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BILL ANALYSIS

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Senate Bills 111 through 115 (as enacted)

PUBLIC ACTS 46-50 of 2017

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)

Senate Committee: Economic Development and International Investment
House Committee: Tax Policy

Date Completed: 1-3-18

RATIONALE

Since 1990, Michigan's population has seen only a modest increase. The State reports that its total population during that year was approximately 9.3 million, while in 2015 it was just over 9.9 million. Additionally, according to the U.S. Bureau of Labor Statistics, Michigan's labor force has decreased over the past 10 years. The Bureau reports that, during the January 2007 period, Michigan's labor force was just over 5.0 million, while the June 2017 period showed a labor force of 4,865,200.

Policy-makers have tried to attract businesses and workers to the State through tax reforms, such as replacing the Single Business Tax with the Corporate Income Tax in 2011, regulatory reforms, such as relaxing the restrictions regarding autonomous vehicle testing, and economic incentives. However, there was a belief among policy-makers and municipal leaders that the State and municipalities had few economic development options to persuade businesses or developers to invest in large and meaningful projects that would make Michigan a more attractive place for people to work and live in. Furthermore, many Michigan municipalities, particularly Detroit, have blighted areas and buildings that are too expensive for developers to renovate without assistance. In an effort to create more economic development opportunities, remove blight, and attract skilled workers to Michigan, some suggested creating an additional economic tool that will encourage developers and businesses to renovate or repurpose some of the most challenging brownfield properties into attractive economic and residential hubs.

CONTENT

Senate Bill 111 amended 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 are 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 overlaps with a renaissance zone, upon the request of the owner or developer, the local government unit, the MSF, and a city, if reimbursement requirements are met.
- Specify that an authority and governing body are 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.
- Prohibit the MSF from approving any new transformational brownfield plans after December 31, 2022, but allow plans approved before that date to remain in effect through that date.
- Specify that the MSF must 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 will be provided.
- Allow the MSF to review and modify the amount of reimbursement if the actual capital investment is less than the amount included in a plan, and provide for remedial actions the MSF may take if the actual level of capital investment does 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 exceeds \$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 (under 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 prohibits 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" means 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 is less than \$40.0 million, the difference between that amount and \$40.0 million must be available to be committed or

disbursed in subsequent calendar years in addition to the annual limit otherwise applicable.

Senate Bill 112 amended 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 due to be transmitted under all transformational brownfield plans adopted under the Brownfield Redevelopment Financing Act must be deposited each State fiscal year into the State Brownfield Redevelopment Fund.

Senate Bill 113 amended 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 is included in a transformational brownfield plan, to the extent that the tangible personal property is affixed to and made a structural part of the real property or infrastructure improvements included within the plan.

Senate Bill 114 amended the Use Tax Act to specify that use tax does 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 is affixed to real estate, if the property or product is affixed to or made a structural part of improvements to real property included within a transformational brownfield plan, to the extent that those improvements are included as eligible activities on eligible property that is included in a transformational brownfield plan.

Senate Bill 115 amended the Michigan Renaissance Zone Act to state that, where a portion of a renaissance zone is 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 do not apply within that portion of the renaissance zone.

Each of the bills took effect on July 24, 2017.

Senate Bill 111 is described in further detail below.

Designation & Approval of Transformational Brownfield Plan

The Brownfield Redevelopment Financing Act authorizes municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans and create brownfield redevelopment zones to capture tax revenue attributable to increases in property value within the area or district, and use that money for specific "eligible activities" on "eligible properties" outlined under the Act. The Act also creates the State Brownfield Redevelopment Fund as a revolving Fund within the Department of Treasury.

The bill permits the board of an authority to implement a transformational brownfield plan, subject to the approval of the governing body and Michigan Strategic Fund. The bill defines "transformational brownfield plan" as a brownfield plan that meets the requirements of the bill and is adopted according to it and, as designated by resolution of the governing body and approved by the MSF, will have a transformational impact on local economic development and community revitalization based on the extent of brownfield redevelopment and growth in population, commercial activity, and employment that will result from the plan.

To be designated a transformational brownfield plan, a plan must be for mixed-use development and be expected to result in the specified levels of capital investment in a municipality that is not a county, based on its population, as shown in Table 1.

