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BILL ANALYSIS

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House Bill 4698 (Substitute S-1 as reported)
Sponsor: Representative Jason Allen
House Committee: Commerce
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 6-15-01

RATIONALE

The Brownfield Redevelopment Financing Act was created in 1996 to encourage the cleanup and rehabilitation of former industrial or commercial sites containing, or suspected to contain, environmental contamination. In general terms, municipalities may establish brownfield authorities, which may capture increased property tax revenue generated on eligible property, and use the revenue to pay the costs of eligible activities on eligible property. Originally, these arrangements were limited to contaminated property, and brownfield authorities could capture revenue from school operating taxes only if the Department of Environmental Quality approved a work plan or a remedial action plan.

Public Act 145 of 2000 extended the program to functionally obsolete property and blighted areas in qualified local units of government, and allows the capture of school operating taxes for eligible activities (such as infrastructure improvements) that do not involve contaminated property. Under these provisions, a brownfield authority may capture school operating tax revenue only if a municipality and the owner of eligible property enter into a development agreement, and the Michigan Economic Growth Authority (MEGA) approves a work plan before January 1, 2003.

Several concerns arose when MEGA began to receive requests for approval of work plans. Although the Act identifies criteria for MEGA to consider when a request is submitted, these factors apparently do not give MEGA enough guidance to evaluate the proposed work plan. In addition, the Act does not authorize MEGA to deny a work plan, and does not place limits on the number of work plans that MEGA may approve or the amount of school operating tax revenue that may be captured.

CONTENT

The bill would amend the Brownfield Redevelopment Financing Act to revise the responsibilities of the Michigan Economic Growth Authority in regard to work plans for eligible activities that involve the capture of school operating tax revenue. The bill would do the following:

- **Expand the criteria MEGA must consider in its review of a work plan.**
- **Require MEGA to respond to a request for approval within 90, rather than 60, days.**
- **Authorize MEGA to deny a request.**
- **Limit the number of work plans proposing to capture school operating taxes that MEGA may approve, and provide that no such plan could be approved after December 31, 2002.**
- **Allow a brownfield authority, under certain circumstances, to use school operating taxes for eligible activities conducted before approval of a work plan.**

(A "work plan" is a plan that describes each individual activity to be conducted to complete eligible activities, and the associated costs of each individual activity.)

Currently, upon receiving a request for approval of a work plan, MEGA must provide a written response within 60 days. The bill would extend this period to 90 days. Under the Act, MEGA must provide one of three responses: unconditional approval; conditional approval delineating specific necessary modifications to the work plan; or, if the work plan lacks sufficient information for MEGA to give unconditional or conditional approval, a letter stating with specificity the necessary additions or changes to the work plan to be

submitted before MEGA will consider it. Under the bill, the third option would be denial and a letter stating with specificity the reason for the denial. If a work plan were denied, it could be resubmitted.

The Act requires MEGA, in its review of a work plan, to consider all of the following:

- Whether the individual activities included in the work plan are sufficient to complete the eligible activity.
- Whether each individual activity included in the work plan is required to complete the eligible activity.
- Whether the cost for each individual activity is reasonable.

The bill would require MEGA also to consider the following:

- The overall benefit to the public.
- The extent of reuse of vacant buildings and redevelopment of blighted property.
- Creation of jobs.
- Whether the eligible property was in an area of high unemployment.
- The level and extent of contamination alleviated by or in connection with the eligible activities.
- The level of private sector contribution.
- The cost gap existing between the site and a similar greenfield site as determined by MEGA.
- If the developer or projected occupant of the new development were moving from another location within Michigan, whether the move would create a brownfield.
- Whether the financial statements of the developer, landowner, or corporate entity indicated that the developer, landowner, or corporate entity was financially sound and that the project included in the work plan was economically sound.
- Other State and local incentives available to the developer, landowner, or corporate entity for the project that was included in the work plan.
- Any other criteria that MEGA considered appropriate for the determination of eligibility or for approval of the work plan.

The bill also specifies that MEGA would have to consider the existing and proposed criteria to the extent reasonably applicable to the type of activities proposed as part of the work plan.

Before January 1, 2003, MEGA could approve five work plans that proposed to capture less than \$500,000 in taxes levied for school operating purposes, but could not approve more than three work plans that would capture \$500,000 or more but less than \$3 million in school operating taxes, over the duration of the work plan. The Authority could not approve any work plan that proposed to capture \$3 million or more in school operating taxes over the duration of the work plan. After December 31, 2002, MEGA could not approve any work plan that would capture school operating taxes.

For two work plans that proposed to capture less than \$500,000 in school operating taxes and for one work plan that would capture \$500,000 or more but less than \$3 million in school operating taxes, over the entire duration of the work plan, a brownfield authority could use taxes levied for school operating purposes captured from eligible property for eligible activities conducted after September 30, 2000, and before approval of a work plan if the work plan were approved before September 30, 2001.

(Eligible activities include infrastructure improvements that directly benefit eligible property, demolition of structures or site preparation that is not response activity under Part 201 of the Natural Resources and Environmental Protection Act, and lead or asbestos abatement. Infrastructure improvements include streets, roads, sidewalks, parking facilities, bridges, sewers, rail lines, utility lines, and property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination; in general, infrastructure improvements must be owned or used by a public agency or designed to be used by or to benefit the public.)

MCL 125.2665

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

The bill would supply needed criteria for MEGA to consider when reviewing a work plan that would capture school operating tax revenue.

The proposed criteria would mirror those that MEGA and the State Treasurer must consider when determining whether a project is eligible for a single business tax credit under legislation enacted last year. The bill also would authorize MEGA to deny a work plan and, consistent with the 2000 amendments, would put a sunset on MEGA's ability to approve plans that would capture school operating taxes. In addition, the bill contains a "look back" provision that would allow MEGA to approve up to three work plans that could capture a combined total of \$4 million in school operating taxes, for eligible activities conducted before the approval of a work plan. These work plans, like others requiring MEGA approval, would be subject to the criteria listed in the bill.

Supporting Argument

The bill would limit the amount of school operating tax revenue that brownfield authorities could capture, by restricting the number of work plans that MEGA could approve, and prohibiting MEGA from approving any plan that would capture more than \$3 million in school taxes. Since the State must reimburse the School Aid Fund for captured revenue, these limitations are necessary to protect the State's budget. The House-passed version of the bill would have authorized MEGA to approve an unlimited number of work plans that would capture less than \$500,000, and up to 25 that would capture \$500,000 or more. Like the existing law, this would have allowed the capture of an unpredictable amount of school operating taxes.

Response: The House-passed version sought to ensure that small projects were not overlooked or rejected in favor of large-scale operations. Regardless of the number, every project must meet the law's criteria and receive MEGA's approval.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would amend provisions of the Brownfield Redevelopment Financing Act that were adopted by Public Act 145 of 2000, which has been in effect for about one year. Due to the short duration these latest changes have been in effect, there is not much information available on the fiscal impact they are having, or are likely to have in the future,

on State and local governments. Given this lack of actual experience, it is difficult to estimate the fiscal impact of the changes proposed in this bill; however, due to provisions in this bill that would restrict both the number of work plans that could be approved by MEGA, and the amount of school taxes that could be captured by these projects, it appears that this bill would reduce the potential fiscal impact on State and local governments compared with current law.

Fiscal Analyst: J. Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.