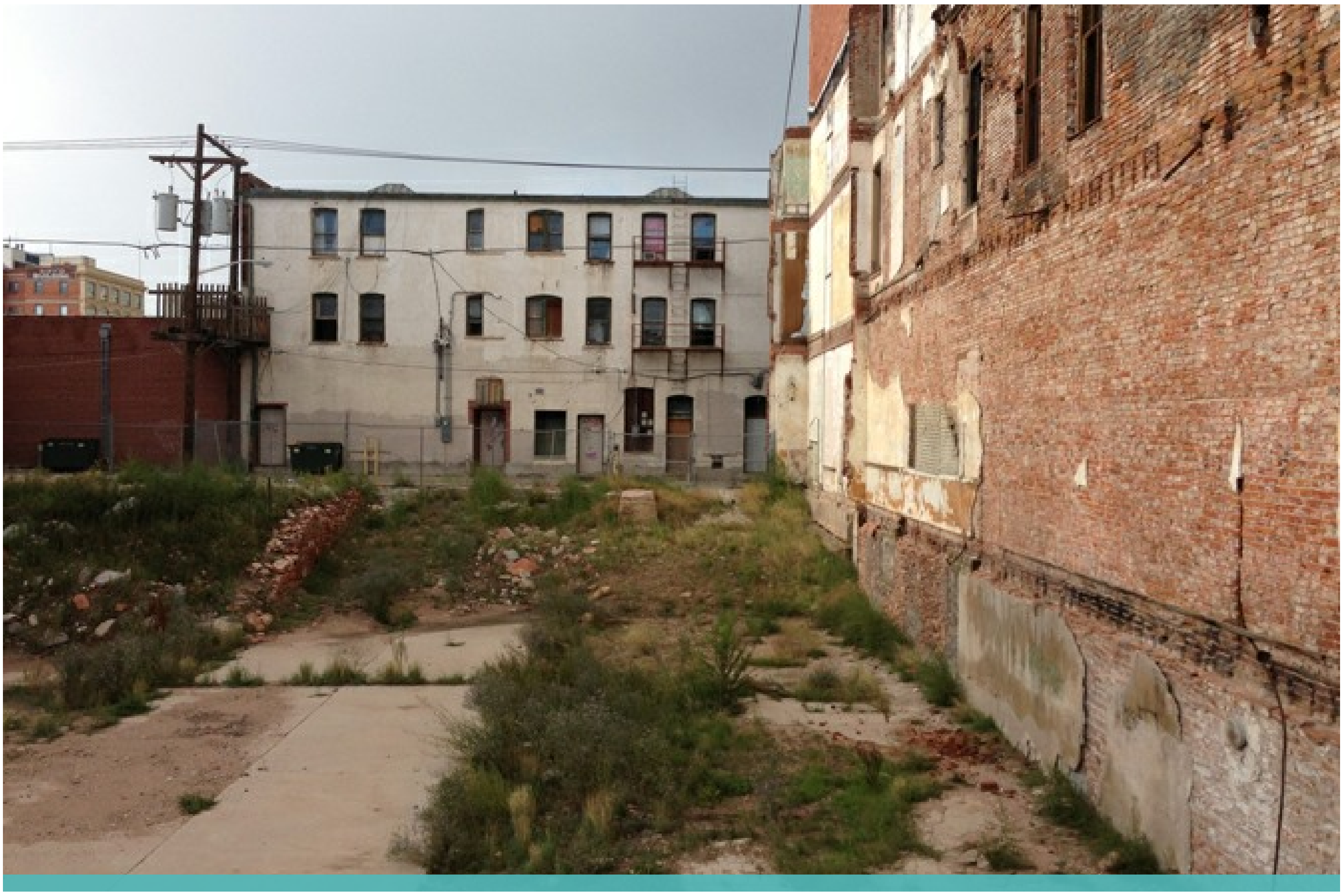
Michigan: $1B brownfield development incentive package passed



David M. Kall | Thursday, May 18, 2017

Now awaiting Gov. Rick Snyder's signature is a series of bills calling for significant investment, by way of funding and tax incentives, for blighted and otherwise functionally obsolete land in the state. The goal is to make property that has been declared a public nuisance, a fire hazard, or similarly dangerous or unfit for its intended use economically viable once again.

The legislation

Senator Ken Horn, the primary sponsor of SB 111, introduced the main bill in February. It passed to the House that same month, was amended there, and sent back to the Senate in early May. On May 9, 2017, the final version passed in the Senate with a 32 to 6 vote.

The most recent legislative analysis sets forth the House Fiscal Agency's evaluation of the package of five bills, the purpose of which is to create "'Transformational Brownfield Plans' (TBPs) through December 31, 2022. [This will allow] the capture of income taxes and the exemptions from sales and use taxes, in addition to the current permitted capture of property taxes, for certain eligible activities associated with an approved transformational brownfield plan agreement." Senator Horn describes brownfield property as that which sits empty or vacant because it is too costly to clean up, restore or redevelop.

The legislative analysis states that the total amount of authorized development incentives, for mixed-use development projects, is $1 billion across all transformational brownfield plans over the life of the program. The fiscal impact is not quantifiable at this time because some investment activities may not have occurred absent the legislation, and the characteristics and related economic activity of the TBPs are still unknown.