Table 1

Population	Level of Investment
<25,000	\$15.0 million
≥25,000 - ≤49,999	\$25.0 million
≥50,000 - ≤99,999	\$50.0 million
≥100,000 - ≤149,999	\$75.0 million
≥150,000 - ≤599,999	\$100.0 million
≥600,000	\$500.0 million

("Mixed use" means a real estate project with planned integration of some combination of retail, office, residential, or hotel uses.)

A transformational brownfield plan may consist of a single development on eligible property or a series of developments on eligible property that are part of a related program of investment, whether or not located on contiguous parcels, and may be amended to apply to additional parcels of eligible property. A series of developments on parcels that are not contiguous must be considered a related program of investment if various conditions are met.

("Eligible property" means 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 meets one or more of the conditions listed in the Act. The bill includes among those conditions undeveloped property that was eligible property in a previously approved brownfield plan abolished as provided in the Act.

The bill also adds to the definition of "eligible activities", for eligible activities on eligible property that is included in a transformational brownfield plan, any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property.)

The bill states that a transformational brownfield plan is a brownfield plan. Except as otherwise provided, a transformational brownfield plan is subject to sections of the Act that require a plan to include certain provisions; require a plan to be determined to be a public purpose; and specify prohibited conduct, specify requirements for a work plan, and provide for combined brownfield plans, among other things. In addition to the information required under the Act, the bill describes further information that a transformational brownfield plan must contain, including the basis for designating the plan as a transformational brownfield plan, a description of the costs of the plan intended to be paid for with construction period tax capture revenue, income tax capture revenue, and withholding tax capture revenue, an estimate of the amount of capture revenue expected to be generated for each year of the plan from the eligible property, and the beginning date and duration of revenue capture for each eligible property.

Approval of a transformational brownfield plan, or an amendment to it, must comply with the notice, approval, and public hearing requirements of the Act, except that the governing body must provide notice to the MSF at least 30 days before the hearing on a transformational brownfield plan. If a plan authorizes the capture of construction period tax capture revenue, income tax capture revenue, or withholding tax capture revenue, approval of a combined brownfield plan or work plan by the Michigan Strategic Fund and a written development or reimbursement agreement between the owner or developer of the eligible property, the authority, and the MSF are required. If a plan authorizes the use of tax increment revenue for eligible activities under the bill (described above), other than those described in Section 13b of the Act, approval of a work plan or combined brownfield plan by the MSF to use tax increment revenue for those additional activities is required. A work plan or combined brownfield plan under these provisions must be consolidated with a work plan or combined brownfield plan under the Act. The eligible activities to be conducted must be

consistent with the work plan submitted by the authority to the MSF. (Section 13b governs the use of taxes captured from eligible property.)

Upon approval of a transformational brownfield plan by the governing body and Michigan Strategic Fund, and the execution of the written development or reimbursement agreement, the transfer and distribution of construction period tax capture revenue, income tax capture revenue, and withholding tax capture revenue as specified under the Act and in the plan are binding on the State, and the collection and transmission of the amount of tax increment revenue as specified under the Act and in the plan are binding on all taxing units levying ad valorem property taxes or specific taxes against property subject to the plan.

The authority and governing body are responsible for deciding whether to seek approval of a brownfield plan as a transformational brownfield plan. The bill states that nothing in these provisions operates to prejudice or limit consideration of a brownfield plan, including a decision by the MSF not to approve a plan as a transformational brownfield plan. Also, the bill states that nothing in the Act is intended to preclude an authority established by a county from seeking approval of a brownfield plan as a transformational brownfield plan. In the event that an authority established by a county seeks approval of a plan that extends into more than one of its component local units of government and that plan includes eligible property in more than one municipality that is not a county, the minimum investment requirements are established with reference to combined population of the municipalities that are not a county in which the eligible property is located.

The governing body and the Michigan Strategic Fund must determine whether to approve a transformational brownfield plan according to requirements in the bill. The requirements include an initial determination by the governing body of whether the plan constitutes a public purpose; approval of the plan, or approval with modifications, by the governing body based on various considerations; and approval, approval with modifications, or rejection by the MSF. In determining whether to approve the plan, the MSF must conduct a financial and underwriting analysis of the developments included in the plan. The analysis must consider both projected rental rates at the time of project delivery and potential increases in rental rates over time. The MSF may not approve the use of construction period tax capture revenue, income tax capture revenue, and withholding tax capture revenue beyond the amount determined to be necessary for the project to be economically viable. The MSF must develop standardized underwriting criteria for determining economic viability. The MSF also must ensure that each transformational brownfield plan includes a significant equity contribution from the owner or developer as determined by the Fund.

