

# BROWNFIELD REDEVELOPMENT FINANCING ACT

## Act 381 of 1996

AN ACT to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans relating to the designation and treatment of brownfield redevelopment zones; to promote the revitalization of environmentally distressed areas; to prescribe the powers and duties of brownfield redevelopment authorities; to permit the issuance of bonds and other evidences of indebtedness by an authority; to authorize the acquisition and disposal of certain property; to authorize certain funds; to prescribe certain powers and duties of certain state officers and agencies; and to authorize and permit the use of certain tax increment financing.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

*The People of the State of Michigan enact:*

### 125.2651 Short title.

Sec. 1. This act shall be known and may be cited as the “brownfield redevelopment financing act”.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### 125.2652 Definitions.

Sec. 2. As used in this act:

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

(b) “Authority” means a brownfield redevelopment authority created under this act.

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

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

(e) “Blighted” means property that meets any of the following criteria:

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

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

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

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

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

(f) “Board” means the governing body of an authority.

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

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

(i) “Chief executive officer” means the mayor of a city, the village manager of a village, the township supervisor of a township, or the county executive of a county or, if the county does not have an elected county executive, the chairperson of the county board of commissioners.

(j) “Department” means the department of environmental quality.

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

(l) “Eligible activities” or “eligible activity” does not include activities related to multisource commercial hazardous waste disposal wells as that term is defined in section 62506a of the natural resources and environmental

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

protection act, 1994 PA 451, MCL 324.62506a, but means 1 or more of the following:

- (i) Baseline environmental assessment activities.
- (ii) Due care activities.
- (iii) Additional response activities.
- (iv) For eligible activities on eligible property that was used or is currently used for commercial, industrial, or residential purposes that is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted, and except for purposes of section 38d of the single business tax act, 1975 PA 228, MCL 208.38d, the following additional activities:
  - (A) Infrastructure improvements that directly benefit eligible property.
  - (B) Demolition of structures that is not response activity under section 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.
  - (C) Lead or asbestos abatement.
  - (D) Site preparation that is not response activity under section 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.
  - (v) Relocation of public buildings or operations for economic development purposes with prior approval of the Michigan economic development authority.
- (m) "Eligible property" means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, or residential purposes that is either in a qualified local governmental unit and is a facility, functionally obsolete, or blighted or is not in a qualified local governmental unit and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property. Eligible property includes, to the extent included in the brownfield plan, personal property located on the property. Eligible property does not include qualified agricultural property exempt under section 7ee of the general property tax act, 1893 PA 206, MCL 211.7ee, from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.
- (n) "Facility" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.
- (o) "Fiscal year" means the fiscal year of the authority.
- (p) "Functionally obsolete" means that the property is unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself or the property's relationship with other surrounding property.
- (q) "Governing body" means the elected body having legislative powers of a municipality creating an authority under this act.
- (r) "Infrastructure improvements" means a street, road, sidewalk, parking facility, pedestrian mall, alley, bridge, sewer, sewage treatment plant, property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination, drainage system, waterway, waterline, water storage facility, rail line, utility line or pipeline, or other similar or related structure or improvement, together with necessary easements for the structure or improvement, owned or used by a public agency or functionally connected to similar or supporting property owned or used by a public agency, or designed and dedicated to use by, for the benefit of, or for the protection of the health, welfare, or safety of the public generally, whether or not used by a single business entity, provided that any road, street, or bridge shall be continuously open to public access and that other property shall be located in public easements or rights-of-way and sized to accommodate reasonably foreseeable development of eligible property in adjoining areas.
- (s) "Initial taxable value" means the taxable value of an eligible property identified in and subject to a brownfield plan at the time the resolution adding that eligible property in the brownfield plan is adopted, as shown by the most recent assessment roll for which equalization has been completed at the time the resolution is adopted. Property exempt from taxation at the time the initial taxable value is determined shall be included with the initial taxable value of zero. Property for which a specific tax is paid in lieu of property tax shall not be considered exempt from taxation. The state tax commission shall prescribe the method for calculating the initial taxable value of property for which a specific tax was paid in lieu of property tax.
- (t) "Local taxes" means all taxes levied other than taxes levied for school operating purposes.
- (u) "Municipality" means all of the following:
  - (i) A city.
  - (ii) A village.

