

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 482

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending sections 2, 4, 13, and 15 (MCL 125.2652, 125.2654,
125.2663, and 125.2665), section 2 as amended by 2003 PA 277,
section 4 as amended by 2000 PA 145, section 13 as amended by 2003
PA 259, and section 15 as amended by 2003 PA 283.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Additional response activities" means response activities
3 identified as part of a brownfield plan that are in addition to
4 baseline environmental assessment activities and due care
5 activities for an eligible property.

6 (b) "Authority" means a brownfield redevelopment authority

1 created under this act.

2 (c) "Baseline environmental assessment" means that term as
3 defined in section 20101 of the natural resources and environmental
4 protection act, 1994 PA 451, MCL 324.20101.

5 (d) "Baseline environmental assessment activities" means those
6 response activities identified as part of a brownfield plan that
7 are necessary to complete a baseline environmental assessment for
8 an eligible property in the brownfield plan.

9 (e) "Blighted" means property that meets any of the following
10 criteria:

11 (i) Has been declared a public nuisance in accordance with a
12 local housing, building, plumbing, fire, or other related code or
13 ordinance.

14 (ii) Is an attractive nuisance to children because of physical
15 condition, use, or occupancy.

16 (iii) Is a fire hazard or is otherwise dangerous to the safety
17 of persons or property.

18 (iv) Has had the utilities, plumbing, heating, or sewerage
19 permanently disconnected, destroyed, removed, or rendered
20 ineffective so that the property is unfit for its intended use.

21 (v) Is tax reverted property owned by a qualified local
22 governmental unit, by a county, or by this state. The sale, lease,
23 or transfer of tax reverted property by a qualified local
24 governmental unit, county, or this state after the property's
25 inclusion in a brownfield plan shall not result in the loss to the
26 property of the status as blighted property for purposes of this
27 act.

1 (vi) Is property owned or under the control of a land bank fast
2 track authority under the land bank fast track act, whether or not
3 located within a qualified local governmental unit. Property
4 included within a brownfield plan prior to the date it meets the
5 requirements of this subdivision to be eligible property shall be
6 considered to become eligible property as of the date the property
7 is determined to have been or becomes qualified as, or is combined
8 with, other eligible property. The sale, lease, or transfer of the
9 property by a land bank fast track authority after the property's
10 inclusion in a brownfield plan shall not result in the loss to the
11 property of the status as blighted property for purposes of this
12 act.

13 (f) "Board" means the governing body of an authority.

14 (g) "Brownfield plan" means a plan that meets the requirements
15 of section 13 and is adopted under section 14.

16 (h) "Captured taxable value" means the amount in 1 year by
17 which the current taxable value of an eligible property subject to
18 a brownfield plan, including the taxable value or assessed value,
19 as appropriate, of the property for which specific taxes are paid
20 in lieu of property taxes, exceeds the initial taxable value of
21 that eligible property. The state tax commission shall prescribe
22 the method for calculating captured taxable value.

23 (i) "Chief executive officer" means the mayor of a city, the
24 village manager of a village, the township supervisor of a
25 township, or the county executive of a county or, if the county
26 does not have an elected county executive, the chairperson of the
27 county board of commissioners.

1 (j) "Department" means the department of environmental
2 quality.

3 (k) "Due care activities" means those response activities
4 identified as part of a brownfield plan that are necessary to allow
5 the owner or operator of an eligible property in the plan to comply
6 with the requirements of section 20107a of the natural resources
7 and environmental protection act, 1994 PA 451, MCL 324.20107a.

8 (l) "Eligible activities" or "eligible activity" does not
9 include activities related to multisource commercial hazardous
10 waste disposal wells as that term is defined in section 62506a of
11 the natural resources and environmental protection act, 1994 PA
12 451, MCL 324.62506a, but means 1 or more of the following:

13 (i) Baseline environmental assessment activities.

14 (ii) Due care activities.

15 (iii) Additional response activities.

16 (iv) For eligible activities on eligible property that was
17 used or is currently used for commercial, industrial, or
18 residential purposes that is in a qualified local governmental
19 unit, or that is owned or under the control of a land bank fast
20 track authority, and is a facility, functionally obsolete, or
21 blighted, and except for purposes of section 38d of the single
22 business tax act, 1975 PA 228, MCL 208.38d, the following
23 additional activities:

24 (A) Infrastructure improvements that directly benefit eligible
25 property.

26 (B) Demolition of structures that is not response activity
27 under section 20101 of the natural resources and environmental

1 protection act, 1994 PA 451, MCL 324.20101.

2 (C) Lead or asbestos abatement.

3 (D) Site preparation that is not response activity under
4 section 20101 of the natural resources and environmental protection
5 act, 1994 PA 451, MCL 324.20101.

6 (E) Assistance to a land bank fast track authority in clearing
7 or quieting title to, or selling or otherwise conveying, property
8 owned or under the control of a land bank fast track authority.

9 (v) Relocation of public buildings or operations for economic
10 development purposes with prior approval of the Michigan economic
11 development authority.

