financing Act, as amended by the bill, allows a brownfield redevelopment authority to establish a local brownfield revolving fund. Formerly, this was referred to as a local site remediation revolving fund. The fund had to consist of money available from the capture of additional tax increment revenue (in excess of the sum of the costs permitted to be funded with tax increment revenue), and could consist of money appropriated or otherwise made available from public or private sources. Under the bill, the fund must consist of money appropriated or otherwise made available from public or private sources, or local tax and school operating tax increment revenue captured in excess of the amount authorized for eligible expenses under Section 13(4) only when all of the following conditions are met:

-- The excess capture occurs during the time of capture for the purpose of paying the costs permitted under Section 13(4), or not more than five years after the time that capture is required for the purpose of paying permitted costs, or both.
-- The excess tax capture may not exceed the total of the cost of eligible activities approved in the brownfield plan.
-- The excess capture of taxes for school operating purposes may not exceed the total cost of eligible Department-specific activities approved in the applicable brownfield plan, combined brownfield plan, or work plan.
-- Excess tax increment revenue from taxes levied for school operating purposes authorized under Section 13b(4) by the MSF may not be captured for deposit in the local brownfield revolving fund.

The capture of school operating tax increment revenue is subject to the 50% capture specified in Section 13b(14). The tax increment revenue from eligible property for deposit in the local brownfield revolving fund may include tax increment revenue attributable to taxes levied for school operating purposes in an amount not greater than the tax increment revenue levied for school operating purposes captured from eligible property under Section 13(4).

(Subject to exceptions, Section 13(4) requires the use of tax increment revenue related to a brownfield plan only for 1) costs of eligible activities attributable to the eligible property that produces the tax increment revenue, and/or 2) eligible activities attributable to any eligible property that is owned by or under the control of a land bank fast track authority or a qualified local unit of government. As amended, Section 13b(4) specifies conditions that apply if a brownfield plan includes the use of taxes levied for school operating taxes for eligible activities that are not Department-specific activities. Section 13b(14) requires a brownfield authority to pay to the Department of Treasury annually an amount equal to 50% of the taxes levied under the State Education Tax Act under certain conditions.)

State Brownfield Redevelopment Fund

The Act establishes the State Brownfield Redevelopment Fund as a revolving fund within the Department of Treasury. Money in the Fund may be used to fund a grant and loan program created and operated by the Michigan Strategic Fund for the costs of eligible activities on eligible property. A person may apply to the MSF for approval of a grant or loan to fund eligible activities on eligible property. Formerly, the MSF had to approve or deny an application within 90 days. The bill, reduced the time allowed to 60 days.

Under the bill, proceeds and interest from a loan repayment must be paid either to the State Brownfield Redevelopment Fund, or the fund from which the loan was generated. Previously, any proceeds from repayment of a loan, including interest, had to be paid into the State Brownfield Redevelopment Fund.

Brownfield Plan

The board of a brownfield redevelopment authority may implement a brownfield plan. Each plan or an amendment to a plan must be approved by the governing body of the municipality, and must contain the information required by the Act, including an estimate of the future tax revenue of all taxing jurisdictions in which the eligible property is located to be generated during the term of the plan. Previously, the plan had to include an estimate of the impact of tax increment financing on the tax revenue of all taxing jurisdictions in which the eligible property was located.

Under the bill, when taxes levied for school operating purposes are subject to capture, the percentage of school operating tax increment revenue capture relating to a parcel of eligible property under a brownfield plan may not be greater than the percentage of local tax increment revenue that is captured under the brownfield plan relating to that parcel. Formerly, the percentage of all taxes levied on a parcel of eligible property for school operating expenses that was captured and used under a brownfield plan and all tax increment finance plans under Public Act 197 of 1975 (the downtown development authority Act), the Tax Increment Finance Authority Act, or the Local Development Financing Act, could not be greater than the combination of the plans' percentage capture and use of all local taxes levied for purposes other than the payment of principal of and interest on obligations approved by the electors or obligations pledging the unlimited taxing power of the local unit of government.