## BROWNFIELD REDEVELOPMENT FINANCING ACT

- (iii) A township in those areas of the township that are outside of a village.
- (iv) A township in those areas of the township that are in a village upon the concurrence by resolution of the village in which the zone would be located.
- (v) A county.
- (v) “Qualified local governmental unit” means that term as defined in the obsolete property rehabilitation act.
- (w) “Qualified taxpayer” means that term as defined in sections 38d and 38g of the single business tax act, 1975 PA 228, MCL 208.38d and 208.38g.
- (x) “Remedial action plan” means a plan that meets both of the following requirements:
- (i) Is a remedial action plan as that term is defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.
- (ii) Describes each individual activity to be conducted to complete eligible activities and the associated costs of each individual activity.
- (y) “Response activity” means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.
- (z) “Specific taxes” means a tax levied under 1974 PA 198, MCL 207.551 to 207.572; the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668; the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123; 1953 PA 189, MCL 211.181 to 211.182; the technology park development act, 1984 PA 385, MCL 207.701 to 207.718; the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797; or the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.787.
- (aa) “Tax increment revenues” means the amount of ad valorem property taxes and specific taxes attributable to the application of the levy of all taxing jurisdictions upon the captured taxable value of each parcel of eligible property subject to a brownfield plan and personal property located on that property. Tax increment revenues exclude ad valorem property taxes specifically levied for the payment of principal of and interest on either obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit, and specific taxes attributable to those ad valorem property taxes. Tax increment revenues attributable to eligible property also exclude the amount of ad valorem property taxes or specific taxes captured by a downtown development authority, tax increment finance authority, or local development finance authority if those taxes were captured by these other authorities on the date that eligible property became subject to a brownfield plan under this act.
- (bb) “Taxable value” means the value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.
- (cc) “Taxes levied for school operating purposes” means all of the following:
- (i) The taxes levied by a local school district for operating purposes.
- (ii) The taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.
- (iii) That portion of specific taxes attributable to taxes described under subparagraphs (i) and (ii).
- (dd) “Work plan” means a plan that describes each individual activity to be conducted to complete eligible activities and the associated costs of each individual activity.
- (ee) “Zone” means, for an authority established before the effective date of the amendatory act that added subdivision (r), a brownfield redevelopment zone designated under this act.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2002, Act 254, Imd. Eff. May 1, 2002.

### **125.2653 Brownfield redevelopment authority; establishment; exercise of powers; alteration or amendment of boundaries; authority as public body corporate; written agreement with county.**

Sec. 3. (1) A municipality may establish 1 or more authorities. Except as provided in subsection (4), an authority with zones established before the effective date of the amendatory act that added subsection (2) shall exercise its powers within its designated zones. Except as provided in subsection (4), an authority established after the effective date of the amendatory act that added subsection (2) shall exercise its powers over any eligible property located in the municipality.

(2) An authority with zones established before the effective date of the amendatory act that added this subsection may alter or amend the boundaries of those zones if the authority holds a public hearing on the alteration or amendment using the procedures under section 4(2), (3), and (4).

(3) The authority shall be a public body corporate that may sue and be sued in a court of competent jurisdiction. The authority possesses all the powers necessary to carry out the purpose of its incorporation. The enumeration of a power in this act is not a limitation upon the general powers of the authority. The powers granted in this act to an authority may be exercised whether or not bonds are issued by the authority.

## BROWNFIELD REDEVELOPMENT FINANCING ACT

(4) An authority established by a county shall exercise its powers with respect to eligible property within a city, village, or township within the county only if that city, village, or township has concurred with the provisions of a brownfield plan that apply to that eligible property within the city, village, or township.

(5) A city, village, or township including a city, village, or township that is a qualified local governmental unit may enter into a written agreement with the county in which that city, village, or township is located to exercise the powers granted to that specific city, village, or township under this act.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

### **125.2654 Resolution by governing body; adoption; notice; public hearing; proceedings establishing authority; presumption of validity; exercise as essential governmental function.**

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

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

(3) Not more than 30 days after the public hearing, if the governing body intends to proceed with the establishment of the authority, the governing body shall adopt, by majority vote of its members elected and serving, a resolution establishing the authority. The adoption of the resolution is subject to all applicable statutory or charter provisions with respect to the approval or disapproval by the chief executive or other officer of the municipality and the adoption of a resolution over his or her veto. This resolution shall be filed with the secretary of state promptly after its adoption.

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

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

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

### **125.2655 Designation of board by governing body; membership; trustees; applicability of subsection (2); election of chairperson, vice-chairperson, and other officers; oath; procedural rules; meetings; special meetings; removal of member; records open to public; quorum.**

Sec. 5. (1) Each authority shall be under the supervision and control of a board chosen by the governing body. Subject to subsection (2), the governing body may by majority vote designate 1 of the following to constitute the board:

(a) The board of directors of the economic development corporation of the municipality established under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636.

(b) The trustees of the board of a downtown development authority established under 1975 PA 197, MCL 125.1651 to 125.1681.

(c) The trustees of the board of a tax increment financing authority established under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830.

(d) The trustees of the board of a local development financing authority established under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174.

(e) Not less than 5 nor more than 9 persons appointed by the chief executive officer of the municipality subject to the approval of the governing body. Of the initial members appointed, an equal number, as near as practicable, shall be appointed for 1 year, 2 years, and 3 years. A member shall hold office until the member's successor is appointed and qualified. Thereafter, each member shall serve for a term of 3 years. An appointment to fill a vacancy shall be made by the chief executive officer of the municipality for the unexpired term only. Members of the board shall serve without compensation, but shall be reimbursed for reasonable actual and necessary expenses.

(2) The governing body of a municipality in which a board described in subsection (1)(b), (c), or (d) has been established shall designate the trustees of 1 of those boards to constitute the board. This subsection shall only apply in the event a board described in subsection (1)(b), (c), or (d) is authorized under subsection (1) to serve as the board of the authority.

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

(3) The members shall elect 1 of their membership as chairperson and another as vice-chairperson. The members may designate and elect other officers of the board as they consider necessary.

(4) Before assuming the duties of office, a member shall qualify by taking and subscribing to the oath of office provided in section 1 of article XI of the state constitution of 1963.

