

"TRANSFORMATIONAL" BROWNFIELD REDEVELOPMENT PROJECTS

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Senate Bill 111 (reported from House Committee as H-1)
Sponsor: Sen. Ken Horn

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 112 (reported from House Committee as H-1)
Sponsor: Sen. Jack Brandenburg

Senate Bill 114 (reported from House Committee without amendment)
Sponsor: Sen Peter MacGregor

Senate Bill 113 (reported from House Committee without amendment)
Sponsor: Sen. Tom Casperson

Senate Bill 115 (reported from House Committee without amendment)
Sponsor: Sen. Steven Bieda

House Committee: Tax Policy
Senate Committee: Economic Development and International Investment
Complete to 5-3-17

OVERVIEW: Senate Bills 111-115 would allow for the creation of "Transformational Brownfield Plans" (TBPs) through December 31, 2022, allowing the capture of income taxes and the exemption of certain sales and use taxes, in addition to the current permitted capture of property taxes, for certain eligible activities associated with an approved transformational brownfield plan agreement. The new concept is introduced through amendments to five acts:

- the Brownfield Redevelopment Financing Act (SB 111)
- the Income Tax Act (SB 112)
- the General Sales Tax Act (SB 113) and the complementary Use Tax Act (SB 114)
- the Michigan Renaissance Zone Act (SB 115)

No new TBP could be approved after December 31, 2022, and no unused plans could carry over past that date. A TBP approved prior to that date would remain in effect and could be amended.

BRIEF FISCAL IMPACT: The bill would authorize development incentives for mixed-use development projects totaling \$1.0 billion across all transformational brownfield plans over the life of the program. To the extent that the package of bills would result in investment and activities that would not have taken place but for the provisions of the bills, there would likely be a positive fiscal impact on state revenues, although there is no reliable way to quantify the magnitude. This also assumes that economic activity was not simply transferred to the eligible property from another area of the state. The annual fiscal impact would vary depending on the characteristics of the TBPs and economic activity generated. See **EXPANDED FISCAL IMPACT** for additional information, later in the summary.

THE CONTENT OF THE BILLS:

Following are key elements of the proposal, most of which are found in **Senate Bill 111**.

- A Transformational Brownfield Plan (TBP) is defined as a brownfield plan that, among other requirements, "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."
- The project must involve **a minimum level of capital investment** (for example, \$500 million in a city with a population over 600,000; \$15 million in a community under 25,000 in population; and four other levels of investment depending on the population of the local unit). There would be exceptions for certain locales. A TBP must ensure a significant equity contribution from the developer.
- It also must be **a mixed-use development**, defined in the bill as "a real estate project with planned integration of some combination of retail, office, residential, or hotel uses". The project could be a single development on eligible property, or consist of a series of developments on eligible property that are part of a "related program of investment" (the bill outlines criteria to meet this standard), even if they are not contiguous.
- A TBP would allow for **the capture of three kinds of income tax revenues** associated with the project, in addition to property tax increments, for use in financing a large array of eligible activities, **specifically including as new activities**, "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 three kinds of revenues from income tax capture are as follows:
 - **Construction Period Tax Capture Revenues**: Funds equal to the amount of income tax levied and imposed in a calendar year on 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 TBP. (Excluded are wages paid to employees of the owner or developer of the project.)
 - **Income Tax Capture Revenues**: Funds equal to the amount for each tax year by which the aggregate income tax from **individuals domiciled within the eligible property** subject to a TBP **exceeds** the initial income tax value (that is, the value in the tax year when the resolution adding TBP property is adopted). The MSF could not approve a TBP that proposes to use more than **50% of the income tax capture revenues**.
 - **Withholding Tax Capture Revenues**: The amount for each calendar year by which the income tax withheld from **individuals employed within the**

eligible property subject to a TBP **exceeds** the initial withholding tax value. (Excludes those domiciled within the eligible TBP property and construction period tax capture revenues.) The MSF could not approve a TBP that proposes to use more than **50% of the withholding tax revenues**.

The State Treasurer would require information be provided from the owner or developer to make these various calculations.