Under the bill, tax increment revenue related to a brownfield plan must be used only for one or more of the following: a) costs of eligible activities attributable to the eligible property that produce the tax increment revenue, or b) eligible activities attributable to any eligible property for property that is owned by or under the control of a land bank fast track authority or a qualified local unit of government. Previously, tax increment revenue related to a brownfield plan had to be used only for eligible activities attributable to the eligible property and the reasonable costs of preparing a brownfield plan, combined brownfield plan, or a work plan for the eligible property.

Under the bill, a brownfield plan may not authorize the capture of tax increment revenue from eligible property after the year in which the total amount of tax increment revenue captured is equal to the sum of the costs permitted to be funded with tax increment revenue under the Act (as previously allowed), or 30 years from the beginning date of the capture of tax increment revenue for that eligible property, whichever occurs first, except that a brownfield plan may authorize the capture of additional local and school operating tax increment revenue from eligible property if one or both of the following apply:

-- During the time of capture for the purpose of paying costs of eligible activities attributable to the eligible property.
-- For not more than five years after the date specified for payment to the local brownfield revolving fund.

Recovery of Funds

Under the Brownfield Redevelopment Financing Act, costs of a response activity paid with tax increment revenue that is captured may be recovered from a party that is responsible for causing a release. The State or an authority may undertake cost recovery for tax increment

revenue captured. Before an authority may institute a cost recovery action, it must provide 60 days' notice. Previously, 120 days' notice was required.

Prohibited & Permitted Use of Funds

Under the bill, tax increment revenue captured from taxes levied by the State under the State Education Tax Act, or taxes levied by a local school district may not be used to assist a land bank fast track authority with clearing or quieting title, acquiring, selling, or conveying property, except as described below.

If a brownfield plan includes the use of taxes levied for school operating purposes captured from eligible property for eligible activities that are not Department-specific activities, then one or more of the following provisions apply.

A combined brownfield plan or a work plan must be approved by the MSF and a development or reimbursement agreement between the municipality or authority and an owner or developer of eligible property is required before such tax increment may be used for infrastructure improvements that directly benefit eligible property, demolition of structures that is not response activity, lead, mold, or asbestos abatement that is not a Department-specific activity, site preparation that is not response activity, relocation of public buildings or operations for economic development purposes, or acquisition of property by a land bank fast track authority if the acquisition is for economic development purposes.

Approval of a combined brownfield plan or a work plan by the MSF is required to use the tax increment revenue to assist a land bank fast track authority or qualified local governmental unit with clearing or quieting title, acquiring, selling, or conveying property. The combined brownfield plan or work plan must be in a form prescribed by the MSF. The eligible activities to be conducted and described must be consistent with the combined brownfield plan or work plan submitted by the authority to the MSF. The DEQ's approval is not required for the capture of taxes levied for school operating purposes for eligible activities.

If a brownfield plan includes the use of taxes levied for school operating purposes captured from eligible property for Department-specific activities, a combined brownfield plan or a work plan must be approved by the DEQ.

An authority may not do any of the following:

-- Use taxes captured from eligible property to pay for eligible activities conducted before approval of the brownfield plan.
-- Use taxes captured from eligible property to pay for the authority's or municipality's administrative and operating activities, with some exceptions.
-- Use taxes levied for school operating purposes captured from eligible property unless the eligible activities to be conducted on the property are eligible Department-specific activities, consistent with a combined brownfield plan or a work plan approved by the Department after July 24, 1996.

An authority may use local taxes captured from eligible property to pay for one or more of the following administrative and operating expenses: a) the authority's reasonable and actual administrative and operating expenses; b) Department-specific activities conducted by or on behalf of the authority related directly to work conducted on prospective eligible property prior to approval of the brownfield plan; or c) reasonable costs of developing and preparing brownfield plans, combined plans, or work plans for which tax increment revenue may be used, including legal and consulting fees that are not in the ordinary course of acquiring and developing real estate.