(5) The board shall adopt rules governing its procedure and the holding of regular meetings, subject to the approval of the governing body. Special meetings may be held when called in the manner provided in the rules of the board. Meetings of the board shall be open to the public, in accordance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(6) After notice and an opportunity to be heard, a member of the board appointed under subsection (1)(e) may be removed before the expiration of his or her term for cause by the governing body. Removal of a member is subject to review by the circuit court.

(7) All financial records of an authority shall be open to the public under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(8) A majority of the members of the board appointed and serving shall constitute a quorum. Action may be taken by the board at a meeting upon a vote of the majority of the members present.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

### **125.2656 Appointment or employment of director, treasurer, secretary, personnel, and consultants; assistance provided by municipality; retirement and insurance programs.**

Sec. 6. (1) The board may employ and fix the compensation of a director of the authority, subject to the approval of the governing body creating the authority. The director shall serve at the pleasure of the board. A member of the board is not eligible to hold the position of director. Before entering upon the duties of the office, the director shall take and subscribe to the oath of office provided in section 1 of article XI of the state constitution of 1963 and shall furnish bond by posting a bond in the sum specified in the resolution establishing the authority. The bond shall be payable to the authority for the use and benefit of the authority, approved by the board, and filed with the clerk of the municipality. The premium on the bond shall be considered an operating expense of the authority, payable from funds available to the authority for expenses of operation. The director shall be the chief officer of the authority. Subject to the approval of the board, the director shall supervise and be responsible for the preparation of plans and the performance of the functions of the authority in the manner authorized by this act. The director shall attend the meetings of the board and shall render to the board and to the governing body a regular report covering the activities and financial condition of the authority. If the director is absent or disabled, the board may designate a qualified person as acting director to perform the duties of the office. Before entering upon the duties of the office, the acting director shall take and subscribe to the oath of office referenced in this subsection and furnish bond as required of the director. The director shall furnish the board with information or reports governing the operation of the authority, as the board requires.

(2) The board may appoint or employ and fix the compensation of a treasurer who shall keep the financial records of the authority and who, together with the director, if a director is appointed, shall approve all vouchers for the expenditure of funds of the authority. The treasurer shall perform other duties as may be delegated by the board and shall furnish bond in an amount as prescribed by the board.

(3) The board may appoint or employ and fix the compensation of a secretary who shall maintain custody of the official seal and of records, books, documents, or other papers not required to be maintained by the treasurer. The secretary shall attend meetings of the board and keep a record of its proceedings and shall perform other duties as may be delegated by the board.

(4) The board may employ and retain personnel and consultants as considered necessary by the board, including legal counsel to advise the board in the proper performance of its duties and to represent the authority in actions brought by or against the authority.

(5) Upon request of the authority, the municipality may provide assistance to the authority in the performance of its powers and duties.

(6) The employees of an authority may be eligible to participate in municipal retirement and insurance programs of the municipality as if they were civil service employees on the same basis as civil service employees.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2657 Powers of authority; determining captured taxable value; transfer of municipality funds to authority.**

Sec. 7. (1) An authority may do 1 or more of the following:

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

- (a) Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.
  - (b) Incur and expend funds to pay or reimburse a public or private person for costs of eligible activities attributable to an eligible property.
  - (c) As approved by the municipality, incur costs and expend funds from the local site remediation revolving fund created under section 8 for purposes authorized in that section.
  - (d) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties, including, but not limited to, lease purchase agreements, land contracts, installment sales agreements, and loan agreements.
  - (e) On terms and conditions and in a manner and for consideration the authority considers proper or for no monetary consideration, own, mortgage, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in the property, that the authority determines are reasonably necessary to achieve the purposes of this act, and grant or acquire licenses, easements, and options with respect to the property.
  - (f) Acquire, maintain, repair, or operate all devices necessary to ensure continued eligible activities on eligible property.
  - (g) Accept grants and donations of property, labor, or other things of value from a public or private source.
  - (h) Incur costs in connection with the performance of its authorized functions, including, but not limited to, administrative costs and architect, engineer, legal, or accounting fees.
  - (i) Study, develop, and prepare the reports or plans the authority considers necessary to assist it in the exercise of its powers under this act and to monitor and evaluate the progress under this act.
  - (j) Procure insurance against loss in connection with the authority's property, assets, or activities.
  - (k) Invest the money of the authority at the authority's discretion in obligations determined proper by the authority, and name and use depositories for its money.
  - (l) Make loans, participate in the making of loans, undertake commitments to make loans and mortgages, buy and sell loans and mortgages at public or private sale, rewrite loans and mortgages, discharge loans and mortgages, foreclose on a mortgage, commence an action to protect or enforce a right conferred upon the authority by a law, mortgage, loan, contract, or other agreement, bid for and purchase property that was the subject of the mortgage at a foreclosure or other sale, acquire and take possession of the property and in that event compute, administer, pay the principal and interest on obligations incurred in connection with that property, and dispose of and otherwise deal with the property, in a manner necessary or desirable to protect the interests of the authority.
  - (m) Borrow money and issue its bonds and notes under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, in anticipation of collection of tax increment revenues.
  - (n) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this act, or other laws that relate to the purposes and responsibilities of the authority.
- (2) The authority shall determine the captured taxable value of each parcel of eligible property. The captured taxable value of a parcel shall not be less than zero.
- (3) A municipality may transfer the funds of the municipality to an authority or to another person on behalf of the authority in anticipation of repayment by the authority.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2002, Act 413, Imd. Eff. June 3, 2002.

