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BILL ANALYSIS

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Senate Bill 1111 (Substitute S-1 as reported)
Senate Bill 1112 (Substitute S-1 as reported)
Senate Bill 1113 (Substitute S-1 as reported)
Senate Bill 1114 (Substitute S-1 as reported)
Sponsor: Senator Jason E. Allen (S.B. 1111)
Senator Hansen Clarke (S.B. 1112)
Senator Patricia L. Birkholz (S.B. 1113)
Senator Jim Barcia (S.B. 1114)
Committee: Commerce and Tourism

Date Completed: 10-19-10

RATIONALE

In recent years, the "green building" movement has gained in popularity at the state and national levels. Generally, green construction refers to the practice of creating structures and using processes that are considered environmentally responsible and resource-efficient. Although several agencies rate or set standards for green construction, probably the most widely recognized program is the LEED (Leadership in Energy and Environmental Design) rating and certification system. Administered by the U.S. Green Building Council, this program rates buildings according to a variety of factors that reflect a structure's potential impact on the environment, such as site planning, water management, material use, carbon dioxide emission, stormwater runoff, and indoor air quality. In order to encourage green building in Michigan, it has been suggested that local tax abatements or incentives should be available for construction that qualifies for LEED certification.

CONTENT

Senate Bills 1111 (S-1), 1112 (S-1), and 1113 (S-1) would amend the Commercial Redevelopment Act to do the following:

- Allow a commercial facilities tax exemption to be issued for a LEED-certified facility in a city or village, or in a township with a population of at least 20,000.

- Require an application to be filed before 2017, and before LEED construction activities were completed.
- Exempt a LEED-certified facility from several criteria for a commercial facilities tax exemption.
- Establish a separate formula to calculate the commercial facilities tax for a LEED-certified facility.
- Allow the State Treasurer to exclude State Education Tax (SET) mills from the calculation of a LEED-certified facility's commercial facilities tax, for up to six years.
- Omit SET exclusions for LEED-certified facilities from the Act's limit on SET exclusions.
- Allow a local legislative body to revoke the exemption for a LEED-certified facility only for specific reasons.

Senate Bill 1114 (S-1) would amend the Brownfield Redevelopment Financing Act to include certain improvements for property located in a city or village, or in a charter township with a population of 20,000 or more, as "eligible activities" if those improvements were used to achieve a credit for a LEED certification level, or a comparable green building standard, and if that certification level or standard actually were achieved.

The bills are described in detail below.

Senate Bill 1113 (S-1)

LEED-Certified Facility

The Commercial Redevelopment Act allows a local governmental unit to establish a commercial redevelopment district. A facility located in a district is exempt from the general property tax and is subject instead to the commercial facilities tax. The Act defines "facility" as a restored facility, a replacement facility, or a new facility. The bill would include a "LEED certified facility" in that definition.

"LEED certified facility" would mean land improvements classified by law for general ad valorem tax purposes as real property, including real property assessable as personal property under the General Property Tax Act, that have received LEED certification or for which LEED certification will be sought, but not including land. A LEED-certified facility could include commercial, industrial, or residential uses or multiple uses.

"LEED certification" would mean a certification issued under the Leadership in Energy and Environmental Design green building rating system developed by the U.S. Green Building Council or a comparable green building standard determined by the Director of the Department of Energy, Labor, and Economic Growth (DELEG).

The Commercial Redevelopment Act defines "local governmental unit" as a city or village. (For local unit designating a commercial redevelopment district before July 1, 2008, the term also includes a township.) Under the bill, for purposes of LEED-certified facilities, "local governmental unit" would include a charter township with a population of 20,000 or more, as well as a city or village.

Application for Certificate & SET Exclusion

Through December 31, 2016, the bill would allow an owner or lessee of a LEED-certified facility, or another person with the written approval of an owner or lessee, to file an application for a commercial facilities exemption certificate with the clerk of the local governmental unit where the LEED-certified facility was located. The application would have to be filed before the LEED construction activities were completed.

