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Senate Bills 129 through 132 (as enacted)

PUBLIC ACTS 90-93 of 2023

Sponsor: Senator Sam Singh (S.B. 129)
Senator Kristen McDonald-Rivet (S.B. 130)
Senator Mary Cavanagh (S.B. 131)
Senator Sue Shink (S.B. 132)

Senate Committee: Housing and Human Services
House Committee: Economic Development and Small Business

Date Completed: 10-9-24

RATIONALE

According to testimony before the Senate Committee on Housing and Human Services, the State needs more resources to address housing gaps. The State is short an estimated 190,000 housing units.¹ As demand for new homes has increased, so have construction costs because of supply-chain and labor issues.² In turn, construction costs have contributed to rising home and rental prices. Some believed the State should invest in more solutions to alleviate the housing crisis, like repurposing brownfield properties to increase housing stock. Generally, brownfields are previously developed sites that have barriers to redevelopment due to contamination or blight. The Brownfield Redevelopment Act allows local authorities to redevelop these sites using tax increment financing (TIF), which captures new tax revenues (e.g. property and income taxes) from a property undergoing redevelopment to pay for eligible costs in that property's redevelopment. Accordingly, it was suggested that the Act be amended to expand the use of its TIF for housing.

CONTENT

Senate Bill 129 amended the Brownfield Redevelopment Financing Act to do the following:

- Modify the definition of eligible activities to include housing development activities.**
- Increase the cap on total annual capture revenues, from \$40.0 million to \$80.0 million, and the cap on the total amount of income and withholding tax captures revenues that the Michigan Strategic Fund (MSF) and Department of Treasury may commit from \$800.0 million to \$1.6 billion, in line with Public Act 89 of 2023.³**
- Require the MSF to approve projects that meet certain population thresholds, in line with Public Act 89 of 2023.**

¹ White, Rose, "Michigan needs 190,000 more housing units to curb a crisis", *MLIVE*, January 4, 2024.

² Gardner, Paula, "New homes demand is high in Michigan. So are builder costs — and prices", *Bridge Michigan*, April 1, 2022.

³ Public Act 89 of 2023 amended the Brownfield Redevelopment Act to, among other things, increase the cap on total annual capture from \$40.0 million to \$80.0 million and to increase the cap on the total amount of income tax capture revenues and withholding tax captures revenues that the MSF and Department of Treasury may commit from \$800.0 million to \$1.6 billion. Public Act 89 also included sales and use tax capture revenues in provisions that allow for, and prescribe requirements for, the use of construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, and tax increment revenues.

- **Allow the MSF to authorize the capture and disbursement of sales and use tax capture revenues, in line with Public Act 89 of 2023.**
- **Require the State Treasurer to develop methods and processes that are necessary for each applicable person within the eligible property to report the amount of sales and use tax from that location, in line with Public Act 89 of 2023.**
- **Allow the State Brownfield Redevelopment Fund to be used to distribute revenue deposited into the Fund from a brownfield redevelopment plan that includes housing development activities and that is approved by the Michigan State Housing Development Authority (MSHDA) to the Housing Development Fund.**
- **Allow MSHDA to approve combined brownfield plans or work plans.**
- **Allow the tax from the school operating tax be exempt from capture if there is another approved local contribution to the project that provides a value reasonably equivalent to that percentage of local capture.**
- **Specify that if a work plan or combined brownfield plan requests reimbursement for housing development activities, the work plan or combined brownfield plan must be approved by MSHDA, unless the housing property for which the development activities were identified under the plan have been sold or are rented at a market rate and are not subsidized.**
- **Allow a brownfield redevelopment authority to amend the beginning date of revenue captures to a date later than five years following the date the MSF approved inclusion of the eligible property in the transformational brownfield plan if the governing body and the MSF determine that the developer has proceeded in good faith and made reasonable and substantial progress in the implementation of the related program of investment.**
- **Increase the amount for reasonable costs of brownfield plan or work plan implementation from \$30,000 to \$50,000.**
- **Increase the amounts of tax increment revenue attributable to local taxes that an authority may use in each fiscal year.**
- **Require an authority to report certain information to MSHDA.**

Senate Bills 130, 131, and 132 amended the General Property Tax Act, the use Tax Act, and the General Sales Tax Act, respectively, to change citations to a Michigan Compiled Laws section that Senate Bill 129 amended.