The MSF may not approve more than five plans in a calendar year. If the MSF approves fewer than five plans in a calendar year, however, the unused approval authority will carry forward into future calendar years and remain available until December 31, 2022. The Michigan Strategic Fund also may not approve more than five transformational brownfield plans in any individual city, village, or township before December 31, 2022. A transformational brownfield plan approved before that date, however, will remain in effect and may be amended in accordance with the bill's provisions.

The MSF may not approve a transformational brownfield plan unless it determines that the plan will result in an overall positive fiscal impact on the State. The bill includes further requirements for the MSF in making the determination. Also, the MSF must require an independent, third-party underwriting and fiscal and economic impact analysis for any plan that proposes to use more than \$1.5 million in any year in income tax capture revenue and withholding tax capture revenue, as determined by the first full year of tax capture under the plan. The cost of the independent, third-party fiscal and economic impact analysis must be paid by the owner or developer of the eligible property. The MSF must consult with the State Treasurer before approving any transformational brownfield plan subject to these provisions. The Treasurer must concur that there will be an overall positive fiscal impact on the State in order for the plan to be approved. The bill states that none of these provisions limit the ability of the MSF to use independent, third-party analyses on plans not subject to these provisions.

The MSF may not approve a transformational brownfield plan that proposes to use more than 50% of the income tax capture revenue or withholding tax capture revenue unless the revenue is attributable to an election concerning the termination of exemptions, deductions, or credits for renaissance zone property.

Also, the MSF must ensure an equitable geographic distribution of approved transformational brownfield plans, which must achieve a balance between the needs of municipalities of differing sizes and geographic areas of the State. Subject to the receipt of qualified transformational brownfield plans meeting the criteria under the bill, the MSF must set a target that at least 35% of the total approved transformational brownfield plans will be located in cities, villages, and townships with a population of less than 100,000.

Any positive or negative determination by the MSF must be supported by objective analysis and documented in the record of its proceedings.

A procedure, adequacy of notice, and findings under the bill are presumptively valid unless contested in a court of competent jurisdiction within 60 days after approval of the plan by the MSF. An approved amendment to a conclusive transformational brownfield plan must likewise be conclusive unless contested within 60 days after approval by the MSF. If a resolution adopting an amendment to the plan is contested, the original resolution adopting the plan is not open to contest.

Tax Capture & Tax Increment Revenue

A transformational brownfield plan may authorize the use of construction period tax capture revenue, income tax capture revenue, tax increment revenue, and withholding tax capture revenue for eligible activities on eligible property included in a plan, any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property.

(The bill defines "construction period tax capture revenues" as funds equal to the amount of income tax levied and imposed in a calendar year upon wages paid to individuals physically present and working within the eligible property for the construction, renovation, or other improvement of eligible property that is an eligible activity within a transformational brownfield plan, calculated as described in the bill. The bill also defines "income tax capture revenues" and "withholding tax capture revenues". The Act defines "tax increment revenues".)

Except as provided for eligible activities conducted before approval of a plan, construction period tax capture revenue, income tax capture revenue, tax increment revenue, and withholding tax capture revenue may be used only for the costs of eligible activities included within the transformational brownfield plan to which the revenue is attributable, including the cost of principal of and interest on any obligation to pay the cost of the eligible activities.

A transformational brownfield plan may provide for the use of part or all of the construction period tax capture revenue, income tax capture revenue, tax increment revenue, and withholding tax capture revenue. The portion to be used may vary over the duration of the transformational brownfield plan, but the portion intended to be used must be clearly stated in the plan.

A transformational brownfield plan may not authorize the capture or use of construction period tax capture revenue, income tax capture revenue, tax increment revenue, or withholding tax capture revenue after the year in which the total amount of the revenue captured under the plan is equal to the sum of the costs permitted to be funded with the revenue under the plan.

The duration of the capture of income tax capture revenue and withholding tax capture revenue under a transformational brownfield plan for a particular eligible property may not exceed the lesser of the period after the year in which the total amount of the revenue captured under the plan is equal to the sum of the costs permitted to be funded with the revenue, or 20 years from

the beginning date of the capture of income tax capture revenue and withholding tax capture revenue for that eligible property. The beginning date for the capture of income tax capture revenue, tax increment revenue, and withholding tax capture revenue for an eligible property may not be later than five years following the date the Michigan Strategic Fund approves the inclusion of the eligible property in a plan. Subject to the approval of the governing body and the MSF, the authority may amend the beginning date of capture to not later than five years following the date the MSF approved the inclusion of the eligible property in the plan, as long as capture of the revenue under it has not started.

