



**House
Legislative
Analysis
Section**

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**BROWNFIELD REDEVELOPMENT:
EXTEND SBT CREDITS & TIFAS**

**House Bill 6501 as enrolled
Public Act 726 of 2002
Sponsor: Rep. Randy Richardville**

**House Bill 6502 as enrolled
Public Act 727 of 2002
Sponsor: Rep. Jason Allen**

**House Committee: Tax Policy
Senate Committee: Economic
Development, International Trade and
Regulatory Affairs**

Second Analysis (1-16-03)

THE APPARENT PROBLEM:

In 1996, the legislature created the Brownfield Redevelopment Program. The aim of the program was to provide funding and tax incentives for the cleanup and redevelopment of contaminated land, especially land in urban areas, so that it could become economically viable and have a chance to compete with undeveloped "greenfield" property. In 2000, the program was significantly expanded to cover blighted and functionally obsolete property and the tax incentives were substantially enhanced. At the time representatives of the Engler Administration said that the new provisions were part of its "initiative to assure the revitalization and long-term sustainability of Michigan's core communities". The incentive programs are jointly administered by the Michigan Economic Growth Authority (MEGA) and the Department of Treasury. The program's emphasis on core communities or urban centers encourages redevelopment where substantial infrastructure already exists and to that extent provides a means of reducing urban sprawl. The 2000 amendments only extended the availability of single business tax credits and tax increment finance programs through 2002. Legislation has been introduced to extend the program for five more years and to make some changes that will improve its administration.

THE CONTENT OF THE BILLS:

House Bill 6501 would amend the Single Business Tax Act and House Bill 6502 would amend the

Brownfield Redevelopment Financing Act to extend through 2007 brownfield redevelopment programs that otherwise would end after 2002, and to make other amendments.

House Bill 6501 contains the following amendments to the Single Business Tax Act (MCL 208.38g).

--It would make new brownfield SBT credits available through 2007. Currently, they are available only through 2002.

--Currently, projects with a cost of \$10 million or less (and a credit of \$1 million or less) seeking an SBT credit are approved or denied by the state treasurer. The bill would specify that the state treasurer or a designee could approve an application or project but only the state treasurer could deny an application or project. The bill also would specify that the application by a qualified taxpayer would be made to the Department of Treasury not to the state treasurer.

--If a project was on property that was functionally obsolete, the taxpayer would have to include with the application an affidavit signed by a level three or level four assessor stating that it was the assessor's expert opinion that the property was functionally obsolete and providing the underlying basis for that opinion.

--Currently, an SBT brownfield credit can be transferred from a property owner to a lessee of the property under certain circumstances. The bill would

House Bills 6501 and 6502 (1-16-03)

allow the credit to be assigned also to a purchaser of the eligible property and would specify that an assignment could only be made to a taxpayer that would be a qualified taxpayer at the time the assignment was complete. A purchaser could subsequently assign a credit or any portion of a credit to a lessee of the eligible property.

--If a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the taxpayer can assign all or a portion of the credit to its partners, members, or shareholders based on their proportionate share of ownership. The bill would allow this to be done based on an alternative method approved by the Department of Treasury.

--The bill would provide that if a taxpayer determined that an already approved project could not be completed as preapproved, the taxpayer could petition to amend the project. The total of the eligible investment for the project as amended could not exceed the amount allowed in the preapproval letter.

--The definition of a qualified taxpayer includes the requirement that the taxpayer certify that the Department of Environmental Quality had not sued or issued a unilateral order to the taxpayer under the Natural Resources and Environmental Protection Act (NREPA) to compel environmental response activity on or at the eligible property or had not spent state funds for response activity and demanded reimbursement from the taxpayer. Under the bill, the taxpayer would be deemed to have met the criteria if the taxpayer had completed all required response activity, was in compliance with any deed restriction or administrative or judicial order related to the response activity, and had reimbursed the state for all related costs.

-- The bill would allow for projects to be multiphase projects, but only if they were industrial and manufacturing projects. A multiphase project could not be divided into more than three components. If a project was a multiphase project, when each component of the project was completed, the taxpayer would submit to the state treasurer or a designee documentation of the completion, an account of the cost of the component, and the eligible investment for the component of each investor eligible for a credit for verification. When the completion was verified, a component completion certificate would be issued to a qualified taxpayer with the credit amount for the component. A taxpayer could assign all or part of the credit for a multiphase project after the certificate was issued. A

taxpayer could transfer ownership of or lease the completed component and assign a proportionate share of the credit for the entire project to the new owner or lessee. A credit assigned based on a multiphase project would have to be claimed by the assignee in the tax year in which the assignment was made. The total of all credits for the project could not exceed the amount stated in the preapproval letter. A component would be considered completed when a certificate of occupancy was issued by the local municipality and a component certificate was issued.