12 (vi) **FOR ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTY THAT IS A**
13 **QUALIFIED FACILITY THAT IS NOT LOCATED IN A QUALIFIED LOCAL**
14 **GOVERNMENTAL UNIT AND THAT IS A FACILITY, FUNCTIONALLY OBSOLETE, OR**
15 **BLIGHTED, THE FOLLOWING ADDITIONAL ACTIVITIES:**

16 (A) **INFRASTRUCTURE IMPROVEMENTS THAT DIRECTLY BENEFIT ELIGIBLE**
17 **PROPERTY.**

18 (B) **DEMOLITION OF STRUCTURES THAT IS NOT RESPONSE ACTIVITY**
19 **UNDER SECTION 20101 OF THE NATURAL RESOURCES AND ENVIRONMENTAL**
20 **PROTECTION ACT, 1994 PA 451, MCL 324.20101.**

21 (C) **LEAD OR ASBESTOS ABATEMENT.**

22 (D) **SITE PREPARATION THAT IS NOT RESPONSE ACTIVITY UNDER**
23 **SECTION 20101 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION**
24 **ACT, 1994 PA 451, MCL 324.20101.**

25 (m) "Eligible property" means property for which eligible
26 activities are identified under a brownfield plan that was used or
27 is currently used for commercial, industrial, or residential

1 purposes that is either in a qualified local governmental unit and
2 is a facility, functionally obsolete, or blighted or is not in a
3 qualified local governmental unit and is a facility, and includes
4 parcels that are adjacent or contiguous to that property if the
5 development of the adjacent and contiguous parcels is estimated to
6 increase the captured taxable value of that property or tax
7 reverted property owned or under the control of a land bank fast
8 track authority. Eligible property includes, to the extent included
9 in the brownfield plan, personal property located on the property.
10 Eligible property does not include qualified agricultural property
11 exempt under section 7ee of the general property tax act, 1893 PA
12 206, MCL 211.7ee, from the tax levied by a local school district
13 for school operating purposes to the extent provided under section
14 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

15 (n) "Facility" means that term as defined in section 20101 of
16 the natural resources and environmental protection act, 1994 PA
17 451, MCL 324.20101.

18 (o) "Fiscal year" means the fiscal year of the authority.

19 (p) "Functionally obsolete" means that the property is unable
20 to be used to adequately perform the function for which it was
21 intended due to a substantial loss in value resulting from factors
22 such as overcapacity, changes in technology, deficiencies or
23 superadequacies in design, or other similar factors that affect the
24 property itself or the property's relationship with other
25 surrounding property.

26 (q) "Governing body" means the elected body having legislative
27 powers of a municipality creating an authority under this act.

1 (r) "Infrastructure improvements" means a street, road,
2 sidewalk, parking facility, pedestrian mall, alley, bridge, sewer,
3 sewage treatment plant, property designed to reduce, eliminate, or
4 prevent the spread of identified soil or groundwater contamination,
5 drainage system, waterway, waterline, water storage facility, rail
6 line, utility line or pipeline, or other similar or related
7 structure or improvement, together with necessary easements for the
8 structure or improvement, owned or used by a public agency or
9 functionally connected to similar or supporting property owned or
10 used by a public agency, or designed and dedicated to use by, for
11 the benefit of, or for the protection of the health, welfare, or
12 safety of the public generally, whether or not used by a single
13 business entity, provided that any road, street, or bridge shall be
14 continuously open to public access and that other property shall be
15 located in public easements or rights-of-way and sized to
16 accommodate reasonably foreseeable development of eligible property
17 in adjoining areas.

18 (s) "Initial taxable value" means the taxable value of an
19 eligible property identified in and subject to a brownfield plan at
20 the time the resolution adding that eligible property in the
21 brownfield plan is adopted, as shown either by the most recent
22 assessment roll for which equalization has been completed at the
23 time the resolution is adopted or, if provided by the brownfield
24 plan, by the next assessment roll for which equalization will be
25 completed following the date the resolution adding that eligible
26 property in the brownfield plan is adopted. Property exempt from
27 taxation at the time the initial taxable value is determined shall

1 be included with the initial taxable value of zero. Property for
2 which a specific tax is paid in lieu of property tax shall not be
3 considered exempt from taxation. The state tax commission shall
4 prescribe the method for calculating the initial taxable value of
5 property for which a specific tax was paid in lieu of property tax.

6 (t) "Land bank fast track authority" means an authority
7 created under the land bank fast track act.

8 (u) "Local taxes" means all taxes levied other than taxes
9 levied for school operating purposes.

10 (v) "Municipality" means all of the following:

11 (i) A city.

12 (ii) A village.

13 (iii) A township in those areas of the township that are outside
14 of a village.

15 (iv) A township in those areas of the township that are in a
16 village upon the concurrence by resolution of the village in which
17 the zone would be located.

18 (v) A county.

19 (w) "Owned or under the control of" means that a land bank
20 fast track authority has 1 or more of the following:

21 (i) An ownership interest in the property.

22 (ii) A tax lien on the property.

23 (iii) A tax deed to the property.

24 (iv) A contract with this state or a political subdivision of
25 this state to enforce a lien on the property.

26 (v) A right to collect delinquent taxes, penalties, or
27 interest on the property.

1 (vi) The ability to exercise its authority over the property.

2 (X) "QUALIFIED FACILITY" MEANS A LANDFILL FACILITY AREA OF 140
3 OR MORE CONTIGUOUS ACRES THAT IS LOCATED IN A CITY AND THAT
4 CONTAINS A LANDFILL, A MATERIAL RECYCLING FACILITY, AND AN ASPHALT
5 PLANT THAT ARE NO LONGER IN OPERATION.

6 (Y) ~~-(x)-~~ "Qualified local governmental unit" means that term
7 as defined in the obsolete property rehabilitation act, 2000 PA
8 146, MCL 125.2781 to 125.2797.

9 (Z) ~~-(y)-~~ "Qualified taxpayer" means that term as defined in
10 sections 38d and 38g of the single business tax act, 1975 PA 228,
11 MCL 208.38d and 208.38g.

12 (AA) ~~-(z)-~~ "Remedial action plan" means a plan that meets both
13 of the following requirements:

14 (i) Is a remedial action plan as that term is defined in
15 section 20101 of the natural resources and environmental protection
16 act, 1994 PA 451, MCL 324.20101.

17 (ii) Describes each individual activity to be conducted to
18 complete eligible activities and the associated costs of each
19 individual activity.

