

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5566

(As passed the House, March 11, 1998)

A bill to amend 1986 PA 281, entitled
"The local development financing act,"
by amending section 2 (MCL 125.2152), as amended by 1998 PA 1.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Advance" means a transfer of funds made by a municipal-
3 ity to an authority or to another person on behalf of the author-
4 ity in anticipation of repayment by the authority. Evidence of
5 the intent to repay an advance may include, but is not limited
6 to, an executed agreement to repay, provisions contained in a tax
7 increment financing plan approved prior to the advance, or a res-
8 olution of the authority or the municipality.

9 (b) "Assessed value" means 1 of the following:

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1 (i) For valuations made before January 1, 1995, the state
2 equalized valuation as determined under the general property tax
3 act, 1893 PA 206, MCL 211.1 to 211.157.

4 (ii) For valuations made after December 31, 1994, the tax-
5 able value as determined under section 27a of the general prop-
6 erty tax act, 1893 PA 206, MCL 211.27a.

7 (c) "Authority" means a local development finance authority
8 created pursuant to this act.

9 (d) "Authority district" means an area or areas within which
10 an authority exercises its powers.

11 (e) "Board" means the governing body of an authority.

12 (f) "Captured assessed value" means the amount in any 1 year
13 by which the current assessed value, as equalized, of the eligi-
14 ble property identified in the tax increment financing plan,
15 including the current assessed value of property for which spe-
16 cific local taxes are paid in lieu of property taxes as deter-
17 mined pursuant to subdivision (w), exceeds the initial assessed
18 value. The state tax commission shall prescribe the method for
19 calculating captured assessed value.

20 (g) "Certified industrial park" means an area of land desig-
21 nated by the ~~department of consumer and industry services~~
22 MICHIGAN JOBS COMMISSION as meeting all of the following
23 requirements:

24 (i) It contains not less than 40 acres of land.

25 (ii) It is zoned exclusively for use for eligible property.

26 (iii) It has a site plan or plat approved by the city,
27 village, or township in which the land is located.

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1 (iv) The developer of the land agrees to comply with other
2 requirements, not inconsistent with subparagraphs (i) to (iii),
3 imposed upon property classified as a certified industrial park
4 by the ~~department of consumer and industry services~~ MICHIGAN
5 JOBS COMMISSION under the certified industrial park program.
6 Compliance with these other requirements is not a prerequisite to
7 meeting the requirement of this subparagraph.

8 (h) "Chief executive officer" means the mayor or city man-
9 ager of a city, the president of a village, or, for other local
10 units of government or school districts, the person charged by
11 law with the supervision of the functions of the local unit of
12 government or school district.

13 (i) "Development plan" means that information and those
14 requirements for a development set forth in section 15.

15 (j) "Development program" means the implementation of a
16 development plan.

17 (k) "Eligible advance" means an advance made before
18 August 19, 1993.

19 (l) "Eligible obligation" means an obligation issued or
20 incurred by an authority or by a municipality on behalf of an
21 authority before August 19, 1993 and its subsequent refunding by
22 a qualified refunding obligation. Eligible obligation includes
23 an authority's written agreement entered into before August 19,
24 1993 to pay an obligation issued after August 18, 1993 and before
25 December 31, 1996 by another entity on behalf of the authority.

26 (m) "Eligible property" means land improvements, buildings,
27 structures, and other real property, and machinery, equipment,

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1 furniture, and fixtures, or any part or accessory thereof whether
2 completed or in the process of construction comprising an inte-
3 grated whole, located within an authority district, of which the
4 primary purpose and use is 1 of the following:

5 (i) The manufacture of goods or materials or the processing
6 of goods or materials by physical or chemical change.

7 (ii) Agricultural processing.

8 (iii) A high technology activity that has as its primary
9 purpose research, product development, engineering, laboratory
10 testing, or development of industrial technology. This subpara-
11 graph applies only to eligible property for which a tax increment
12 financing plan or development plan is adopted and bonds are
13 issued under this act before January 1, 1993.

14 (iv) The production of energy by the processing of goods or
15 materials by physical or chemical change by a small power produc-
16 tion facility as defined by the federal energy regulatory commis-
17 sion pursuant to the public utility regulatory policies act of
18 1978, Public Law 95-617, 92 Stat. 3117, which facility is fueled
19 primarily by biomass or wood waste. This act does not affect a
20 person's rights or liabilities under law with respect to ground-
21 water contamination described in this subparagraph. This sub-
22 paragraph applies only if all of the following requirements are
23 met:

24 (A) Tax increment revenues captured from the eligible prop-
25 erty will be used to finance, or will be pledged for debt service
26 on tax increment bonds used to finance, a public facility in or
27 near the authority district designed to reduce, eliminate, or

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1 prevent the spread of identified soil and groundwater
2 contamination, pursuant to law.