The bill prohibits an authority from using construction period tax capture revenue, income tax capture revenue, or withholding tax capture revenue to pay for eligible activities conducted before approval of the transformational brownfield plan except for certain costs outlined in the bill; or using construction period tax capture revenue, income tax capture revenue, or withholding tax capture revenue for any expense other than as provided for in the bill, except for other costs regarding the administration and operation of the authority or municipality specifically associated with the implementation of a plan.

Reimbursement

A brownfield authority and the Michigan Strategic Fund may reimburse advances, with or without interest, 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 construction period tax capture revenue, income tax capture revenue, tax increment revenue, or withholding tax capture revenue attributable to that plan. Upon approval of the MSF, the amount of such revenue authorized to be captured under a transformational brownfield plan may include amounts required for the payment of interest under these provisions. A written development or reimbursement agreement must be entered into before any reimbursement or payment using construction period tax capture revenue, income tax capture revenue, tax increment revenue, or withholding tax capture revenue.

Eligible activities conducted on eligible property before approval of a transformational brownfield plan may be reimbursed from construction period tax capture revenue, income tax capture revenue, tax increment revenue, and withholding tax capture revenue if those costs and the eligible property are subsequently included in a transformational brownfield plan approved by the governing body and Michigan Strategic Fund, a combined brownfield plan or work plan approved by the MSF, and a written development or reimbursement agreement. Reimbursement under these provisions is limited to eligible expenses incurred within 90 days of the MSF's approval of the transformational brownfield plan.

In the event of a proposed change in ownership of eligible property subject to a transformational brownfield plan for which reimbursement will continue, the approval of the MSF is required before the assignment or transfer of the development and reimbursement agreement.

The MSF may not give community revitalization incentives under the Michigan Strategic Fund Act to any project included in a transformational brownfield plan that receives or will receive reimbursement for eligible activities.

Revenue Disbursement

The MSF may not commit, and the Department of Treasury may not disburse, a total amount of income tax capture revenue and withholding tax capture revenue that exceeds \$800.0 million. Also, the MSF may not approve more than a total of \$200.0 million in construction period tax capture revenue and in projected sales and use tax exemptions (as described in Senate Bills 113 and 114). The MSF must project the value of the sales and use tax exemptions under each transformational brownfield plan at the time of plan approval and require such information from the owner or developer as necessary to perform the calculation, among other information outlined under the bill. If the value of the actual sales and use tax exemptions and construction period tax

capture revenue under all transformational brownfield plans exceeds the limit by more than a de minimis amount, as determined by the State Treasurer, he or she must take corrective action and may reduce future disbursements to achieve compliance with the aggregate limitations listed in the bill. The corrective action may not reduce the disbursement for an individual plan by an amount that is more than the amount by which the value of the sales and use tax exemptions for that plan exceeds the amount projected at the time of plan approval and included in the plan. The MSF and the Department must prescribe specific methods for implementing these provisions within 60 days of the bill's effective date. Also, the MSF may modify the amount of income tax capture revenue and withholding tax capture revenue before approving a plan in order to bring it into compliance with the bill.

The MSF must require the owner or developer of the eligible property to certify the actual capital investment, as determined under the bill, on the completion of construction and before the commencement of reimbursement from income tax capture revenue, tax increment revenue, or withholding tax capture revenue, for the plan or the distinct phase or project within the plan for which reimbursement is provided. If the actual capital investment is less than the amount included in the plan, the MSF must review the determination and may modify the amount of reimbursement if a modification is necessary to maintain compliance with the bill. The transformational brownfield plan, work plan, and development and reimbursement agreement must include provisions to enforce these requirements and remedies. If the actual level of capital investment does not meet the applicable minimum investment requirement and is outside the "safe harbor" provision in the bill, the MSF may take one of the following remedial actions:

- For a plan that consists of a single development, reduce the amount of reimbursement.
- For a plan that consists of distinct phases or projects, where the failure to meet the minimum threshold is the result of failure to undertake additional distinct phases or projects as provided for under the plan, either permanently rescind the authorization to use captured revenue for the additional distinct phases or projects in the plan or, if the MSF determines that the applicable owner or developer acted in bad faith, reduce the amount of reimbursement for completed phases of the plan.