An authority may use taxes levied for school operating purposes for one or both of the following administrative and operating expenses: a) reasonable costs of developing and preparing brownfield plans, combined plans, or work plans for which tax increment revenue may be used, including legal and consulting fees that are not in the ordinary course of acquiring and developing real estate, not to exceed $30,000; or b) reasonable costs of brownfield plan or work plan implementation, including tracking and reporting of data and plan compliance, not to exceed $30,000. The amount of tax increment revenue attributable to local taxes that an authority may use remains the same as previously specified under the Act.

The bill's limitations on the use of taxes levied for school operating purposes do not apply to the costs of one or more of the following incurred by a person other than an authority:

-- Site investigation activities required to conduct a baseline environmental assessment and to evaluate compliance with Sections 20107a and 21304c of NREPA.
-- Completing a baseline environmental assessment.
-- Preparing a plan for compliance with Sections 20107a and 21304c.
-- Performing predemolition and building hazardous material surveys.
-- Asbestos, mold, and lead surveys.

(Section 20107a specifies the duties of a property owner or operator with respect to hazardous substances at the property he or she knows is a "facility". Section 21304c specifies responsibilities of an owner or operator of property that he or she knows is contaminated.)

The bill's limitations on use of local taxes and taxes levied for school operating purposes are the same as those previously specified in the Act.

The bill allows a brownfield authority to reimburse various advances and capture taxes for the payment of interest, on a basis similar to what was previously allowed.

Under the bill, notwithstanding anything to the contrary in the Brownfield Redevelopment Financing Act, for a brownfield plan that includes the capture of taxes levied for school operating purposes from each eligible property included in a plan after January 1, 2013, the authority must pay an amount equal to 50% of the tax levied under the State Education Tax Act, including 50% of that portion of specific taxes attributable to, but not levied under, that Act, to the Department of Treasury each year. Previously, the authority was require to pay an amount equal to three mills of that tax. Under the bill, those payments must continue until the expiration of the earlier of the following: a) 25 years of capture of tax increment revenue from such eligible property; or b) the later of the date of repayment of all eligible expenses relative to the eligible property or the date excess capture is terminated.

Termination of a Brownfield Plan

Under the Brownfield Redevelopment Financing Act, a brownfield plan or plan amendment may be abolished or terminated by the governing body upon finding that the purpose for which the plan was established was accomplished.

The governing body also may terminate a brownfield plan or plan amendment for eligible property for which eligible activities identified in the brownfield plan or plan amendment failed to occur with respect to the eligible property for a period of time. Under the bill, the governing body may terminate if the activities fail to occur for at least two years following the date of the resolution approving the plan or plan amendment, provided the governing body first gives 30 days' written notice to the developer at its last known address by certified mail or other

method that documents proof of delivery attempted, and gives the developers an opportunity to be heard at a public meeting. Previously, termination was allowed if the project failed to occur for at least five years following the date of the resolution.

Approval of Work Plan

To seek Department approval of a work plan, a brownfield redevelopment authority must submit information for each eligible property, including a copy of the brownfield plan, current ownership information, current and historical use information, and a summary of the proposed redevelopment. Upon receiving the request for approval of a work plan, or a portion of a work plan that pertains only to Department-specific activities, the Department must review the work plan and issue a response. Previously, the Act referred to a work plan or portion that pertained to only baseline environmental assessment activities, or due care activities, or both.

The DEQ may issue a conditional approval that delineates specific modifications to the plan to meet the Act's requirements. Under the bill, the DEQ may not condition its approval on deletions from or modifications of the work plan relating to activities to be funded solely by tax increment revenue not attributable to taxes levied for school operating purposes.

The bill specifies that it is in the sole discretion of an authority to propose to undertake Department-specific activities at an eligible property under a brownfield plan. Formerly, this applied to additional response activities. The bill also specifies that the DEQ may not require a work plan to include Department-specific activities that are more protective of public health, safety, welfare, and the environment.