3 (B) The board of the authority exercising powers within the
4 authority district where the eligible property is located adopted
5 an initial tax increment financing plan between January 1, 1991
6 and May 1, 1991.

7 (C) The municipality that created the authority establishes
8 a special assessment district whereby not less than 50% of the
9 operating expenses of the public facility described in this sub-
10 paragraph will be paid for by special assessments. Not less than
11 50% of the amount specially assessed against all parcels in the
12 special assessment district shall be assessed against parcels
13 owned by parties potentially responsible for the identified
14 groundwater contamination pursuant to law.

15 (n) "Fiscal year" means the fiscal year of the authority.

16 (o) "Governing body" means the elected body having legisla-
17 tive powers of a municipality creating an authority under this
18 act.

19 (p) "Initial assessed value" means the assessed value, as
20 equalized, of the eligible property identified in the tax incre-
21 ment financing plan at the time the resolution establishing the
22 tax increment financing plan is approved as shown by the most
23 recent assessment roll for which equalization has been completed
24 at the time the resolution is adopted. Property exempt from tax-
25 ation at the time of the determination of the initial assessed
26 value shall be included as zero. Property for which a specific
27 local tax is paid in lieu of property tax shall not be considered

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1 exempt from taxation. The initial assessed value of property for
2 which a specific local tax was paid in lieu of property tax shall
3 be determined as provided in subdivision (w).

4 (q) "Municipality" means a city, village, or urban
5 township.

6 (r) "Obligation" means a written promise to pay, whether
7 evidenced by a contract, agreement, lease, sublease, bond, or
8 note, or a requirement to pay imposed by law. An obligation does
9 not include a payment required solely because of default upon an
10 obligation, employee salaries, or consideration paid for the use
11 of municipal offices. An obligation does not include those bonds
12 that have been economically defeased by refunding bonds issued
13 under this act. Obligation includes, but is not limited to, the
14 following:

15 (i) A requirement to pay proceeds derived from ad valorem
16 property taxes or taxes levied in lieu of ad valorem property
17 taxes.

18 (ii) A management contract or a contract for professional
19 services.

20 (iii) A payment required on a contract, agreement, bond, or
21 note if the requirement to make or assume the payment arose
22 before August 19, 1993.

23 (iv) A requirement to pay or reimburse a person for the cost
24 of insurance for, or to maintain, property subject to a lease,
25 land contract, purchase agreement, or other agreement.

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1 (v) A letter of credit, paying agent, transfer agent, bond
2 registrar, or trustee fee associated with a contract, agreement,
3 bond, or note.

4 (s) "On behalf of an authority", in relation to an eligible
5 advance made by a municipality or an eligible obligation or other
6 protected obligation issued or incurred by a municipality, means
7 in anticipation that an authority would transfer tax increment
8 revenues or reimburse the municipality from tax increment reve-
9 nues in an amount sufficient to fully make payment required by
10 the eligible advance made by a municipality, or eligible obliga-
11 tion or other protected obligation issued or incurred by the
12 municipality, if the anticipation of the transfer or receipt of
13 tax increment revenues from the authority is pursuant to or evi-
14 denced by 1 or more of the following:

15 (i) A reimbursement agreement between the municipality and
16 an authority it established.

17 (ii) A requirement imposed by law that the authority trans-
18 fer tax increment revenues to the municipality.

19 (iii) A resolution of the authority agreeing to make pay-
20 ments to the incorporating unit.

21 (iv) Provisions in a tax increment financing plan describing
22 the project for which the obligation was incurred.

23 (t) "Other protected obligation" means:

24 (i) A qualified refunding obligation issued to refund an
25 obligation described in subparagraph (ii) or (iii), an obligation
26 that is not a qualified refunding obligation that is issued to
27 refund an eligible obligation, or a qualified refunding

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1 obligation issued to refund an obligation described in this
2 subparagraph.

3 (ii) An obligation issued or incurred by an authority or by
4 a municipality on behalf of an authority after August 19, 1993,
5 but before December 31, 1994, to finance a project described in a
6 tax increment finance plan approved by the municipality in
7 accordance with this act before August 19, 1993, for which a con-
8 tract for final design is entered into by the municipality or
9 authority before March 1, 1994.

10 (iii) An obligation incurred by an authority or municipality
11 after August 19, 1993, to reimburse a party to a development
12 agreement entered into by a municipality or authority before
13 August 19, 1993, for a project described in a tax increment
14 financing plan approved in accordance with this act before
15 August 19, 1993, and undertaken and installed by that party in
16 accordance with the development agreement.