(The "safe harbor" provision states that a plan that is expected to result in, or results in, a total capital investment that is within 10% of the applicable minimum investment requirement satisfies the capital investment requirement.)

The determination as to whether a transformational brownfield plan complies with the minimum investment requirements must be made with reference to the most recent decennial census data available at the time of approval by the authority. A plan in a municipality that exceeds a population tier by not more than 10% of the maximum population for that tier is, upon election of the authority, subject to the investment requirement for that tier.

Waiver of Requirements & Limits

Upon approval by the Michigan Strategic Fund, the minimum investment requirements outlined in the bill and the limit on the number of designations may be waived if the plan is for eligible property that is one of the following: 1) in an area approved by the State Housing Development Authority as eligible for blight elimination program funding under Federal law; 2) in a municipality that is subject to a state of emergency under the Emergency Management Act issued for drinking water contamination; 3) a historic resource if the MSF determines the redevelopment is not economically feasible absent the transformational brownfield plan; or 4) located in a city, village, or township with a population of less than 25,000 or otherwise eligible for the corresponding population tier of less than 25,000, as determined under the bill, if the MSF determines that the redevelopment is not economically feasible absent the transformational brownfield plan.

Under these circumstances, the Michigan Strategic Fund may approve not more than five plans in a calendar year, but if the MSF approves fewer than five plans in a calendar year, the unused

approval authority will carry forward into future calendar years and remain available until five years from the bill's effective date.

Renaissance Zone

Where undeveloped property included in a transformational brownfield plan has been designated as a renaissance zone under the Michigan Renaissance Zone Act, on request of the owner or developer of the eligible property and the local government unit that designated the zone, the Michigan Strategic Fund, and a city levying a tax under the City Income Tax Act, may elect under the Michigan Renaissance Zone Act to terminate exemptions, deductions, or credits provided for in that Act, and reimburse the authority, or owner or developer of the eligible property, an annual amount equal to the revenue collected for each tax year as a result of the termination of the exemptions, deductions, or credits that would otherwise have been in effect. The bill specifies further requirements regarding the implementation of this provision.

Plan Amendments

Amendments to an approved transformational brownfield plan must be submitted by the authority to the governing board and the MSF for approval or rejection following the same notice necessary for approval or rejection of the original plan. Notice is not required for revisions in the estimates of captures. An amendment to an approved plan must not be considered a new plan approval subject to the limit of five approved plans per calendar year. The MSF may consider an amendment as a new plan approval only if the amendment adds eligible property and the MSF determines that approving the addition as an amendment is inconsistent with the purposes of the Brownfield Redevelopment Financing Act.

Brownfield Redevelopment Fund

The bill requires 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, income tax capture revenue, and withholding tax capture revenue due to be transmitted under all transformational brownfield plans. The Department of Treasury must distribute the construction period tax capture revenue, income tax capture revenue, and withholding tax capture revenue to an authority, or to the owner or developer of the eligible property to which the revenue is attributable, in accordance with requirements of the bill and the terms of the written development or reimbursement agreement for each plan. Funds must be transmitted to the authority, or owner or developer of the eligible property, within 30 days of transfer to the Fund.

Amounts transferred into the State Brownfield Redevelopment Fund attributable to a specific transformational brownfield plan must be accounted for separately within the Fund and may not be used for any other purpose or activity or for any plan other than the plan to which the revenue is attributable, or for the additional administrative costs associated with the implementation of a plan.

The Act requires an authority to submit an annual financial report on its activities to the governing body, the Department of Environmental Quality (DEQ), and the MSF; requires the DEQ and the MSF to collect these reports and compile a combined report; and requires the DEQ and the MSF to post information about tax increment revenue quarterly. The bill requires an authority, the Department, and the MSF to comply with these reporting requirements with respect to all approved transformational brownfield plans, and to provide information on the amount and use of construction period tax capture revenue, income tax capture revenue, and withholding tax capture revenue to the same extent as required for tax increment revenue. The owner or developer of active projects included within a transformational brownfield plan must provide the information required for the authority, the DEQ, and the MSF to satisfy the reporting requirements.

The Act specifies the purposes for which money in the Fund may be used, including implementation of the Act by the DEQ and the MSF. The bill also allows the money to be used by the Department of Treasury to implement the Act.

