

**SUBSTITUTE FOR
HOUSE BILL NO. 5781**

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending section 15 (MCL 125.2665), as amended by 2007 PA 201.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 15. (1) An authority shall not do any of the following:
2 (a) For eligible activities not described in section 13(15),
3 use taxes levied for school operating purposes captured from
4 eligible property unless the eligible activities to be conducted on
5 the eligible property are eligible activities under part 201 of the
6 natural resources and environmental protection act, 1994 PA 451,
7 MCL 324.20101 to 324.20142, consistent with a work plan approved by

1 the department after July 24, 1996 and before January 1, 2013.
2 However, except as provided in subdivision (e), an authority may
3 use taxes levied for school operating purposes captured from
4 eligible property without the approval of a work plan by the
5 department for the reasonable costs of 1 or more of the following:

6 (i) Site investigation activities required to conduct a
7 baseline environmental assessment and to evaluate compliance with
8 section 20107a of the natural resources and environmental
9 protection act, 1994 PA 451, MCL 324.20107a.

10 (ii) Completing a baseline environmental assessment report.

11 (iii) Preparing a plan for compliance with section 20107a of the
12 natural resources and environmental protection act, 1994 PA 451,
13 MCL 324.20107a.

14 (b) For eligible activities not described in section 13(15),
15 other than activities that are exempt from the work plan approval
16 process under subsection (1)(a), use funds from a local site
17 remediation revolving fund that are derived from taxes levied for
18 school operating purposes unless the eligible activities to be
19 conducted are eligible activities under part 201 of the natural
20 resources and environmental protection act, 1994 PA 451, MCL
21 324.20101 to 324.20142, consistent with a work plan that has been
22 approved by the department after July 24, 1996.

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

1 growth authority.

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

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

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

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

21 (a) A copy of the brownfield plan.

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

26 (c) A summary of available information on the historical and
27 current use of each eligible property, including a brief summary of

1 site conditions and what is known about environmental contamination
2 as that term is defined in section 20101 of the natural resources
3 and environmental protection act, 1994 PA 451, MCL 324.20101.

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

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

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

10 (3) Upon receipt of a request for approval of a work plan
11 under subsection (2) or a portion of a work plan that pertains to
12 only baseline environmental assessment activities or due care
13 activities, or both, the department shall review the work plan
14 according to subsection (4) and provide 1 of the following written
15 responses to the requesting authority within 60 days:

16 (a) An unconditional approval.

17 (b) A conditional approval that delineates specific necessary
18 modifications to the work plan to meet the criteria of subsection
19 (4), including, but not limited to, individual activities to be
20 added or deleted from the work plan and revision of costs.

21 (c) If the work plan lacks sufficient information for the
22 department to respond under subdivision (a), (b), or (d) for any
23 specific activity, a letter stating with specificity the necessary
24 additions or changes to the work plan to be submitted before that
25 activity will be considered by the department. The department shall
26 respond under subdivision (a), (b), or (d) according to this
27 section for the other activities in the work plan.

1 (d) A denial if the property is not an eligible property under
2 this act, if the work plan contemplates the use of taxes levied for
3 school operating purposes prohibited by subsection (1)(e), or for
4 any specific activity if the activity is prohibited by subsection
5 (1)(d). The department may also deny any activity in a work plan
6 that does not meet the conditions in subsection (4) only if the
7 department cannot respond under subdivision (b) or (c). The
8 department shall accompany the denial with a letter that states
9 with specificity the reason for the denial. The department shall
10 respond under subdivision (a), (b), or (c) according to this
11 section for any activities in the work plan that are not denied
12 under this subdivision. If the department denies all or a portion
13 of a work plan under this subdivision, the authority may
14 subsequently resubmit the work plan.

15 (4) The department may approve a work plan if the following
16 conditions have been met:

17 (a) Whether some or all of the activities constitute due care
18 activities or additional response activities other than activities
19 that are exempt from the work plan approval process under
20 subsection (1)(a).

21 (b) The due care activities and response activities, other
22 than the activities that are exempt from the work plan approval
23 process under subsection (1)(a), are protective of the public
24 health, safety, and welfare and the environment. The department may
25 approve additional response activities that are more protective of
26 the public health, safety, and welfare and the environment than
27 required by section 20107a of the natural resources and

1 environmental protection act, 1994 PA 451, MCL 324.20107a, if those
2 activities provide public health or environmental benefit. In
3 review of a work plan that includes activities that are more
4 protective of the public health, safety, and welfare and the
5 environment, the department's considerations may include, but are
6 not limited to, all of the following:

7 (i) Proposed new land use and reliability of restrictions to
8 prevent exposure to contamination.

