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BILL ANALYSIS



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Senate Bills 111 through 115 (as reported without amendment)

Sponsor: Senator Ken Horn (S.B. 111)
Senator Jack Brandenburg (S.B. 112)
Senator Tom Casperson (S.B. 113)
Senator Peter MacGregor (S.B. 114)
Senator Steven Bieda (S.B. 115)

Committee: Economic Development and International Investment

CONTENT

Senate Bill 111 would amend the Brownfield Redevelopment Financing Act to do the following:

- Allow the board of a brownfield redevelopment authority to implement a transformational brownfield development plan with the approval of the Michigan Strategic Fund (MSF) and the governing body of the municipality that created the authority.
- Require a transformational brownfield plan to be for mixed use development and be expected to generate a specified level of capital investment, based on the population of the municipality.
- Allow a transformational brownfield plan to authorize the use of construction period tax capture revenue, withholding tax capture revenue, income tax capture revenue, and tax increment revenue for eligible activities described in the bill.
- Allow a plan to consist of a single development on eligible property or a series of developments on eligible property that were part of a related program of investment, whether or not located on contiguous parcels, and allow the plan to be amended to apply to additional parcels of eligible property.
- Allow the brownfield authority and the MSF to reimburse advances made by a municipality, a land bank fast track authority, or any other person or entity for costs of eligible activities included within a transformational brownfield plan using tax increment revenue, construction period tax capture revenue, withholding tax capture revenue, or income tax capture revenue attributable to that plan.
- Allow eligible activities conducted on eligible property 90 days before approval of a transformational brownfield plan to be reimbursed from those revenue sources under certain circumstances.
- Provide for income tax exemptions under the Michigan Renaissance Zone Act to cease if a transformational brownfield development plan overlapped with a renaissance zone, upon the request of the owner or developer, the local government unit, the MSF, and a city, if reimbursement requirements were met.
- Specify that an authority and governing body would be responsible for deciding whether to seek approval of a brownfield plan as a transformational brownfield plan.
- Prescribe requirements and disqualifying conditions governing the determination of whether to approve a plan, including financial and underwriting analyses by the MSF and independent third parties.
- Require any positive or negative determination by the MSF to be supported by objective analyses and documented in the record of its proceedings.
- Allow the MSF to approve not more than five transformational brownfield plans in a calendar year, except under certain circumstances.

- Specify that the MSF would have to require the owner or developer of eligible property to certify the actual capital investment upon completion of construction and before the commencement of reimbursement for the plan or the distinct phase or project within the plan for which reimbursement would be provided.
- Allow the MSF to review and modify the amount of reimbursement if the actual capital investment were less than the amount included in a plan, and provide for remedial actions the MSF could take if the actual level of capital investment did not meet the applicable minimum investment required.
- Require the State Treasurer to deposit annually from the General Fund into the State Brownfield Redevelopment Fund an amount equal to the construction period tax capture revenue, withholding tax capture revenue, and income tax capture revenue due to be transmitted under all transformational brownfield plans.
- Prohibit the MSF from committing, and the Department from disbursing, a total amount of income tax capture revenue and withholding tax capture revenue that exceeded \$800.0 million.
- Prohibit the MSF from approving more than a total of \$200.0 million in construction period tax capture revenue and in projected sales and use tax exemptions (proposed by Senate Bills 113 and 114).
- Require the MSF to charge and collect a reasonable application fee as necessary to cover the costs associated with the review and approval of a transformational brownfield plan.

The bill also would prohibit the MSF from committing, and the Department of Treasury from disbursing, more than \$40.0 million in "total annual tax capture" under all transformational brownfield plans. "Total annual tax capture" would mean the total annual amount of income tax capture revenue and withholding tax capture revenue that may be reimbursed each calendar year under all transformational brownfield plans. If the amount committed or disbursed in a calendar year were less than \$40.0 million, the difference between that amount and \$40.0 million would be available to be committed or disbursed in subsequent calendar years in addition to the annual limit otherwise applicable.

Senate Bill 112 would amend the Income Tax Act to provide that, from collected income tax revenue, an amount equal to the construction period tax capture revenue, withholding tax capture revenue, and income tax capture revenue attributable to transformational brownfield plans adopted under the Brownfield Redevelopment Financing Act would have to be deposited each State fiscal year into the State Brownfield Redevelopment Fund.

Senate Bill 113 would amend the General Sales Tax Act to exempt from sales tax the sale of tangible personal property for use in eligible activities on eligible property that was included in a transformational brownfield plan, to the extent that the tangible personal property would be affixed to and made a structural part of the real property or infrastructure improvements included within the plan.