The bills took effect July 19, 2023.

Senate Bill 129 is described in greater detail below.

Eligible Activities; Eligible Property

Generally, "eligible activities" include activities for which a brownfield redevelopment authority may spend tax increment revenues to acquire or prepare eligible property. The Act specifies eligible activities for all eligible properties and for eligible properties that meet certain requirements. For example, for all eligible properties, eligible activities include Department of Environment, Great Lakes, and Energy (EGLE) specific activities, relocation of public buildings or operations for economic development purposes, and reasonable costs of environmental insurance, among other things.

The bill amended the term "eligible activities" to include, for local housing property located in a community that has identified a specific housing need and has absorption data or job growth data included in the brownfield plan, the following:

- The activities of a brownfield plan that were used or are currently used for a commercial, industrial, public, or residential purposes, or former dumps, landfills, and other areas filled with nonnative material.
- Housing development activities.
- Infrastructure improvements that are necessary for housing property and support housing development activities.
- Site preparation that is not a response activity and that supports housing development activities.

The bill also amended the term to include costs to implement, monitor, and maintain compliance with the income and price monitoring responsibilities associated with housing development activities. The bill also included among "eligible activities" site improvements that are not a response activity.

"Eligible property" means property for which eligible activities are identified under a brownfield plan that has been used or is currently used for commercial, industrial, public, or residential purposes including personal property to the extent included in the brownfield plan if it meets certain conditions. The bill modified the term to include former dumps, landfills, and other areas filled with nonnative material that met one of the conditions listed in the Act. Additionally, it included in the term housing property for which eligible activities were identified under a brownfield plan, including personal property located on the property, to the extent included in the brownfield plan.

Under the bill, "housing development activities" means one or more of the following:

- Reimbursement provided to owners to rental housing for qualified rehabilitation.
- Costs for public infrastructure and safety improvements necessary for a housing project.
- Costs of demolition and renovation of existing buildings and site preparation, to the extent necessary to accommodate an income qualified purchaser household or income qualified renting household.
- Temporary household relocations costs for an income qualified household for a period not to exceed one year.
- Acquisition cost for blighted or obsolete rental units, to the extent the acquisition would promote rehabilitation or adaptive reuse of the blighted or obsolete rental unit to accommodate an income qualified purchaser household or income qualified renting household.
- Reimbursement provided to a developer to fill a financing gap associated with the development of housing units priced for income qualified households and to assist with the costs related to infrastructure improvements and site preparation that is not a response activity and that is necessary for new housing development for income qualified households on eligible property.

"Housing property" means one or more of the following:

- A property on which one or more units of residential housing are proposed to be constructed, rehabilitated, or otherwise designed to be used as a dwelling.
- One or more units of residential housing proposed to be constructed or rehabilitated and located in a mixed-use project.

"Household income" means all the income received by all the individuals who are at least 24 years old when the household income is determined and who reside in a household while members of the household.

"Income qualified household" means a person, a family, or unrelated persons living together, whose annual income is not more than 120% of the area median income. "Area median income" means the median income for the area as determined by Section 8 of the United States Housing Act, adjusted for family size. (Generally, Section 8 of the United States Housing Act requires the Department of Housing and Urban Development to create and update income limits to reflect changes in median family income levels for different size households and income limits. The median income limits are developed by the fair market rent calculation defined in the Housing Act.)

"Income qualified purchaser household" means a purchaser who is, or who is a member of, an income qualified household.

"Income qualified renting household" means a renter who is, or who is a member of, an income qualified household.

Under the Act, "owned by or under control of" meant a land bank fast track authority or a qualified local unit of government that met certain conditions. The bill modified the term to mean a land bank fast track authority, a *municipality*, or qualified local governmental unit that met certain conditions.

"Previously developed property" means a property that was part of an existing developed residential, commercial, or industrial zone and contained a structure serviced by utilities, or former dumps, landfills, and other areas filled with nonnative material.

"Qualified rehabilitation" means rehabilitation of existing structures that is necessary to make a housing unit suitable for sale to an income qualified purchaser household or rent to an income qualified renting household. The term also includes proposed rehabilitation that would bring the structure into conformance with minimum local building code standards or improve the livability of the units while meeting minimum local building code standards. "Existing structures" includes any structure designed to be used as a dwelling.