### **125.2658 Local site remediation revolving fund.**

Sec. 8. (1) An authority may establish a local site remediation revolving fund. A local site remediation revolving fund shall consist of money available under section 13(5) and may also consist of money appropriated or otherwise made available from public or private sources. An authority shall separately account for money deposited to the fund that is directly derived from tax increment revenues levied for school operating purposes.

(2) The local site remediation revolving fund may be used only to pay the costs of eligible activities on eligible property that is located within the municipality.

(3) An authority or a municipality on behalf of an authority may incur an obligation for the purpose of funding a local site remediation revolving fund.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

### **125.2659 Authority as instrumentality of political subdivision.**

Sec. 9. The authority shall be considered an instrumentality of a political subdivision for purposes of Act No. 227 of the Public Acts of 1972, being sections 213.321 to 213.332 of the Michigan Compiled Laws.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

### **125.2660 Taking, transfer, and use of private property.**

Sec. 10. A municipality may transfer private property taken under the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws, to the authority for use as authorized in the brownfield plan, on terms and conditions it considers appropriate. The taking, transfer, and use shall be considered necessary for public purposes and for the benefit of the public.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2661 Financing sources of authority activities.**

Sec. 11. The activities of the authority shall be financed from 1 or more of the following sources:

(a) Contributions, contractual payments, or appropriations to the authority for the performance of its functions or to pay the costs of a brownfield plan of the authority.

(b) Revenues from a property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to the limitations imposed upon the authority by trusts or other agreements.

(c) Subject to the limitations imposed under sections 8, 13, and 15, 1 or both of the following:

(i) Tax increment revenues received under a brownfield plan established under sections 13 and 14.

(ii) Proceeds of tax increment bonds and notes issued under section 17.

(d) Proceeds of revenue bonds and notes issued under section 12.

(e) Revenue available in the local site remediation revolving fund for the costs described in section 8.

(f) Money obtained from all other sources approved by the governing body of the municipality or otherwise authorized by law for use by the authority or the municipality to finance activities authorized under this act.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2662 Bonds and notes of authority.**

Sec. 12. (1) The authority may borrow money and issue its negotiable revenue bonds or notes to finance all or part of the costs of eligible activities or of another activity of the authority under this act. Revenue bonds and notes issued under this section are subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140. The costs that may be financed by the issuance of revenue bonds or notes may include the costs of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with an activity authorized under this act; engineering, architectural, legal, accounting, or financial expenses; the costs necessary or incidental to the borrowing of money; interest on the bonds or notes during the period of construction; a reserve for payment of principal and interest on the bonds or notes; and a reserve for operation and maintenance until sufficient revenues have developed. The authority may secure the bonds and notes by mortgage, assignment, or pledge of the property and all money, revenues, or income received in connection with the property.

(2) A pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property pledged by the authority immediately shall be subject to the lien of the pledge without a physical delivery, filing, or further act. The lien of a pledge shall be valid and binding as against parties having claims in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice of the lien. Filing of the resolution, the trust agreement, or another instrument by which a pledge is created is not required.

(3) Bonds or notes issued under this section shall be exempt from all taxation in this state except estate and transfer taxes, and the interest on the bonds or notes shall be exempt from all taxation in this state, notwithstanding that the interest may be subject to federal income tax.

(4) Unless otherwise provided by a majority vote of the members of its governing body, the municipality shall not be liable on bonds or notes of the authority issued under this section and the bonds or notes shall not be a debt of the municipality.

(5) The bonds and notes of the authority may be invested in by the state treasurer and all other public officers, state agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for all purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is supplemental and in addition to all other authority granted by law.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2002, Act 413, Imd. Eff. June 3, 2002.

### **125.2663 Brownfield plan; provisions.**

Sec. 13. (1) Subject to section 15, the board may implement a brownfield plan. The brownfield plan may apply to 1 or more parcels of eligible property whether or not those parcels of eligible property are contiguous and may be

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

amended to apply to additional parcels of eligible property. If more than 1 parcel of eligible property is included within the plan, the tax increment revenues under the plan shall be determined individually for each parcel of eligible property. Each plan or an amendment to a plan shall be approved by the governing body of the municipality and shall contain all of the following:

