Legislative Analysis

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ALLOW BROWNFIELD TAX INCREMENT FINANCING FOR HOUSING DEVELOPMENT PROJECTS

Senate Bill 129 (H-5) as passed by the House
Sponsor: Sen. Sam Singh

Senate Bill 130 as passed by the House
Sponsor: Sen. Kristen McDonald Rivet

Senate Bill 131 as passed by the House
Sponsor: Sen. Mary Cavanagh

Senate Bill 132 as passed by the House
Sponsor: Sen. Sue Shink

House Committee: Economic Development and Small Business Housing Subcommittee
Senate Committee: Housing and Human Services
Complete to 6-21-23

SUMMARY:

Senate Bills 129, 130, 131, and 132 would allow tax increment financing (TIF) to be used for housing development projects through the state's brownfield program. Generally speaking, when a brownfield development generates new tax revenue due to an increase in property tax value, that revenue can be captured by a local brownfield redevelopment authority (BRA) and given back to the property developer to reimburse certain eligible costs associated with the development.

Senate Bill 129 would allow housing development activities to be eligible for reimbursement under the Brownfield Redevelopment Financing Act. (The bill also includes changes proposed by Senate Bill 289 as to avoid a conflict with that bill if both are enacted.) Senate Bills 130, 131, and 132 would make complementary changes to other acts and are tie-barred to Senate Bill 129, meaning that the bills would not go into effect unless Senate Bill 129 were enacted.

Senate Bill 129 would amend the Brownfield Redevelopment Financing Act to allow tax revenues captured from a brownfield property to be used for certain housing activities with the approval of the Michigan State Housing Development Authority (MSHDA).

Eligible property
The Brownfield Redevelopment Financing Act authorizes brownfield redevelopment authorities to use captured tax revenues to pay for certain activities that benefit or redevelop eligible properties. Under Senate Bill 129, ***housing property*** would qualify as eligible property.

> ***Housing property*** would mean a property on which at least one unit of residential housing is proposed to be constructed, rehabilitated, or otherwise designed to be used as a dwelling, including for mixed-use development. It would also include any personal property located on that property.

Former dumps, landfills, and other areas filled with nonnative material would also qualify as eligible property as long as the property is not qualified agricultural property exempt from local school operating taxes and one or more of the following apply:

- It is a facility,[1] a site or property as defined in Part 213 (Leaking Underground Storage Tanks) of the Natural Resources and Environmental Protection Act (NREPA),[2] a historic resource, functionally obsolete, or ***blighted*** and includes parcels that are adjacent or contiguous to that property if the development of the adjacent or contiguous parcels is estimated to increase the captured taxable value of that property.
- It is tax reverted property owned or controlled by a land bank authority.
- It is a transit-oriented development or property.
- It is in a qualified local governmental unit and contains a targeted redevelopment area.[3]
- It is undeveloped property that was eligible property in a previously approved brownfield plan abolished under specific provisions of the act.

Under Senate Bill 129, ***blighted*** property would include ***previously developed property*** owned by the state or a municipality (a county, city, village, or township). The sale, lease, or transfer of previously developed property by the state or a municipality after the property's inclusion in a brownfield plan would not result in the property losing its status as blighted.

> ***Previously developed property*** would mean property that was a part of an existing developed residential, commercial, or industrial zone that contained a structure serviced by utilities, or property formerly used as a dump, landfill, or other area filled with nonnative material.

In addition, ***blighted*** property currently includes tax reverted property owned by the state, a county, or a qualified local governmental unit. Under the bill, it would instead include tax reverted property owned by the state or a municipality.

Eligible activities

The following activities would qualify as eligible activities for housing property that is owned or controlled by a BRA, municipality, or land bank; is in a community that has identified a specific housing need; and includes absorption or job growth data in its brownfield plan:

- ***Housing development activities***.
- Necessary infrastructure improvements for housing property.
- Infrastructure improvements that support housing development activities.
- Site preparation and improvements that support housing development activities and are not environmental response activities.[4]

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[1] "Facility" is defined in section 20101 of NREPA. In general terms, it means a site with too much of a hazardous substance. See http://www.legislature.mi.gov/documents/mcl/pdf/mcl-324-20101.pdf.

[2] The definitions of "property" and "site" can be found here: http://www.legislature.mi.gov/documents/mcl/pdf/mcl-324-21303.pdf.