If an exclusion of the State Education Tax were requested (as Senate Bill 1111 (S-1) would allow), a copy of the application would have to be submitted to the State Tax Commission. An application could be for all or a portion, or multiple portions, of a LEED-certified facility. The application would have to contain or be accompanied by a general description of the facility and its use, and the general nature and extent of the LEED construction activities, including the activities that were or would be conducted for the purpose of achieving LEED certification.

The local governmental unit would have to hold a public hearing on the application.

"LEED construction activities" would mean one or both of the following:

- Construction of a LEED-certified facility.
- Renovation or upgrading of a LEED-certified facility for the purpose of achieving LEED certification or maintaining or increasing the level of an existing LEED certification.

Approval of Exemption Certificate

Under the Act, after the legislative body of a local governmental unit approves an application, the local clerk must issue the applicant a commercial facilities exemption certificate. In the case of a LEED-certified facility, the bill would require an exemption certificate to include the percentage of property tax applicable to the facility.

A certificate could not be issued for a LEED-certified facility until the applicant submitted to the local unit evidence of LEED certification, along with information sufficient to determine the starting date of LEED construction activities for purposes of calculating the commercial facilities tax (as provided under Senate Bill 1112 (S-1)). The required information would have to be submitted to the local unit within five years after it approved the certificate application or a greater time authorized by the local unit's legislative body.

Senate Bill 1112 (S-1)

Exemption Certificate Criteria; Duration

Under the Act, the legislative body of the local unit may not approve an application for

an exemption certificate unless the following requirements are met:

- The restoration, replacement, or construction of the facility does not begin before the establishment of a commercial redevelopment district.
- The application relates to a construction, restoration, or replacement program that, when completed, constitutes a new, replacement, or restored facility situated within a commercial redevelopment district established in an eligible local unit.
- At the time the certificate is issued, it is reasonably likely that completion of the facility will include commercial activity, create employment, retain employment, or prevent a loss of employment in the community in which the facility is situated.

Under the bill, those requirements would not apply to a LEED-certified facility.

Unless revoked, a commercial facilities exemption certificate remains in force and effect for a period determined by the legislative body of the local governmental unit. The certificate may be issued for a period of at least one year, but not more than 12 years. The date of issuance of a certificate of occupancy, if required, is the date of completion of the facility. Under the bill, for a LEED-certified facility, the date of issuance of LEED certification would be the date of completion of the facility.

Commercial Facilities Tax

The Act includes a formula for calculating the amount of the commercial facilities tax, which is a specific tax levied on every owner of a facility to which a commercial facilities exemption certificate is issued.

The bill includes a separate calculation of the commercial facilities tax for LEED-certified facilities. The formula would provide greater tax reductions to facilities that met a higher standard under the LEED program or a comparable green building standard determined by the DELEG Director. (The proposed formula can be broken into several parts. Part 1 establishes a base tax rate for the commercial facilities tax as the taxable value of the facility during or just before construction. Part 2 of the formula establishes the tax rate going forward as the

difference between the base tax rate and the change in taxable value over time. The change in taxable value then is multiplied by a percentage that depends on the level of LEED certification (50% for platinum, 60% for gold, 70% for silver, and 80% for basic). Part 3 of the formula adds the base tax rate set in Part 1 to the LEED-modified tax rate set in Part 2.)

Senate Bill 1111 (S-1)

SET Exclusion

Under the Act, within 60 days after a new commercial facilities exemption certificate is granted for a new or replacement facility, the State Treasurer may exclude up to half of the number of mills levied under the State Education Tax Act from the commercial facilities tax calculation, for up to six years. The Treasurer may do so if he or she determines that reducing the number of mills is necessary to reduce unemployment, promote economic growth, and increase capital investment in qualified local governmental units.

Under the bill, within 60 days after the Tax Commission received a commercial facilities exemption certificate application for a LEED-certified facility, the State Treasurer could exclude the SET mills for up to six years. The State Treasurer would have to give written notice of the decision to the applicant and the local assessor. The State Treasurer's approval of an exclusion for a LEED-certified facility would become effective only if a commercial facilities exemption certificate were issued.