Senate Bill 114 would amend the Use Tax Act to specify that use tax would not apply to tangible personal property acquired by a person engaged in the business of altering, repairing, or improving real estate for others, or to the manufacture of a product that was affixed to real estate, if the property or product were to be affixed to or made a structural part of improvements to real property included within a transformational brownfield plan, to the extent that those improvements were included as eligible activities on eligible property that was included in a transformational brownfield plan.

Senate Bill 115 would amend the Michigan Renaissance Zone Act to state that, where a portion of a renaissance zone was included within a transformational brownfield plan, upon the request of the property owner and the local government unit, and the approval of the Michigan Strategic Fund and the city levying an income tax within the zone, exemptions from the Income Tax Act and the City Income Tax Act would not apply within that portion of the renaissance zone.

MCL 125.2652 et al. (S.B. 111)
Proposed MCL 206.51e (S.B. 112)
MCL 205.54d (S.B. 113)
Proposed MCL 205.4dd (S.B. 114)
MCL 125.2689 (S.B. 115)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bills would increase State revenue over the long-term, assuming that the developments included in transformational brownfield plans (TBPs) would not have occurred in the absence of the bill and that development in a TBP did not shift economic activity from other locations in Michigan to the area of the TBP. The General Fund would incur the cost of tax capture under the income tax. The benefit of increased income tax revenue would accrue to the School Aid Fund and, depending on the interpretation of the bill, to the General Fund or the State Brownfield Redevelopment Fund (SBRF). The General Fund, School Aid Fund, and constitutional revenue sharing would incur the cost of exemptions under the sales and use taxes. The timing of General Fund spending related to the TBPs would not necessarily match the timing of increased State revenue. To obtain approval, each TBP would have to satisfy a requirement that it would result in an overall positive fiscal benefit to the State, considering the impact for potential displacement of revenue from other areas of the State and the impact of the TBP on the economic development in the surrounding area. The bills would increase the revenue and administrative costs of the Department of Treasury and the Michigan Strategic Fund. Local revenue would be affected by the terms of the TBP, including the degree to which a plan reimbursed a local unit for brownfield administrative expenditures and project advances and the possible use of tax increment revenue for additional purposes pursuant to the bills, including construction, restoration, and renovation of buildings. To the extent that sales tax revenue increased due to an increase in economic activity under a TBP, constitutional revenue sharing payments would increase. These impacts are discussed further below.

Senate Bill 111

State Fiscal Impact

The bill would provide for development incentives of up to \$1.0 billion for projects included in TBPs. This is divided into two parts. First, the bill would allow the capture of up to \$800.0 million in income tax revenue across all approved TBPs from withholding from employees working in the TBPs and income tax paid by residents of the TBPs. The tax capture from employees and residents would be limited to 50% of the increased eligible income tax revenue under a TBP. Second, up to \$200.0 million would be allowed for the combined value of captured income tax revenue from construction period tax capture revenues (the increase in income tax paid to construction workers in the TBP) and the sales and use tax exemptions provided in Senate Bill 113 and Senate Bill 114. The General Fund would pay the entire cost of the \$800.0 million in captured income tax revenue allowed by Senate Bill 111. This cost would be offset by additional State revenue because the tax capture would be limited to 50% of the increased taxes in a TBP. The terms of a TBP could require up to 100% of the construction period tax capture to be paid to the Brownfield Redevelopment Fund for remittance to the brownfield authority or developer. The cost of the \$200.0 million primarily would be paid by the General Fund; however, to the extent that sales and use tax incentives were part of the \$200.0 million, the General Fund and School Aid Fund revenue would be reduced.

The terms of a TBP would determine the amount of income tax revenue allowed to be captured by the TBP. This would be limited for each plan by an underwriting and financial analysis conducted by the MSF, and in some cases, by an independent third party. The amount of income tax revenue necessary to pay the authority, owner, or developer according to the

terms of the TBPs would be calculated by the Department of Treasury and deposited from the General Fund into the Brownfield Redevelopment Fund. The disbursements to an authority, owner, or developer under a TBP could vary by year. The bill would establish a limit of \$40.0 million in reimbursements per year under all TBPs; however, it provides that any of the \$40.0 million not disbursed in a year could be used to allow payments above \$40.0 million in a future year. Depending on the interpretation of several provisions in the bill, the increased State income tax revenue from the TBP developments would be either deposited in the State Brownfield Development Fund, or distributed to the General Fund and the School Aid Fund in the same proportions as other income tax revenue: approximately 76.2% to the General Fund and approximately 23.8% to the School Aid Fund.