20 (BB) ~~-(aa)-~~ "Response activity" means that term as defined in
21 section 20101 of the natural resources and environmental protection
22 act, 1994 PA 451, MCL 324.20101.

23 (CC) ~~-(bb)-~~ "Specific taxes" means a tax levied under 1974 PA
24 198, MCL 207.551 to 207.572; the commercial redevelopment act, 1978
25 PA 255, MCL 207.651 to 207.668; the enterprise zone act, 1985 PA
26 224, MCL 125.2101 to 125.2123; 1953 PA 189, MCL 211.181 to 211.182;
27 the technology park development act, 1984 PA 385, MCL 207.701 to

1 207.718; the obsolete property rehabilitation act, 2000 PA 146, MCL
2 125.2781 to 125.2797; the neighborhood enterprise zone act, 1992 PA
3 147, MCL 207.771 to 207.786; or that portion of the tax levied
4 under the tax reverted property clean title act that is not
5 required to be distributed to a land bank fast track authority.

6 **(DD)** ~~—(ee)—~~ "Tax increment revenues" means the amount of ad
7 valorem property taxes and specific taxes attributable to the
8 application of the levy of all taxing jurisdictions upon the
9 captured taxable value of each parcel of eligible property subject
10 to a brownfield plan and personal property located on that
11 property. Tax increment revenues exclude ad valorem property taxes
12 specifically levied for the payment of principal of and interest on
13 either obligations approved by the electors or obligations pledging
14 the unlimited taxing power of the local governmental unit, and
15 specific taxes attributable to those ad valorem property taxes. Tax
16 increment revenues attributable to eligible property also exclude
17 the amount of ad valorem property taxes or specific taxes captured
18 by a downtown development authority, tax increment finance
19 authority, or local development finance authority if those taxes
20 were captured by these other authorities on the date that eligible
21 property became subject to a brownfield plan under this act.

22 **(EE)** ~~—(dd)—~~ "Taxable value" means the value determined under
23 section 27a of the general property tax act, 1893 PA 206, MCL
24 211.27a.

25 **(FF)** ~~—(ee)—~~ "Taxes levied for school operating purposes" means
26 all of the following:

27 (i) The taxes levied by a local school district for operating

1 purposes.

2 (ii) The taxes levied under the state education tax act, 1993
3 PA 331, MCL 211.901 to 211.906.

4 (iii) That portion of specific taxes attributable to taxes
5 described under subparagraphs (i) and (ii).

6 (GG) ~~-(ff)-~~ "Work plan" means a plan that describes each
7 individual activity to be conducted to complete eligible activities
8 and the associated costs of each individual activity.

9 (HH) ~~-(gg)-~~ "Zone" means, for an authority established before
10 June 6, 2000, a brownfield redevelopment zone designated under this
11 act.

12 Sec. 4. (1) A governing body may declare by resolution adopted
13 by a majority of its members elected and serving its intention to
14 create and provide for the operation of an authority.

15 (2) In the resolution of intent, the governing body shall set
16 a date for holding a public hearing on the adoption of a proposed
17 resolution creating the authority. Notice of the public hearing
18 shall be published twice in a newspaper of general circulation in
19 the municipality, not less than 20 nor more than 40 days before the
20 date of the hearing. The notice shall state the date, time, and
21 place of the hearing. At that hearing, a citizen, taxpayer,
22 official from a taxing jurisdiction whose millage may be subject to
23 capture under a brownfield plan, or property owner of the
24 municipality has the right to be heard in regard to the
25 establishment of the authority.

26 (3) Not more than 30 days after the public hearing, if the
27 governing body intends to proceed with the establishment of the

1 authority, the governing body shall adopt, by majority vote of its
2 members elected and serving, a resolution establishing the
3 authority. The adoption of the resolution is subject to all
4 applicable statutory or charter provisions with respect to the
5 approval or disapproval by the chief executive or other officer of
6 the municipality and the adoption of a resolution over his or her
7 veto. This resolution shall be filed with the secretary of state
8 promptly after its adoption.

9 (4) The proceedings establishing an authority shall be
10 presumptively valid unless contested in a court of competent
11 jurisdiction within 60 days after the filing of the resolution with
12 the secretary of state.

13 (5) The exercise by an authority of the powers conferred by
14 this act shall be considered to be an essential governmental
15 function and benefit to, and a legitimate public purpose of, the
16 state, the authority, and the municipality or units.

17 (6) IF THE BOARD IMPLEMENTS OR MODIFIES A BROWNFIELD PLAN THAT
18 CONTAINS A QUALIFIED FACILITY, THE GOVERNING BODY SHALL MAIL NOTICE
19 OF THAT IMPLEMENTATION OR MODIFICATION TO EACH TAXING JURISDICTION
20 THAT LEVIES AD VALOREM PROPERTY TAXES IN THE MUNICIPALITY. NOT MORE
21 THAN 60 DAYS AFTER RECEIPT OF THAT NOTICE, THE GOVERNING BODY OF A
22 TAXING JURISDICTION LEVYING AD VALOREM PROPERTY TAXES THAT WOULD
23 OTHERWISE BE SUBJECT TO CAPTURE MAY EXEMPT ITS TAXES FROM CAPTURE
24 BY ADOPTING A RESOLUTION TO THAT EFFECT AND FILING A COPY WITH THE
25 CLERK OF THE MUNICIPALITY IN WHICH THE QUALIFIED FACILITY IS
26 LOCATED. THE RESOLUTION TAKES EFFECT WHEN FILED WITH THAT CLERK AND
27 REMAINS EFFECTIVE UNTIL A COPY OF A RESOLUTION RESCINDING THAT

1 **RESOLUTION IS FILED WITH THAT CLERK.**

2 Sec. 13. (1) Subject to section 15, the board may implement a
3 brownfield plan. The brownfield plan may apply to 1 or more parcels
4 of eligible property whether or not those parcels of eligible
5 property are contiguous and may be amended to apply to additional
6 parcels of eligible property. Except as otherwise authorized by
7 this act, if more than 1 parcel of eligible property is included
8 within the plan, the tax increment revenues under the plan shall be
9 determined individually for each parcel of eligible property. Each
10 plan or an amendment to a plan shall be approved by the governing
11 body of the municipality and shall contain all of the following:

12 (a) A description of the costs of the plan intended to be paid
13 for with the tax increment revenues or, for a plan for eligible
14 properties qualified on the basis that the property is owned or
15 under the control of a land bank fast track authority, a listing of
16 all eligible activities that may be conducted for 1 or more of the
17 eligible properties subject to the plan.

