

**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; to create brownfield redevelopment zones; to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, tax reverted, blighted, or functionally obsolete property; 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;—Am. 2003, Act 259, Imd. Eff. Jan. 5, 2004.

*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.

**Compiler's note:** For transfer of powers and duties of department of environmental quality to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

**125.2652 Definitions.**

Sec. 2. As used in this act:

- (a) "Authority" means a brownfield redevelopment authority created under this act.
- (b) "Baseline environmental assessment" means that term as defined in part 201 or 213.
- (c) "Blighted" means property that meets any of the following criteria as determined by the governing body:
  - (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.
  - (vi) Is property owned by or under the control of a land bank fast track authority, whether or not located within a qualified local governmental unit. Property included within a brownfield plan prior to the date it meets the requirements of this subdivision to be eligible property shall be considered to become eligible property as of the date the property is determined to have been or becomes qualified as, or is combined with, other eligible property. The sale, lease, or transfer of the property by a land bank fast track authority 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.
  - (vii) Has substantial buried subsurface demolition debris present so that the property is unfit for its intended use.
- (d) "Board" means the governing body of an authority.
- (e) "Brownfield plan" means a plan that meets the requirements of section 13 and section 13b and is adopted under section 14.
- (f) "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.
- (g) "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.
- (h) "Combined brownfield plan" means a brownfield plan that also includes the information necessary to submit the plan to the department or Michigan strategic fund under section 15(20).
- (i) "Construction period tax capture revenues" means funds equal to the amount of income tax levied and

imposed in a calendar year upon wages paid to individuals physically present and working within the eligible property for the construction, renovation, or other improvement of eligible property that is an eligible activity within a transformational brownfield plan. As used in this subdivision, "wages" means that term as defined in section 3401 of the internal revenue code of 1986, 26 USC 3401. To calculate the amount of construction period tax capture revenues for a calendar year under a transformational brownfield plan, the state treasurer shall do all of the following:

(i) Require the owner or developer of the eligible property to report the total taxable wages paid to individuals for the construction, renovation, or other improvement of eligible property that is an eligible activity within the transformational brownfield plan. The wages reported under this subparagraph shall exclude any wages paid to employees of the owner or developer.

(ii) Multiply the amount under subparagraph (i) by the effective rate as determined by the state treasurer at which the income tax is levied on an individual in this state. The state treasurer shall estimate the effective rate by taking into account the effect of any exemptions, additions, subtractions, and credits allowable under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. The state treasurer may require the owner or developer to submit any information necessary for the calculation under this subparagraph.

(iii) The wage information and other information required under this subdivision shall be provided to the department of treasury by the owner or developer in a manner prescribed by the state treasurer. The state treasurer may require the owner or developer to provide a review or reconciliation of the wages by an independent auditing firm.

(j) "Corrective action" means that term as defined in part 111 or part 213.

(k) "Department" means the department of environment, Great Lakes, and energy.

(l) "Department specific activities" means baseline environmental assessments, due care activities, response activities, and other environmentally related actions that are eligible activities and are identified as a part of a brownfield plan that are in addition to the minimum due care activities required by part 201, including, but not limited to:

(i) Response activities that are more protective of the public health, safety, and welfare and the environment than required by section 20107a, 20114, or 21304c of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a, 324.20114, and 324.21304c.

(ii) Removal and closure of underground storage tanks pursuant to part 211 or 213.

(iii) Disposal of solid waste, as defined in part 115 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11501 to 324.11554, from the eligible property, provided it was not generated or accumulated by the authority or the developer.

(iv) Dust control related to construction activities.

(v) Removal and disposal of lake or river sediments exceeding part 201 criteria from, at, or related to an economic development project where the upland property is either a facility or would become a facility as a result of the deposition of dredged spoils.

(vi) Industrial cleaning.