MSF Review of Work Plan

To seek MSF approval of a work plan, a brownfield redevelopment authority must submit information for each eligible property similar to what is required for Department approval. In its review, the MSF must consider a variety of criteria, which formerly included the cost gap that existed between a site and a similar greenfield site. The bill eliminated that criterion.

If the MSF fails to provide a written response to a request for approval within 60 days of receiving the request, the eligible activities must be considered approved, and the authority may proceed with eligible activities as outlined by the work plan. Previously, the MSF had to respond within 65 days.

If a brownfield plan includes the capture of taxes levied for school operating purposes, the chairperson of the MSF may approve combined brownfield plans and work plans that address eligible activities totaling $1.0 million or less, without a meeting of the Fund board. Previously, the chairperson could approve combined brownfield plans and work plans that addressed eligible activities totaling $500,000 or less.

Senate Bill 909

Part 195 of NREPA specifies that the DEQ may not make a grant or a loan under Section 19508(1)(a) or (b) unless all of the following conditions are met:

-- The applicant demonstrates that the proposed project is in compliance with or will result in compliance with all applicable State laws and rules.
-- The applicant demonstrates to the Department the capability to carry out the proposed project.
-- The applicant provides the Department with evidence that a licensed professional engineer has approved the plans and specifications for the project, if appropriate.

-- The applicant demonstrates to the Department that there is an identifiable source of funds for the future maintenance and operation of the proposed project.

(As amended by Senate Bill 911, Section 19508(1)(a) requires money deposited into the Environmental Protection Bond Fund to be used to clean up sites of toxic and other environmental contamination for sites identified through Part 201 and 213, as well as provide grants to eligible communities to investigate whether property within that community is an environmental contamination site. Section 19508(1)(b) prescribes the use of money in Fund that is allocated for solid waste projects.)

A recipient of a grant or a loan must keep an accounting of the money spent on the project or facility in a generally accepted manner, and must obtain authorization from the DEQ before implementing a change that significantly alters the proposed project or facility. The Department may revoke a grant or loan made by it, or withhold payment, if the recipient fails to comply with the terms and conditions of the loan or grant. The Department may recover a grant if the project for which the grant made never operates, and may withhold a grant or loan until the Department determines that the recipient is able to proceed with the project or facility. To assure timely completion of the project, the Department may withhold 10% of the grant or loan amount until completion.

Under the bill, notwithstanding any other provision, for grant projects approved for funding under Section 19508(1)(a) on or after the bill's effective date, the above conditions or requirements do not apply and the Department must apply the same application requirements provided for a grant or loan in Section 19609, and grant or loan recipients must comply with the requirements of Section 19612. (Senate Bill 912 amends Sections 19609 and 19612.)

The Department is permitted to promulgate rules as necessary or required to implement Part 195. The bill specifies that, for grant projects funded under Section 19508(1)(a), the Department may not implement or enforce R 299.5051 to R 299.5061 related to any grant or loan authorized or approved on or after the bill's effective date. (Those rules were rescinded in August 2015.)

Senate Bill 910

Clean Michigan Initiative Bond Fund

Part 196 specifies the total proceeds of all bonds required to be deposited into the Clean Michigan Initiative Bond Fund, and requires that a maximum of $335.0 million be used for response activities at facilities. Under the bill, the money must be used for eligible activities at facilities and Part 213 properties.

Under Section 19608(1)(a)(iv), as amended by the bill, the money to be used for eligible activities and Part 213 property must be used to fund, among other things, $75.0 million to provide grants and loans to local units of government for eligible activities at eligible properties with redevelopment potential. Formerly, this provision required the money to be used to provide grants and loans to local units of government and brownfield redevelopment authorities created under the Brownfield Redevelopment Financing Act for response activities at known or suspected facilities with redevelopment potential. Grants or loans may not be made to a local unit of government that is responsible for causing a release or threat of release under Part 201 or 213, except as otherwise provided. Previously, this prohibition included a local unit of government or a brownfield redevelopment authority for releases under Part 201.