"Specific Taxes" mean a tax levied under the Commercial Development Act, the Enterprise Zone Act, the Technology Park Development Act, the Obsolete Property Rehabilitation Act, the Neighborhood Enterprise Zone Act, the Commercial Rehabilitation Act, or the portion of the tax levied under the Tax Reverted Clean Title Act. The bill added to the term taxes levied under the Attainable Housing Act and the Residential Housing Facilities Act.

Total Disbursement

The Act prohibits the MSF from committing, and the Department of Treasury from disbursing, more than \$40.0 million in total annual tax capture. The bill raises this cap to \$80.0 million, in line with changes made to the Brownfield Redevelopment Act by Public Act 89 of 2023.

In addition to the \$80.0 million annual limit, the following provisions apply:

- With respect to the availability of uncommitted amounts, if an amount authorized to be committed for a calendar year is not committed, the uncommitted amount for that calendar year remains available to be committed and disbursed in a subsequent calendar year and is in addition to the annual limits otherwise applicable; however, not more than \$30.0 million may be committed or disbursed in any calendar year above the \$80.0 million annual limit as a result of this provision, and all such commitments and disbursements remain subject to the \$1.6 billion overall limitation.
- With respect to the availability of committed but undisbursed amounts, if an amount had been committed under an approved transformational brownfield plan for a calendar year

but had not been disbursed, the undisbursed amount for that year is available to be disbursed in a subsequent calendar year and is in addition to the annual limit otherwise applicable.

The Act also prohibited the MSF from committing, and the Department of Treasury from disbursing, a total amount of income tax capture revenues and withholding tax capture revenues that exceeded \$800.0 million. The bill added to this sales and use tax revenue and raised the cap to \$1.6 billion, in line with changes made to the Brownfield Redevelopment Act by Public Act 89 of 2023.

Previously, if the value of the actual sales and use tax exemptions and construction period tax capture revenues under all transformational brownfield plans exceeded the limit of \$200.0 million by more than a de minimis amount, as determined by the State Treasurer, the State Treasurer was required to take corrective action and could reduce future disbursements to achieve compliance with the aggregate limitation. The corrective action could not reduce the disbursement for an individual plan by an amount that was more than the amount by which the value of the sales and use tax exemptions for that plan exceeded the amount projected at the time of plan approval and included in the plan. The bill deleted these and related provisions.

Population Threshold

The MSF must ensure an equitable geographic distribution of transformational brownfield plans. To this end, the MSF was previously required to set a target that not less than 35% of the total transformational brownfield plans approved under the Act prior to December 31, 2027, were in cities, villages, and townships with a population of less than 100,000. The bill deleted this provision. Instead, the MSF must ensure that the following requirements are met, in line with the population thresholds outlined by Public Act 89 of 2023:

- Between 33% and 38% of the total transformational brownfield plans approved under the Act before December 31, 2027, must be in cities, villages, and townships with a population of less than 100,000.
- Between 33% and 38% of the total transformational brownfield plans approved under the Act before December 31, 2027, must be in cities, villages, and townships with a population between 100,000 and 225,000.

Brownfield Revolving Fund

The Act allows an authority to establish a local brownfield revolving fund and specifies the sources that may be deposited into the fund. Excess tax increment revenue from taxes levied for school operating purposes by the MSF may not be captured for deposit in the local brownfield revolving fund. Under the bill, excess tax increment revenue from taxes levied for school operating purposes authorized by MSHDA also may not be captured for deposit.

Under the Act, the local brownfield revolving fund can be used only to pay the costs of eligible activities on property that is located within the municipality and meets certain conditions. The bill specifies that this applies regardless of whether the property was included in the brownfield plan.

State Brownfield Redevelopment Fund

Under the Act, the State Brownfield Redevelopment Fund is created as a revolving fund within the Department of Treasury. The Fund may be used only for specified purposes. For example, the Fund may be used to distribute construction period tax capture revenue, withholding tax

capture revenues, and income tax capture revenues. The bill amended the Act to allow the Fund to be used to distribute sales and use tax capture revenues, in line with changes made to the Brownfield Redevelopment Act by Public Act 89 of 2023. Current provisions governing the use of tax capture, withholding tax capture, and income tax capture revenues apply to sales and use tax capture revenues.