18 (b) A brief summary of the eligible activities that are
19 proposed for each eligible property or, for a plan for eligible
20 properties qualified on the basis that the property is owned or
21 under the control of a land bank fast track authority, a brief
22 summary of eligible activities conducted for 1 or more of the
23 eligible properties subject to the plan.

24 (c) An estimate of the captured taxable value and tax
25 increment revenues for each year of the plan from each parcel of
26 eligible property, or from all eligible properties qualified on the
27 basis that the property is owned or under the control of a land

1 bank fast track authority, and in the aggregate. The plan may
2 provide for the use of part or all of the captured taxable value,
3 including deposits in the local site remediation revolving fund,
4 but the portion intended to be used shall be clearly stated in the
5 plan. The plan shall not provide either for an exclusion from
6 captured taxable value of a portion of the captured taxable value
7 or for an exclusion of the tax levy of 1 or more taxing
8 jurisdictions unless the tax levy is excluded from tax increment
9 revenues in section 2(cc), or unless the tax levy is excluded from
10 capture under section 15.

11 (d) The method by which the costs of the plan will be
12 financed, including a description of any advances made or
13 anticipated to be made for the costs of the plan from the
14 municipality.

15 (e) The maximum amount of note or bonded indebtedness to be
16 incurred, if any.

17 (f) The duration of the brownfield plan, which shall not
18 exceed the lesser of the period authorized under subsections (4)
19 and (5) or 30 years.

20 (g) An estimate of the impact of tax increment financing on
21 the revenues of all taxing jurisdictions in which the eligible
22 property is located.

23 (h) A legal description of each parcel of eligible property to
24 which the plan applies, a map showing the location and dimensions
25 of each eligible property, a statement of the characteristics that
26 qualify the property as eligible property, and a statement of
27 whether personal property is included as part of the eligible

1 property. If the project is on property that is functionally
2 obsolete, the taxpayer shall include, with the application, an
3 affidavit signed by a level 3 or level 4 assessor, that states that
4 it is the assessor's expert opinion that the property is
5 functionally obsolete and the underlying basis for that opinion.

6 (i) Estimates of the number of persons residing on each
7 eligible property to which the plan applies and the number of
8 families and individuals to be displaced. If occupied residences
9 are designated for acquisition and clearance by the authority, the
10 plan shall include a demographic survey of the persons to be
11 displaced, a statistical description of the housing supply in the
12 community, including the number of private and public units in
13 existence or under construction, the condition of those in
14 existence, the number of owner-occupied and renter-occupied units,
15 the annual rate of turnover of the various types of housing and the
16 range of rents and sale prices, an estimate of the total demand for
17 housing in the community, and the estimated capacity of private and
18 public housing available to displaced families and individuals.

19 (j) A plan for establishing priority for the relocation of
20 persons displaced by implementation of the plan.

21 (k) Provision for the costs of relocating persons displaced by
22 implementation of the plan, and financial assistance and
23 reimbursement of expenses, including litigation expenses and
24 expenses incident to the transfer of title, in accordance with the
25 standards and provisions of the uniform relocation assistance and
26 real property acquisition policies act of 1970, Public Law 91-646.
27 ~~, 84 Stat. 1894.~~

1 (l) A strategy for compliance with 1972 PA 227, MCL 213.321 to
2 213.332.

3 (m) A description of proposed use of the local site
4 remediation revolving fund.

5 (n) Other material that the authority or governing body
6 considers pertinent.

7 (2) The percentage of all taxes levied on a parcel of eligible
8 property for school operating expenses that is captured and used
9 under a brownfield plan and all tax increment finance plans under
10 1975 PA 197, MCL 125.1651 to 125.1681, the tax increment finance
11 authority act, 1980 PA 450, MCL 125.1801 to 125.1830, or the local
12 development financing act, 1986 PA 281, MCL 125.2151 to 125.2174,
13 shall not be greater than the combination of the plans' percentage
14 capture and use of all local taxes levied for purposes other than
15 for the payment of principal of and interest on either obligations
16 approved by the electors or obligations pledging the unlimited
17 taxing power of the local unit of government. This subsection shall
18 apply only when taxes levied for school operating purposes are
19 subject to capture under section 15.

20 (3) Except as provided in this subsection and subsections (5),
21 (15), and (16), tax increment revenues related to a brownfield plan
22 shall be used only for costs of eligible activities attributable to
23 the eligible property, the captured taxable value of which produces
24 the tax increment revenues, including the cost of principal of and
25 interest on any obligation issued by the authority to pay the costs
26 of eligible activities attributable to the eligible property, and
27 the reasonable costs of preparing a work plan or remedial action

1 plan for the eligible property, including the actual cost of the
2 review of the work plan or remedial action plan under section 15.
3 For property owned or under the control of a land bank fast track
4 authority, tax increment revenues related to a brownfield plan may
5 be used for eligible activities attributable to any eligible
6 property owned or under the control of the land bank fast track
7 authority, the cost of principal of and interest on any obligation
8 issued by the authority to pay the costs of eligible activities,
9 the reasonable costs of preparing a work plan or remedial action
10 plan, and the actual cost of the review of the work plan or
11 remedial action plan under section 15. Tax increment revenues
12 captured from taxes levied by this state under the state education
13 tax act, 1993 PA 331, MCL 211.901 to 211.906, or taxes levied by a
14 local school district shall not be used for eligible activities
15 described in section 2(l)(iv)(E).