- **For any plan that proposed to use more than \$1.5 million in any year in withholding tax capture revenues and income tax capture revenues**, the developer or owner must pay for an "independent, third-party economic and fiscal impact analysis" to determine whether the plan will result in an overall positive fiscal impact to the state. For projects of this size, MSF would also require an "independent, third-party underwriting analysis to determine whether the amount of captured taxable value, construction period tax captures revenues, withholding tax capture revenues, and income tax capture revenues estimated to result from the plan are reasonable. Additionally, these projects would require consultation with the **State Treasurer**, who must concur that there is an overall positive fiscal impact to the state.
- MSF could not approve any plan, regardless of size of capture, that proposes to use construction period tax capture, withholding tax capture, and income tax capture revenues beyond the amount determined to be necessary for the project to be economically viable. (MSF would be required to develop standardized underwriting criteria for determining economic viability). MSF also could not approve any plan, regardless of size of capture, unless it determines that the plan will result in an overall positive fiscal impact to the state.
- There would be **caps on the capture of tax revenue**, as follows:
 - 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 would be capped at \$40 million. (If the amount committed or disbursed in calendar year were less than \$40 million, the unused portion would roll over into subsequent calendar years.)
 - The MSF would be prohibited from committing, and the Department of Treasury from disbursing, a total amount of income tax capture revenue and withholding tax capture revenue that exceeded \$800 million.
 - The MSF could not approve more than a total of \$200 million in construction period tax capture revenue and in projected sales and use tax exemptions. (The MSF would project the value of the sales and use tax exemptions at the time of approval, and would require information from the developer to perform and monitor this calculation. The MSF and Treasury would be required to write specific guidelines in the instance when the actual sales and use tax exemptions and construction period tax capture revenues exceeded the \$200 million limit.)

- Further, there could be no tax capture allowed after total revenue captured under a TBP is equal to the total costs permitted by the plan; and there could be no income tax capture or withholding tax capture **beyond 20 years from the from the beginning date of capture.**
- The State Treasurer would deposit, from the General Fund, the amount equal to the construction, withholding, and income tax capture revenues due to be transmitted under all TBPs. The **Department of Treasury would then distribute the collected revenues** to an authority or to the owner or developer of the eligible property to which the revenues are attributable, subject to the terms of the written development or reimbursement agreement for each TBP. Treasury would be required to account for the revenues attributed to each TBP separately, and funds may only be used for the specific TBP.
- In addition, the **purchase of certain tangible personal property** used in eligible brownfield redevelopment activities would be **exempt from sales and use taxes.** Generally speaking, the legislation provides an exemption, subject to limits and various approvals, for the sale of tangible personal property to the extent the property will be affixed and made a structural part of the real property or infrastructure improvements included within a TBP.
- TBP projects would **require the approval of the brownfield authority, the local unit of government, and the Michigan Strategic Fund;** and the State Treasurer must concur with the MSF that a project would have a positive fiscal impact on the state **if** the project proposes to use at least \$1.5 million in withholding and income tax capture revenues. A resolution of the governing body that created the local brownfield redevelopment authority would be required to initiate a TBP.
- The MSF could approve **no more than five TBPs in a calendar year statewide and no more than five TBPs in any individual local unit for all years** (that is, prior to December 31, 2022, the deadline for approvals). However, these limitations could be waived by the MSF to allow certain additional TBPs in certain areas: communities under 25,000 if the development would not be economically feasible otherwise; those where the Michigan State Housing Development Authority has approved the expenditure of federal blight elimination funds; for a municipality subject to a state of emergency for drinking water contamination (Flint); and for eligible property that is a historic resource and would not otherwise be transformed. For years in which fewer than five are approved, the unused approval authority would carry forward until December 31, 2022.
- The MSF would have to ensure an equitable geographic distribution of plans, balancing the needs of municipalities of different sizes and geographic areas. The MSF would have to set a target that at least 35% of all TBPs be located in cities, villages, and townships with populations under 100,000.

ADDITIONAL PROVISIONS:

Capital Investment Criteria

A TBP would be expected to result in the following levels of capital investment, based on the population (based on decennial census data) of a municipality that is not a county:

Population	Expected Capital Investment
>600,000	\$500 million
>150,000 and <599,999	\$100 million
>100,000 and <149,000	\$75 million
>50,000 and <99,999	\$50 million
>25,000 and <49,999	\$25 million
<25,000	\$15 million

- The capital requirements could be waived for the same areas listed above that do not count toward the five TBP annual cap: communities under 25,000 if the development would not be economically feasible otherwise; those where the Michigan State Housing Development Authority has approved the expenditure of federal blight elimination funds; for a municipality subject to a state of emergency for drinking water contamination (Flint); and for eligible property that is a historic resource and would not otherwise be transformed.
- Municipalities with populations that are less than 10% above the maximum for a tier may select that tier for the investment requirement.
- Total capital investments (both expected and actualized) within 10% of the applicable minimum investment would satisfy the requirement.
- Upon completion of TBP construction, or completion of a specific phase, MSF would **only** commence reimbursement from the construction period, income tax, withholding tax capture, and tax increment sources when the owner or developer has certified the actual capital investment. If the capital investment were less than included in the plan, MSF would have the right to modify the amount of reimbursement and take other recourse.