The bill defines "sales and use tax capture revenues" as, with respect to each eligible property subject to a transformational brownfield plan, the amount for each calendar year by which the sales tax and use tax collected from persons within the eligible property exceeds the initial sales and use tax value. For persons with multiple business locations, the applicable amount of sales tax and use tax for purposes of the Act are only the sales tax and use tax collections attributable to the business location within the eligible property.

To calculate sales and use tax capture revenues for a calendar year under a transformational brownfield plan, the bill requires the State Treasurer to develop methods and processes that are necessary for each applicable person within the eligible property to report the amount of sales and use tax from that location, in line with Public Act 89 of 2023. The MSF must include all the following provisions in the development or reimbursement agreement for any transformational brownfield plan that uses sales and use tax capture revenue:

- That the owner or developer of the eligible property requires each applicable person occupying the eligible property to comply with reporting requirements through a contract requirement, lease requirement, or other similar means.
- That reimbursement of sales and use tax capture revenues is limited to amounts that have been reported and that the State has no obligation with respect to sales and use tax capture revenues that are not reported or paid.

The MSF requires an independent third-party underwriting analysis of any transformational brownfield plan that proposes to use more than \$10.0 million in any year of tax capture, withholding tax capture, income tax capture, and, under the bill, sales and use tax capture revenue. Under the bill, the MSF also must require an independent, third-party analysis of the sales and use tax capture revenue estimates for any plan that includes sales and use tax capture revenues. The owner or developer of the eligible property must pay the cost of this independent, third-party analysis.

Additionally, under the bill, the Fund may be used to distribute revenue deposited into the Fund from a brownfield redevelopment plan that included housing development activities and that is approved by MSHDA to the Housing Development Fund.

Brownfield Plan

The Act specifies that a brownfield plan can apply to one or more parcels of eligible property and can be amended to apply to additional eligible parcels. Unless otherwise authorized by the Act, if one or more eligible properties is included within the plan, the tax increment revenue under the plan is determined individually for each eligible property. Each plan or amendment must be approved by a governing body of the municipality and contain specified information.

If taxes levied for school operating purposes are subject to capture, the percentage of school operating tax increment revenues captured relating to a parcel of eligible property under a brownfield plan may not be greater than the percentage of local tax increment revenues that are captured under the plan relating to that parcel of eligible property. The bill prohibits the percentage of school operating tax increment revenue from being captured unless there is

another approved local contribution to the project that provides a value reasonably equivalent of that percentage of local capture.

Tax Increment Revenues

"Tax increment revenues" means the amount of ad valorem property taxes and specific taxes attributable to the application of the levy of all taxing jurisdictions upon the captured taxable value of each parcel of eligible property subject to a brownfield plan and personal property located on that property, regardless of whether those taxes began to be levied after the brownfield plan was adopted. Under the bill, "tax increment revenues" also includes the amount of any payment in lieu of taxes under Section 15a(3) of the State Housing Development Authority Act, paid on an eligible property subject to a brownfield plan, less the amount of property taxes levied on the eligible property subject to the brownfield plan for the year the eligible property became subject to the brownfield plan. (Generally, Section 15a(3) requires the owner of a housing project exempt from ad valorem property taxes to pay to the municipality in which the project is located an annual service charge for public services in lieu of all taxes.)

The term does not include, among other things, the amount of ad valorem property taxes captured by a downtown development authority under Part 3 (Tax Increment Finance Authorities), Part 4 (Local Development Finance Authorities), or Part 6 (Corridor Improvement) of the Recodified Tax Increment Financing Act. Under the bill, these revenue sources are exempt unless these other authorities agree to forgo or transfer their taxes in support of the brownfield plan.

The Act prohibits an authority from spending tax increment revenue to acquire or prepare eligible property unless the acquisition or preparation is an eligible activity. Additionally, an authority is prohibited from entering into agreements with the taxing jurisdictions and the governing body of the municipality to share a portion of the taxes captured from an eligible property. Under the bill, this prohibition applies unless an agreement is related to another TIF authority that has been established under the Recodified Tax Increment Finance Act, that waived or transferred its tax capture to allow an authority to instead capture and utilize those taxes to pay for the eligible activities for an eligible property and only for a period that does not exceed the duration of the plan for that eligible property.

Under the Act, 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 EGLE-specific activities then one or more specified requirements apply.