16 (4) Except as provided in subsection (5), a brownfield plan
17 shall not authorize the capture of tax increment revenue from
18 eligible property after the year in which the total amount of tax
19 increment revenues captured is equal to the sum of the costs
20 permitted to be funded with tax increment revenues under this act.

21 (5) A brownfield plan may authorize the capture of additional
22 tax increment revenue from an eligible property in excess of the
23 amount authorized under subsection (4) during the time of capture
24 for the purpose of paying the costs permitted under subsection (3),
25 or for not more than 5 years after the time that capture is
26 required for the purpose of paying the costs permitted under
27 subsection (3), or both. Excess revenues captured under this

1 subsection shall be deposited in the local site remediation
2 revolving fund created under section 8 and used for the purposes
3 authorized in section 8. If tax increment revenues attributable to
4 taxes levied for school operating purposes from eligible property
5 are captured by the authority for purposes authorized under
6 subsection (3), the tax increment revenues captured for deposit in
7 the local site remediation revolving fund also may include tax
8 increment revenues attributable to taxes levied for school
9 operating purposes in an amount not greater than the tax increment
10 revenues levied for school operating purposes captured from the
11 eligible property by the authority for the purposes authorized
12 under subsection (3). Excess tax increment revenues from taxes
13 levied for school operating purposes for eligible activities
14 authorized under subsection (15) by the Michigan economic growth
15 authority shall not be captured for deposit in the local site
16 remediation revolving fund.

17 (6) An authority shall not expend tax increment revenues to
18 acquire or prepare eligible property, unless the acquisition or
19 preparation is an eligible activity.

20 (7) Costs of eligible activities attributable to eligible
21 property include all costs that are necessary or related to a
22 release from the eligible property, including eligible activities
23 on properties affected by a release from the eligible property. For
24 purposes of this subsection, "release" means that term as defined
25 in section 20101 of the natural resources and environmental
26 protection act, 1994 PA 451, MCL 324.20101.

27 (8) Costs of a response activity paid with tax increment

1 revenues that are captured pursuant to subsection (3) may be
2 recovered from a person who is liable for the costs of eligible
3 activities at an eligible property. This state or an authority may
4 undertake cost recovery for tax increment revenue captured. Before
5 an authority or this state may institute a cost recovery action, it
6 must provide the other with 120 days' notice. This state or an
7 authority that recovers costs under this subsection shall apply
8 those recovered costs to the following, in the following order of
9 priority:

10 (a) The reasonable attorney fees and costs incurred by this
11 state or an authority in obtaining the cost recovery.

12 (b) One of the following:

13 (i) If an authority undertakes the cost recovery action, the
14 authority shall deposit the remaining recovered funds into the
15 local site remediation fund created pursuant to section 8, if such
16 a fund has been established by the authority. If a local site
17 remediation fund has not been established, the authority shall
18 disburse the remaining recovered funds to the local taxing
19 jurisdictions in the proportion that the local taxing
20 jurisdictions' taxes were captured.

21 (ii) If this state undertakes a cost recovery action, this
22 state shall deposit the remaining recovered funds into the
23 revitalization revolving loan fund established under section 20108a
24 of the natural resources and environmental protection act, 1994 PA
25 451, MCL 324.20108a.

26 (iii) If this state and an authority each undertake a cost
27 recovery action, undertake a cost recovery action jointly, or 1 on

1 behalf of the other, the amount of any remaining recovered funds
2 shall be deposited pursuant to subparagraphs (i) and (ii) in the
3 proportion that the tax increment revenues being recovered
4 represent local taxes and taxes levied for school operating
5 purposes, respectively.

6 (9) Approval of the brownfield plan or an amendment to a
7 brownfield plan shall be in accordance with the notice and approval
8 provisions of this section and section 14.

9 (10) Before approving a brownfield plan for an eligible
10 property, the governing body shall hold a public hearing on the
11 brownfield plan. Notice of the time and place of the hearing shall
12 be given by publication twice in a newspaper of general circulation
13 designated by the municipality, the first of which shall be not
14 less than 20 or more than 40 days before the date set for the
15 hearing.

16 (11) Notice of the time and place of the hearing on a
17 brownfield plan shall contain all of the following:

18 (a) A description of the property to which the plan applies in
19 relation to existing or proposed highways, streets, streams, or
20 otherwise.

21 (b) A statement that maps, plats, and a description of the
22 brownfield plan are available for public inspection at a place
23 designated in the notice and that all aspects of the brownfield
24 plan are open for discussion at the public hearing required by this
25 section.

26 (c) Any other information that the governing body considers
27 appropriate.

1 (12) At the time set for the hearing on the brownfield plan
2 required under subsection (10), the governing body shall provide an
3 opportunity for interested persons to be heard and shall receive
4 and consider communications in writing with reference to the
5 brownfield plan. The governing body shall make and preserve a
6 record of the public hearing, including all data presented at the
7 hearing.

8 (13) Not less than 20 days before the hearing on the
9 brownfield plan, the governing body shall provide notice of the
10 hearing to the taxing jurisdictions that levy taxes subject to
11 capture under this act. The authority shall fully inform the taxing
12 jurisdictions about the fiscal and economic implications of the
13 proposed brownfield plan. At that hearing, an official from a
14 taxing jurisdiction with millage that would be subject to capture
15 under this act has the right to be heard in regard to the adoption
16 of the brownfield plan.

