



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5539 (Substitute H-1 as passed by the House)
House Bill 5540 (Substitute H-1 as passed by the House)
House Bill 5541 (Substitute H-1 as passed by the House)
House Bill 5542 (Substitute H-1 as passed by the House)
Sponsor: Representative Steve Bieda (H.B. 5539)
Representative Lorence Wenke (H.B. 5540)
Representative Robert Dean (H.B. 5541)
Representative Robert Jones (H.B. 5542)

House Committee: Tax Policy
Senate Committee: Commerce and Tourism

Date Completed: 4-21-08

CONTENT

The bills would amend several statutes to provide for State education tax revenue to be retained and paid to various tax increment authorities if the amount of tax increment revenue lost to those authorities as a result of certain personal property tax exemptions enacted in 2007 would reduce the allowable school tax capture received in a fiscal year by the authorities used to repay particular advances or obligations.

House Bill 5539 (H-1) would amend the Brownfield Redevelopment Financing Act and apply to a reduction in the allowable school tax capture used to repay an advance made, or an obligation issued or incurred, within 120 days after the bill's effective date. House Bill 5540 (H-1) would amend the Local Development Financing Act and apply to a reduction in the allowable school tax capture used to repay an eligible advance, an eligible obligation, another protected obligation, or an obligation issued or incurred before July 12, 2007, for expenditures in a certified technology park. House Bill 5541 (H-1) would amend the Tax Increment Finance Authority Act and apply to a reduction in the allowable school tax capture used to repay an eligible advance, an eligible obligation, or another protected obligation. House Bill 5542 (H-1) would amend the downtown development authority (DDA) Act and apply to a reduction in the allowable school tax capture used to repay an eligible advance, an eligible obligation, or another protected obligation. (All of those Acts authorize the various authorities created under them to capture tax increment revenue from property within a designated district.)

(Under House Bill 5539 (H-1), "advance" and "obligation" would mean those terms as defined in the DDA Act. Under that Act, "advance" means a transfer of funds made by a municipality to an authority or to another person on behalf of the authority in anticipation of repayment by the authority; and "obligation" means a written promise to pay, whether evidenced by a contract, agreement, lease, sublease, bond, or note, or a requirement to pay imposed by law. "Eligible advance" means an advance made before August 19, 1993; and "eligible obligation" means an obligation issued or incurred by an authority or by a

municipality on behalf of an authority before August 19, 1993, and its subsequent refunding by a qualified refunding obligation.

The Local Development Finance Authority Act and the Tax Increment Finance Authority Act include the same definitions. Each Act has its own definition of "other protected obligation".)

Under the bills, if the amount of tax increment revenue lost as a result of the personal property tax exemptions enacted by Public Acts 37 through 40 of 2007 would reduce the allowable school tax capture received in a fiscal year by a tax increment authority used to repay the advances or obligations described above, the authority, with the approval of the Department of Treasury, could request the local tax collecting treasurer to retain and pay to the authority taxes levied under the State Education Tax Act. (Public Acts 37, 38, 39, and 40 amended the Revised School Code, the State Education Tax Act, the plant rehabilitation and industrial development Act, and the General Property Tax Act, respectively, to exempt commercial and industrial personal property from the State education tax and school operating mills, as described in **BACKGROUND**, below.)

By May 1, 2008, and April 1, 2009, and yearly after that, an authority eligible to have taxes levied under the State Education Tax Act retained and paid to the authority under the bills would have to apply for approval with the Department of Treasury. The application for approval would have to include the following information:

- The property tax millage rates expected to be levied by local school districts within the authority's jurisdictional area for school operating purposes for that fiscal year
- The tax increment revenue estimated to be received by the authority for that fiscal year, based upon actual property tax levies of all taxing jurisdictions within the authority's jurisdictional area.
- The tax increment revenue the authority estimated it would have received for that fiscal year, if the personal property tax exemptions described above were not in effect.
- A list of advances and obligations described above, and the payments due on each of them in that fiscal year, and the total amount of all the payments due on those obligations and advances in that fiscal year.
- The amount of money, other than tax increment revenue, estimated to be received in that fiscal year by the authority that was primarily pledged to, and to be used for, the repayment of advances or the payment of obligations described above.
- The amount of a distribution received for a fiscal year in excess of or less than the distribution that would have been required if calculated upon actual tax increment revenue received for that fiscal year.

By August 15, 2008, and August 1, 2009, and yearly after that, based on the calculations in the bills, the Department would have to approve, modify, or deny the application for approval to have taxes levied under the State Education Tax Act retained and paid to the authority. If the application were approved or modified, the local tax collecting treasurer would have to retain and pay to the authority the amount described in the bills' calculations, as approved by the Department. If the Department denied an authority's application for approval, the local tax collecting treasurer could not retain or pay taxes levied under the State Education Tax Act to the authority.