A combined brownfield plan or work plan must be approved by the MSF and a development agreement between the municipality or authority and an owner or developer of an eligible property is required before the tax increment may be used for certain purposes. If the provision below is not satisfied, approval and the agreement are required before the tax increment can be used for housing development activities.

If the work plan or combined brownfield plan must be approved by MSHDA, a development agreement or reimbursement agreement between the municipality or authority and an owner or developer of an eligible property that stipulates price and income monitoring for residential units is required before the tax increment can be used for housing development activities. The work plan or combined brownfield plan is not required to be approved by MSHDA if all the housing property for which housing development activities are identified under the plan will be sold or rented at a market price and are not subsidized.

The combined brownfield plan or work plan submitted to the MSF must be in a form prescribed by the MSF. Under the bill, either must be submitted to the MSF or MSHDA, as applicable.

Additionally, the bill prohibits an authority from submitting a request for approval of a work plan or a combined brownfield plan for a transformational brownfield plan until all required financial analyses are complete.

Administrative Costs

The Act allows an authority to use taxes captured from eligible properties to pay for administrative and operating costs, including reasonable costs of developing and preparing brownfield plans, combined brownfield plans, or work plans for which tax increment revenue may be used. These reasonable costs include certain legal and consulting fees that are not in the ordinary course of acquiring and developing real estate. The bill expanded reasonable costs to include costs to implement, monitor, and maintain compliance with the income and price monitoring responsibilities associated with housing development activities, fees and expenses, including licensing, permitting, planning, engineering, architectural, testing, legal, and accounting fees, not included in the legal and consulting fees as described above.

Under the Act, reasonable costs of a brownfield plan or work plan implementation include tracking and reporting data. The bill specified that the reasonable costs of a brownfield plan or work plan implementation also include costs to implement, monitor, and maintain compliance with the income and price monitoring responsibilities associated with housing development activities.

Previously, the reasonable costs of brownfield plan or work plan implementation could not exceed \$30,000. The bill raised this limit to \$50,000.

Previously, in each fiscal year of an authority, the amount of tax increment revenues attributable to local taxes and school taxes that the authority could use for certain administrative and operational expenses of the authority was determined by the number of active projects each authority operates. The bill modified these amounts as show in the table below.

("Active project" means a project in which the authority is currently capturing taxes. Under the bill, "active project" also would mean a project for which an authority has ongoing obligations to implement, monitor, or maintain compliance with the income and price monitoring responsibilities associated with housing development activities.)

Number of Projects an Authority Operates	Previous Amount	Current Amount
Five or fewer active projects	\$100,000	\$125,000
Six or more, but fewer than 11 active projects	125,000	165,000
11 or more, but fewer than 16 active projects	150,000	200,000
16 or more, but fewer than 21 active projects	175,000	220,000
21 or more, but fewer than 26 active projects	200,000	250,000
26 or more, but fewer than 31 active projects	300,000	400,000
31 or more, but fewer than 54 active projects	500,000	650,000
54 or more, but fewer than 74 active projects	700,000	900,000
74 or more, but fewer than 99 active projects	900,000	1.4 million
99 or more active projects	1.0 million	2.0 million

Tax Capture

The Act allows a brownfield authority to capture taxes for the payment of interest and if an

authority reimburses a person or entity for an advance for the payment or reimbursement of the cost of eligible activities that are not EGLE-specific activities and interest on those activities included in a combined brownfield plan or a work plan approved by the MSF, the authority may capture the taxes levied for school operating purposes and local taxes for the payment of that interest based on MSF approval. The bill specifies that this also applies to a plan approved by MSHDA.

Previously, there were limitations on the use of taxes levied for school operating purposes. These limitations did not apply to the costs of certain activities incurred by a person other than the authority. Under the bill, the limitations to the costs do not apply to asbestos, mold, lead, and building hazardous materials abatement and demolition, in an amount no greater than \$250,000.

Public Hearing

The Act requires a governing body to hold a public hearing on a brownfield plan before approval and specifies the public hearing process for brownfield plan approval. At least 10 days before the hearing on the plan, the governing body must notify EGLE regarding the hearing if the plan involves the uses of taxes levied for school operating purposes to pay for eligible activities that require the approval of a combined brownfield plan or work plan developed by EGLE. Under the bill, this requirement also applies if the plan involves the use of taxes levied for school operating purposes to pay for eligible activities that require the approval of MSHDA, or its designee, if the brownfield plan involves the use of taxes levied to pay for specified eligible activities when 50% or more of the project is dedicated to residential use.