(vii) Sheeting and shoring necessary for the removal of materials exceeding part 201 criteria at projects requiring a permit pursuant to part 301, 303, or 325 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30101 to 324.30113, MCL 324.30301 to 324.30328, or MCL 324.32501 to 324.32515a.

(viii) Lead, mold, or asbestos abatement when lead, mold, or asbestos pose an imminent and significant threat to human health.

(ix) Environmental insurance.

(m) "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 or 21304c of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a and 324.21304c.

(n) "Economic opportunity zone" means 1 or more parcels of property that meet all of the following:

(i) That together are 40 or more acres in size.

(ii) That contain or contained a manufacturing operation that consists or consisted of 500,000 or more square feet.

(iii) That are located in a municipality that has a population of 30,000 or less and that is contiguous to a qualified local governmental unit.

(o) "Eligible activities" or "eligible activity" means 1 or more of the following:

(i) For all eligible properties, eligible activities include all of the following:

(A) Department specific activities.

(B) Relocation of public buildings or operations for economic development purposes.

(C) Reasonable costs of environmental insurance.

(D) Reasonable costs incurred to develop and prepare brownfield plans, combined brownfield plans, or work plans for the eligible property, including legal and consulting fees that are not in the ordinary course of acquiring and developing real estate.

(E) Reasonable costs of brownfield plan and work plan implementation, including, but not limited to, tracking and reporting of data and plan compliance and the reasonable costs incurred to estimate and determine actual costs incurred, whether those costs are incurred by a municipality, authority, or private developer.

(F) Demolition of structures that is not a response activity, including removal of manufactured debris composed of discarded, unused, or unusable manufactured by-products left on the site by a previous owner. The removal of the manufactured by-products left on the site described in this sub-subparagraph is not eligible for interest reimbursement under sub-subparagraph (H).

(G) Lead, asbestos, or mold abatement.

(H) Except as otherwise provided in sub-subparagraph (F), the repayment of principal of and interest on any obligation issued by an authority to pay the costs of eligible activities attributable to an eligible property.

(ii) For eligible properties located in a qualified local unit of government, or an economic opportunity zone, or that is a former mill, eligible activities include:

(A) The activities described in subparagraph (i).

(B) Infrastructure improvements that directly benefit eligible property.

(C) Site preparation that is not a response activity.

(iii) For eligible properties that are owned by or under the control of a land bank fast track authority, or a qualified local unit of government or authority, eligible activities include:

(A) The eligible activities described in subparagraphs (i) and (ii).

(B) Assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned by or under the control of a land bank fast track authority or the acquisition of property by the land bank fast track authority if the acquisition of the property is for economic development purposes.

(C) Assistance to a qualified local governmental unit or authority in clearing or quieting title to, or selling or otherwise conveying, property owned by or under the control of a qualified local governmental unit or authority or the acquisition of property by a qualified local governmental unit or authority if the acquisition of the property is for economic development purposes.

(iv) For eligible activities on eligible property that is included in a transformational brownfield plan, any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property.

(v) For eligible activities on eligible property that is a qualified facility that is not located in a qualified local governmental unit and that is a facility, functionally obsolete, or blighted, the following additional activities:

(A) The activities described in subparagraph (i).

(B) Infrastructure improvements that directly benefit eligible property.

(C) Site preparation that is not a response activity.

(p) "Eligible property" means, except as otherwise provided in this subdivision, property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes, including personal property located on the property, to the extent included in the brownfield plan, and that is 1 or more of the following:

(i) Is in a qualified local governmental unit and is a facility or a site or property as those terms are defined in part 213, historic resource, functionally obsolete, or blighted 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.

(ii) Is not in a qualified local governmental unit and is a facility, historic resource, functionally obsolete, blighted, or a site or property as those terms are defined in part 213, 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.

(iii) Is tax reverted property owned by or under the control of a land bank fast track authority.

(iv) Is a transit-oriented development or transit-oriented property.

(v) Is located in a qualified local governmental unit and contains a targeted redevelopment area.