[3] ***Qualified local governmental unit*** means that term as defined in the Obsolete Property Rehabilitation Act (in general, a city or township that meets specified criteria indicating economic distress). A list of these local units can be found here: https://www.miplace.org/495921/globalassets/documents/fact-sheets/core_communities.pdf. Targeted redevelopment areas must meet certain criteria under the act and require Michigan Strategic Fund approval.

[4] Environmental response activities are currently eligible activities that fall under the jurisdiction of the Department of Environment, Great Lakes, and Energy.

Housing development activities would mean any of the following:

- Reimbursement provided to owners of rental units for ***qualified rehabilitation***.
- Costs of public infrastructure and necessary safety improvements.
- Costs of demolition and renovation of existing buildings and of site preparation, to the extent necessary to accommodate an income qualified purchaser or renter household.
- Temporary relocation costs for an ***income qualified household*** for up to one year.
- Acquisition costs for blighted or obsolete rental units, to the extent that the acquisition would promote the rehabilitation or adaptive reuse of the unit to accommodate an income qualified household.
- Reimbursement provided to a developer to fill a financing gap associated with the development of units priced for income qualified households.
- Reimbursement provided to a developer to assist with costs related to infrastructure improvements and site preparation that are necessary for housing development for income qualified households on eligible property but do not qualify as response activities.

Qualified rehabilitation would mean the rehabilitation of any existing structures, including those designed to be used as a dwelling that is necessary to make a housing unit suitable for sale or rent to an income qualified household. It would include any proposed rehabilitation that would bring a structure into compliance with local minimum building occupancy standards or that would improve the livability of the units while meeting minimum local standards.

Income qualified household would mean a person, family, or unrelated persons living together whose annual household income is no greater than 120% of the area median income (AMI), as determined by the federal Department of Housing and Urban Development and adjusted for family size.[5]

Brownfield plan hearing

A local unit of government, which must hold a public hearing before approving a brownfield plan, would have to notify MSHDA or a MSHDA designee at least 10 days before the hearing if a brownfield plan would use captured school operating taxes for housing development activities. BRAs that submit a combined brownfield plan to MSHDA (as described below) would have to notify MSHDA at least 30 days before the hearing to allow for a consultation.[6]

Work plans and combined brownfield plans

Currently, a BRA that plans to capture taxes levied for school operating purposes must submit either a work plan or a combined brownfield plan to the Department of Environment, Great Lakes, and Energy (EGLE) or the Michigan Strategic Fund (MSF) for approval.[7] Additionally,

[5] Annual household income would mean the income received by all individuals living as members of the household who are at least 24 years old at the time of the determination. The 2022 Median Family Income calculations can be found here: https://www.huduser.gov/portal/datasets/il/il2022/select_Geography.odn.

[6] Combined brownfield plans include all information required in a brownfield plan and a work plan.

[7] The information that must be included in a work plan submitted to the MSF can be found here: https://www.miplace.org/4a739d/globalassets/documents/tif/act-381-work-plan-instructions.pdf.

a development or reimbursement agreement between the municipality or BRA and the property owner or developer generally must be in place before TIF can be used.

Senate Bill 129 would generally require that if a work plan or combined brownfield plan requests reimbursement for housing development activities, it would have to be approved by MSHDA.[8] Additionally, a work plan or combined brownfield plan and the required development or reimbursement agreement would have to include a summary of the BRA's proposed income and price monitoring responsibilities for residential units and any related expenses.

In additional to all currently required criteria, MSHDA would have to consider the plan's alignment with Michigan's Statewide Housing Plan,[9] the capacity of the entity or agency that will monitor price and income (and the duration of the monitoring), whether the project will support housing at price points that align with the local workforce, and whether the property will regulate short-term rentals through deed restrictions or will otherwise ensure long-term local housing needs when reviewing a work plan or combined brownfield plan.

Within 60 days of receiving a request for the approval of a work plan or combined brownfield plan, MSHDA would have to provide one of the following written notices:[10]

- An unconditional approval that specifies the eligible activities and maximum allowable capture amount.
- A conditional approval that specifies any necessary modifications to the work plan.
- A denial letter specifying the reason for the denial.

MSHDA's approval of a work plan or combined brownfield plan would be final, and if no timely written response is provided, then the plan would be approved as submitted. If a plan is denied, the BRA could resubmit it.

Eligible costs

Revenue from local and school operating taxes can only be used for activities specifically outlined in the act, which include any reasonable costs of developing, preparing, or implementing brownfield plans, combined brownfield plans, and work plans. Senate Bill 129 would include any fees and expenses beyond legal and consulting fees as reasonable costs of development or preparation, such as those for licensing, permitting, planning, engineering, architectural services, testing, and accounting.[11]

Costs of implementation would include costs of implementing, monitoring, and complying with any income and price monitoring responsibilities associated with housing development activities, and the maximum amount that could be used from captured taxes levied for school operating purposes would be raised from $30,000 to $50,000.

