Legislative Analysis

HOUSE FISCAL AGENCY

TRANSFORMATIONAL BROWNFIELD PROJECTS

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Senate Bill 671 (S-1) as passed by the Senate
Sponsor: Sen. Kenneth Horn
House Committee: Government Operations
Senate Committee: Economic and Small Business Development
Complete to 12-8-21

SUMMARY:

Senate Bill 671 would amend the Brownfield Redevelopment Financing Act to change several provisions concerning transformational brownfield projects and plans. A transformational brownfield plan is a brownfield plan that, among other requirements, must be for a mixed-use development that involves a minimum level of capital investment depending on the population of the municipality. Notably, a transformational brownfield plan can authorize the capture and use of three kinds of income tax revenues, in addition to property tax increments, to finance an array of eligible activities: construction period tax capture revenue, withholding tax capture revenue, and income tax capture revenue. The act contains several other requirements and currently provides that the Michigan Strategic Fund (MSF) cannot approve any new transformational brownfield plans after December 31, 2022.

Sunset
The bill would extend the December 31, 2022, sunset for transformational brownfield plans by five years, to December 31, 2027.

Waiver of mixed-use development requirement
The bill would allow MSF to waive the requirement that a transformational brownfield plan must be for a mixed-use development. The plan would have to otherwise meet location, population, and minimum investment requirements.

Exception to cap on use of income tax capture revenues
Currently, MSF cannot approve a transformational brownfield plan that proposes to use more than 50% of the income tax capture revenues or more that 50% of the withholding tax capture revenues unless the revenues are attributable to an election made under section 13c(13) of the act, which concerns undeveloped property in a plan that has been designated a renaissance zone.

The bill would additionally allow MSF to approve a plan that uses more than 50% of the income tax capture revenues if the applicable eligible properties within the transformational brownfield plan are subject to a written, binding affordable housing agreement with the local governmental unit, which agreement must be provided to MSF. In this case, MSF could approve a transformational brownfield plan that proposes to use up to 100% of the income tax capture revenues, subject to the underwriting and financial analysis required under the act.

Overall positive fiscal impact to the state
The bill would remove consideration of whether a transformational brownfield plan will result in an overall positive fiscal impact to the state from several provisions.

Currently, the governing body of the municipality must consider whether a transformational brownfield plan will result in an overall positive fiscal impact to the state in approving a plan.

In addition, MSF must make a determination that the plan will result in an overall positive fiscal impact to the state in approving a plan, and the state treasurer must concur for the plan to be approved. For a plan that proposes to use more than $1.5 million in withholding tax capture revenues and income tax capture revenues in any year, MSF must require an independent, third-party fiscal and economic impact analysis as to whether the plan would result in an overall positive fiscal impact to the state.

The bill would remove the provisions described above.

Revenue threshold requiring third-party underwriting analysis

MSF now must require an independent, third-party underwriting analysis and an independent, third-party fiscal and economic impact analysis for a plan that proposes to use more than *$1.5 million* in withholding tax capture revenues and income tax capture revenues in any year.

The bill would remove the fiscal and economic impact analysis, as described above ("Overall fiscal impact to the state").

The bill also would amend the third-party underwriting analysis requirement so that it would apply to a plan that proposes to use more than *$10.0 million* in withholding tax capture revenues and income tax capture revenues in any year.

Amendments to plans

The bill would provide that, if MSF approves a transformational brownfield plan and work plan, and the act is amended after that approval, MSF could amend those plans to make conforming and consistent changes on an administrative basis, as long as the changes do not result in any increase in the aggregate total amount of reimbursement authorized under the initial transformational brownfield plan.

MSF's authority to amend plans under this provision also would apply to transformational brownfield plans and work plans entered into before the effective date of the bill.

Safe harbor method of calculating income tax capture revenues

The bill would amend the definition of ***income tax capture revenues***, for purposes of eligible property subject to a transformational brownfield plan, to allow the owner or developer of a transformational brownfield project site to elect to use a safe harbor method of calculating income tax capture revenues. Under this method, MSF would establish a safe harbor amount of annual income tax capture revenues for each eligible property at the time it approves the plan, and those amounts would serve as the basis for the transmittal of income tax capture revenues to the owner or developer of the transformational project site under the act.

MSF would have to establish the safe harbor amount for an eligible property by imputing a standard annual taxable income for households residing within the eligible property or portion of the property. The safe harbor would be effective only to the extent that the residential units in the property or portion are actively leased or, for units made available for sale, sold in an arms-length transaction. Imputations as to standard household taxable income could vary based on location and other relevant factors, and MSF could adjust the safe harbor amount to account for changes in the plan for the project site that occur after plan approval, as long as those changes do not result in an aggregate increase in the level of income tax capture revenues from the amount initially established. The owner or developer of the transformational project site could elect to use the safe harbor method of accounting at any time before the first reimbursement of income tax capture revenues under the plan. However, an election, once made, could not be rescinded.

<u>Safe harbor method of calculating withholding tax capture revenues</u>
Similarly, the bill would amend the definition of ***withholding tax capture revenues***, for purposes of eligible property subject to a transformational brownfield plan, to allow the owner or developer of a transformational brownfield project site to elect to use a safe harbor method of calculating withholding tax capture revenues. Under this method, MSF would establish a safe harbor amount of annual withholding tax capture revenues for each eligible property at the time it approves the plan, and those amounts would serve as the basis for the transmittal of withholding tax capture revenues to the owner or developer of the transformational project site under the act.

MSF would have to establish the safe harbor amount for an eligible property by imputing a standard level of employee occupancy that corresponds to the size and use of the eligible property or portion of the property and a safe harbor average annual taxable wage for the individuals employed within the property or portion. The safe harbor would be effective only to the extent that the eligible property or portion of the eligible property is actively occupied, as evidenced by the existence of a binding lease agreement or similar instrument. Imputations as to occupancy and wages could vary between projects based on location, type and use of eligible property, and other relevant factors. MSF could adjust the safe harbor amount to account for changes in the plan for the project site that occur after plan approval, as long as those changes do not result in an aggregate increase in the level of withholding tax capture revenues from the amount initially established. The owner or developer of the transformational project site could elect to use the safe harbor method of accounting at any time before the first reimbursement of withholding tax capture revenues under the plan. However, an election, once made, could not be rescinded.

MCL 125.2652, 125.2663c, and 125.2664a

FISCAL IMPACT:

Senate Bill 671 would retain the overall cap on total tax capture revenues under the act, which would retain the overall potential fiscal impact under the act. However, scope and qualification changes proposed under the bill likely would ease project approval and increase the overall potential size of projects. Additionally, the extension of the bill would extend the potential annual impacts for an additional five years. Taken together, the various changes would make it more likely that the cap on total tax capture revenues would be reached relative to current law.

The bill would have an indeterminate fiscal impact for local units of government, which would depend on the mix and characteristics of projects approved under the bill and the terms of the transformational brownfield plan.

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