(vi) Is undeveloped property that was eligible property in a previously approved brownfield plan abolished under section 14(8).

(vii) 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.

(q) "Environmental insurance" means liability insurance for environmental contamination and cleanup that is not otherwise required by state or federal law.

(r) "Facility" means that term as defined in part 201.

(s) "Fiscal year" means the fiscal year of the authority.

(t) "Former mill" means a former mill that has not been used for industrial purposes for the immediately preceding 2 years, that is not located in a qualified local governmental unit, that is a facility or is a site or a property as those terms are defined in part 213, functionally obsolete, or blighted, and that is located within 15 miles of a river that is a federal superfund site listed under the comprehensive environmental response, compensation and liability act of 1980, 42 USC 9601 to 9675, and that is located in a municipality with a population of less than 10,000.

(u) "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.

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

(w) "Historic resource" means that term as defined in section 90a of the Michigan strategic fund act, 1984 PA 270, MCL 125.2090a.

(x) "Income tax" means the tax levied and imposed under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

(y) "Income tax capture revenues" means, with respect to each eligible property subject to a transformational brownfield plan, funds equal to the amount for each tax year by which the aggregate income tax from individuals residing within the eligible property subject to a transformational brownfield plan exceeds the initial income tax value. Subject to subparagraph (iii), the state treasurer shall calculate annually the income tax capture revenues associated with each transformational brownfield plan. In calculating income tax capture revenues, the state treasurer shall subtract from the aggregate amount of income tax credits under sections 255, 265, 266, and chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.255, 206.265, 206.266, and 206.501 to 206.532. The state treasurer shall require the owner or developer of the eligible property to provide to the department of treasury all of the following information at the end of each calendar year, including the year in which the resolution adding that eligible property in the transformational brownfield plan is adopted:

(i) A list of addresses for all residential units, rental or owner-occupied, within the eligible property.

(ii) Any other information that may be necessary to calculate the income tax capture revenues. The information required under this subdivision shall be provided in a manner prescribed by the state treasurer.

(iii) Notwithstanding anything to the contrary in this subdivision, in lieu of the reporting and calculation methods otherwise provided for, the owner or developer of a transformational brownfield project site may elect to utilize a safe harbor method of calculating income tax capture revenues. Under this safe harbor method, the Michigan strategic fund shall establish a safe harbor amount of annual income tax capture revenues for each eligible property at the time the Michigan strategic fund approves the transformational brownfield plan, and those amounts shall serve as the basis for the transmittal of income tax capture revenues to the owner or developer of the transformational project site under section 8a(4). The Michigan strategic fund shall establish the safe harbor amount for an eligible property by imputing a standard annual taxable income for households residing within the eligible property or portion of the eligible property. The safe harbor is effective only to the extent that the residential units within the eligible property or portion of the eligible property are actively leased or, in the case of units made available for sale, sold in an arms-length transaction. Imputations as to standard household taxable income may vary based on location and other relevant factors. The Michigan strategic fund may adjust the safe harbor amount for an eligible property, or portion of the eligible property, after the time of transformational brownfield plan approval as required to reflect changes in the transformational brownfield plan for the transformational project site that may occur after approval of the transformational brownfield plan, provided that those changes may not result in an aggregate increase in the level of income tax capture revenues from the amount initially established. The owner or developer of the transformational project site may make the election to utilize the safe harbor method of accounting at any time prior to the first reimbursement of income tax capture revenues under the transformational brownfield plan, provided that an election, once made, cannot be rescinded.

(z) "Industrial cleaning" means cleaning or removal of contaminants from within a structure necessary to achieve the intended use of the property.

(aa) "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, transit-oriented development, transit-oriented property, 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. Infrastructure improvements also include 1 or more of the following whether publicly or privately owned or operated or located on public or private property:

- (i) Underground parking.
- (ii) Multilevel parking structures.
- (iii) Urban stormwater management systems.