The bill defines "eligible activities" for projects with funding allocated under Section 19608(1)(a)(iv) as:

-- Baseline environmental assessment activities.
-- Investigations.
-- Due care activities.
-- Response activities, including response activities that are more protective of the public health, safety, and welfare and the environment than required by Section 20107a or 21304c.
-- Removal and closure of underground storage tanks under Parts 211 (Underground Storage Tanks) and 213 (Leaking Underground Storage Tanks).
-- Dust control related to construction activities.
-- Industrial cleaning.
-- Sheeting and shoring necessary for removal of material exceeding Part 201 cleanup criteria at projects requiring a permit under Part 301 (Inland Lakes and Streams), Part 303 (Wetlands Protection), or Part 325 (Great Lakes Submerged Lands).

The term also includes the following activities, provided that their total cost does not exceed the total cost of project-related activities identified above: a) disposal of solid waste from the eligible property, provided it was not generated or accumulated by the authority or the developer; b) lead, asbestos, or mold abatement, and demolition of structures that are not a response activity; and c) removal and disposal of lake or river sediments exceeding Part 201 unrestricted criteria from, at, or related to an economic development project if the upland property either is a facility or would become a facility as a result of the deposition of dredged spoils.

"Eligible property" for projects with funding allocated under Section 19608(1)(a)(iv) means property that is known or suspected to be a facility under Part 201 or a site or property under Part 213 and that was used or is currently being used for commercial, industrial, public, or residential purposes.

"Part 213 property" means property as defined in Section 21303: real estate that is contaminated by a release from an underground storage tank system.

Previously, the Department had publish and disseminate the criteria it was going to use in evaluating and recommending projects for funding before submitting the first cycle of recommended projects. Under the bill, the Department must post the criteria on its website.

Under the bill, Section 19607 (1)(a) allocates up to $335.0 million of the CMI Bond Fund for eligible activities at eligible activities and for Part 213 activities. Previously, this allocation was for response activities at eligible facilities. Of the money allocated under Section 19607(1)(a), $93.0 million must be used for facilities that pose an imminent or substantial endangerment to the public health, safety, or welfare, or to the environment. The bill also refers to Part 213 properties that meet the same standard.

Previously, money in the Fund could not be used to develop a municipal or commercial marina. The bill eliminated that language.

Clean Michigan Initiative Grant and Revolving Loan Program

Section 19608a formerly required the Department to create a Clean Michigan Initiative Revolving Loan Program for the purpose of making loans to local units of government and brownfield redevelopment authorities.

Under the bill, the Department must create the Clean Michigan Initiative Grant and Revolving Loan Program to make grants and loans to local governments under Section 19608(1)(a)(iv) for eligible activities at eligible properties with redevelopment potential. The bill eliminated the remainder of the language in section 19608a, which governed the loan application and approved process.

Under the bill, the Department may not make a grant or loan under the program unless all of the following conditions are met: a) the applicant demonstrates that the proposed project is in, or will result in, compliance with all applicable State laws and rules; b) the applicant demonstrates to the Department the capability to carry out the proposed project; c) the applicant demonstrates to the Department that there is an identifiable source of funds for the future maintenance and operation of the activities funded with money from the Fund, if appropriate; d) within the last 24 months, the applicant has successfully undergone an audit conducted in accordance with generally accepted auditing standards or an emergency manager had been appointed for the applicant under the Local Financial Stability and Choice Act; and e) within the last 24 months, the Department has not revoked or terminated a grant to the applicant and the administering State department has not determined that the applicant demonstrated an inability to manage a grant.

