



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

BILL ANALYSIS



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

House Bill 4159 (Substitute H-2 as passed by the House)
Sponsor: Representative Brandt Iden
House Committee: Local Government and Municipal Finance
Ways and Means
Senate Committee: Economic and Small Business Development

Date Completed: 9-24-20

CONTENT

The bill would amend the Brownfield Redevelopment Financing Act to do the following:

- **Require, as a condition to deposit local tax and school operating tax increment revenue into a local brownfield revolving fund, that the total excess capture of taxes for school operating purposes not exceed the total of the cost of eligible activities approved in a brownfield plan.**
- **Specify that a fund could be used only to pay the costs of eligible activities on property that was located within the municipality and met at least one of the conditions required for an eligible activity.**
- **Prohibit a brownfield redevelopment authority from using taxes levied for school operating purposes captured from eligible property for activities other than those identified under the bill.**
- **Allow an authority to use taxes captured from eligible property to pay for the reasonable cost of brownfield plan or work plan implementation, including tracking and reporting data and plan compliance.**
- **Exempt certain costs from the limitations on the use of local taxes and taxes levied for school operating purposes from an eligible property.**
- **Allow the beginning date of capture of tax increment revenue to be later than five years for a brownfield plan.**
- **Allow an authority to amend the beginning date of capture of tax increment revenues for a particular eligible property if the authority had not begun to reimburse eligible activities from the capture of tax increment revenues from that property.**
- **Modify the requirements of the annual financial report on the status of the activities of the authority to include a copy of all brownfield plan amendments approved by the local unit of government, among other things.**

Local Brownfield Revolving Fund

Under the Act, a brownfield redevelopment authority may establish a local brownfield revolving fund. The fund must consist of funds deposited from, among other sources, local tax and school operating tax increment revenue captured in excess of the amount authorized for eligible expenses under the Act only when all the following conditions are met:

- The excess capture occurs during the time of capture for the purposes of paying the costs for eligible activities, or for not more than five years after the time that capture is required for the purposes of paying those costs, or both.
- The excess local tax excess capture may not exceed the total of the cost of the eligible activities approved in the brownfield plan.
- Excess tax increment revenues from taxes levied for school operating purposes for eligible activities by the Michigan Strategic Fund (MSF) may not be captured for deposit in the local brownfield revolving fund.

In addition, the local tax and school operating tax increment revenue captured in excess of the amount authorized for eligible expenses must meet the condition that the excess capture of taxes for school operating purposes may not exceed the total of the cost of eligible Department of Environment, Great Lakes, and Energy (DEGLE) specific activities approved in the applicable brownfield plan, combined brownfield plan, or work plan. Under the bill, the total excess tax capture could not exceed the total of the cost of eligible activities approved in the brownfield plan.

The Act specifies that the fund may be used only to pay the costs of eligible activities on eligible property that is located within the municipality. The bill would require the property to meet at least one of the conditions under Section 2(o); however, activities outlined in Section 13b(8) could be conducted and funded on prospective properties.

(Section 2(o) of the Act provides the list of eligible activities that may be performed at an eligible property involved in brownfield redevelopment: Department specific activities; relocation of public buildings or operations for economic development; reasonable costs of environmental insurance; reasonable costs to prepare brownfield plans and their implementation; lead, asbestos, or mold abatement; among other things. Section 13b(8) specifies that limitations prescribed by the Act related to the use of taxes levied for school operating purposes do not apply to the costs of certain activities incurred by a person other than the authority, including site investigation activities to conduct baseline environmental assessment, preparing a plan for compliance with the Natural Resources and Environmental Protection Act (NREPA), and asbestos, mold, and lead surveys, among other things.)

The Act defines "Department specific activities" as baseline environmental assessments, due care activities, response activities, and other environmentally related actions that are eligible activities and are identified as a part of a brownfield plan that are in addition to the minimum due care activities required by Part 201 (Downtown Development Authorities), including a list of activities specified under the Act. The bill would include environmental insurance within this list.

Use of Taxes Levied

Under the Act, for certain eligible activities an authority may not use taxes levied for school operating purposes captured from eligible property unless the eligible activities to be conducted on the eligible property are eligible Department specific activities, consistent with a combined brownfield plan or a work plan approved by DEGLE. Instead, under the bill, an authority could not use taxes levied for school operating purposes captured from eligible property for activities other than those identified in Section 13b(4), 13b(5), and 13b(12).

(Section 13b(4) specifies that if a brownfield plan includes the use of taxes levied for school operating purposes captured from an eligible property for eligible activities that are not Department specific activities, then certain requirements must be met. Section 13b(5) specifies that if a brownfield plan includes the use of taxes levied for school operating purposes captured from eligible property for department specific activities, DEGLE must approve a

combined brownfield plan or a work plan with the exception of activities identified by the Brownfield Redevelopment Act. Section 13b(12) specifies the circumstances under which an authority may capture taxes for the payment of interest.)