17 (14) The authority shall not enter into agreements with the
18 taxing jurisdictions and the governing body of the municipality to
19 share a portion of the captured taxable value of an eligible
20 property. Upon adoption of the plan, the collection and
21 transmission of the amount of tax increment revenues as specified
22 in this act shall be binding on all taxing units levying ad valorem
23 property taxes or specific taxes against property located in the
24 zone.

25 (15) Except as provided by subsection (18), if a brownfield
26 plan includes the capture of taxes levied for school operating
27 purposes or the use of tax increment revenues related to a

1 brownfield plan for the cost of eligible activities attributable to
2 more than 1 eligible property that is adjacent and contiguous to
3 all other eligible properties covered by the development agreement,
4 whether or not the captured taxes are levied for school operating
5 purposes, approval of a work plan by the Michigan economic growth
6 authority before January 1, 2008 to use school operating taxes and
7 a development agreement between the municipality and an owner or
8 developer of eligible property are required if the revenues will be
9 used for infrastructure improvements that directly benefit eligible
10 property, demolition of structures that is not response activity
11 under part 201 of the natural resources and environmental
12 protection act, 1994 PA 451, MCL 324.20101 to 324.20142, lead or
13 asbestos abatement, or site preparation that is not response
14 activity under section 20101 of the natural resources and
15 environmental protection act, 1994 PA 451, MCL 324.20101. The
16 eligible activities to be conducted described in this subsection
17 shall be consistent with the work plan submitted by the authority
18 to the Michigan economic growth authority. The department's
19 approval is not required for the capture of taxes levied for school
20 operating purposes for eligible activities described in this
21 subsection.

22 (16) The limitations of section 15(1) upon use of tax
23 increment revenues by an authority shall not apply to the following
24 costs and expenses:

25 (a) In each fiscal year of the authority, \$75,000.00 for the
26 following purposes for tax increment revenues attributable to local
27 taxes:

1 (i) Reasonable and actual administrative and operating expenses
2 of the authority.

3 (ii) Baseline environmental assessments, due care activities,
4 and additional response activities related directly to work
5 conducted on prospective eligible properties prior to approval of
6 the brownfield plan.

7 (b) Reasonable costs of preparing a work plan or remedial
8 action plan or the cost of the review of a work plan for which tax
9 increment revenues may be used under section 13(3).

10 (17) A brownfield authority may reimburse advances, **WITH OR**
11 **WITHOUT INTEREST**, made by a municipality under section 7(3), a land
12 bank fast track authority, or any other person or entity for costs
13 of eligible activities with any source of revenue available for use
14 of the brownfield authority under this act and may enter into
15 agreements related to those reimbursements. A reimbursement
16 agreement for these purposes and the obligations under that
17 reimbursement agreement shall not be subject to section 12 or the
18 revised municipal finance act, 2001 PA 34, MCL 141.2101 to
19 141.2821.

20 (18) If a brownfield plan includes the capture of taxes levied
21 for school operating purposes, approval of a work plan by the
22 Michigan economic growth authority in the manner required under
23 section 15(14) to (16) is required in order to use tax increment
24 revenues attributable to taxes levied for school operating purposes
25 for purposes of eligible activities described in section 2(l)(iv)(E)
26 for 1 or more parcels of eligible property. The work plan to be
27 submitted to the Michigan economic growth authority under this

1 subsection shall be in a form prescribed by the Michigan economic
2 growth authority. The eligible activities to be conducted and
3 described in this subsection shall be consistent with the work plan
4 submitted by the authority to the Michigan economic growth
5 authority. The department's approval is not required for the
6 capture of taxes levied for school operating purposes for eligible
7 activities described in this section.

8 Sec. 15. (1) An authority shall not do any of the following:

9 (a) For eligible activities not described in section 13(15),
10 use taxes levied for school operating purposes captured from
11 eligible property unless the eligible activities to be conducted on
12 the eligible property are eligible activities under part 201 of the
13 natural resources and environmental protection act, 1994 PA 451,
14 MCL 324.20101 to 324.20142, consistent with a work plan or remedial
15 action plan approved by the department after July 24, 1996 and
16 before January 1, 2008.

17 (b) For eligible activities not described in section 13(15),
18 use funds from a local site remediation revolving fund that are
19 derived from taxes levied for school operating purposes unless the
20 eligible activities to be conducted are eligible activities under
21 part 201 of the natural resources and environmental protection act,
22 1994 PA 451, MCL 324.20101 to 324.20142, consistent with a work
23 plan or remedial action plan that has been approved by the
24 department after July 24, 1996.

25 (c) Use funds from a local site remediation revolving fund
26 created pursuant to section 8 that are derived from taxes levied
27 for school operating purposes for the eligible activities described

1 in section 13(15) unless the eligible activities to be conducted
2 are consistent with a work plan approved by the Michigan economic
3 growth authority.

4 (d) Use taxes captured from eligible property to pay for
5 eligible activities conducted before approval of the brownfield
6 plan except for costs described in section 13(16).

7 (e) Use taxes levied for school operating purposes captured
8 from eligible property for response activities that benefit a party
9 liable under section 20126 of the natural resources and
10 environmental protection act, 1994 PA 451, MCL 324.20126, except
11 that a municipality that established the authority, for taxes
12 levied after 2004, may use taxes levied for school operating
13 purposes captured from eligible property for response activities
14 associated with a landfill.

15 (f) Use taxes captured from eligible property to pay for
16 administrative and operating activities of the authority or the
17 municipality on behalf of the authority except for costs described
18 in section 13(16) and for the reasonable costs for preparing a work
19 plan or remedial action plan for the eligible property, including
20 the actual cost of the review of the work plan or remedial action
21 plan under this section.

22 (2) To seek department approval of a work plan under
23 subsection (1)(a) or (b) or remedial action plan, the authority
24 shall submit all of the following for each eligible property:

25 (a) A copy of the brownfield plan.