Plan Requirements

To seek TBP status, a plan must include:

1. The basis for designating the plan as a TBP.
2. A description of the costs of the TBP that are intended to be paid for with construction period, withholding tax, and income tax capture revenues. (In certain instances, subject to approval, these tax capture revenues can reimburse eligible activities up to 90 days prior to a property being approved for TBP status. They can also be used to reimburse advances made by municipalities, land bank fast track authorities, or other entities for costs of eligible activities.)
3. An estimate of the amount of construction period, withholding tax, and income tax capture revenues expected to be generated for each year of the TBP.

4. The beginning date and duration of capture of construction period, withholding tax, and income tax capture revenues.
5. A statement that describes what portion of all tax capture revenues will be used.
6. An approved work plan and a written development or reimbursement agreement between the owner or developer of the property, the authority, and the MSF if the TBP authorizes use of the construction period, withholding tax, and income tax capture revenues. (An approved work plan would also be required for a TBP that uses property tax capture revenue for the expanded definition of "eligible activities". MSF would be required to prescribe the form and content of this work plan.)

[A TBP could also include a request from the owner or developer and governing board to the MSF and a city levying a city income tax that the income tax exemptions of a Michigan Renaissance Zone be terminated (this would only be utilized if a TBP overlapped with undeveloped land in a Renaissance Zone.) In this instance, there would be no limit on the percent of income tax revenue that could be reimbursed to the owner or developer.]

Process of Creating a TBP

The governing body of the local municipality that created the brownfield authority must make an initial determination as to whether a TBP constitutes a public purpose. If the governing body finds that the plan does not constitute public purpose, it would reject the plan. If it finds public purpose, the governing body can approve, reject, or modify the plan after considering the following:

- (1) The plan's economic and community impact,
- (2) whether it meets statutory requirements,
- (3) whether the costs of eligible activities proposed are reasonable to carry out the purposes of the act,
- (4) whether the amount of capture tax revenues estimated to result from the plan are reasonable,
- (5) whether, based on an economic and fiscal impact analysis, the plan will result in an overall positive impact to this state,
- (6) whether the plan takes into account criteria for the Michigan Community Revitalization Program, and
- (7) whether there has been coordination between the governing body and the MSF regarding the provision of affordable housing, if necessary.

If the governing body approves the TBP, the plan is sent to the MSF. The MSF must approve or reject the plan using the same criteria as above. Within 90 days, in determining whether to approve a TBP, the MSF must conduct a "financial and underwriting analysis" of the developments included in the plan that:

- Sets the use of income tax capture revenues **only** to the point that makes the project economically viable.
- Takes into account the impact of the sales and use tax exemptions in determining the amount of tax capture revenue required.
- Ensures a significant equity contribution from the developer.
- Considers both rental rates at the time of project delivery and potential increases over time.

- The MSF could not approve a TBP **unless** it determines that the plan will have an overall positive fiscal impact to the state. In making that determination, the MSF must consider:
 - The potential displacement of tax revenues from other areas of the state.
 - The effects of the TBP on economic development in the surrounding area.
- The MSF would require an independent, third-party underwriting analysis and an independent, third-party fiscal and economic impact analysis **if** a plan proposes to use more than \$1.5 million in any year in withholding and income tax capture revenues. The owner or developer would pay the cost of the fiscal and economic impact analysis.
 - The MSF would be required to consult with the state Treasurer for any project of this size; the Treasurer would be required to concur that there will be an overall positive fiscal impact to the state.
 - The MSF could modify the amount of withholding tax capture revenues and income tax capture revenues in order bring the plan into compliance with the requirement that reimbursement be set **only** to the amount that makes the project economically viable, and that the plan result in an overall positive fiscal impact to the state.
- Amendments to existing plans are treated in the same manner as new plans, but are not considered new plans under the five-plan limit.
- The procedure, adequacy of notice, and findings under the act are presumptively valid unless contested in a court of competent jurisdiction within 60 days after approval of a TBP.
- Any positive or negative determinations made by the MSF must be supported by objective analysis and documented in the record of its proceedings.
- The MSF would charge and collect a fee to cover its costs associated with TBP review.
- MSF approval is required for a transfer of ownership for any TBP with existing and continuing reimbursements.