(bb) "Initial income tax value" means, with respect to each eligible property subject to a transformational brownfield plan, the aggregate amount of income tax less credits under sections 255, 265, 266, and chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.255, 206.265, 206.266, and 206.501 to 206.532, from individuals residing within the eligible property for the tax year in which the resolution adding that eligible property in the transformational brownfield plan is adopted.

(cc) "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 either by the most recent assessment roll for which equalization has been completed at the time the resolution is adopted or, if provided by the brownfield plan, by the next assessment roll for which equalization will be completed following the date the resolution adding that eligible property in the brownfield plan 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. The initial assessed value may be modified by lowering the initial assessed value once during the term of the brownfield plan through an amendment as provided in section 14 after the tax increment financing plan fails to generate captured taxes for 3 consecutive years due to declines in assessed value.

(dd) "Initial withholding tax value" means, with respect to each eligible property subject to a transformational brownfield plan, the amount of income tax withheld under part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, from individuals employed within the eligible property for the calendar year in which the resolution adding the eligible property to the plan is adopted. The initial withholding tax value shall not include construction period tax capture revenues.

(ee) "Land bank fast track authority" means an authority created under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774.

(ff) "Local taxes" means all taxes levied other than taxes levied for school operating purposes.

(gg) "Michigan strategic fund" means the Michigan strategic fund created under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(hh) "Mixed-use" means a real estate project with planned integration of some combination of retail, office, residential, or hotel uses.

(ii) "Municipality" means all of the following:

- (i) A city.
- (ii) A village.
- (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.

(jj) "Owned by or under the control of" means that a land bank fast track authority or a qualified local unit of government has 1 or more of the following:

- (i) An ownership interest in the property.
- (ii) A tax lien on the property.
- (iii) A tax deed to the property.

- (iv) A contract with this state or a political subdivision of this state to enforce a lien on the property.
- (v) A right to collect delinquent taxes, penalties, or interest on the property.
- (vi) The ability to exercise its authority over the property.
- (kk) "Part 111", "part 201", "part 211", or "part 213" means that part as described as follows:
- (i) Part 111 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11153.
- (ii) Part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142.
- (iii) Part 211 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21101 to 324.21113.
- (iv) Part 213 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21301a to 324.21334.
- (ll) "Qualified facility" means a landfill facility area of 15 or more contiguous acres that is located in a city and that contains, contained, or is adjacent to a landfill, a material recycling facility, or an asphalt plant that is no longer in operation.
- (mm) "Qualified local governmental unit" means that term as defined in the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.
- (nn) "Qualified taxpayer" means that term as defined in sections 38d and 38g of former 1975 PA 228, or section 437 of the Michigan business tax act, 2007 PA 36, MCL 208.1437, or a recipient of a community revitalization incentive as described in section 90a of the Michigan strategic fund act, 1984 PA 270, MCL 125.2090a.
- (oo) "Release" means that term as defined in part 201 or part 213.
- (pp) "Response activity" means either of the following:
- (i) Response activity as that term is defined in part 201.
- (ii) Corrective action.
- (qq) "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; the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786; the commercial rehabilitation act, 2005 PA 210, MCL 207.841 to 207.856; or that portion of the tax levied under the tax reverted clean title act, 2003 PA 260, MCL 211.1021 to 211.1025a, that is not required to be distributed to a land bank fast track authority.
- (rr) "State brownfield redevelopment fund" means the state brownfield redevelopment fund created in section 8a.
- (ss) "Targeted redevelopment area" means not fewer than 40 and not more than 500 contiguous parcels of real property located in a qualified local governmental unit and designated as a targeted redevelopment area by resolution of the governing body and approved by the Michigan strategic fund. A qualified local governmental unit is limited to designating no more than 2 targeted redevelopment areas for the purposes of this section in a calendar year. The Michigan strategic fund may approve no more than 5 targeted redevelopment areas for the purposes of this section in a calendar year.
- (tt) "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, regardless of whether those taxes began to be levied after the brownfield plan was adopted. Tax increment revenues do not include any of the following:
- (i) 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.
- (ii) For 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 under part 2 of the recodified tax increment financing act, 2018 PA 57, MCL 125.4201 to 125.4230, tax increment finance authority under the tax increment finance authority act, part 3 of the recodified tax increment financing act, 2018 PA 57, MCL 125.4301 to 125.4329, corridor improvement authority under part 6 of the recodified tax increment financing act, 2018 PA 57, MCL 125.4602 to 125.4629, or local development finance authority under part 4 of the recodified tax increment financing act, 2018 PA 57, MCL 125.4401 to 125.4420, if those taxes were captured by these other authorities on the date that eligible property became subject to a brownfield plan under this act.
- (iii) Ad valorem property taxes levied under 1 or more of the following or specific taxes attributable to