17 (iv) An ongoing management or professional services contract
18 with the governing body of a county which was entered into before
19 March 1, 1994 and which was preceded by a series of limited term
20 management or professional services contracts with the governing
21 body of the county, the last of which was entered into before
22 August 19, 1993.

23 (u) "Public facility" means 1 or more of the following:

24 (i) A street, road, bridge, sewer, sewage treatment facili-
25 ty, facility designed to reduce, eliminate, or prevent the spread
26 of identified soil or groundwater contamination, drainage system,
27 waterway, waterline, water storage facility, rail line, utility

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1 line or pipeline, or other similar or related structure or
2 improvement, together with necessary easements for the structure
3 or improvement, owned or used by a public agency or functionally
4 connected to similar or supporting facilities owned or used by a
5 public agency, or designed and dedicated to use by, for the bene-
6 fit of, or for the protection of the health, welfare, or safety
7 of the public generally, whether or not used by a single business
8 entity, provided that any road, street, or bridge shall be con-
9 tinuously open to public access and that other facilities shall
10 be located in public easements or rights-of-way and sized to
11 accommodate reasonably foreseeable development of eligible prop-
12 erty in adjoining areas.

13 (ii) The acquisition and disposal of real and personal prop-
14 erty or an interest in that property, demolition of structures,
15 site preparation, relocation costs, building rehabilitation, and
16 all administrative costs related to a public facility, including,
17 but not limited to, architect's, engineer's, legal, and account-
18 ing fees as contained in the resolution establishing the
19 district's development plan.

20 (iii) An improvement to a facility used by the public or a
21 public facility as those terms are defined in section 1 of 1966
22 PA 1, MCL 125.1351, which improvement is made to comply with the
23 barrier free design requirements of the state construction code
24 promulgated under the state construction code act of 1972, 1972
25 PA 230, MCL 125.1501 to 125.1531.

26 (v) "Qualified refunding obligation" means an obligation
27 issued or incurred by an authority or by a municipality on behalf

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1 of an authority to refund an obligation if the refunding
2 obligation meets both of the following:

3 (i) The net present value of the principal and interest to
4 be paid on the refunding obligation, including the cost of issu-
5 ance, will be less than the net present value of the principal
6 and interest to be paid on the obligation being refunded, as cal-
7 culated using a method approved by the department of treasury.

8 (ii) The net present value of the sum of the tax increment
9 revenues described in subdivision (y)(ii) and the distributions
10 under section 11a to repay the refunding obligation will not be
11 greater than the net present value of the sum of the tax incre-
12 ment revenues described in subdivision (y)(ii) and the distribu-
13 tions under section 11a to repay the obligation being refunded,
14 as calculated using a method approved by the department of
15 treasury.

16 (w) "Specific local taxes" means a tax levied under 1974 PA
17 198, MCL 207.551 to 207.572, the commercial redevelopment act,
18 1978 PA 255, MCL 207.651 to 207.668, the enterprise zone act,
19 1985 PA 224, MCL 125.2101 to 125.2123, 1953 PA 189, MCL 211.181
20 to 211.182, and the technology park development act, 1984 PA 385,
21 MCL 207.701 to 207.718. The initial assessed value or current
22 assessed value of property subject to a specific local tax is the
23 quotient of the specific local tax paid divided by the ad valorem
24 millage rate. However, after 1993, the state tax commission
25 shall prescribe the method for calculating the initial assessed
26 value and current assessed value of property for which a specific
27 local tax was paid in lieu of a property tax.

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1 (x) "State fiscal year" means the annual period commencing
2 October 1 of each year.

3 (y) "Tax increment revenues" means the amount of ad valorem
4 property taxes and specific local taxes attributable to the
5 application of the levy of all taxing jurisdictions upon the
6 ~~capture~~ CAPTURED assessed value of real and personal property
7 in the development area, subject to the following requirements:

8 (i) Tax increment revenues include ad valorem property taxes
9 and specific local taxes attributable to the application of the
10 levy of all taxing jurisdictions other than the state pursuant to
11 the state education tax act, 1993 PA 331, MCL 211.901 to 211.906,
12 and local or intermediate school districts upon the captured
13 assessed value of real and personal property in the development
14 area for any purpose authorized by this act.

15 (ii) Tax increment revenues include ad valorem property
16 taxes and specific local taxes attributable to the application of
17 the levy of the state pursuant to the state education tax act,
18 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate
19 school districts upon the captured assessed value of real and
20 personal property in the development area in an amount equal to
21 the amount necessary, without regard to subparagraph (i), to
22 repay eligible advances, eligible obligations, and other pro-
23 tected obligations.