The Commercial Redevelopment Act prohibits the State Treasurer from granting more than 25 SET exclusions. Under the bill, exclusions for LEED-certified facilities would not be included in that limit.

Revocation of Exemption

Under the Act, the legislative body of the local governmental unit may revoke a commercial facilities exemption if it finds that the facility has not been completed within two years after the exemption certificate's effective date, or a greater time authorized by the legislative body for good cause. The legislative body also may revoke an exemption if it finds that the holder of the exemption certificate has not proceeded

in good faith with the replacement, restoration, or construction and operation of the facility in a manner consistent with the purposes of the Act, and in the absence of circumstances that are beyond the control of the certificate holder.

The bill specifies that the legislative body of the local unit could not revoke the exemption for a LEED-certified facility unless it found one or more of the following:

- The applicant submitted fraudulent evidence of LEED certification.
- The facility owner or lessee was delinquent in paying the commercial facilities tax for that facility.
- The facility no longer met the definition of LEED certification.

The local unit could inspect the facility annually to determine compliance with the Act.

Transfer of Exemption

The Act allows the holder of a commercial facilities exemption certificate to transfer and assign it to a new owner or lessee of the facility, but only with the approval of the local unit after application by the new owner or lessee. Notice and hearing requirements for a certificate application also apply to a transfer.

The bill specifies that a commercial facilities exemption certificate issued for a LEED-certified facility would remain in force for all of the property as legally described in the certificate, notwithstanding any lease or transfer of ownership of all, any portion, or multiple portions of the facility. The certificate would not have to be transferred or assigned in order to remain effective in the event of a lease or transfer of ownership.

Senate Bill 1114 (S-1)

The Brownfield Redevelopment Financing Act allows municipalities (cities, villages, townships, and counties) to establish brownfield redevelopment zones and brownfield redevelopment zone authorities, which may implement brownfield plans for the redevelopment of commercial or industrial property. Financing sources for authority activities include the capture of tax increment revenue (that is, revenue from

the incremental increase in property values within a zone). The revenue may be used to pay the costs of eligible activities on eligible property within a zone.

For property located in a city or village, or in a charter township with a population of 20,000 or more, the bill would include certain improvements in the definition of "eligible activities", if those improvements were used to achieve a credit for a certification level under the LEED green building rating system developed by the U.S. Green Building Council or a comparable green building standard determined by the DELEG Director, and if that certification level actually were achieved. The improvements that would qualify include one or more of the following renewable-energy systems:

- Photovoltaic, fuel cell, wind, hydro, wave, or biofuel-based electrical production and storage systems deployed on site.
- Geothermal energy systems that produce electric power or provide thermal energy for use on-site.
- Active solar thermal systems that employ collection panels; heat transfer mechanical components, including pumps and fans; a defined heat storage system, including hot water tanks; and thermo-siphon solar and storage tank batch heaters.

The improvements that would qualify also include underground parking and one or both of the following building systems:

- Geothermal exchange systems for heating, air conditioning, and hot water.
- Stormwater-management systems implemented according to low-impact design strategies that do not otherwise qualify as eligible activities.

MCL 207.662a et al. (S.B. 1111)
207.659-207.662 (S.B. 1112)
207.653 et al. (S.B. 1113)
125.2652 (S.B. 1114)

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

Compared with buildings that simply comply with standard construction codes, green buildings use resources—such as energy, water, materials, and land—more efficiently and effectively, resulting in environmental, financial, and social benefits. These benefits can include reduced operating and capital costs, less waste sent to landfills, reduced greenhouse gas emissions, the protection of farmland and open space, and a healthier environment for building occupants. The LEED rating system is recognized nationally and internationally, and LEED certification provides a reliable determination that a building meets objective measurements of environmental sustainability.

Michigan already is a leader in the green building movement. According to *Site Selection* magazine's Sustainability Rankings (July 2010), Michigan ranks sixth among the states for sustainability and the Grand Rapids-Wyoming area ranks ninth among U.S. metropolitan areas. The criteria used in these rankings included green industry projects (such as renewable energy manufacturing), the number of LEED-certified projects, the level of incentives for green projects, and other factors.