Work Plan Approval

Under the Act, to seek MSF approval of a work plan an authority must submit specified documents for each eligible property (e.g., a copy of the brownfield or transformational brownfield plan) and a summary of available information on the historical and current use of each eligible property. Under the bill, these requirements are extended to MSHDA approval for a work plan.

In addition, for work plans that include housing development activities, an authority must submit a summary for proposed income and price monitoring responsibilities and related expenses.

After receiving a request for approval of a work plan, the MSF must provide one of the written responses described below to the requesting authority within 60 days following receipt of a request for approval or within seven days following the first meeting of the board after the 60-day period following the receipt of the request for approval, whichever is later. The bill specifies that MSHDA also must provide one of the specified responses after receiving a request to approve a work plan. In addition, the bill allows an authority to resubmit a work plan if it is denied in whole or in part by the MSF or MSHDA.

Previously, the Act specified that in its review of a work plan, the MSF had to consider specified criteria to the extent reasonably applicable to the type of activities proposed as part of the that work plan when approving or denying that part of the plan. Instead, under the bill, in its review of a work plan for approval or denial, the MSF or MSHDA must consider the prescribed criteria to the extent reasonably applicable to the type of activities proposed as part of the work plan or applicable portion of that work plan.

In addition to the currently prescribed criteria, during the review process, if housing development activities are included in the work plan, the MSF or MSHDA may consider the following:

- Alignment with the Statewide Housing Plan developed.
- The capacity of the entity or agency that is monitoring price and income, and the duration of the monitoring.
- Whether the project will support housing at price points that align with the local workforce.
- If the property will be deed restricted to regulate short-term rentals or otherwise ensure long-term local housing needs.

The Act specifies that if the MSF fails to provide a written response after receiving a request for approval of a work plan within specified time periods, depending on the underlying circumstances, the eligible activities are approved and the authority may proceed with the eligible activities as outlined in the work plan. The MSF's approval of a work plan is final. The bill applies these provisions to MSHDA and specified that the approval or denial process applies to a work plan and approval made by MSHDA is final (as it currently is for the MSF).

Under the Act, if a brownfield plan includes capture of taxes levied for school operating purposes, a chairperson of the MSF may approve, without a meeting of the MSF Board, combined brownfield plans and work plans that address eligible activities totaling an amount of \$1.0 million or less and that include reimbursement of taxes levied for school operating purposes. Under the bill, this provision applies to eligible activities other than those specified in the bill.

Under the Act, instead of seeking approval of a work plan, an authority may seek approval of a combined brownfield plan from EGLE or the MSF. To seek approval of a combined brownfield plan, the authority must provide notice that it will be seeking approval of a combined brownfield plan instead of a work plan to one or more specified entities, depending on the circumstances. This provision also applies to MSHDA. In addition, the bill requires an authority to notify MSHDA if the authority seeks approval of a combined brownfield plan from MSHDA because the combined brownfield plan involves the uses of tax levied for school operating purposes to pay for eligible activities that require approval from MSHDA under the bill.

Report

The Act requires municipal and county treasurers to transmit tax increment revenue to the authority within 30 days after they are collected. Annually, the authority must submit to the governing body, EGLE, and the MSF a financial report on the status of its activities for each calendar year. Under the bill, if the authority's activities include housing development activities, it must contain all the following:

- The number of housing units produced.
- The number of income qualified purchaser households served.
- The number of income qualified renting households assisted.
- For the initial reporting period, the prices at which the housing units were sold or rented.
- Racial and socioeconomic data on the individuals purchasing or renting the housing units, or, if that data were not available, racial and socioeconomic data on the census tract in which the housing units were located.

The bill also requires this report to be submitted to MSHDA. The MSF and EGLE must compile the financial reports received and annually submit a combined report to each member of the Legislature. The bill requires MSHDA to contribute to these combined reports. Additionally, the bill requires MSHDA to post on a quarterly basis on its website the name, location, and

amount of tax increment revenues, including taxes levied for school operating purposes, for each project approved by MSHDA during the immediately preceding quarter.

