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SFA**BILL ANALYSIS**

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House Bills 6501 and 6502 (as passed by the House)
Sponsor: Representative Randy Richardville (H.B. 6502)
Representative Jason Allen (H.B. 6502)
House Committee: Tax Policy
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 12-3-02

CONTENT

House Bill 6501 would amend the Single Business Tax Act and House Bill 6502 would amend the Brownfield Redevelopment Financing Act to extend from January 1, 2003, to January 1, 2008, the deadline for approval of a brownfield project for the purpose of a single business tax (SBT) credit, and the deadline for approval of a brownfield plan that would capture school operating taxes, respectively. The bills would make several other changes to the Acts, as described below.

House Bill 6502

Currently, a "qualified taxpayer" may claim an SBT credit if the taxpayer has a preapproval letter (for a brownfield project) issued by the State Treasurer or the Michigan Economic Growth Authority (MEGA) before January 1, 2003. The bill would allow the credit for a qualified taxpayer having a preapproval letter issued before January 1, 2008.

Under the SBT Act, a "qualified taxpayer" is a taxpayer that owns or leases eligible property (property identified under a brownfield plan); and certifies that the Department of Environmental Quality (DEQ) under Part 201 of the Natural Resources and Environmental Protection Act has not sued or issued a unilateral order to the taxpayer to compel response activity on the property, or spent State funds for response activity on the property. The bill would amend the definition by providing that a taxpayer would meet the certification requirement if the taxpayer had completed all response activity required by Part 201, were in compliance with any deed restriction or administrative or judicial order related to the required response activity, and had reimbursed the State for all costs incurred related to the required response activity.

Currently, if the cost of a brownfield project will be \$10 million or less, a taxpayer must apply to the State Treasurer for approval, and the State Treasurer may either approve or deny the project. The bill would require a taxpayer to apply to the Department of Treasury for approval; the State Treasurer or the Treasurer's designee could approve an application, but only the Treasurer could deny an application.

If a brownfield project will cost more than \$10 million, and is located in a qualified local unit of government, the taxpayer must apply to MEGA for approval. The Authority may approve up to 15 projects each calendar year, subject to certain limitations. The bill provides that if MEGA approved fewer than 15 projects in a calendar year, it could carry forward for one year only the difference between 15 and the number of new agreements executed in the immediately preceding calendar year. Each year MEGA could approve the 15 projects for that year plus the number of projects carried forward from the immediately preceding year. The carried forward projects could not be approved for more than \$10 million.

Under the Act, when a brownfield project is completed, the taxpayer must submit documentation that the project is completed, an accounting of its cost, and the eligible investment of each taxpayer if there is more than one taxpayer eligible for a credit for the project. The bill further provides that if the taxpayer were not the owner or lessee of the property on which the eligible investment was made at the time the project was completed, the taxpayer would have to submit documentation that it was the owner or lessee of the property when all eligible investment of the taxpayer was made.

Currently, if a qualified taxpayer pays or accrues investment on or to property that is leased for at least 10 years to another taxpayer for use in a business activity, the qualified taxpayer may assign all or a portion of the credit, based on that investment, to the lessee. The bill also would allow a taxpayer to assign all or part of the credit to a taxpayer that purchased the property. The bill also provides that a credit assignment could be made only to a taxpayer that would be a qualified taxpayer when the assignment was complete. A purchaser could subsequently assign a credit or portion of a credit to a lessee of the property.

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

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

The bill provides that if a project were 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 stating the underlying basis for that opinion.

House Bill 6502

The Brownfield Redevelopment Financing Act allows the board of a local brownfield redevelopment authority to implement a brownfield plan, and prescribes the content of the plan, including the capture of taxable value and tax increment revenues to be used for projects in a brownfield redevelopment zone. (Captured taxable value and tax increment revenues are calculated as prescribed in the Act.) If a brownfield plan includes the capture of taxes levied for school operating purposes, MEGA's approval of a work plan to use those taxes must be obtained before January 1, 2003. The bill would extend the deadline to January 1, 2008. The deadline also would be extended from January 1, 2003, to January 1, 2008, for the DEQ's approval of an authority's work plan or remedial action plan to use school operating taxes for certain eligible activities.

The bill provides that if a brownfield plan included the use of tax increment revenues for the cost of eligible activities attributable to more than one eligible property adjacent and contiguous to all other eligible properties covered by a development agreement, whether or not the captured taxes were levied for school operating purposes, the plan would have to be approved by MEGA, and there would have to be a development agreement between the local municipality and the owner or developer of the property.

The Act requires MEGA, upon receiving a request for approval of a work plan, to provide a written response within 60 days. The bill would require a response within 65 days. Presently, if MEGA fails to provide a written response within 90 days, an authority may proceed with

eligible activities outlined in a work plan. The bill would reduce the time limit to 65 days. Further, the bill provides that a written response that included unconditional approval of a work plan would have to include an enumeration of eligible activities and a maximum allowable capture amount. Denial of a plan would have to include a letter stating the reason for denial.

In reviewing a work plan, MEGA must consider certain criteria specified in the Act. The bill would expand the criteria, and require MEGA to consider the criteria to the extent reasonably applicable to the type of activities proposed as part of that work plan when approving or denying a work plan. The Authority would have to consider the following additional criteria:

- The overall benefit to the public and the extent of reuse of vacant buildings and redevelopment of blighted property.
- The creation of jobs and 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 existed between the site and a similar greenfield site as determined by MEGA.
- If the developer or projected occupant of the new development were moving from another location in the State, whether the move would create a brownfield.
- Whether the developer's, landowner's, or corporate entity's financial statements indicated that the developer, landowner, or corporate entity was financially sound; that the project included in the work plan was economically sound; and that other State and local incentives available to the developer, landowner, or corporate entity were included in the work plan.
- Any other criteria that MEGA considered appropriate for the determination of eligibility or for approval of the work plan.

The bill provides that if a work plan were denied, it could be resubmitted.

Presently, a brownfield plan submitted for approval must include a legal description of each parcel to which the plan applies. The bill provides that if a project were 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 stating the underlying basis for that opinion.

MCL 208.38g (H.B. 6501)
125.2663 & 125.2665 (H.B. 6502)

Legislative Analyst: George Towne

FISCAL IMPACT

Extending brownfield redevelopment financing through 2007, as proposed by these bills, would allow more single business tax credits to be granted from 2003 to 2007. Based on past experience, the new credits that would be granted under these bills in 2003 and 2004 would reduce single business tax revenue an additional \$15 million to \$20 million each year. It can be argued, however, that without the Brownfield Redevelopment Financing Act, at least some of the environmental cleanup activity, and the resulting single business tax revenue from this activity, would not occur, so the real net loss due to extending these single business tax credits is most likely somewhat less than the estimated \$15 million to \$20 million per year that would be granted in new tax credits each year.

Fiscal Analyst: Jay Wortley

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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.