The incentives offered by these bills would bolster Michigan's efforts to protect the environment and reduce energy use, and would allow communities to demonstrate their commitment to environmental protection. Under Senate Bills 1111 (S-1), 1112 (S-1), and 1113 (S-1), the owner of a facility that achieved LEED certification could be eligible for the commercial facilities tax, at a reduced rate, and would have until the end of 2016 to apply for the abatement. Under Senate Bill 1114 (S-1), certain improvements made to achieve LEED certification in brownfield zones could be considered eligible activities, and qualify for tax increment revenue. In addition to providing financial and environmental benefits, these measures could promote economic development by supplying the impetus needed for projects that are currently on hold.

Response: Although the LEED rating system is widely recognized, obtaining LEED certification can be very expensive, resulting in additional costs for building owners. In addition, LEED certification reflects a building's rating at the time of construction; it does not measure actual energy

consumption going forward. The U.S. Green Building Council (USGBC) now requires owners to report annual performance data, but there is not enough detail to measure energy consumption accurately, and there is no clear way to repeal certification if tenants or owners miss their energy-saving targets, according to a *New York Times* article ("Don't LEED Us Astray", 5-19-10). Although the bills would apply to a facility meeting the LEED standard developed by the USGBC or "a comparable green building standard" as determined by the DELEG Director, it appears that the LEED standard is the only one recognized by the State at this time.

Opposing Argument

Since the commercial facilities tax exemption already abates property taxes, the proposed reduction of the specific tax would be an abatement on top of an abatement, without the underlying reasons for the exemption. Currently, facilities qualifying for the commercial facilities tax must have a reasonable likelihood of increasing commercial activity or creating or retaining employment, and must be located in a commercial redevelopment district. Under Senate Bills 1111 (S-1), 1112 (S-1), and 1113 (S-1), however, a LEED-certified facility would not have to meet those requirements.

In addition, Senate Bill 1112 (S-1) would give an applicant five years to submit the required information to the local governmental unit. This potentially suggests five-year retroactivity, which could create a serious accounting problem for local units.

Opposing Argument

Allowing the use of brownfield tax increment revenue for improvements made to achieve LEED certification could be costly. The improvements listed in Senate Bill 1114 (S-1) include such things as underground parking and stormwater-management systems, which are very expensive. Diverting tax revenue to pay for these projects could put a dent in education spending, as the School Aid Fund must reimburse local districts for lost revenue.

Opposing Argument

Activities eligible for tax increment revenue under the Brownfield Redevelopment Financing Act typically must be located in a

low-income core community or on property that is functionally obsolete, blighted, or the site of a hazardous waste release. Under Senate Bill 1114 (S-1), however, eligible activities could be located in any city or village, or any charter township with a population of 20,000 or more. This would go beyond the scope of the existing Act for a limited class of property owners. In addition, tax increment revenue currently is paid to a brownfield authority, but apparently would be paid to a property owner under the bill.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would likely have a small but indeterminate impact on State and local revenue. By expanding the definition of "facility" to include LEED-certified or other comparable green building standards facilities, Senate Bills 1111 (S-1) to 1113 (S-1) likely would encourage facility owners to apply for a commercial facility tax exemption for an unknown amount of new activity. The impact would depend on the number of facilities that used this new exemption as well as the categories of the new LEED facilities certified and the total economic value of the various projects.

By expanding the definition of "eligible activities" to include activity in brownfield zones used to achieve LEED certification, Senate Bill 1114 (S-1) also would likely result in an unknown amount of new activity. The impact would depend on the number of facilities that pursued this new certification option and the total economic value of the various projects.

In either case, the bills could reduce revenue to the State School Aid Fund and local units and could increase State expenditures from the General Fund. State taxes could be reduced and the State would be liable through the School Aid Fund to reimburse school districts for lost revenue. Most other local property taxes abated due to the LEED-based commercial facility tax exemptions, or LEED certification in brownfield zones, would not be reimbursed by the State, reducing local unit revenue.

Fiscal Analyst: Eric Scorsone

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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.