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

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan has struggled to maintain an attractive living and working environment for many years. In 1997, the U.S. Census Bureau projected Michigan as having the fourth-lowest percentage change in population growth from 1995 to 2025. The State also has failed to attract young and educated people. A *New York Times* article, using data from IPUMS-USA, University of Minnesota, reported that Michigan, Iowa, Ohio, and other Great Plains states have the largest out-migration of people less than 40 years old with a college degree.¹

In 2014, the U.S. Census Bureau published a report that investigated why 35.9 million people over one-year-old moved to a different residence from 2012 to 2013. Answers to that question were grouped into four major categories that were found to be the driving factors for changing residences: "Housing" (48.0%), "Family" (30.3%), "Employment" (19.4%), and "Other" (2.3%). The report noted that "better-educated movers were more likely to move for job-related reasons than movers with lower levels of educational attainment". The report also stated, "The only age range reporting a lower housing-related reason for move percentage than 18- to 24-year-olds was 25- to 29-year olds with 42.5%. This group focused more on job-related reasons than 18- to 24-year olds."

Young and educated people have shown an interest in moving for housing- and job-related reasons. However, policy-makers and municipal leaders in Michigan have few incentives at their disposal to encourage profound investment in the State that will create more vibrant and attractive communities for educated workers and for businesses. Moreover, many communities in the State have an overabundance of brownfields or blighted areas. These sites are economic and social drains on the communities where they are located. The sites generally are old, dilapidated, and unattractive, which decreases surrounding property values and discourages people from moving into the area. Moreover, they do not generate tax revenue, and may contribute to crime. Blighted areas also can be hazardous or contaminated. Repurposing and renovating these sites can provide financial benefit and attract workers and businesses while ridding communities of undesirable areas or buildings.

Many of the blighted sites in Michigan, however, are extraordinarily difficult and expensive to renovate or repurpose, and the available economic development tools were not enough to provide the incentive necessary for developers to make the renovation projects financially viable, particularly with respect to the large projects that would involve years of demolition and construction but would have the greatest impact on a community. Therefore, many of those sites remain dormant and continue to burden the surrounding community. Furthermore, there is a negative perception of the U.S. Midwest (i.e., the "Rust Belt") that compounds the difficulty of trying to attract investment in Michigan.

¹ Bui, Quoc Trung, "The States That College Graduates Are Most Likely to Leave", *The New York Times*, 11-22-2016.

Building great places to live attracts skilled and educated workers, which attracts quality jobs and, in turn, generates wealth that perpetuates the cycle. The bills have the potential to unlock billions of dollars for investment in communities across the State by filling the financial gaps developers face when considering large and difficult renovation projects, encouraging them to invest in some of the most challenging sites and repurpose them as thriving districts where talented individuals will want to live and work. Furthermore, developments of such magnitude may become the catalyst for further improvements in communities throughout Michigan.

Supporting Argument

Senate Bill 111 guarantees that all municipalities in Michigan may benefit from a transformational brownfield plan by including different population tiers and levels of investment to qualify as a plan, a requirement that the Michigan Strategic Fund approve plans in a balanced geographic manner across the State, and requiring at least 35% of the total plans approved under the bill to be located in cities, villages, and townships with a population of less than 100,000.

Opposing Argument

A transformational brownfield plan, which employs a tax increment financing method for reimbursing developers, may not have the envisioned economic impact. A 2015 Ball State University study found that tax increment financing districts in Indiana had negative impacts on traditional measures of economic development, such as employment, the number of business establishments, and sales tax revenue, and that tax increment financing was a county budget management tool more than an economic development tool.² If the plans do not have the intended transformational effect, they effectively will be giving taxpayer dollars to select developers with no real benefit. Moreover, the policies implemented under the bills have no direct precedent for comparison. The State and municipalities across Michigan depend on taxpayer dollars to improve and maintain infrastructure and provide services to residents. Transformational brownfield plans are overly risky and have potentially grave economic consequences.

Response: The bills were crafted in a way to ensure that transformational brownfields are not a "cash grab" for developers and do not become a liability to the State, by requiring a substantial investment by a developer before tax captures may begin, requiring financial analyses of plans to determine whether there will be a positive fiscal impact before plans are approved, and capping the amount of money plans may capture. These provisions will safeguard against additional financial obligations in the future.