Senate Bill 111, known as the Brownfield Redevelopment Financing Act, contains most of the key elements of the initiative, which are the following:

- **A Transformational Brownfield Plan definition**. A TBP is a brownfield plan that, among other requirements, "will have a transformational impact on local economic development and community revitalization based on the extent of brownfield redevelopment and growth in population, commercial activity, and employment that will result from the plan."
- **The project must involve a minimum level of capital investment**. That is, $500 million in a city with a population over 600,000; $15 million in a community under 25,000 in population; and four other levels of investment depending on the population of the local unit. There would be exceptions for certain locales. A TBP must ensure a significant equity contribution from the developer.
- **The project must be mixed-use development**. This means "a real estate project with planned integration of some combination of retail, office, residential, or hotel uses". The project could be a single development on eligible property, or consist of a series of developments on eligible property that are part of a "related program of investment" (the bill outlines criteria to meet this standard, as described later), even if they are not contiguous.
- **Capture of income tax revenues**. A TBP would allow for the capture of three kinds of income tax revenues associated with the project, in addition to property tax increments, for use in financing a large array of eligible activities, specifically including as new activities, "any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property."

The three kinds of income tax revenues are these:

1. **Construction Period Tax Capture Revenues**: Funds equal to the amount of income tax levied and imposed in a calendar year on wages paid to individuals physically present and working within the eligible property for the construction, renovation, or other improvement of eligible property that is an eligible activity within a TBP. (Excluded are wages paid to employees of the owner or developer of the project.)
2. **Income Tax Capture Revenues**: Funds equal to the amount for each tax year by which the aggregate income tax from individuals domiciled within the eligible property subject to a TBP exceeds the initial income tax value (that is, the value in the tax year when the resolution adding TBP property is adopted). The MSF could not approve a TBP that proposes to use more than 50% of the income tax capture revenues.
3. **Withholding Tax Capture Revenues**: The amount for each calendar year by which the income tax withheld from individuals employed within the eligible property subject to a TBP exceeds the initial withholding tax value. (Excludes those domiciled within the eligible TBP property and construction period tax capture revenues.) The Michigan Strategic Fund, the body that approves grants and loans under various programs, like the Michigan Business Development Program, could not approve a TBP that proposes to use more than 50 percent of the withholding tax revenues.

The other four bills that contain the necessary statutory changes are these:

- **The Income Tax Act (SB 112)** amends the Income Tax Act to provide that, from total income tax revenue collected, an amount equal to the construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues due to be transmitted under all TBPs shall be deposited each state fiscal year into the State Brownfield Redevelopment Fund.
- **The General Sales Tax Act (SB 113)** amends the General Sales Tax Act to exempt from sales taxes the sale of tangible personal property for use in eligible brownfield redevelopment activities on eligible property included in a TBP, to the extent that the tangible personal property will be affixed and made a structural part of the real property or infrastructure improvements included within the TBP.
- **The Complementary Use Tax Act (SB 114)** amends the Use Tax Act to exempt from use taxes tangible personal property acquired by a person engaged in the business of altering, repairing, or improve real estate for others, or to the manufacture of a specific product if the property or product is to be affixed or made a structural part of improvements to real property included within a TBP, to the extent that those improvements are eligible activities on eligible property within a TBP.
- **The Michigan Renaissance Zone Act (SB 115)** amends the Michigan Renaissance Zone Act to provide that, where a Renaissance Zone overlapped with a TBP, the property owner and local government unit may request that exemptions from the Income Tax Act and City Income Tax Act not apply within the overlapping portion of the renaissance zone. The MSF and city levying the income tax would decide whether to approve the request.

Supporters and detractors

The Michigan Thrive Initiative is a "coalition of leading Michigan economic development organizations, cities and chambers who support legislation to unleash $5 billion in major brownfield redevelopment projects that will transform cities across the state." They cite the numerous empty cities and towns, in which developers have difficulty getting financing, as the reason for the need in the first place: "Enacting legislation to unlock these projects is critical to Michigan's economic future. We need vibrant, live-work-play communities to attract talent and business and grow our economy."

On the other hand, in a blog titled "Proposed Corporate Giveaway Unlikely to Grow Economy," the Mackinac Center for Public Policy's Assistant Director of Fiscal Policy, James Hohman, advised lawmakers to "consider the full costs of corporate welfare before they approve it."

The blog contains his testimony before the Michigan House Tax Policy Committee on April 19, 2017. There, Hohman contended that the package of laws would deliver "hundreds of millions of taxpayer dollars to select developers based on flimsy evidence…" He asserted that the costs are being either misrepresented or ignored, contending that "[i]f developers want taxpayer dollars to redevelop select places, they ought to be arguing their case in the budget-making process, and lawmakers should pledge that money this year instead of kicking it to the future, as these bills do by allowing agreements that can last 25 years into the future."

He also pointed to other brownfield development programs already on the books, as well as "dozens more for economic development more broadly." These should be fixed before "add[ing] more favors to select businesses and developers from the pockets of taxpayers."

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