The Act allows an authority to use taxes captured from eligible property to pay for the administrative and operating costs under certain circumstances. Among other circumstances, an authority may use local taxes captured for one or more of the following administrative and operating purposes:

- Reasonable and actual administrative and operating expenses of the authority.
- Department specific activities conducted by or on behalf of an authority related directly to work conducted on prospective eligible properties prior to approval of the brownfield plan.
- Reasonable costs of developing and preparing brownfield plans, combined plans, or work plans for which tax increment revenues may be used under the Act.

The bill would allow local taxes captured to be used for the reasonable cost of brownfield plan or work plan implementation, including tracking and reporting data and plan compliance.

The Act provides limitations for the use of local taxes and taxes levied for school operating purposes from an eligible property. However, the Act specifies that the limitations do not apply to a specified list of costs and expenses. The bill would add to this list the following costs and expenses:

- Reasonable cost of developing and preparing brownfield plans, combined brownfield plans, or work plans for which tax increment revenues could be used under Section 13(4), including legal and consulting fees that were not in the ordinary course of acquiring and developing real estate.
- Reasonable cost of brownfield plan or work plan implementation, including tracking and reporting of data and plan compliance.

(Section 13(4) specifies that, except as provided in the Act, an authority must use tax increment revenue related to a brownfield plan only for costs of eligible activities attributable to the eligible property that produces the tax increment revenues or eligible activities attributable to any eligible property for property that is owned by or under control of a land bank fast track authority or a qualified local unit of government, or both.)

Beginning Date of Capture

Under the Act, a brownfield plan must include a proposed beginning date of capture. The beginning date of capture of tax increment revenue may not be later than five years following the date of the resolution, including the eligible property in the brownfield plan. Under the bill, if the actual beginning date of capture were later than five years following the date of the adoption of the brownfield plan resolution, then the maximum number of years of capture would decrease. The end date of capture could be no later than 35 years after the date of the adoption of the resolution.

The Act allows the authority to amend the beginning date of capture of tax increment revenues for a particular eligible property to a date not later than five years following the date of the resolution including the eligible property in the brownfield plan. The authority may not amend the beginning date for a particular eligible property if the authority has begun to reimburse eligible activities from the capture of tax increment revenues from that eligible property. Instead, the bill would allow the authority to amend the beginning date of capture of tax increment revenues for a particular eligible property as long as the authority had not begun

to reimburse eligible activities from the capture of tax increment revenues from that eligible property.

In addition, the Act requires the authority to notify DEGLE or the MSF, as applicable, within 30 days after amending the beginning date for a capture of tax increment revenues that include the capture of revenues for school operating purposes. The bill would delete this provision.

School Operating Purposes

Under the Act, if a brownfield plan includes the capture of taxes levied for school operating purposes, the chairperson of the MSF may approve, without a meeting of the MSF Board, combined brownfield plans and work plans that address eligible activities described in Section 13b(4) totaling an amount of \$1.0 million or less according to requirements of the Act for seeking MSF approval of a work plan. The bill specifies that this amount would include reimbursement of taxes levied for school operating purposes.

Reporting Requirements

Under the Act, the authority must submit annually to the governing body, DEGLE, and the MSF a financial report on the status of the activities of the authority for each calendar year. The report must include the amount and source of tax increment revenues received. Instead, under the bill, the report would have to include the total amount of local taxes that were approved for capture and the total amount of taxes levied for school operating purposes that were approved for capture for each parcel included in a brownfield plan.

The Act requires the report to include the amount of principal and interest on all outstanding indebtedness. Instead, the bill would require the report to include the amount and source of tax increment revenue received for each active brownfield plan, including the amount of tax increment revenue captured in the most recent tax year and the cumulative amount of tax increment revenue captured for each brownfield plan.

In addition, the bill would require the report to include a copy of all brownfield plan amendments approved by the local unit of government.

The Act also requires the report to include the amount of tax increment revenues attributable to taxes levied for school operating purposes used for activities described in Sections 13b(6)(c), Section 2(o)(i)(H) (the repayment of principal and interest on obligations issued to pay for eligible activities), and 2(o)(i)(B) and (C). Under the bill, the report, instead, would have to include the amount described above used for activities described in Sections 13b(6)(c), Sections 2(o)(i)(F) and (G) and Sections 2(o)(ii)(B) and (C).

(Sections 2(o)(i)(F) and (G) specify that eligible activities for eligible properties include the demolition of structures that is not a response activity and lead, asbestos, and mold abatement. Sections 2(o)(ii)(B) and (C) specify that eligible activities for eligible properties located in a qualified local unit of government or an economic opportunity zone include infrastructure improvements that directly benefit eligible property and site preparation that is not a response activity.)

MCL 125.2652 et al.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill could have a negative fiscal impact on local units of government and the School Aid Fund. The total cost likely would be minor, but would depend on individual brownfield plans. The additional uses for tax increment could result in increased property tax capture, which would reduce revenue to local units of government. This also would affect property taxes for the State Education Tax, which goes into the School Aid Fund.

The reduced authority of Michigan Strategic Fund Board chairperson would have little fiscal impact on the Michigan Strategic Fund.

Fiscal Analyst: Cory Savino

SAS\S1920\s4159sa

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.