If all the components of a multiphase project were not completed by ten years after the date the preapproval letter was issued, the qualified taxpayer that received the letter would pay the state treasurer, as a penalty, an amount equal to the sum of all credits claimed and assigned, and no credits based on the project could be claimed thereafter by the taxpayer or any assignee. The penalty would be subject to interest determined for each component beginning on the date the credit for a component was claimed. The interest rate used would be that found in the Revenue Act (currently the monthly interest rate of one percent above the adjusted prime rate per annum from the time the payment was due).

House Bill 6502 contains the following amendments to the Brownfield Redevelopment Financing Act (MCL 125.26663 and 125.2665).

--It would allow the creation of brownfield-related tax increment financing programs through 2007. Currently, such programs must be established before January 1, 2003.

--Under the act, if a brownfield plan includes the capture of school operating taxes then the approval of a work plan by MEGA is required and there has to be a development agreement between the municipality and the owner of the property. This requirement would also be extended to the use of tax increment revenues from a brownfield plan for the cost of eligible activities attributable to more than one eligible property that is adjacent and contiguous to all other eligible properties covered by the development agreement, whether or not the captured taxes are used for school operating purposes.

--The act currently requires MEGA to respond to a request for approval of a work plan within 60 days. The bill would allow 65 days. At present if MEGA fails to respond within 90 days, the eligible activities in the work plan would be considered approved. That would also be changed to 65 days. The bill also

would alter somewhat the nature of the responses to a request. An unconditional approval would have to include an enumeration of eligible activities and a maximum allowable capture amount. A denial would need to be accompanied by a letter stating with specificity the reason for the denial. The bill would also allow a work plan that had been denied by MEGA to be resubmitted.

--The bill would add to the criteria that MEGA must consider in reviewing a work plan and would specify that the criteria would have to be considered "to the extent reasonably applicable to the type of activities proposed". The additional criteria are essentially the same as those used by MEGA in evaluating applications for SBT tax credits. They include the overall benefit to the public; the extent of reuse of vacant buildings and redevelopment of obsolete 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 that exists between the site and a similar greenfield site as determined by MEGA; in cases in which the developer or projected occupant was moving from another location in the state, whether the move would create a brownfield; the financial soundness of the taxpayer and the economic soundness of the project; other state and local incentives available; and any other criteria MEGA considers appropriate.

--Under the bill, if the project was on functionally obsolete property, the taxpayer would have to include with the application an affidavit signed by a level three or level four assessor stating that it was the assessor's expert opinion that the property was functionally obsolete and providing the underlying basis for that opinion.

BACKGROUND INFORMATION:

The recent expansion of the brownfield redevelopment programs was accomplished by Public Acts 143-146 of 2000 (House Bills 4400, 5543, 5444, and Senate Bill 269 of the 1999-2000 legislative session). The bills are described and discussed in the analysis by the House Legislative Analysis Section dated 7-10-00. Useful information on brownfield programs can be found on the web site of the Department of Environmental Quality at www.michigan.gov/deq.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency estimates that new credits issued in 2003 and 2004 would reduce single business tax revenues by \$15 million to \$20 million per year, based on the experience in previous years. The net loss, however, could be considered less than that since some of the single business tax revenue foregone would not have occurred anyway without the environmental cleanup activity and economic development resulting from the Brownfield Redevelopment Financing Act. The bills would allow business credits through 2007, rather than only through 2002, as would have been the case without the bills. (SFA analysis dated 12-4-02)

ARGUMENTS:

For:

The bills would extend the tax incentives and tax recapture features of the brownfield redevelopment program for five years. This is a key economic development program for core cities in the state. It helps encourage investment in urban centers, both large and small. The program was revamped and the tax incentives greatly expanded only two years ago. At the same time, a number of administrative improvements have been recommended none of which change the essential elements of the program. The brownfields program, jointly administered by the Michigan Economic Growth Association and the Department of Treasury, provides for large single business tax credits for businesses redeveloping contaminated, blighted, and obsolete property in certain core communities. It also allows local authorities to recapture property taxes attributable to new development for a variety of infrastructure improvements. The program has had widespread use.

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