those ad valorem property taxes:

(A) The zoological authorities act, 2008 PA 49, MCL 123.1161 to 123.1183.

(B) The art institute authorities act, 2010 PA 296, MCL 123.1201 to 123.1229.

(uu) "Taxable value" means the value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(vv) "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).

(ww) "Transformational brownfield plan" means a brownfield plan that meets the requirements of section 13c and is adopted under section 14a and, as designated by resolution of the governing body and approved by the Michigan strategic fund, will have a transformational impact on local economic development and community revitalization based on the extent of brownfield redevelopment and growth in population, commercial activity, and employment that will result from the plan. To be designated a transformational brownfield plan, a transformational brownfield plan under this subdivision shall be for mixed-use development unless waived by the Michigan strategic fund as provided under section 14a(26) and shall be expected to result in the following levels of capital investment:

(i) In a municipality that is not a county and that has a population of at least 600,000, \$500,000,000.00.

(ii) In a municipality that is not a county and that has a population of at least 150,000 and not more than 599,999, \$100,000,000.00.

(iii) In a municipality that is not a county and that has a population of at least 100,000 and not more than 149,999, \$75,000,000.00.

(iv) In a municipality that is not a county and that has a population of at least 50,000 and not more than 99,999, \$50,000,000.00.

(v) In a municipality that is not a county and that has a population of at least 25,000 and not more than 49,999, \$25,000,000.00.

(vi) In a municipality that is not a county and that has a population of less than 25,000, \$15,000,000.00.

(xx) "Transit-oriented development" means infrastructure improvements that are located within 1/2 mile of a transit station or transit-oriented property that promotes transit ridership or passenger rail use as determined by the board and approved by the municipality in which it is located.

(yy) "Transit-oriented property" means property that houses a transit station in a manner that promotes transit ridership or passenger rail use.

(zz) "Withholding tax capture revenues" means, with respect to each eligible property subject to a transformational brownfield plan, the amount for each calendar year by which the income tax withheld under part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, from individuals employed within the eligible property exceeds the initial withholding tax value. Withholding tax capture revenues shall not include income tax from individuals domiciled within the eligible property or construction period tax capture revenues. To calculate withholding tax capture revenues for a calendar year under a transformational brownfield plan, the state treasurer or the Michigan strategic fund shall do all of the following:

(i) The state treasurer shall require the owner or developer of the eligible property to provide the department of treasury with notice not more than 10 days from the date an employer commences or terminates occupancy within the eligible property. As used in this subdivision, "employer" means that term as defined in section 8 of the income tax act of 1967, 1967 PA 281, MCL 206.8.

(ii) The state treasurer shall develop methods and processes that are necessary for each employer occupying the eligible property to report the amount of withholding under part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, from individuals employed within the eligible property.

(iii) The Michigan strategic fund shall include the following provisions in the development or reimbursement agreement for any transformational brownfield plan that utilizes withholding tax capture revenues:

(A) That the owner or developer of the eligible property shall require each employer occupying the eligible property to comply with the reporting requirements under this section through a contract requirement, lease requirement, or other such means.