9 (ii) Cost of implementation activities minimally necessary to
10 achieve due care compliance, the incremental cost of all additional
11 response activities relative to the cost of all response
12 activities, and the total cost of all response activities.

13 (iii) Long-term obligations associated with leaving
14 contamination in place and the value of reducing or eliminating
15 these obligations.

16 (c) The estimated costs for the activities as a whole are
17 reasonable for the stated purpose. Except as provided in
18 subdivision (b), the department shall make the determination in
19 this subdivision only after the department determines that the
20 conditions in subdivisions (a) and (b) have been met.

21 (5) If the department fails to provide a written response
22 under subsection (3) within 60 days after receipt of a request for
23 approval of a work plan, the authority may proceed with the
24 activities as outlined in the work plan as submitted for approval.
25 Except as provided in subsection (6), activities conducted pursuant
26 to a work plan that was submitted to the department for approval
27 but for which the department failed to provide a written response

1 under subsection (3) shall be considered approved for the purposes
2 of subsection (1). Within 45 days after receiving additional
3 information requested from the authority under subsection (3)(c),
4 the department shall review the additional information according to
5 subsection (4) and provide 1 of the responses described in
6 subsection (3) to the requesting authority for the specific
7 activity. If the department does not provide a response to the
8 requesting authority within 45 days after receiving the additional
9 information requested under subsection (3)(c), the activity is
10 approved under subsection (1).

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

1 for the activities to be considered acceptable for the purposes of
2 compliance with part 201 of the natural resources and environmental
3 protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

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

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

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

20 (8) It shall be in the sole discretion of an authority to
21 propose to undertake additional response activities at an eligible
22 property under a brownfield plan. The department shall not require
23 a work plan to include additional response activities.

24 (9) The department shall review the portion of a work plan
25 that includes additional response activities in accordance with
26 subsection (4).

27 (10) The department's approval or denial of a work plan

1 submitted under this section constitutes a final decision in regard
2 to the use of taxes levied for school operating purposes but does
3 not restrict an authority's use of tax increment revenues
4 attributable to local taxes to pay for eligible activities under a
5 brownfield plan. If a person is aggrieved by the final decision,
6 the person may appeal under section 631 of the revised judicature
7 act of 1961, 1961 PA 236, MCL 600.631.

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

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

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

21 (b) The amount of tax increment revenues approved by the
22 department in the immediately preceding calendar year, including
23 taxes levied for school operating purposes, to conduct eligible
24 activities.

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

1 (a) A copy of the brownfield plan.

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

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

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

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

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

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

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

24 (a) An unconditional approval that includes an enumeration of
25 eligible activities and a maximum allowable capture amount.

26 (b) A conditional approval that delineates specific necessary
27 modifications to the work plan, including, but not limited to,

1 individual activities to be added or deleted from the work plan and
2 revision of costs.

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

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

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

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

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

17 (d) The overall benefit to the public.

18 (e) The extent of reuse of vacant buildings and redevelopment
19 of blighted property.

20 (f) Creation of jobs.

21 (g) Whether the eligible property is in an area of high
22 unemployment.

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

25 (i) The level of private sector contribution.

26 (j) The cost gap that exists between the site and a similar
27 greenfield site as determined by the Michigan economic growth

1 authority.

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

5 (l) Whether the project of the developer, landowner, or
6 corporate entity that is included in the work plan is financially
7 and economically sound.

8 (m) Other state and local incentives available to the
9 developer, landowner, or corporate entity for the project of the
10 developer, landowner, or corporate entity that is included in the
11 work plan.

12 (n) Any other criteria that the Michigan economic growth
13 authority considers appropriate for the determination of
14 eligibility or for approval of the work plan.

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

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

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

27 (19) The Michigan economic growth authority shall submit a

1 report each year on or before March 1 to each member of the
2 legislature that contains all of the following:

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

5 (b) The amount of tax increment revenues approved by the
6 Michigan economic growth authority in the immediately preceding
7 calendar year, including taxes levied for school operating
8 purposes, to conduct eligible activities.

9 (20) All taxes levied for school operating purposes that are
10 not used for eligible activities consistent with a work plan
11 approved by the department or the Michigan economic growth
12 authority or for the payment of interest under section 13 and that
13 are not deposited in a local site remediation revolving fund shall
14 be distributed proportionately between the local school district
15 and the school aid fund.

16 (21) An authority shall not use taxes levied for school
17 operating purposes captured from eligible property for eligible
18 activities for a qualified facility or for eligible activities for
19 property located in an economic opportunity zone.

20 (22) The department's approval of a work plan under subsection
21 (3)(a) or (b) does not imply an entitlement to reimbursement of the
22 costs of the eligible activities if the work plan is not
23 implemented as approved.