24 (iii) Tax increment revenues do not include any of the
25 following:

26 (A) Ad valorem property taxes or specific local taxes
27 attributable either to a portion of the captured assessed value

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1 shared with taxing jurisdictions within the jurisdictional area
2 of the authority or to a portion of value of property that may be
3 excluded from captured assessed value.

4 (B) Ad valorem property taxes and specific local taxes
5 attributable to ad valorem property taxes excluded by the tax
6 increment financing plan of the authority from the determination
7 of the amount of tax increment revenues to be transmitted to the
8 authority.

9 (C) Ad valorem property taxes exempted from capture under
10 section 4(3) or specific local taxes attributable to such ad
11 valorem property taxes.

12 (D) Ad valorem property taxes specifically levied for the
13 payment of principal and interest of obligations approved by the
14 electors or obligations pledging the unlimited taxing power of
15 the local governmental unit or specific local taxes attributable
16 to such ad valorem property taxes.

17 (iv) The amount of tax increment revenues authorized to be
18 included under subparagraph (ii), and required to be transmitted
19 to the authority under section 13(1), from ad valorem property
20 taxes and specific local taxes attributable to the application of
21 the levy of the state education tax act, 1993 PA 331, MCL 211.901
22 to 211.906, a local school district or an intermediate school
23 district upon the captured assessed value of real and personal
24 property in a development area shall be determined separately for
25 the levy by the state, each school district, and each intermedi-
26 ate school district as the product of sub-subparagraphs (A) and
27 (B):

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1 (A) The percentage which the total ad valorem taxes and
2 specific local taxes available for distribution by law to the
3 state, local school district, or intermediate school district,
4 respectively, bears to the aggregate amount of ad valorem millage
5 taxes and specific taxes available for distribution by law to the
6 state, each local school district, and each intermediate school
7 district.

8 (B) The maximum amount of ad valorem property taxes and spe-
9 cific local taxes considered tax increment revenues under sub-
10 paragraph (ii).

11 (z) "Urban township" means a township that meets ~~all~~ 1 OR
12 MORE of the following:

13 (i) MEETS ALL OF THE FOLLOWING requirements:

14 (A) ~~(i)~~ Has a population of 20,000 or more, or has a popu-
15 lation of 10,000 or more but is located in a county with a popu-
16 lation of 400,000 or more.

17 (B) ~~(ii)~~ Adopted a master zoning plan before February 1,
18 1987.

19 (C) ~~(iii)~~ Provides sewer, water, and other public services
20 to all or a part of the township.

21 (ii) MEETS ALL OF THE FOLLOWING REQUIREMENTS:

22 (A) HAS A POPULATION OF LESS THAN 20,000.

23 (B) IS LOCATED IN A COUNTY WITH A POPULATION OF 250,000 OR
24 MORE BUT LESS THAN 400,000, AND THAT COUNTY IS LOCATED IN A MET-
25 ROPOLITAN STATISTICAL AREA.

26 (C) HAS WITHIN ITS BOUNDARIES A PARCEL OF PROPERTY UNDER
27 COMMON OWNERSHIP THAT IS 800 ACRES OR LARGER AND IS CAPABLE OF

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1 BEING SERVED BY A RAILROAD, AND LOCATED WITHIN 3 MILES OF A

2 LIMITED ACCESS HIGHWAY.

3 (D) ESTABLISHES AN AUTHORITY BEFORE DECEMBER 31, 1998.

(iii) MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(A) HAS A POPULATION OF LESS THAN 20,000.

(B) HAS A STATE EQUALIZED VALUE FOR ALL REAL AND PERSONAL
PROPERTY LOCATED IN THE TOWNSHIP OF MORE THAN \$200,000,000.00.

(C) ADOPTED A MASTER ZONING PLAN BEFORE FEBRUARY 1, 1987.

(D) IS A CHARTER TOWNSHIP UNDER THE CHARTER TOWNSHIP ACT, 1947
PA 359, MCL 42.1 TO 42.34.

(E) HAS WITHIN ITS BOUNDARIES A COMBINATION OF PARCELS UNDER
COMMON OWNERSHIP THAT IS 800 ACRES OR LARGER, IS IMMEDIATELY
ADJACENT TO A LIMITED ACCESS HIGHWAY, IS CAPABLE OF BEING SERVED BY
A RAILROAD, AND IS IMMEDIATELY ADJACENT TO AN EXISTING SEWER LINE.

(F) ESTABLISHES AN AUTHORITY BEFORE MARCH 1, 1999.