Additionally, the Act requires the Auditor General to conduct and report a performance post-audit on the effectiveness of the program established under the Act every three years. As part of this post-audit, the Auditor General must assess the impact to which the implementation of the program by the Treasury Department and the MSF facilitated and affected the redevelopment or reuse of eligible property and identify any factors that inhibited the program's effectiveness. The post-audit must also assess the extent to which the interpretation of statutory language, the development of guidance or administrative rules, and the implementation of the program by the Treasury Department and the MSF was consistent with the fundamental objective of facilitating and supporting timely and efficient brownfield redevelopment of eligible properties. Under the bill, the Auditor General also must assess the implementation of the program by MSHDA.

Additional Provisions; Transformation Brownfield Plan

Under the bill, an authority, solely with respect to a related program of investment and subject to the approval of the governing body and MSF, may amend the beginning date of capture of tax increment revenues, withholding tax capture revenues, income tax capture revenues, and sales and use tax capture revenues for an eligible property included within a related program of investment to a date later than five years following the date the MSF approved inclusion of the eligible property in the transformational brownfield plan if the governing body and the MSF determine that the developer of the related program of investment has proceeded in good faith and made reasonable and substantial progress in the implementation of the related program of investment.

Definitions

"Blighted" means property that, among other things, is tax reverted property owned by a qualified local governmental unit, by a county, or by the State. The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or the State after the property's inclusion in a brownfield plan cannot result in the loss to the property of the status as a blighted property for the purposes of the Act. Under the bill, the term means, among other things, property that is *previously developed*, or tax reverted property owned by a municipality or by the State. The sale, lease, or transfer of *previously developed* or tax reverted property by a municipality or the State after the property's inclusion in a brownfield plan does not result in the loss to the property for the purposes of the Act.

Under the Act, "economic opportunity zone" means one or more parcels of property that meet all the following:

- That together are 40 or more acres in size.
- That contain or contained a manufacturing operation that consists or consisted of 500,000 or more square feet.
- That are in a municipality that has a population of 30,000 or less and that is contiguous to a qualified local government.

The bill amended the definition of "economic opportunity zone" to mean one or more parcels of property that meet all the following:

- That together are 40 or more acres in size.
- That contain or contained a manufacturing operation *or an enclosed mall* that consists or consisted of 300,000 or more square feet.

-- That are in a municipality that is contiguous to a qualified local government.

"Initial sales and use tax value" means, with respect to each eligible property subject to a transformational brownfield plan, the aggregate amount of sales tax and use tax collected from persons located within the eligible property for the tax year in which the resolution adding that eligible property in the transformational brownfield plan is adopted. For persons with multiple business locations, the applicable amount of sales tax and use tax for purposes of the Act is only the sales tax and use tax collections attributable to the business location within the eligible property.

"Sales tax" means the tax levied under the General Sales Tax Act.⁴ "Use tax" means the tax levied under the Use Tax Act⁵, including both the local community stabilization share and the State share as those terms are defined in Section 2c of the Use Tax Act: the local community stabilization share tax described in section 3(5) and included in the specific tax levied under section 3(1) and the State Share tax described in section 3(5) and included in the specific tax levied under section 3(1), respectively.⁶

MCL 125.2652 et al. (S.B. 129)
211.7gg (S.B. 130)
205.94dd (S.B. 131)
205.54d (S.B. 132)

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 bills will benefit Michigan's low- and middle-income home buyers by increasing affordable housing stock throughout the State. The bills provide local communities the ability to fund housing development through TIF for income qualified households, households whose annual income is not more than 120% of the area median income. By taking advantage of TIF, which subsidizes development by increasing and allowing developers to capture tax revenue, housing developers will see reduced building costs. This, in turn, will lower housing costs for prospective buyers from income qualified households.⁷ To ensure that developers comply with this provision, the bills require local communities to report to MSHDA, providing home buyers another layer of assurance. By providing local communities with another tool to alleviate the housing crisis, the bills will aid low- and middle-class prospective homebuyers.

Supporting Argument

The bills will benefit the State's environment and economy by incentivizing the further redevelopment of blighted property. Blighted property may be contaminated, unattractive, or dangerous. For example, while evaluating the property on which the City of Saginaw and the Saginaw Public Schools District intended to build a new high school, EGLE found soil contaminated with metals, volatile organic compounds, and polynuclear aromatic

⁴ Generally, the General Sales Tax Act prescribes a 6% sales tax on tangible personal property.