- (a) A description of the costs of the plan intended to be paid for with the tax increment revenues.
  - (b) A brief summary of the eligible activities that are proposed for each eligible property.
  - (c) An estimate of the captured taxable value and tax increment revenues for each year of the plan from each parcel of eligible property and in the aggregate. The plan may provide for the use of part or all of the captured taxable value, including deposits in the local site remediation revolving fund, but the portion intended to be used shall be clearly stated in the plan. The plan shall not provide either for an exclusion from captured taxable value of a portion of the captured taxable value or for an exclusion of the tax levy of 1 or more taxing jurisdictions unless the tax levy is excluded from tax increment revenues in section 2(aa), or unless the tax levy is excluded from capture under section 15.
  - (d) The method by which the costs of the plan will be financed, including a description of any advances made or anticipated to be made for the costs of the plan from the municipality.
  - (e) The maximum amount of note or bonded indebtedness to be incurred, if any.
  - (f) The duration of the brownfield plan, which shall not exceed the lesser of the period authorized under subsections (4) and (5) or 30 years.
  - (g) An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the eligible property is located.
  - (h) A legal description of each parcel of eligible property to which the plan applies, a map showing the location and dimensions of each eligible property, a statement of the characteristics that qualify the property as eligible property, and a statement of whether personal property is included as part of the eligible property. If the project is on property that is functionally obsolete, the taxpayer shall include, with the application, an affidavit signed by a level 3 or level 4 assessor, that states that it is the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion.
  - (i) Estimates of the number of persons residing on each eligible property to which the plan applies and the number of families and individuals to be displaced. If occupied residences are designated for acquisition and clearance by the authority, the plan shall include a demographic survey of the persons to be displaced, a statistical description of the housing supply in the community, including the number of private and public units in existence or under construction, the condition of those in existence, the number of owner-occupied and renter-occupied units, the annual rate of turnover of the various types of housing and the range of rents and sale prices, an estimate of the total demand for housing in the community, and the estimated capacity of private and public housing available to displaced families and individuals.
  - (j) A plan for establishing priority for the relocation of persons displaced by implementation of the plan.
  - (k) Provision for the costs of relocating persons displaced by implementation of the plan, and financial assistance and reimbursement of expenses, including litigation expenses and expenses incident to the transfer of title, in accordance with the standards and provisions of the uniform relocation assistance and real property acquisition policies act of 1970, Public Law 91-646, 84 Stat. 1894.
  - (l) A strategy for compliance with 1972 PA 227, MCL 213.321 to 213.332.
  - (m) A description of proposed use of the local site remediation revolving fund.
  - (n) Other material that the authority or governing body considers pertinent.
- (2) The percentage of all taxes levied on a parcel of eligible property for school operating expenses that is captured and used under a brownfield plan and all tax increment finance plans under 1975 PA 197, MCL 125.1651 to 125.1681, the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, or the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174, shall not be greater than the combination of the plans' percentage capture and use of all local taxes levied for purposes other than for the payment of principal of and interest on either obligations approved by the electors or obligations pledging the unlimited taxing power of the local unit of government. This subsection shall apply only when taxes levied for school operating purposes are subject to capture under section 15.
- (3) Except as provided in subsections (5), (15), and (16), tax increment revenues related to a brownfield plan shall be used only for costs of eligible activities attributable to the eligible property, the captured taxable value of which produces the tax increment revenues, including the cost of principal of and interest on any obligation issued by the authority to pay the costs of eligible activities attributable to the eligible property, and the reasonable costs of preparing a work plan or remedial action plan for the eligible property, including the actual cost of the review of the

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

work plan or remedial action plan under section 15.

(4) Except as provided in subsection (5), a brownfield plan shall not authorize the capture of tax increment revenue from eligible property after the year in which the total amount of tax increment revenues captured is equal to the sum of the costs of eligible activities attributable to the eligible property including the cost of principal of and interest on any obligation issued by the authority to pay the costs of eligible activities on the eligible property, and the reasonable cost of preparing a work plan or remedial action plan for eligible property, and the actual cost of the department's review of the work plan or remedial action plan.

(5) A brownfield plan may authorize the capture of additional tax increment revenue from an eligible property in excess of the amount authorized under subsection (4) during the time of capture for the purpose of paying the costs of eligible activities under subsection (3), or for not more than 5 years after the time that capture is required for the purpose of paying the costs of eligible activities under subsection (3), or both. Excess revenues captured under this subsection shall be deposited in the local site remediation revolving fund created under section 8 and used for the purposes authorized in section 8. If tax increment revenues levied for school operating purposes from eligible property are captured by the authority for purposes authorized under subsection (3), the tax increment revenues captured for deposit in the local site remediation revolving fund also may include tax increment revenues levied for school operating purposes in an amount not greater than the tax increment revenues levied for school operating purposes captured from the eligible property by the authority for the purposes authorized under subsection (3). Excess revenues from taxes levied for school operating purposes for eligible activities authorized under subsection (15) by the Michigan economic growth authority shall not be captured for deposit in the local site remediation revolving fund.

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

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

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

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

(b) One of the following:

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

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

(iii) If this state and an authority each undertake a cost recovery action, undertake a cost recovery action jointly, or 1 on behalf of the other, the amount of any remaining recovered funds shall be deposited pursuant to subparagraphs (i) and (ii) in the proportion that the tax increment revenues being recovered represent local taxes and taxes levied for school operating purposes, respectively.

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

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

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

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

## BROWNFIELD REDEVELOPMENT FINANCING ACT

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

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

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

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

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

(15) If a brownfield plan includes the capture of taxes levied for school operating purposes or the use of tax increment revenues related to a brownfield plan for the cost of eligible activities attributable to more than 1 eligible property that is adjacent and contiguous to all other eligible properties covered by the development agreement, whether or not the captured taxes are levied for school operating purposes, approval of a work plan by the Michigan economic growth authority before January 1, 2008 to use school operating taxes and a development agreement between the municipality and an owner or developer of eligible property are required if the revenues will be used for infrastructure improvements that directly benefit eligible property, demolition of structures that is not response activity under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, lead or asbestos abatement, or site preparation that is not response activity under section 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101. The eligible activities to be conducted described in this subsection shall be consistent with the work plan submitted by the authority to the Michigan economic growth authority. The department's approval is not required for the capture of taxes levied for school operating purposes for eligible activities described in this subsection.