Opposing Argument

There is nothing to ensure that people moving into areas that are a part of a transformational brownfield plan migrate from places outside of Michigan. This is an important distinction because the State will lose tax dollars if a person already living in-State moves into a transformational brownfield plan area. For example, if a person moved from Lansing to a transformational brownfield plan area in Detroit, the State would lose tax dollars because it would receive only a fraction of the total taxes that person paid while living in Detroit, as opposed to the entire amount if that person had continued to live in Lansing. If the bills do not attract many out-of-State residents to Michigan, they effectively will shift existing businesses and residents around the State without providing any positive fiscal impact.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bills will 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 bills and that development in a TBP does not shift economic activity from other locations in Michigan to the area of the TBP. The General Fund will incur the cost of tax capture under the income tax. The benefit of increased income tax revenue will accrue to the School Aid Fund and, depending on the

² Hicks, Michael J., et al., "Some Economic Effects of Tax Increment Financing in Indiana", *Ball State University Center for Business and Economic Research*, 1-28-2015.

interpretation of the bills, to the General Fund or the State Brownfield Redevelopment Fund (SBRF). The General Fund, School Aid Fund, and constitutional revenue sharing will incur the cost of exemptions under the sales and use taxes. The timing of General Fund spending related to the TBPs will not necessarily match the timing of increased State revenue. To obtain approval, each TBP must satisfy a requirement that it will 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 will increase the revenue and administrative costs of the Department of Treasury and the Michigan Strategic Fund. Local revenue will be affected by the terms of the TBP, including the degree to which a plan reimburses 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 increases due to an increase in economic activity under a TBP, constitutional revenue sharing payments will increase. These impacts are discussed further below.

Senate Bill 111

State Fiscal Impact

The bill provides for development incentives of up to \$1.0 billion for projects included in TBPs, divided into two parts. First, the bill allows the capture of up to \$800.0 million in income tax revenue across all approved TBPs from withholding attributable to employees working in the TBPs and income tax paid by residents of the TBPs. The tax capture from employees and residents is limited to 50% of the increased eligible income tax revenue under a TBP. Second, up to \$200.0 million is allowed for the combined value of captured income tax revenue from construction period tax capture revenues (an estimate of the income tax levied against wages 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 will pay the entire cost of the \$800.0 million in captured income tax revenue allowed by Senate Bill 111. This cost will be offset by additional State revenue because the tax capture will be limited to 50% of the increased taxes in a TBP. The terms of a TBP may 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 will be paid by the General Fund; however, to the extent that sales and use tax incentives are part of the \$200.0 million, General Fund and School Aid Fund revenue will be reduced.

The terms of a TBP will determine the amount of income tax revenue allowed to be captured by the TBP as well as the amount of any sales and/or use tax exemption. Both the capture amount and the amount of any sales and/or use tax exemptions will 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 will be calculated by the Department of Treasury and deposited from the General Fund into the State Brownfield Redevelopment Fund. Disbursements the bill requires to an authority, owner, or developer under a TBP may vary by year and will need to be appropriated. The bill establishes 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 may 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 will 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 obtains a new position in a TBP area and that worker has 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 will be new revenue to the State, which will receive at least 50% of that additional revenue while up to 50% of the new revenue may 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 has income that is simply shifted from another part of the State because the job moved from outside a TBP area to inside a TBP area, up to 50% of the State income tax paid by that worker will be lost to the State, which will 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 must estimate the relative magnitude of these effects. A TBP may not be approved unless the estimates show that there will be an overall positive fiscal impact on the State. The impact, however, may vary year by year and it is possible that the net positive impact will not be achieved until the TBP expires.

The number of TBPs that the MSF is permitted to approve in a year is limited to five plans that meet the investment levels specified by population level and five plans approved under waiver authority. However, the unused approval authority for regular and waiver projects will carry forward into subsequent calendar years and be available until December 31, 2022. Not more than five plans may be approved for any single city, village, or township; and not less than 35% of the total number of TBPs approved under the bill must be located in a city, village, or township with a population of less than 100,000.

The waiver authority allows the MSF to waive investment requirements for TBPs in areas that have been subject to a drinking water state of emergency (Flint) or that have received certain Federal funds for blight elimination. Local units eligible for that funding are shown in [Table 1](#). Waivers also may be granted to projects that would not be economically feasible without a TBP, if the project is for a eligible property that is a historic resource or in a city, village, or township with a population of less than 25,000 or eligible for that population tier.