RELATED BILLS:

Senate Bill 112 would amend the Income Tax Act (proposed MCL 206.51e) to provide that, from total income tax revenue collected, an amount equal to the construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues due to be transmitted under all TBPs shall be deposited each state fiscal year into the State Brownfield Redevelopment Fund.

Senate Bill 113 would amend the General Sales Tax Act (205.54d) to **exempt** from sales taxes the sale of tangible personal property for use in eligible brownfield redevelopment activities on eligible property included in a TBP, to the extent that the tangible personal

property will be affixed and made a structural part of the real property or infrastructure improvements included within the TBP.

Senate Bill 114 would amend the Use Tax Act (proposed MCL 205.44d) to exempt from use taxes tangible personal property acquired by a person engaged in the business of altering, repairing, or improve real estate for others, or to the manufacture of a specific product if the property or product is to be affixed or made a structural part of improvements to real property included within a TBP, to the extent that those improvements are eligible activities on eligible property within a TBP.

Senate Bill 115 would amend the Michigan Renaissance Zone Act (MCL 125.2689) to provide that, where a Renaissance Zone overlapped with a TBP, the property owner and local government unit may request that exemptions from the Income Tax Act and City Income Tax Act not apply within the overlapping portion of the renaissance zone. The MSF and city levying the income tax would decide whether to approve the request.

HOUSE COMMITTEE ACTION:

The House Tax Policy Committee made amendments to the bill, incorporated into substitutes for SB 111 & 112, as reflected in the summary above. Most notably, the Committee adopted a "sunset" on the proposal; set a guideline that 35% of projects be in communities with populations of under 100,000; and exempted communities with populations under 25,000 from both the capital investment requirement and five-project annual cap.

BACKGROUND INFORMATION:

The state's Brownfield Redevelopment Program provides funding and tax incentives for the cleanup and redevelopment of contaminated, blighted, functionally obsolete, historic, transit-oriented, and certain other targeted properties with the aim of making them economically viable. As part of the program, the Brownfield Redevelopment Financing Act (Public Act 381 of 1996) allows municipalities to establish brownfield redevelopment zones and zone authorities ("authority"), which may implement brownfield plans. Brownfield authorities can use tax increment financing, which allows the "capture" of incremental increases in tax revenues on each parcel of eligible property subject to a brownfield plan, and use that "capture" to pay costs of eligible activities on eligible property.

EXPANDED FISCAL INFORMATION:

To the extent that the package of bills would result in investment and activities that would not have taken place but for the provisions of the bills, there would likely be a positive fiscal impact on state revenues, although there is no reliable way to quantify the magnitude. This also assumes that economic activity was not simply transferred to the eligible property from another area of the state. The annual fiscal impact would vary depending on the characteristics of the transformational brownfield plans (TBP) and economic activity generated.

Under the provisions of the bill, the Michigan Strategic Fund would be required to determine that the transformational brownfield plan would result in a positive fiscal impact to the state. This analysis would be required to be verified by an independent, third-party analysis if the plan proposed to use more than \$1.5 million in any year in withholding and income tax capture revenues.

Senate Bill 111: The bill would authorize development incentives for large development projects totaling \$1.0 billion across all transformational brownfield plans (TBP) over the life of the program. Of that amount, a total \$800.0 million could be captured from income and withholding tax revenue associated with the TBP and \$200.0 million could be captured from a combination of construction period tax capture revenue in the TBP and sales and use tax exemptions on certain tangible personal property provided for in SB 113 and SB 114. Disbursements of construction period tax capture revenue and the value of the sales and use tax exemptions would not have an additional annual reimbursement cap. Disbursements of income and withholding tax capture revenue would be limited to \$40.0 million annually across all TBPs. However, if the \$40.0 million threshold was not reached in a given year, the remaining balance could be carried forward into subsequent years for disbursement.

In general, a TBP could not use more than 50% of the income and withholding tax capture revenues to reimburse eligible activities. The TBP could capture 100% of the construction period tax capture for transmittal to the brownfield authority or developer. The available development incentives from any source for a TBP would be limited to an amount that made the project economically viable. Further, no tax capture would occur after the permitted costs under the TBP were met or after 20 years from the start of the capture.

The provisions of the bill would require the General Fund to absorb the entire potential \$800.0 million cost of the development incentives related to the income and withholding tax capture revenues. The potential \$200.0 million cost associated with the construction period tax capture revenue and value of sales and use tax exemptions would reduce revenue to the General Fund and School Aid Fund depending on the source of the incentive. The provisions of the bill require the Treasurer to deposit annually from the General Fund to the State Brownfield Redevelopment Fund an amount equal to the construction period tax capture revenues, income tax capture revenues, and withholding tax capture revenues due to be transmitted under all transformational brownfield plans.