⁵ Generally, the Use Tax Act prescribes a 6% use tax on all taxable items brought into Michigan or on all purchases made through the internet or by mail or phone from out-of-state retailers that do not collect and remit sales or use tax from their customers.

⁶ Section 3(5) of the Act prescribes, for fiscal year 2023-2024, the local community stabilization share tax rate to be levied by the authority as that rate calculated by the Department of Treasury on behalf of the authority sufficient to generate \$561,700,000.00 in revenue and the State share tax rate as that rate determined by subtracting the local community stabilization share tax rate from 6%.

⁷ Friske, Katheryne, "Michigan expands building financing option for more affordable housing", *Michigan Public*, March 22, 2024.

hydrocarbons (a class of chemicals associated with coal, crude oil, and gasoline), which was removed.⁸ The redevelopment of blighted properties has positive environmental effects. Additionally, redeveloping unattractive areas contributes to the State's economy by making abandoned land productive, creating jobs, and encouraging investment; however, before the passage of the bills, the State limited the use of TIF to certain types of projects, failing to incentivize the development of residential areas. By allowing developers to use TIF to transform blighted property into affordable housing, the bills expanded the scope of brownfield redevelopment, which will positively contribute to the State's environment and economy.

Supporting Argument

The bills will allow local communities to tailor solutions to their housing needs. Generally, brownfield plans are written and approved at the local level. The bills would maintain this requirement, allowing local communities to evaluate their housing burden and, if approved, take advantage of TIF to alleviate it. The bills offer local communities another tool to fight the housing crisis and ensure that the decision whether to use TIF remains in local hands.

Opposing Argument

The bills may further exacerbate the State's housing crisis. According to testimony before the Senate, developers or landlords may use captured tax revenues to improve their properties. This may result in rising home and rental prices. In 2022, 51% of renters were housing-cost burdened, spending more than 30% of their income on housing, while 24% of homeowners with mortgages and 14% without were housing cost-burdened.⁹ Michigan residents need affordable housing, which the bills will not necessarily provide.

Response: The bills limit the ability of developers and landlords to improve their own properties. Tax increment financing may be used to reimburse owners of rental housing units for qualified rehabilitation, which includes the rehabilitation of existing structures to bring the structure into conformance with minimum local building code standards for occupancy or improving the livability of the units. It also includes the rehabilitation of existing structures that are necessary to make a housing unit suitable for sale to an income qualified purchaser household or rent to an income qualified renter. Overall, the bills allow TIF to be used to benefit income qualified purchaser or renter households, ensuring that its benefits are felt by those in need.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

Senate Bill 129

Senate Bill 129 will have an indeterminate negative fiscal impact on State and local tax revenue through a potential increase in eligible brownfield redevelopment projects. Through TIF, the bill allows for certain tax revenue from brownfield projects to be reverted to the developers to reimburse them for the development activities specified in the bill. Therefore, the bill likely will decrease State and local tax revenue and reduce the overall revenue for the School Aid Fund through a decrease in the State Education Tax.

The bills also will have an indeterminate fiscal impact on EGLE. The bill likely will result in an overall increase in the number of eligible brownfield redevelopment projects. Because EGLE has review and permitting roles throughout the progress of a brownfield redevelopment project, an increase in eligible projects may result in an increase in labor and costs for EGLE;

⁸ "1741 North Niagara Street", [RenewMI Project Viewer](#), EGLE. Retrieved on 7-16-24.

⁹ Belhaj, Melika, *et al.*, *Michigan Statewide Housing Needs Assessment*, p. 24, 2024.

however, the extent of any cost increase is indeterminate, as the extent of the increase in projects is unknown.

The bill also will have a small negative fiscal impact on MSHDA within the Department of Labor and Economic Opportunity (LEO). As the bill moved program administration from LEO to MSHDA, the net impact on LEO would be zero; however, MSHDA may see some increased administrative costs for new tasks and reporting requirements under the bill.

Senate Bill 130

The bill will have no fiscal impact on State or local government.

Senate Bills 131 & 132

The bills will have no fiscal impact on State or local government. The bills' amended references to sections that were modified by Senate Bill 129.

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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.