Each year, the Legislature would have to appropriate and distribute an amount sufficient to pay each authority the following:

- If the amount to be retained and paid were less than the amount calculated under the bills, the difference between those amounts.
- If the application were denied by the Department, an amount verified by the Department equal to the amount calculated under the bills.

The aggregate amount under the bills would be the sum of the first two amounts determined as described below, minus the third amount determined as described below:

- The amount by which the tax increment revenue the authority would have received and retained for the fiscal year, excluding taxes exempt under the General Property Tax Act for real and personal property located in a renaissance zone, if the personal property tax exemptions enacted in 2007 were not in effect, exceeded the tax increment revenue the authority actually received for the fiscal year.
- A shortfall required to be reported that had not previously increased a distribution.
- An excess amount required to be reported that had not previously decreased a distribution.

Calculations of amounts retained and paid and appropriations to be distributed under the bills would have to be made on the basis of each development area of an authority. The State Tax Commission could provide that the reimbursement calculations under the bills and the calculations of allowable capture of school taxes would have to be made for each calendar year's tax increment revenue using a 12-month debt payment period used by the authority and approved by the State Tax Commission.

A distribution or taxes retained under the bills replacing tax increment revenue pledged by an authority or a municipality would be subject to the lien of the pledge, whether or not there had been physical delivery of the distribution. Obligations for which distributions were made under the bills would not be a debt or liability of the State; would not create or constitute an indebtedness, liability, or obligation of the State; and would not constitute a pledge of the faith and credit of the State.

By September 1 of each year, an authority would have to provide a copy of the application approved by the Department of Treasury to the local tax collecting treasurer and provide the amount of the taxes retained and paid to the authority under the bills.

The bills state, "It is the intent of the legislature that, to the extent that the total amount of taxes levied under the State Education Tax Act...that are allowed to be retained under...[the bills] exceeds the difference of the total school aid fund revenue for the tax year minus the estimated amount of revenue the school aid fund would have received for the tax year had the tax exemptions described in...[the bills] and the earmark created by section 515 of the Michigan Business Tax Act...not taken effect, the general fund shall reimburse the school aid fund the difference."

(Section 515 of the Michigan Business Tax Act earmarks to the School Aid Fund \$341.0 million of the revenue collected under the Act in fiscal year 2007-08 and \$729.0 million in fiscal year 2008-09. For each subsequent fiscal year, the School Aid Fund is to receive that amount from the preceding fiscal year as adjusted by an amount equal to the growth in the U.S. consumer price index in the preceding year.)

Proposed MCL 125.2665a (H.B. 5539)

Proposed MCL 125.2161b (H.B. 5540)

Proposed MCL 125.1812b (H.B. 5541)

Proposed MCL 125.1663c (H.B. 5542)

BACKGROUND

Public Act 37 of 2007 amended Section 1211 of the Revised School Code (MCL 380.1211) to exempt commercial personal property from 12 mills of the 18-mill school property tax.

Public Act 38 of 2007 amended Section 3 of the State Education Tax Act (MCL 211.903) to exempt industrial personal property from the 6-mill State education tax.

Public Act 39 of 2007 amended Section 564 of the plant rehabilitation and industrial development Act (commonly called PA 198) (MCL 207.564) to exempt personal property taxed under the industrial facilities tax from the 6-mill State education tax and the 18-mill local school property tax.

Public Act 40 of 2007 added Section 9k to the General Property Tax Act (MCL 211.9k) to exempt commercial and industrial personal property from the local school property tax and the State education property tax, consistent with the exemptions contained in Public Acts 37, 38, and 39.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would reduce State School Aid Fund revenue and increase State expenditures by an unknown amount. The bills also would increase local unit revenue to the affected authorities by an unknown amount. The amount of any fiscal impact would depend upon the specific characteristics of the local units affected, the amount of revenue appropriated to authorities, and the amount of State education tax allowed to be retained by authorities. Expenditures would be increased by the amount of any payments made to authorities.

It is unknown whether the appropriations would be made from the General Fund or the School Aid Fund. The Michigan business tax revenue earmarked to the School Aid Fund includes the amounts affected by the bills, suggesting that any such appropriations could be made from the School Aid Fund. School Aid Fund revenue would decrease to the extent that State education tax revenue was approved to be retained and paid to an authority. The bills would affect only those local units with authorities that were authorized to capture school operating mills or State education tax, and the State education tax received from those units.

Fiscal Analyst: David Zin

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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.