Assuming the economic activity would not have happened without the development incentives, which cannot be ascertained with any degree of certainty, the costs noted above could be offset to some extent over the life of the TBP through new income, sales, and use tax revenue. While the entire cost of the development incentives would be borne by the General Fund, the offsetting benefits from new income tax revenue would flow to the General Fund and School Aid Fund in the following manner: 76.2% to the General Fund and 23.8% to the School Aid Fund. Sustained economic activity following the expiration of the TBP would result in revenue that would accrue to the state. Distribution of that revenue would depend on its source (e.g., income, sales, or use tax).

The MSF would incur certain costs outlined in the legislative analysis above related to TBP review and approval. To cover these costs, the MSF would be required to assess a

reasonable application fee. Likewise, the Department of Treasury would be authorized to use funds available in the State Brownfield Redevelopment Fund to cover administrative costs related to the tax capture provisions and corresponding calculations.

The provisions of the bill would also generally have a positive fiscal impact on local units of government assuming the projects would not have occurred but for the development incentives. Assuming sustained economic activity beyond the tax increment financing period, the local government would realize increased property tax revenues in the long run.

On the other hand, the expanded use of tax increment financing under a TBP for eligible activities could lead to increased expenditures from the School Aid Fund due to the capture of additional 18-mill non-homestead local school operating millages.

A local unit of government would realize increased revenue if an advance was made to a TBP project and the tax capture was used to reimburse the local unit with interest. Moreover, a TBP could authorize reimbursement of administrative costs to a local unit of government associated with the development of a TBP.

Lastly, new economic activity directly attributable to the TBP that created new sales tax revenues in excess of the allowable exemptions would result in increased constitutional revenue sharing payments to local units of government.

Senate Bill 112: The bill would have the potential to reduce General Fund revenue by an amount not to exceed \$40 million annually. The bill would require an amount equal to the total construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues due to be transmitted to all TBPs be deposited each state fiscal year into the State Brownfield Redevelopment Fund.

Senate Bills 113 & 114: The bills would result in foregone General Fund revenue, School Aid Fund revenue, as well as local unit revenue from Constitutional revenue sharing, by an unknown amount. Any fiscal impact would be directly correlated to the revenue foregone through the purchase of tangible personal property exempt from the sales and use tax under the provisions of the bill. To the extent that the tangible personal property would not have been purchased but for the provisions of SB 111, the revenue impact would be mitigated.

Senate Bill 115: If the MSF and the local unit approved the removal of exemptions from the Income Tax Act and City Income Tax Act under a renaissance zone designation, individuals would be required to pay the state and city income taxes that would be subject to capture and distribution under the TBP. To the extent that the state or city would have received this revenue upon expiration of the renaissance zone, the income tax revenue would be foregone by the state and city. However, under SB 111, this provision would only apply to development on undeveloped land in the renaissance zone.

POSITIONS:

Representatives of the following organizations testified in support of the bills:

- Saginaw Future (3-22-17)

- Shiawassee Economic Development Partnership (3-22-17)
- Shiawassee Chamber of Commerce (3-22-17)
- Oakland County (3-22-17)
- City of Tecumseh (4-19-17)
- Northern Michigan Chamber Alliance (4-19-17)
- City of Muskegon (4-19-17)
- Lansing Economic Area Partnership (4-19-17)
- Michigan Municipal League (4-19-17)
- Michigan Realtors (4-19-17)
- Grand Rapids Chamber of Commerce (4-19-17)
- Southwest Michigan First (4-19-17)
- Quicken Loans (4-19-17)

Additionally, representatives from 56 other organizations indicated support for the bills.

Representatives of the following organizations testified in opposition to the bills:

- Equitable Detroit Coalition (3-22-17)
- Mackinac Center for Public Policy (4-19-17)
- Americans For Prosperity (4-19-17)

Additionally, representatives from five school-related organizations indicated opposition to SB 113 & 114: the Michigan Association of School Boards, the Michigan Association of School Administrators; the Middle Cities Education Association; the Michigan Association of Intermediate School Administrators; and a representative of the Barry, Branch, Calhoun, Jackson, Lenawee, and Monroe intermediate school districts. (3-22-17) For a complete list of testimony and testimony cards, please see the House Tax Policy Committee meeting minutes:

<http://house.mi.gov/SessionDocs/2017-2018/Minutes/TAXP032217.pdf> (March 22, 2017)
<http://house.mi.gov/SessionDocs/2017-2018/Minutes/TAXP041917.pdf> (April 19, 2017)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.