26 (b) Current ownership information for each eligible property
27 and a summary of available information on proposed future

1 ownership, including the amount of any delinquent taxes, interest,
2 and penalties that may be due.

3 (c) A summary of available information on the historical and
4 current use of each eligible property, including a brief summary of
5 site conditions and what is known about environmental contamination
6 as that term is defined in section 20101 of the natural resources
7 and environmental protection act, 1994 PA 451, MCL 324.20101.

8 (d) Existing and proposed future zoning for each eligible
9 property.

10 (e) A brief summary of the proposed redevelopment and future
11 use for each eligible property.

12 (f) A separate work plan or remedial action plan, or part of a
13 work plan or remedial action plan, for each eligible activity to be
14 undertaken.

15 (3) Upon receipt of a request for approval of a work plan or
16 remedial action plan under subsection (2) that pertains to baseline
17 environmental assessment activities or due care activities, or
18 both, or a portion of a work plan or remedial action plan that
19 pertains to only baseline environmental assessment activities or
20 due care activities, or both, the department shall provide 1 of the
21 following written responses to the requesting authority within 60
22 days:

23 (a) An unconditional approval.

24 (b) A conditional approval that delineates specific necessary
25 modifications to the work plan or remedial action plan, including,
26 but not limited to, individual activities to be added or deleted
27 from the work plan or remedial action plan and revision of costs.

1 (c) If the work plan or remedial action plan lacks sufficient
2 information for the department to respond under subdivision (a) or
3 (b), a letter stating with specificity the necessary additions or
4 changes to the work plan or remedial action plan to be submitted
5 before a plan will be considered by the department.

6 (4) In its review of a work plan or remedial action plan, the
7 department shall consider all of the following:

8 (a) Whether the individual activities included in the work
9 plan or remedial action plan are sufficient to complete the
10 eligible activity.

11 (b) Whether each individual activity included in the work plan
12 or remedial action plan is required to complete the eligible
13 activity.

14 (c) Whether the cost for each individual activity is
15 reasonable.

16 (5) If the department fails to provide a written response
17 under subsection (3) within 60 days after receipt of a request for
18 approval of a work plan or remedial action plan that pertains to
19 baseline environmental assessment activities or due care
20 activities, or both, the authority may proceed with the baseline
21 environmental assessment activities or due care activities, or
22 both, as outlined in the work plan or remedial action plan as
23 submitted for approval. Except as provided in subsection (6),
24 baseline environmental assessment activities or due care
25 activities, or both, conducted pursuant to a work plan or remedial
26 action plan that was submitted to the department for approval but
27 for which the department failed to provide a written response under

1 subsection (3) shall be considered approved for the purposes of
2 subsection (1).

3 (6) The department may issue a written response to a work plan
4 or remedial action plan that pertains to baseline environmental
5 assessment activities or due care activities, or both, more than 60
6 days but less than 6 months after receipt of a request for
7 approval. If the department issues a written response under this
8 subsection, the authority is not required to conduct individual
9 activities that are in addition to the individual activities
10 included in the work plan or remedial action plan as it was
11 submitted for approval and failure to conduct these additional
12 activities shall not affect the authority's ability to capture
13 taxes under subsection (1) for the eligible activities described in
14 the work plan or remedial action plan initially submitted under
15 subsection (5). In addition, at the option of the authority, these
16 additional individual activities shall be considered part of the
17 work plan or remedial action plan of the authority and approved for
18 purposes of subsection (1). However, any response by the department
19 under this subsection that identifies additional individual
20 activities that must be carried out to satisfy the baseline
21 environmental assessment or due care requirements, or both, of part
22 201 of the natural resources and environmental protection act, 1994
23 PA 451, MCL 324.20101 to 324.20142, must be satisfactorily
24 completed for the baseline environmental assessment or due care
25 activities, or both, to be considered acceptable for the purposes
26 of compliance with part 201 of the natural resources and
27 environmental protection act, 1994 PA 451, MCL 324.20101 to

1 324.20142.

2 (7) If the department issues a written response under
3 subsection (6) to a work plan or remedial action plan that pertains
4 to baseline environmental assessment activities or due care
5 activities, or both, and if the department's written response
6 modifies an individual activity proposed by the work plan or
7 remedial action plan of the authority in a manner that reduces or
8 eliminates a proposed response activity, the authority must
9 complete those individual activities included in the baseline
10 environmental assessment or due care activities, or both, in
11 accordance with the department's response in order for that portion
12 of the work plan or remedial action plan to be considered approved
13 for purposes of subsection (1), unless 1 or more of the following
14 conditions apply:

15 (a) Obligations for the individual activity have been issued
16 by the authority, or by a municipality on behalf of the authority,
17 to fund the individual activity prior to issuance of the
18 department's response.

19 (b) The individual activity has commenced or payment for the
20 work has been irrevocably obligated prior to issuance of the
21 department's response.

22 (8) It shall be in the sole discretion of an authority to
23 propose to undertake additional response activities at an eligible
24 property under a brownfield plan. The department shall not require
25 a work plan or remedial action plan for either baseline
26 environmental assessment activities or due care activities, or
27 both, to include additional response activities.

1 (9) The department may reject the portion of a work plan or
2 remedial action plan that includes additional response activities
3 and may consider the level of risk reduction that will be
4 accomplished by the additional response activities in determining
5 whether to approve or reject the work plan or remedial action plan
6 or a portion of a plan.

7 (10) The department's approval or rejection of a work plan
8 under subsection (1)(a) or (b) or remedial action plan for
9 additional response activities is final.