Table 1

Municipalities Eligible for Blight Elimination 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 will increase the revenue and costs of the Michigan Strategic Fund. The bill directs the MSF to collect a reasonable fee to cover the cost of TBP review and approval. The cost of the independent economic and fiscal analysis will be paid by the owner or developer. The Department of Treasury will incur additional costs to administer the tax capture provisions of the bill to determine revenue attributable to construction workers, employees, and residents of a TBP. The Department is 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 will 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 will be considered a brownfield plan with the ability to use tax increment financing and capture property tax revenue. The period before local governments see increased property tax revenue from development under a TBP will 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 expands the uses of tax increment financing to include any construction, restoration, alteration, demolition of buildings, or improvement of buildings or sites. Expanding the eligible

uses of tax increment revenue will 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 may receive increased revenue, if the terms of the TBP allow 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 may include interest. Reimbursement of advances, possibly with interest, also is allowed to a land bank fast track authority. Advances also may be repaid with interest to any other person or entity for costs of eligible activities within a TBP, which will reduce funds available for new projects. An increase in sales tax revenue due to the TBP will result in an increase in constitutional revenue sharing payments to cities, villages, and townships.

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

Senate Bill 112

The bill will reduce General Fund revenue by an unknown and potentially significant amount that depends on the level and timing of economic activity related to a transformational brownfield project. While Senate Bill 111 limits 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 is limited only by the amount of actual capture, and thus may be less than, or more than, the \$40.0 million reimbursement limit. Similarly, Senate Bill 111 only limits 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 directs 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) directs General Fund revenue to the SBRF, but limits the deposit to the amount "due to be transmitted under all transformational brownfield plans", although it is unclear whether "due to be transmitted" is the same as the amount to be reimbursed. Later in Senate Bill 111, Section 16(8)(a) directs a transfer of revenue to the SBRF "as provided for in Section 8a(4)", but does not indicate that the transfer must be made from the General Fund. 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 does 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 appears to earmark more revenue to the SBRF than may be distributed to a plan. For example, income tax capture revenue will 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 indicates that the income tax capture revenue would total \$4.0 million. Under Senate Bill 112, it appears that only \$2.0 million would have to be deposited into the SBRF. However, Senate Bill 111 does require in Section 16(8)(a) a transfer of the capture amount approved in the plan. Thus, if the plan had approved a capture of \$7.0 million, it is not clear under the bills what the ultimate disposition of the resulting \$3.0 million shortfall would be.

Combined with the conditions in Senate Bill 112 on amounts to be transferred into the SBRF, the limits in Senate Bill 111 imply that the maximum amount of General Fund reduction over a 20-year period will total \$1.0 billion, although the values of the exemptions under Senate Bills 113 and 114 will likely reduce that total. The amount that may be transferred in any given year may vary significantly, depending on how the transfer language is interpreted. There is no annual limit with respect to the construction period tax capture, so the yearly reduction under those provisions

may 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 is limited to \$40.0 million, unless an amount carries over from a prior year in which less than \$40.0 million was reimbursed. Thus, even though the language limits the transfer associated with any income tax and withholding capture to the amount that may be reimbursed to a plan, the annual impact on the General Fund might be more or less than \$40.0 million.

Senate Bills 113 and 114

The bills will reduce State General Fund and School Aid Fund revenue, and local unit revenue under constitutional revenue sharing provisions, by an unknown amount that depends 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 occurs in each community size category listed in Senate Bill 111, the minimum expected investment totals \$765.0 million. The portion of this investment consisting of tangible personal property eligible for the exemption under the bills is unknown, as is the portion that is exempt under the sales tax rather than the use tax; however, if 20% of the investment is eligible for the exemption under the sales tax, sales tax collections will be reduced by \$9.2 million, which will 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 units, and a \$1.5 million reduction in General Fund revenue. To the extent that a portion of the purchases is exempt under the use tax, the impact on the General Fund will increase, while the impact on the School Aid Fund and constitutional revenue sharing will decrease by an identical amount. Regardless of how the exemptions are split between sales taxes and use taxes, if a larger portion of the investment is exempt, the reductions will be greater; while if a smaller portion is exempt, the reductions will be less.

Senate Bill 115

The bill allows the levy of State and city income tax in a renaissance zone that is in part within a TBP, with MSF and local approval. Affected taxpayers within the renaissance zone will no longer be exempt from State and city income tax. Instead, they will pay the State and city income tax that is captured for distribution under the terms of the TBP to the authority, owner, or development. This income tax revenue will 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 applies only to development on previously undeveloped land within a renaissance zone.

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