The information that must be included in a combined brownfield plan submitted to the MSF can be found here: https://www.miplace.org/4a73a5/globalassets/documents/tif/act-381-combined-brownfield-plan-instructions.pdf.

[8] A work plan or combined brownfield plan would not require MSHDA approval if all housing property identified in the plan for housing development activities would be sold or rented at market rate and would not be subsidized.

[9] https://www.michigan.gov/mshda/developers/statewide-housing-plan

[10] For work plans, MSHDA would have to provide a response within seven days after the first board meeting that occurs after the 60-day deadline.

[11] Legal and consulting fees already qualify as reasonable costs under the act, up to $30,000.

Up to $250,000 in revenue captured from school operating taxes could be used for asbestos, mold, lead, and building hazardous materials abatement and demolition *before* a work plan or combined brownfield plan is approved if the costs were incurred by a person other than the BRA.

When applicable, MSHDA would have to approve the use of captured school operating tax revenue for interest payments on advances made for a project that includes housing development activities.

The chairperson of the MSF can approve combined brownfield plans and work plans that include the use of captured school operating taxes for eligible activities totaling up to $1.0 million without convening the MSF board. Senate Bill 129 would exclude plans that include housing development activities from this provision.

Revenue capture limits

Senate Bill 129 would raise the maximum allowable amounts that a BRA can capture from local taxes in each fiscal year for any reasonable costs of developing, preparing, and implementing brownfield plans as follows:

- If a BRA has five or fewer ***active projects***, from $100,000 to $125,000.
- If it has between six and ten active projects, from $125,000 to $165,000.
- If it has between 11 and 15 active projects, from $150,000 to $200,000.
- If it has between 16 and 20 active projects, from $175,000 to $225,000.
- If it has between 21 and 25 active projects, from $200,000 to $250,000.
- If it has between 26 and 30 active projects, from $300,000 to $400,000.
- If it has between 31 and 53 active projects, from $500,000 to $650,000.
- If it has between 54 and 73 active projects, from $700,000 to $900,000.
- If it has between 74 and 98 active projects, from $900,000 to $1,400,000.
- If it has 99 or more active projects, from $1,000,000 to $2,000,000.

Active project currently means a project for which a BRA is currently capturing tax revenues. Senate Bill 129 would amend this definition to include projects for which a BRA has ongoing obligations to implement, monitor, or maintain compliance with the income and price monitoring responsibilities associated with housing development activities.

Reporting

A BRA would have to provide MSHDA with a copy of its annual report. If the BRA participates in housing development activities, the report would have to include the following information:[12]

- The number of housing units produced.
- The number of income qualified purchaser households served.
- The number of income qualified renting households served.
- For the initial reporting period only, the prices at which the units were sold or rented.

[12] The current reporting requirements for BRAs can be found here: https://www.miplace.org/4a73a4/globalassets/documents/tif/act-381-reporting-guidance.pdf.

- Racial and socioeconomic data on the individuals purchasing or renting the units. (If this data is not available, then racial and socioeconomic data on the census tract in which the units are located would be used.)

MSHDA would have to compile all reports received from BRAs into one annual report that would be submitted to each member of the legislature. Once per quarter, it would be required to post the name, location, and amount of approved tax revenue capture for each project that it approves during the immediately preceding quarter on its website.

Additionally, MSHDA's role would be assessed in the auditor general's performance postaudit of the brownfield program's effectiveness.

State and local brownfield funds

Senate Bill 129 would allow the State Brownfield Redevelopment Fund to be used to distribute revenue deposited into the fund from a brownfield plan that includes housing development activities to the Michigan Housing and Community Development Fund.

The bill would also specify that a local brownfield revolving fund could only be used to pay for the costs of eligible activities on property located within the relevant municipality, regardless of whether that property is included in a brownfield plan.

Eligible tax increment revenue sources

Tax increment revenues would include the difference between the amount of any service charge for public services paid by owners of certain housing projects in lieu of property taxes on an eligible property, as authorized by the State Housing Development Authority Act, that is subject to a brownfield plan and the amount of property taxes levied on that property the year it became subject to the brownfield plan.