10 (11) The authority shall reimburse the department for the
11 actual cost incurred by the department or a contractor of the
12 department to review a work plan under subsection (1)(a) or (b) or
13 remedial action plan under this section. Funds paid to the
14 department under this subsection shall be deposited in the cost
15 recovery subaccount of the cleanup and redevelopment fund created
16 under section 20108 of the natural resources and environmental
17 protection act, 1994 PA 451, MCL 324.20108.

18 (12) The department shall submit a report each year on or
19 before March 1 to each member of the legislature that contains all
20 of the following:

21 (a) A compilation and summary of all the information submitted
22 under subsection (2).

23 (b) The amount of revenue this state would have received if
24 taxes levied for school operating purposes had not been captured
25 under this section for the previous calendar year.

26 (c) The amount of revenue each local governmental unit would
27 have received if taxes levied for school operating purposes had not

1 been captured under this section for the previous calendar year.

2 (13) To seek Michigan economic growth authority approval of a
3 work plan under subsection (1)(c) or section 13(15), the authority
4 shall submit all of the following for each eligible property:

5 (a) A copy of the brownfield plan.

6 (b) Current ownership information for each eligible property
7 and a summary of available information on proposed future
8 ownership, including the amount of any delinquent taxes, interest,
9 and penalties that may be due.

10 (c) A summary of available information on the historical and
11 current use of each eligible property.

12 (d) Existing and proposed future zoning for each eligible
13 property.

14 (e) A brief summary of the proposed redevelopment and future
15 use for each eligible property.

16 (f) A separate work plan, or part of a work plan, for each
17 eligible activity described in section 13(15) to be undertaken.

18 (g) A copy of the development agreement required under section
19 13(15), which shall include, but is not limited to, a detailed
20 summary of any and all ownership interests, monetary
21 considerations, fees, revenue and cost sharing, charges, or other
22 financial arrangements or other consideration between the parties.

23 (14) Upon receipt of a request for approval of a work plan,
24 the Michigan economic growth authority shall provide 1 of the
25 following written responses to the requesting authority within 65
26 days:

27 (a) An unconditional approval that includes an enumeration of

1 eligible activities and a maximum allowable capture amount.

2 (b) A conditional approval that delineates specific necessary
3 modifications to the work plan, including, but not limited to,
4 individual activities to be added or deleted from the work plan and
5 revision of costs.

6 (c) A denial and a letter stating with specificity the reason
7 for the denial. If a work plan is denied under this subsection, the
8 work plan may be subsequently resubmitted.

9 (15) In its review of a work plan under subsection (1)(c) or
10 section 13(15), the Michigan economic growth authority shall
11 consider the following criteria to the extent reasonably applicable
12 to the type of activities proposed as part of that work plan when
13 approving or denying a work plan:

14 (a) Whether the individual activities included in the work
15 plan are sufficient to complete the eligible activity.

16 (b) Whether each individual activity included in the work plan
17 is required to complete the eligible activity.

18 (c) Whether the cost for each individual activity is
19 reasonable.

20 (d) The overall benefit to the public.

21 (e) The extent of reuse of vacant buildings and redevelopment
22 of blighted property.

23 (f) Creation of jobs.

24 (g) Whether the eligible property is in an area of high
25 unemployment.

26 (h) The level and extent of contamination alleviated by or in
27 connection with the eligible activities.

1 (i) The level of private sector contribution.

2 (j) The cost gap that exists between the site and a similar
3 greenfield site as determined by the Michigan economic growth
4 authority.

5 (k) If the developer or projected occupant of the new
6 development is moving from another location in this state, whether
7 the move will create a brownfield.

8 (l) Whether the financial statements of the developer,
9 landowner, or corporate entity indicate that the developer,
10 landowner, or corporate entity is financially sound and that the
11 project of the developer, landowner, or corporate entity that is
12 included in the work plan is economically sound.

13 (m) Other state and local incentives available to the
14 developer, landowner, or corporate entity for the project of the
15 developer, landowner, or corporate entity that is included in the
16 work plan.

17 (n) Any other criteria that the Michigan economic growth
18 authority considers appropriate for the determination of
19 eligibility or for approval of the work plan.

20 (16) If the Michigan economic growth authority fails to
21 provide a written response under subsection (14) within 65 days
22 after receipt of a request for approval of a work plan, the
23 eligible activities shall be considered approved and the authority
24 may proceed with the eligible activities described in section
25 13(15) as outlined in the work plan as submitted for approval.

26 (17) The Michigan economic growth authority's approval of a
27 work plan under section 13(15) is final.

Senate Bill No. 482 (H-1) as amended June 29, 2005

1 (18) The authority shall reimburse the Michigan economic
2 growth authority for the actual cost incurred by the Michigan
3 economic growth authority or a contractor of the Michigan economic
4 growth authority to review a work plan under this section.

5 (19) The Michigan economic growth authority shall submit a
6 report each year on or before March 1 to each member of the
7 legislature that contains all of the following:

8 (a) A compilation and summary of all the information submitted
9 under subsection (13).

10 (b) The amount of revenue this state would have received if
11 taxes levied for school operating purposes had not been captured
12 under this section for the previous calendar year.

13 (c) The amount of revenue each local governmental unit would
14 have received if taxes levied for school operating purposes had not
15 been captured under this section for the previous calendar year.

16 (20) All taxes levied for school operating purposes that are
17 not used for eligible activities consistent with a work plan
18 approved by the department or the Michigan economic growth
19 authority [OR FOR THE PAYMENT OF INTEREST UNDER SECTION 13] and that are
20 not deposited in a local site remediation
21 revolving fund shall be distributed proportionately between the
22 local school district and the school aid fund.

23 (21) AN AUTHORITY SHALL NOT USE TAXES LEVIED FOR SCHOOL
24 OPERATING PURPOSES CAPTURED FROM ELIGIBLE PROPERTY FOR ELIGIBLE
ACTIVITIES FOR A QUALIFIED FACILITY.