24 (23) The applicant and the department can, by mutual
25 agreement, extend the time period for any review described in this
26 section. An agreement described in this subsection shall be
27 documented in writing.

House Bill No. 5781 (H-1) as amended April 9, 2008

1 (24) BEGINNING JULY 1, 2008, THE AUTHORITY SHALL NOT USE TAX
2 INCREMENT REVENUES TO PAY OR REIMBURSE A BUSINESS ENTITY FOR
3 ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES UNLESS THE BUSINESS
4 ENTITY STATES, IN WRITING, THAT THE BUSINESS ENTITY WILL NOT
5 KNOWINGLY HIRE OR CONTRACT WITH ANY BUSINESS ENTITY THAT KNOWINGLY
6 HIRES AN INDIVIDUAL WHO IS NOT AUTHORIZED UNDER FEDERAL LAW TO WORK
7 IN THE UNITED STATES[.

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12 (25) BEGINNING JULY 1, 2008, THE AUTHORITY SHALL NOT USE TAX
13 INCREMENT REVENUES TO PAY OR REIMBURSE A BUSINESS ENTITY FOR
14 ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES UNLESS THE BUSINESS
15 ENTITY STATES, IN WRITING, THAT THE BUSINESS ENTITY WILL DO ALL OF
16 THE FOLLOWING:

17 (A) HIRE ONLY RESIDENTS OF THIS STATE TO PERFORM ELIGIBLE
18 ACTIVITIES ON ELIGIBLE PROPERTIES UNDER THIS ACT UNLESS THE
19 AUTHORITY DETERMINES THAT THE ELIGIBLE ACTIVITIES CANNOT BE
20 PERFORMED BY USING ONLY RESIDENTS OF THIS STATE FOR 1 OR MORE OF
21 THE FOLLOWING:

22 (i) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR
23 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

24 (ii) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS
25 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE
26 NEEDED.

27 (B) CONTRACT WITH BUSINESSES THAT AGREE TO HIRE ONLY RESIDENTS

1 OF THIS STATE TO PERFORM ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES
2 UNDER THIS ACT UNLESS THE AUTHORITY DETERMINES THAT THE ELIGIBLE
3 ACTIVITIES CANNOT BE PERFORMED BY USING ONLY RESIDENTS OF THIS
4 STATE FOR 1 OR MORE OF THE FOLLOWING:

5 (i) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR
6 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

7 (ii) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS
8 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE
9 NEEDED.

10 (26) BEGINNING JULY 1, 2008, THE WRITTEN AGREEMENT DESCRIBED
11 IN SUBSECTIONS (24) AND (25) SHALL ALSO CONTAIN A REMEDY PROVISION
12 THAT PROVIDES FOR ALL OF, BUT NOT LIMITED TO, A REQUIREMENT THAT
13 THE BUSINESS ENTITY MAY BE REQUIRED TO REPAY SOME OR ALL OF THE
14 PAYMENTS OR REIMBURSEMENTS RECEIVED UNDER THIS ACT IF THE ELIGIBLE
15 BUSINESS IS DETERMINED TO BE IN VIOLATION OF THE PROVISIONS OF
16 SUBSECTION (25) OR (26), AS DETERMINED BY THE AUTHORITY.

17 (27) EACH AUTHORITY SHALL REPORT TO THE BOARD OF THE MICHIGAN
18 STRATEGIC FUND AND ON OCTOBER 1 ON THE ACTIVITIES OF THE AUTHORITY.
19 THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE
20 FOLLOWING:

21 (A) THE NUMBER OF MICHIGAN RESIDENTS EMPLOYED IN NEW JOBS IN
22 THE IMMEDIATELY PRECEDING YEAR IN WHICH SUBSECTIONS (24) AND (25)
23 APPLY.

24 (B) THE TOTAL NUMBER OF NEW JOBS CREATED IN ALL JOBS IN THE
25 IMMEDIATELY PRECEDING YEAR IN WHICH SUBSECTIONS (24) AND (25)
26 APPLY.

27 (C) THE SPECIFIC REASONS FOR EACH DETERMINATION OF EXEMPTION

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1 FROM THE PROVISIONS OF SUBSECTION (25) (A) OR (B) MADE BY THE

2 AUTHORITY AND THE NUMBER OF JOBS RELATED TO EACH DETERMINATION.

[(28) THE ATTORNEY GENERAL OF THIS STATE, OR OTHER APPROPRIATE
STATE AGENCY, SHALL BE RESPONSIBLE FOR ANY ENFORCEMENT NECESSARY TO
ENSURE COMPLIANCE AFTER THE APPLICANT HAS SIGNED THE AGREEMENT UNDER THE
PROVISIONS DESCRIBED IN SUBSECTIONS (24), (25), AND (26).]