(16) A brownfield authority may reimburse reasonable and actual administrative and operating expenses that include, but are not limited to, baseline environmental assessments, due care activities, and additional response activities, related directly to work conducted by the authority on prospective eligible properties prior to approval of the brownfield plan and on eligible properties and for eligible activities after the approval of the brownfield plan, only from captured local taxes not to exceed \$75,000.00 for each authority in each fiscal year. Reasonable and actual administrative and operating expenses do not include reasonable costs of preparing a work plan or remedial action plan or the cost of the review of a work plan for which taxes may be used under section 13(3).

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2002, Act 727, Imd. Eff. Dec. 30, 2002.

### **125.2664 Brownfield plan as public purpose; determination; amendments to plan; validity of procedure, notice, and findings; presumption.**

Sec. 14. (1) Not less than 10 days after notice of the proposed brownfield plan is provided to the taxing jurisdictions, the governing body shall determine whether the plan constitutes a public purpose. If the governing body determines that the plan does not constitute a public purpose, the governing body shall reject the plan. If the governing body determines that the plan constitutes a public purpose, the governing body may then approve or reject the plan, or approve it with modification, by resolution, based on the following considerations:

(a) Whether the plan meets the requirements of section 13.

(b) Whether the proposed method of financing the costs of eligible activities is feasible and the authority has the ability to arrange the financing.

(c) Whether the costs of eligible activities proposed are reasonable and necessary to carry out the purposes of this act.

(d) Whether the amount of captured taxable value estimated to result from adoption of the plan is reasonable.

(2) Except as provided in this subsection, amendments to an approved brownfield plan must be submitted by the authority to the governing body for approval or rejection following the same notice necessary for approval or rejection of the original plan. Notice is not required for revisions in the estimates of captured taxable value or tax

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

increment revenues.

(3) The procedure, adequacy of notice, and findings with respect to purpose and captured taxable value shall be presumptively valid unless contested in a court of competent jurisdiction within 60 days after adoption of the resolution adopting the brownfield plan. An amendment, adopted by resolution, to a conclusive plan shall likewise be conclusive unless contested within 60 days after adoption of the resolution adopting the amendment. If a resolution adopting an amendment to the plan is contested, the original resolution adopting the plan is not therefore open to contest.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2665 Prohibited conduct; work plan or remedial action plan; documents to be submitted for approval; factors to be considered in plan review; written request pertaining to baseline environmental assessment activities or due care activities; additional response activities; reimbursement of costs to review work plan or remedial action plan; report; distribution of remaining funds.**

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

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

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

(c) Use funds from a local site remediation revolving fund created pursuant to section 8 that are derived from taxes levied for school operating purposes for the eligible activities described in section 13(15) unless the eligible activities to be conducted are consistent with a work plan approved by the Michigan economic growth authority.

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

(e) Use taxes levied for school operating purposes captured from eligible property for response activities that benefit a party liable under section 20126 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20126.

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

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

(a) A copy of the brownfield plan.

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

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

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

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

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

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

(a) An unconditional approval.

(b) A conditional approval that delineates specific necessary modifications to the work plan or remedial action

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

plan, including, but not limited to, individual activities to be added or deleted from the work plan or remedial action plan and revision of costs.

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

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

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

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

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

(5) If the department fails to provide a written response under subsection (3) within 60 days after receipt of a request for approval of a work plan or remedial action plan that pertains to baseline environmental assessment activities or due care activities, or both, the authority may proceed with the baseline environmental assessment activities or due care activities, or both, as outlined in the work plan or remedial action plan as submitted for approval. Except as provided in subsection (6), baseline environmental assessment activities or due care activities, or both, conducted pursuant to a work plan or remedial action plan that was submitted to the department for approval but for which the department failed to provide a written response under subsection (3) shall be considered approved for the purposes of subsection (1).

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

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

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

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

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

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

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

(11) The authority shall reimburse the department for the actual cost incurred by the department or a contractor of the department to review a work plan under subsection (1)(a) or (b) or remedial action plan under this section.

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

Funds paid to the department under this subsection shall be deposited in the cost recovery subaccount of the cleanup and redevelopment fund created under section 20108 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20108.

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

- (a) A compilation and summary of all the information submitted under subsection (2).
- (b) The amount of revenue this state would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.
- (c) The amount of revenue each local governmental unit would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.

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

- (a) A copy of the brownfield plan.
- (b) Current ownership information for each eligible property and a summary of available information on proposed future ownership, including the amount of any delinquent taxes, interest, and penalties that may be due.
- (c) A summary of available information on the historical and current use of each eligible property.
- (d) Existing and proposed future zoning for each eligible property.
- (e) A brief summary of the proposed redevelopment and future use for each eligible property.
- (f) A separate work plan, or part of a work plan, for each eligible activity described in section 13(15) to be undertaken.
- (g) A copy of the development agreement required under section 13(15), which shall include, but is not limited to, a detailed summary of any and all ownership interests, monetary considerations, fees, revenue and cost sharing, charges, or other financial arrangements or other consideration between the parties.

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

- (a) An unconditional approval that includes an enumeration of eligible activities and a maximum allowable capture amount.
- (b) A conditional approval that delineates specific necessary modifications to the work plan, including, but not limited to, individual activities to be added or deleted from the work plan and revision of costs.
- (c) A denial and a letter stating with specificity the reason for the denial. If a work plan is denied under this subsection, the work plan may be subsequently resubmitted.