If a worker obtained a new position in the TBP and that worker had not worked previously in Michigan (having been unemployed or having moved to the TBP area from out of State, for example), then the income tax paid by the worker would be new revenue to the State, which would receive at least 50% of that additional revenue while up to 50% of the new revenue could be captured under the TBP and paid to the authority, owner, or developer for up to 20 years according to the terms of the TBP and the overall caps on payments under all TBPs. On the other hand, if the worker had income that was simply shifted from another part of the State because the job moved from outside a TBP to inside a TBP, up to 50% of the State income tax paid by that worker would be lost to the State, which would have to pay up to 50% of that tax revenue to the authority, owner, or developer under the terms of the TBP for up to 20 years. The economic impact analysis required by the bill would have to estimate the relative magnitude of these effects. A TBP could not be approved unless the estimates showed that there would be an overall positive fiscal impact on the State. The impact, however, could vary year by year and it is possible that the net positive impact would not be achieved until the TBP expired.

The number of TBPs that the MSF would be permitted to approve in a year would be limited to five plans that met the investment levels specified by population level and five plans approved under waiver authority that would allow the MSF to waive investment requirements for TBPs in areas that had been subject to a drinking water state of emergency (Flint) or that had received certain Federal funds for blight elimination. Local units eligible for that funding are shown in [Table 1](#).

Table 1

Municipalities Eligible for Blight Eliminate Funding Under the Housing Finance Innovation Fund for the Hardest Hit Housing Markets		
Adrian	Ironwood	Lansing
Calhoun County	Hamtramck	Melvindale
Ecorse	Highland Park	Muskegon County
Detroit	Inkster	Muskegon Heights
Flint	Ishpeming	Pontiac
Genesee County	Jackson	Port Huron
Grand Rapids	Kalamazoo	River Rouge
		Saginaw
Source: Michigan State Housing Development Authority and Michigan Strategic Fund		

In addition, the bill would increase the revenue and costs of the Michigan Strategic Fund. The bill would direct the MSF to collect a reasonable fee to cover the cost of TBP review and approval. The Department of Treasury would incur additional costs to administer the tax capture provisions of the bill to determine revenue attribute to construction worker, employees, and residents of a TBP. The Department would be allowed to use money in the State Brownfield Redevelopment Fund to pay for the administrative costs of the Brownfield Redevelopment Financing Act.

Local Fiscal Impact

The bill would have a generally positive impact on local revenue over the long term assuming that the projects would not occur without the establishment of a TBP. Each TBP would be considered a brownfield plan with the ability to use tax increment financing and capture property tax revenue. The period before local governments saw increased property tax revenue from development under a TBP would vary based on the characteristics of the plan, particularly the duration of any tax capture period, and the number and value of developments locally.

The bill would expand the uses of tax increment financing to include any construction, restoration, alteration, demolition of buildings, or improvement of buildings or sites that could increase the magnitude of any tax increment financing and associated capture. Expanding the eligible uses of tax increment revenue would increase the magnitude of the property tax capture, with the potential to increase the capture of local school operating millage and thereby increase costs to the School Aid Fund.

A brownfield authority or municipality with an approved transformational brownfield plan could receive increased revenue, if the terms of the TBP allowed for a portion of the captured sales, use, and income tax revenue to be used for administrative and operating expenses associated with the TBP, including the repayment of the cost of developing the original TBP or the reimbursement of a municipality for advances made for a TBP project, which could include interest. Reimbursement of advances, possibly with interest, also would be allowed to a land bank fast track authority. Advances also could be repaid with interest to any other person or entity for costs of eligible activities within a TBP. This would reduce funds available for new projects. An increase in sales tax revenue due to the TBP would result in an increase in constitutional revenue sharing payments to cities, villages, and townships.

Also, local governments and brownfield authorities could see increased revenue due to the expanded purposes for which advances could be reimbursed from TBP captured revenue.

Senate Bill 112 would reduce General Fund revenue by an unknown and potentially significant amount that would depend on the level and timing of economic activity related to a transformational brownfield project. While Senate Bill 111 would limit the amount of reimbursement of income tax capture revenue and withholding tax capture revenue for all plans to \$40.0 million per year, the amount of money directed to the State Brownfield Redevelopment Fund (SBRF) under Senate Bill 112 would be limited only by the amount of actual capture, and thus could be less than, or more than, the \$40.0 million reimbursement limit. Similarly, Senate Bill 111 would only limit construction period tax capture revenue to \$200.0 million less the value of any sales and use tax exemptions under Senate Bills 113 and 114, and Senate Bill 112 would direct that revenue, as it was determined, to the SBRF.