The bill also specifies that grants provided under the Clean Michigan Initiative Grant and Revolving Loan Program that are used solely to determine whether property is a site or a facility, and if so, to characterize the nature and extent of the contamination by means of an assessment or investigation, may be issued only if both of the following conditions are met: a) the characterization of the nature and extent of contamination includes an estimate of response activity costs in relation to the value of the property in an uncontaminated state and identifies future potential limitations on the use of the property based on current environmental conditions; and b) the property has demonstrable economic development potential.

Eligibility for Grant or Loan

Under the bill, with respect to grants and loans under Section 19608(1)(a)(vi), all of the following conditions apply: An applicant must be a local unit of government. A recipient is not be eligible to receive, except as otherwise provided, more than one grant per year and one loan per year. The loan or grant may not exceed $1.0 million. Brownfield projects that have significant economic and environmental benefit may be considered for more than one grant or loan over consecutive years, provided that the loan or grant agreement includes project-specific benchmarks for eligible activities and failure to satisfy a benchmark would terminate the project's eligibility for additional grant or loan funding, as applicable. A local unit of government may be considered for and awarded more than one grant or loan in a single year relating to multiple unrelated brownfield projects if the projects are determined to have significant environmental or economic benefits to the recipient's municipality or region.

Except for a grant used solely to determine whether property is a site or a facility, the Department may award a grant only if it determines that the property is an eligible property, and the proposed development of the property is expected to result in measurable economic benefit in excess of the grant amount requested by the applicant. The Department may award a loan only if it determines that the property is known or suspected to be an eligible property and the property has economic development potential based on the applicant's planned use of the property.

("Measurable economic benefit" means the permanent jobs that are created or retained, the capital invested, or the increased tax base to the applicable county, city, village, and township where the project is located.)

The Department may approve funding for response activities that are more protective of the public health, safety, and welfare and the environment than required if those activities provide public health or environmental benefit. In its review of a work plan that includes those activities, the Department may consider all of the following: a) proposed new land use and reliability of restrictions to prevent exposure to contamination; b) the cost of implementation activities minimally necessary to satisfy due care requirements, the incremental cost of response activities relative to the cost of activities minimally necessary to satisfy due care requirements, and the total cost of all response activities; and c) long-term obligations associated with leaving contamination in place and the value of reducing or eliminating those obligations.

A grant or loan may not be used to fund response activities that benefit a party that is responsible for an activity causing a release at the eligible property, except that a loan may be used to fund appropriate response activities related to redevelopment and due care activities necessary to facilitate redevelopment of the property if the responsible party meets all of the following: a) is a local unit of government, b) has a proposed redevelopment for the property with measurable economic benefit, and c) provides a minimum of 50% local matching funds for the project.

A grant or loan may be used to fund due care activities necessary to facilitate redevelopment if the party responsible for an activity causing a release is not the developer of proposed redevelopment.

A loan may be used to fund response activities if a party responsible for an activity causing a release is neither the seller nor the developer of the property to receive funding, and the recipient can show that response activities are appropriate in relation to the redevelopment.

Senate Bill 911

Under Part 195 of the Natural Resources and Environmental Protection Act, $435.0 million of the money deposited into the Environmental Protection Bond Fund must be used to clean up sites of toxic and environmental contamination. Of that money, $35.0 million must be used to clean up environmental contamination sites that have been identified under Public Act 307 of 1982 (the former Environmental Response Act) or Part 201. The bill includes sites identified under Part 213. Previously, identified sites also had to meet the criteria that they would not be funded in the next fiscal year and had been approved by the Department as having a measurable economic benefit. Beginning on the bill's effective date, identified sites must meet the criteria for projects under Section 19608 to 19615 (for the Clean Michigan Initiative Bond Fund).