(15) In its review of a work plan under subsection (1)(c) or section 13(15), the Michigan economic growth authority shall consider the following 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:

- (a) Whether the individual activities included in the work plan are sufficient to complete the eligible activity.
- (b) Whether each individual activity included in the work plan is required to complete the eligible activity.
- (c) Whether the cost for each individual activity is reasonable.
- (d) The overall benefit to the public.
- (e) The extent of reuse of vacant buildings and redevelopment of blighted property.
- (f) Creation of jobs.
- (g) Whether the eligible property is in an area of high unemployment.
- (h) The level and extent of contamination alleviated by or in connection with the eligible activities.
- (i) The level of private sector contribution.
- (j) The cost gap that exists between the site and a similar greenfield site as determined by the Michigan economic growth authority.
- (k) If the developer or projected occupant of the new development is moving from another location in this state, whether the move will create a brownfield.
- (l) Whether the financial statements of the developer, landowner, or corporate entity indicate that the developer, landowner, or corporate entity is financially sound and that the project of the developer, landowner, or corporate entity that is included in the work plan is economically sound.
- (m) Other state and local incentives available to the developer, landowner, or corporate entity for the project of the developer, landowner, or corporate entity that is included in the work plan.
- (n) Any other criteria that the Michigan economic growth authority considers appropriate for the determination of eligibility or for approval of the work plan.

(16) If the Michigan economic growth authority fails to provide a written response under subsection (14) within

## BROWNFIELD REDEVELOPMENT FINANCING ACT

65 days after receipt of a request for approval of a work plan, the eligible activities shall be considered approved and the authority may proceed with the eligible activities described in section 13(15) as outlined in the work plan as submitted for approval.

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

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

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

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

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

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

(20) All taxes levied for school operating purposes that are not used for eligible activities consistent with a work plan approved by the department or the Michigan economic growth authority and that are not deposited in a local site remediation revolving fund shall be distributed proportionately between the local school district and the school aid fund.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2002, Act 727, Imd. Eff. Dec. 30, 2002.

### **125.2666 Tax increment revenues; transmission to authority; expenditure; reversion of surplus funds; abolishment of plan; financial status report; collection of financial reports by department and state tax commission.**

Sec. 16. (1) The municipal and county treasurers shall transmit tax increment revenues to the authority not more than 30 days after tax increment revenues are collected.

(2) The authority shall expend the tax increment revenues received only in accordance with the brownfield plan. All surplus funds not deposited in the local site remediation revolving fund of the authority under section 13(5) shall revert proportionately to the respective taxing bodies, except as provided in section 15(20). The governing body may abolish the plan when it finds that the purposes for which the plan was established are accomplished. However, the plan shall not be abolished until the principal and interest on bonds issued under section 17 and all other obligations to which the tax increment revenues are pledged have been paid or funds sufficient to make the payment have been segregated.

(3) The authority shall submit annually to the governing body and the state tax commission a financial report on the status of the activities of the authority. The report shall include all of the following:

(a) The amount and source of tax increment revenues received.

(b) The amount and purpose of expenditures of tax increment revenues.

(c) The amount of principal and interest on all outstanding indebtedness.

(d) The initial taxable value of all eligible property subject to the brownfield plan.

(e) The captured taxable value realized by the authority.

(f) Information concerning any transfer of ownership of or interest in each eligible property.

(g) All additional information that the governing body or the state tax commission considers necessary.

(4) The state tax commission shall collect the financial reports submitted under subsection (3), compile and analyze the information contained in those reports, and submit annually a report based on that information to all of the following standing committees of the legislature:

(a) In the house of representatives, the committees responsible for natural resource management, conservation, environmental protection, and taxation.

(b) In the senate, the committees responsible for natural resource management, conservation, environmental protection, and taxation.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

### **125.2667 Authorization, issuance, and sale of tax increment bonds and notes.**

Sec. 17. (1) By resolution of its board, the authority may authorize, issue, and sell its tax increment bonds and notes, subject to the limitations set forth in this section, to finance the purposes of a brownfield plan. The bonds or notes shall be payable in the manner and upon the terms and conditions determined, or within the parameters specified, by the authority in the resolution authorizing issuance of the bonds or notes. The resolution authorizing

## BROWNFIELD REDEVELOPMENT FINANCING ACT

the bonds shall create a lien on the tax increment revenues and other revenues pledged by the resolution that shall be a statutory lien and shall be a first lien subject only to liens previously created. The resolution may provide the terms upon which additional bonds or notes may be issued of equal standing and parity of lien as to the tax increment revenues and other revenues pledged under the resolution.

(2) The municipality, by majority vote of the members of its governing body, may make a limited tax pledge to support the authority's tax increment bonds or notes or, if authorized by the voters of the municipality, may pledge its unlimited tax full faith and credit for the payment of the principal of and interest on the authority's tax increment bonds or notes.

(3) The bonds or notes issued under this section shall be secured by 1 or more sources of revenue identified in section 7 as sources of financing of activities of the authority, as provided by resolution of the authority.

(4) The bonds and notes of the authority may be invested in by the state treasurer and all other public officers, state agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for 1 or more of the purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is supplemental and in addition to all other authority granted by law.

(5) The bonds and notes issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, except section 503 of the revised municipal finance act, 2001 PA 34, MCL 141.2503.