The total amount of General Fund revenue to be deposited into the SBRF in any given year, or in total, is difficult to determine because of similar, but different, language in Senate Bill 112 and two sections of Senate Bill 111, as well as in the definitions of capture revenue. In Senate Bill 111, Section 8a(4) would direct General Fund revenue to the SBRF, but limit the deposit to the amount "due to be transmitted under all transformational brownfield plans", although it is unclear whether "due to be transmitted" would be the same as the amount to be reimbursed. Later in Senate Bill 111, Section 16(8)(a) would direct a transfer of revenue to the SBRF "as provided for in Section 8a(4)", but does not indicate that the transfer would have to be made from the General Fund. Senate Bill 112 would require the transfer to be from the General Fund, but not limit it to the amount "due to be transmitted". Furthermore, the definitions in Senate Bill 111 for the various types of capture revenue do not appear to incorporate the limit imposed in Section 14a(8) that would not allow a transformational brownfield plan to use more than 50% of any captured withholding or income tax revenue. As a result, because the definitions for capture revenue determine the capture as the amount

above an initial value, the bill would appear to earmark more revenue to the SBRF than could be distributed to a plan. For example, income tax capture revenue would be that revenue above the initial level. Therefore, if the initial level were \$1.0 million, and revenue in a given year under the transformational brownfield plan were \$5.0 million, the definition would indicate that the income tax capture revenue would total \$4.0 million, and Senate Bill 112 would appear to require the \$4.0 million to be deposited into the SBRF. However, Senate Bill 111 would not allow a plan to use more than \$2.0 million of the \$4.0 million; and the bills are unclear regarding the ultimate disposition of the remaining \$2.0 million in the SBRF. As a result, the bills hypothetically could allow, over the 20-year life of the plans, \$1.8 billion to be transferred from the General Fund to the SBRF: \$800.0 million of income tax and withholding capture used by the plans, another \$800.0 million of capture not authorized to be used by the plans because of the 50% limit, and \$200.0 million of construction period tax capture.

If the language were to be adjusted so that only amounts that could be used by a plan were to be transferred into the SBRF, the limits in Senate Bill 111 would imply that the maximum amount of General Fund reduction over a 20-year period would total \$1.0 billion, although the values of the exemptions under Senate Bills 113 and 114 would likely reduce that total. The amount that could be transferred in any given year could vary significantly, depending on how the transfer language was modified. There would be no annual limit with respect to the construction period tax capture, so the yearly reduction under those provisions could vary from zero (no construction activity) to \$200.0 million (the maximum amount of capture all occurring in a single year). For income tax and withholding tax captures, the reimbursement would be limited to \$40.0 million, unless an amount had carried over from a prior year in which less than \$40.0 million was reimbursed. Thus, even if the language were modified to limit the transfer associated with any income tax and withholding capture to the amount that could be reimbursed to a plan, the annual impact on the General Fund could be more or less than \$40.0 million.

Senate Bills 113 and 114 would reduce State General Fund and School Aid Fund revenue, and local unit revenue under constitutional revenue sharing provisions, by an unknown amount that would depend on the timing and level of economic activity related to purchases of tangible personal property for a transformational brownfield plan. Senate Bill 111 specifies minimum expected investment levels for plans in different sizes of communities. If one plan occurred in each community size category listed in Senate Bill 111, the minimum expected investment would total \$765.0 million. The portion of this investment that would consist of tangible personal property eligible for the exemption under the bills is unknown, as is the portion that would be exempt under the sales tax rather than the use tax; however, if 20% of the investment were eligible for the exemption under the sales tax, sales tax collections would be reduced by \$9.2 million, which would be divided between a School Aid Fund reduction of approximately \$6.7 million, a \$0.9 million reduction in constitutional revenue sharing payments to local unit, and a \$1.5 million reduction in General Fund revenue. To the extent that a portion of the purchases would be exempt under the use tax, the impact on the General Fund would increase, while the impact on the School Aid Fund and constitutional revenue sharing would decrease by an identical amount. Regardless of how the exemptions were split between sales taxes and use taxes, if a larger portion of the investment were exempt, the reductions would be greater; while if a smaller portion were exempt, the reductions would be less.

Senate Bill 115 would allow the levy of State and city income tax in a renaissance zone that was in part within a TBP with MSF and local approval. Affected taxpayers within the renaissance zone would no longer be exempt from State and city income tax. Instead, they would pay the State and city income tax that would be captured for distribution under the terms of the TBP to the authority, owner, or development. This income tax revenue would be foregone by the State and city levying a city income tax, which otherwise would receive increased revenue if the exemption under the renaissance zone were terminated. This

provision would apply only to development on previously undeveloped land within a renaissance zone.

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Bill Analysis @ www.senate.michigan.gov/sfa

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