Under Section 19509, the Department of Environmental Quality must promulgate rules necessary to implement grant and loan programs provided in Part 195. The DEQ also must assure maximum participation by local units of government and private entities by promulgating rules that provide for a grant or loan program, where appropriate. Before making a grant or loan, the Department must consider the extent to which it contributes to the achievement of a balanced distribution of grants and loans throughout the State. The Department also must require in rules that loans issued to private entities include an interest charge of not less than 5% per year. Under the bill, notwithstanding any other provision of the section, for grant projects considered for funding under Section 19508 (1)(a) on or after the bill's effective date, the above provisions do not apply and the Department must apply the criteria used for projects under Section 19611 (the extent to which a grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the State).

An application for a grant or loan authorized under Part 195 must be made on a form prescribed by the Department. The Department may require the applicant to provide any information reasonably necessary to allow it to make a determination. Beginning on the bill's effective date, an application for a grant or loan under Section 19508(1)(a) is subject to the same requirements listed in Section 19610 for a loan under Section 19608(1)(a)(iv).

(Section 19508(1)(a) requires money in the Environmental Protection Bond Fund that is allocated to clean up sites of toxic and environmental contamination identified through Part 201 or, under the bill, Part 213 to be spent and recovered by the State in the same manner as provided in that part. Section 19610 lists conditions that must be met before a grant or loan from the Clean Michigan Initiative Bond Fund may be made.)

Senate Bill 912

Grant or Loan Application Requirements

Part 196 of the Natural Resources and Environmental Protection Act requires an application for a grant or a loan from the Clean Michigan Initiative Bond Fund to be made on a form or in a format prescribed by the administering State department. The administering State department may require the applicant to provide any information reasonably necessary to allow it to make a determination required under Part 196.

Under the bill, of the money to be used to provide grants and loans under Section 19608(1)(a)(iv), the following apply: a) the Department of Environmental Quality must accept, and consider for approval, applications for grants and loans throughout the year; and b) the Department must make final application decisions within 90 days after it receives a complete grant or loan application.

A complete application must include all of the following:

-- A description of the proposed eligible activities and the reasons they should be funded.
-- An itemized budget for the proposed eligible activities.
-- A schedule for the completion of the proposed eligible activities.
-- The location of the property.
-- The current ownership and ownership history of the property.
-- The relevant history of the use of the property
-- The current use of the property.
-- The existing and proposed future zoning of the property.
-- If the property is not owned by the applicant, a draft of the enforceable agreement between the property owner and the applicant that commits the property owner to cooperate with the applicant, including a commitment to allow access to the property to complete, at a minimum, the proposed eligible activities.
-- A description of the property's economic redevelopment potential.
-- For loans, a resolution from the governing body of the applicant committing to repayment of the loan.
-- A letter from the chief executive officer or highest-ranking appointed official indicating that the local unit of government supports the brownfield project and that the brownfield project complies with all local zoning and planning ordinances.
-- Any other relevant information the Department requires.

Application Review

The bill eliminated language prohibiting the administering State department from making a grant or loan unless certain conditions were met. The bill requires the DEQ, upon receiving a grant or loan application, for funding provided under Section 19608(1)(a)(iv), to review the application based on the following considerations: a) whether the brownfield project proposed to be funded is authorized by Part 196; b) whether the project is consistent with the local planning and zoning for the area where it is located; c) whether the project provides measurable environmental benefit; d) whether the project provides measurable economic benefit or will contribute significantly to the local unit of government's economic and community redevelopment or the revitalization of adjacent neighborhoods; e) the viability of the redevelopment plan; f) the level of public and private commitment and other resources available for the project; g) how the project relates to a broader economic and community development plan for the local unit as a whole; and h) other criteria that the Department considers relevant.

The bill requires the Department to issue grants under Section 19608(1)(a)(iv) for brownfield projects that it determines meet the requirements of Part 196 and will contribute to the revitalization of underused property.

Grant or Loan Agreement Requirements

Under the bill, for funds to be used to provide grants and loans under Section 19608(1)(a)(iv), all of the following apply.