(6) For bonds issued under this act, the first principal amount maturity date or mandatory redemption date shall be not later than 5 years after the date of issuance and some principal amount shall mature or be subject to mandatory redemption in each subsequent year of the term of the bond.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2002, Act 413, Imd. Eff. June 3, 2002.

**Compiler's note:** The following communication was received:

"September 12, 1999

The Honorable John Engler

Capitol Building

Lansing, Michigan

Subject: PA 381 of 1996

Dear Governor Engler:

A review of the Senate and House Journals has revealed an error in Enrolled Senate Bill 923, which was filed with the Secretary of State on July 24, 1996, and assigned Public Act No. 381 of 1996. The bill presented to the Governor on July 17, 1996, did not accurately reflect what was agreed to by both houses of the Legislature. Specifically, Section 17, subsection (1), the third sentence incorrectly stated:

'The terms of the municipal finance act, Act No. 202 of the Public Acts of 1943, apply to bonds issued under this section.'  
The sentence agreed to by both houses is:

'Except for the requirement of the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, that the authority receive the approval or an exception from approval from the department of treasury prior to the issuance of bonds under this subsection, the terms of Act No. 202 of the Public Acts of 1943 shall not apply to bonds issued under this section.'

Therefore, we are presenting a correct Enrolled Senate Bill 923 for your signature and filing with the Secretary of State. Upon filing, the defective Enrolled Senate Bill 923 will be replaced with the correct Enrolled Senate Bill 923 and assigned the same public act number. The effective date of the Public Act No. 381 of 1996 will be the date the correct bill is filed.

This procedure ensures the integrity of the process while providing notification to the public. We apologize for any inconvenience this may have caused you or the citizens of the state of Michigan. If you have any questions, please feel free to contact us.

Sincerely,

Carol Morey Viventi

Melvin J. DeStigter

Secretary of the Senate

Clerk of the House of Representatives

cc: Candice S. Miller, Secretary of State"

### 125.2668 Operating budget.

Sec. 18. (1) The authority shall prepare and approve a budget for the operation of the authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. Funds of a municipality shall not be included in the budget of the authority except those funds authorized in this act or by the governing body of the municipality.

(2) The governing body of a municipality may assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds of the authority, other than those committed for designated purposes, which cost shall be paid annually by the authority under an appropriate item in its budget.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### 125.2669 Dissolution of authority; distribution of tax revenues and interest.

Sec. 19. (1) An authority that completes the purposes for which it was organized shall be dissolved by resolution

## BROWNFIELD REDEVELOPMENT FINANCING ACT

---

of the governing body. Except as provided in subsection (2), the property and assets of the authority remaining after the satisfaction of the obligations of the authority shall belong to the municipality or to an agency or instrumentality designated by resolution of the municipality.

(2) Tax increment revenues and the interest earned on tax increment revenues shall be distributed as provided under section 16(2).

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

### **125.2670 Enforcement proceedings.**

Sec. 20. The state tax commission may institute proceedings to compel enforcement of the requirements of this act.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2671 Taxes levied before December 31, 1996.**

Sec. 21. An authority shall not capture tax increment revenues from taxes levied before December 31, 1996.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2672 Conditional effective date.**

Sec. 22. This act shall not take effect unless Senate Bill No. 919 of the 88th Legislature is enacted into law.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

# Table Of Contents

<b>BROWNFIELD REDEVELOPMENT FINANCING ACT — Act 381 of 1996</b>	1	
125.2651	Short title.	1
125.2652	Definitions.	3
125.2653	Brownfield redevelopment authority; establishment; exercise of powers; alteration or amendment of boundaries; authority as public body corporate; written agreement with county.	4
125.2654	Resolution by governing body; adoption; notice; public hearing; proceedings establishing authority; presumption of validity; exercise as essential governmental function.	4
125.2655	Designation of board by governing body; membership; trustees; applicability of subsection (2); election of chairperson, vice-chairperson, and other officers; oath; procedural rules; meetings; special meetings; removal of member; records open to public; quorum.	5
125.2656	Appointment or employment of director, treasurer, secretary, personnel, and consultants; assistance provided by municipality; retirement and insurance programs.	5
125.2657	Powers of authority; determining captured taxable value; transfer of municipality funds to authority.	6
125.2658	Local site remediation revolving fund.	6
125.2659	Authority as instrumentality of political subdivision.	6
125.2660	Taking, transfer, and use of private property.	7
125.2661	Financing sources of authority activities.	7
125.2662	Bonds and notes of authority.	7
125.2663	Brownfield plan; provisions.	10
125.2664	Brownfield plan as public purpose; determination; amendments to plan; validity of procedure, notice, and findings; presumption.	11
125.2665	Prohibited conduct; work plan or remedial action plan; documents to be submitted for approval; factors to be considered in plan review; written request pertaining to baseline environmental assessment activities or due care activities; additional response activities; reimbursement of costs to review work plan or remedial action plan; report; distribution of remaining funds.	14
125.2666	Tax increment revenues; transmission to authority; expenditure; reversion of surplus funds; abolishment of plan; financial status report; collection of financial reports by department and state tax commission.	14
125.2667	Authorization, issuance, and sale of tax increment bonds and notes.	15
125.2668	Operating budget.	15
125.2669	Dissolution of authority; distribution of tax revenues and interest.	16
125.2670	Enforcement proceedings.	16
125.2671	Taxes levied before December 31, 1996.	16
125.2672	Conditional effective date.	16