Tax increment revenues currently exclude ad valorem taxes or specific taxes captured by a downtown development authority, corridor improvement authority, local development finance authority, or other tax increment financing authority if the taxes were captured on the date that eligible property became subject to a brownfield plan under the act. Senate Bill 129 would specify that those taxes would be exempt from capture unless those authorities agree to forgo or transfer their taxes in support of the brownfield plan.

Economic opportunity zones

An ***economic opportunity zone*** is currently defined as one or more parcels of land that are at least 40 acres in size, contain or contained a manufacturing operation that consisted of at least 500,000 square feet, and are located in a municipality with a population of at least 30,000 that is contiguous to a qualified local governmental unit. Senate Bill 129 would amend this definition to include a parcel of land containing an enclosed mall, reduce the minimum square footage to 300,000, and eliminate the municipality population minimum.

Additional provisions

A BRA currently cannot enter into an agreement to share a portion of the taxes captured from an eligible property with the taxing jurisdictions or governing body of a municipality. Senate Bill 129 would allow an exception to this provision if a TIF authority established under the Recodified Tax Increment Financing Act agrees to forgo or transfer its tax capturing abilities

to allow a BRA to instead capture and utilize those taxes to pay for eligible activities for an eligible property in accordance with the TIF plan for the property.

The percentage of TIF revenues captured from taxes levied for school operating purposes from a parcel of eligible property currently cannot exceed the percentage of TIF revenues captured from local taxes for that parcel. Senate Bill 129 would allow an exception to this provision if there is another approved local contribution to the project that provides a value reasonably equivalent to that percentage of local capture.

For purposes of the act, ***specific taxes*** would include taxes levied under the Attainable Housing Facilities Act and the Residential Housing Facilities Act.

MCL 125.2652 et seq.

Senate Bill 130 would amend the General Property Tax Act to update a reference to sections of the Brownfield Redevelopment Financing Act to reflect changes that would be made by Senate Bill 129.

MCL 211.7gg

Senate Bill 131 would amend the Use Tax Act to update a reference to a section of the Brownfield Redevelopment Financing Act to reflect changes that would be made by Senate Bill 129.

MCL 205.94dd

Senate Bill 132 would amend the General Sales Tax Act to update a reference to a section of the Brownfield Redevelopment Financing Act to reflect changes that would be made by Senate Bill 129.

MCL 205.54d

FISCAL IMPACT:

To the extent that a brownfield redevelopment authority increases its tax capture to pay for the newly authorized activities under the provisions of the bill, an affected local unit of government would realize reduced revenues. If the brownfield redevelopment authority captured a portion of the State Education Tax, the School Aid Fund would realize reduced revenues. In addition, any expanded use of tax increment financing to pay for the additional activities authorized under the provisions of the bill could lead to increased expenditures from the School Aid Fund due to the capture of additional 18-mill nonhomestead local school operating millages. The extent to which these newly expanded activities would be included in brownfield plans cannot currently be estimated.

In the longer term, the net fiscal impact would depend on the nature and scope of the project and the impact on property values. To the extent that it is argued that a project would not have occurred but for the provisions of the bill, the longer term net fiscal impact would more likely result in increased revenues for the local unit of government.

The bill would increase costs for MSHDA within the Department of Labor and Economic Opportunity by an indeterminate amount. The amount of any increased costs would likely be minimal and would depend upon additional administrative costs and staff resources that may be required under the bill's requirements.

POSITIONS:

Representatives of the following entities testified in support of the bills (5-11-23):

- Michigan State Housing Development Authority
- Dwelling Place

The following entities indicated support for the bills:

- City of Grand Rapids (6-13-23)
- Community Economic Development Association of Michigan (6-13-23)
- David, Wierenga & Lauka, P.C. (5-11-23)
- Grand Rapids Chamber (5-11-23)
- Holland Nonprofit (5-11-23)
- Home Builders Association of Michigan (5-11-23)
- Housing North (5-11-23)
- ICCF Community Homes (5-11-23)
- Kalkaska Downtown Development Authority (5-11-23)
- Lighthouse Michigan (5-11-23)
- Michigan Bankers (6-13-23)
- Michigan Manufactured Housing Association (6-13-23)
- Michigan Mortgage Lenders Association (5-11-23)
- Michigan Municipal League (5-11-23)
- Michigan Realtors (6-13-23)
- Michigan Townships Association (6-13-23)
- Northern Michigan Chamber Alliance (5-11-23)
- Robertson Homes (5-11-23)
- Shiawassee Economic Development Partnership (5-11-23)
- Traverse Connect (5-11-23)
- Western UP Planning and Development Region (5-11-23)

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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.