To receive grant or loan funds, approved applicants must enter into a grant or loan agreement with the Department. At a minimum, the agreement must contain reporting requirements, including at least the following: a) the grant or loan recipient must submit progress status reports to the Department during implementation of the brownfield project that include documentation of project costs and expenditures, at a frequency determined by the Department; and b) the grant or loan recipient must provide a final report upon completion of the grant- or loan-funded activities within a time frame determined by the Department.

When entering into a loan agreement, the recipient must provide financial assurance of repayment of the loan including pledges or revenue sharing, escrow account, letter of credit, or other acceptable mechanism negotiated with the Department. Use of real property as a means to secure a loan will not be considered an acceptable mechanism. The Department is authorized to include in the loan agreement a provision that permits the release of the financial assurance in favor of a pledge of the right of first refusal of the tax increment revenue to the DEQ if the brownfield project has been substantially completed and the annual tax increment captured relative to the project is at least 125% of the annual loan reimbursement payment.

The grant or loan agreement also must contain at least all of the following:

-- The approved eligible activities to be undertaken with grant or loan funds.
-- An implementation schedule for the approved eligible activities.
-- If the property is not owned by the grant or loan recipient, an executed agreement that meets the requirements for an enforceable agreement between the property owner and the applicant.
-- Other provisions as considered appropriate by the Department.

All eligible activities must be consistent with an approved grant or loan work plan. Unless otherwise approved by the DEQ Director, only activities carried out and costs incurred after execution of a grant or loan agreement are eligible. Grant funds must be disbursed on a reimbursement basis upon receipt of appropriate documentation. Loan funds must be

disbursed in draws based on an approved work plan, and supporting documentation must be submitted after expenses are incurred. In either case, the Department must prescribe documentation requirements.

Balancing Distribution, Other Requirements

Before making a grant or loan with money from the Fund, the administering State department must consider the extent to which it contributes to the achievement of a balanced distribution of grants and loans throughout the State. The bill specifies that in determining whether a grant or a loan is appropriate under Section 19608(1)(a)(iv), the DEQ must consider whether the project is likely to be undertaken without State assistance, the availability of State funds from other sources, the degree of private sector participation in the type of project under consideration, and other factors considered important by the Department.

A loan made with money in the Fund must be made on the terms specified by the Act. Loan recipients must repay loans in equal annual installments of principal and interest beginning not later than the first draw of the loan and concluding not later than 15 years after the first draw of the loan. Where the bill refers to the "first draw of the loan", the Act formerly referred to "execution of a loan agreement".

The bill eliminated language relating to State payments upon default of a loan.

MCL 125.2652 et al. (S.B. 908)
324.19511-324.19513 (S.B. 909)
324.19601 et al. (S.B. 910)
324.19508-324.19510 (S.B. 911)
324.19609-324.19612 (S.B. 912)
324.20108b (S.B. 913)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills will have an indeterminate fiscal impact on the Department of Environmental Quality and on local units of government. Generally speaking, the bills broaden the types of sites eligible for tax increment financing (TIF) for redevelopment as a brownfield to include sites under Part 213 of NREPA, as well as make other changes. Additionally, the bills expand the types of sites eligible for brownfield grants and loans and provide clarity as to what activities those grants and loans may be used for. The Clean Michigan Initiative (CMI) bonds authorized by voters in 1998 have provided financing for brownfield grants and loans. According to the DEQ, about $3.5 million in CMI loans and $5.0 million in CMI grants remain uncommitted. Also available for redevelopment projects is $1.0 million in the Revitalization Revolving Loan Fund and $125,000 in site reclamation grants. These amounts themselves are not affected by the bills; rather, the scope of projects eligible for funding through those amounts is expanded.

It does not appear that the changes in the bills will fundamentally change the nature of work that the DEQ does at a particular brownfield site, but it is possible that with the expansion of the types of sites that are eligible for brownfield TIF, the DEQ's workload, and hence its costs, may increase somewhat. According to the DEQ, however, any increases will not be significant to the Department from an operational standpoint.

Fiscal Analyst: Josh Sefton

S1516\s908es