(B) That reimbursement of withholding tax capture revenues is limited to amounts that are reported in accordance with part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, and this state has no obligation with respect to withholding tax capture revenues that are not reported or paid.

(iv) Notwithstanding anything to the contrary in this subdivision, in lieu of the reporting and calculation methods otherwise provided for, the owner or developer of a transformational project site may elect to utilize a safe harbor method of calculating withholding tax capture revenues. Under this safe harbor method, the

Michigan strategic fund shall establish a safe harbor amount of annual withholding tax capture revenues for each eligible property at the time the Michigan strategic fund approves the transformational brownfield plan, and those amounts shall serve as the basis for the transmittal of withholding tax capture revenues to the owner or developer of the transformational project site under section 8a(4). The Michigan strategic fund shall establish the safe harbor amount for an eligible property by imputing a standard level of employee occupancy that corresponds to the size and use of the eligible property or portion of the eligible property and a safe harbor average annual taxable wage for the individuals employed within the eligible property or portion of the eligible property. The safe harbor shall be effective only to the extent the eligible property or portion of the eligible property is actively occupied, as evidenced by the existence of a binding lease agreement or similar instrument. Imputations as to occupancy and wages may vary between projects based on location, the type and use of the eligible property, and other relevant factors. The Michigan strategic fund may adjust the safe harbor amount for an eligible property, or portion of the eligible property, after the time of plan approval as required to reflect changes in the transformational brownfield plan for the transformational project site that may occur after approval of the transformational brownfield plan, provided that any of those changes may not result in an aggregate increase in the level of withholding tax capture revenues from the amount initially established. The owner or developer of the transformational project site may make the election to utilize the safe harbor method of accounting at any time prior to the first reimbursement of withholding tax capture revenues under the plan, provided that an election, once made, cannot be rescinded.

(aaa) "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.

(bbb) "Zone" means, for an authority established before June 6, 2000, 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;—Am. 2003, Act 259, Imd. Eff. Jan. 5, 2004;—Am. 2003, Act 277, Imd. Eff. Jan. 8, 2004;—Am. 2005, Act 101, Imd. Eff. July 22, 2005;—Am. 2006, Act 32, Imd. Eff. Feb. 23, 2006;—Am. 2007, Act 204, Imd. Eff. Dec. 27, 2007;—Am. 2010, Act 241, Imd. Eff. Dec. 14, 2010;—Am. 2010, Act 246, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 502, Imd. Eff. Dec. 28, 2012;—Am. 2013, Act 67, Imd. Eff. June 19, 2013;—Am. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2017, Act 46, Eff. July 24, 2017;—Am. 2018, Act 203, Imd. Eff. June 20, 2018;—Am. 2020, Act 259, Imd. Eff. Dec. 29, 2020;—Am. 2021, Act 138, Imd. Eff. Dec. 27, 2021;—Am. 2022, Act 178, Imd. Eff. July 25, 2022.

### **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 June 6, 2000 shall exercise its powers within its designated zones. Except as provided in subsection (4), an authority established on or after June 6, 2000 shall exercise its powers over any eligible property located in the municipality.

(2) An authority with zones established before June 6, 2000 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.

(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;—Am. 2016, Act 471, Eff. Apr. 5, 2017.

### **125.2654 Resolution by governing body; adoption; notice; public hearing; proceedings establishing authority; presumption of validity; exercise of powers 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. The notice of the public hearing 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;—Am. 2005, Act 101, Imd. Eff. July 22, 2005;—Am. 2012, Act 502, Imd. Eff. Dec. 28, 2012;—Am. 2016, Act 471, Eff. Apr. 5, 2017.

**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.

(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. The rules of procedure of the authority may permit a person to be appointed to the board in his or her capacity as a public official, whether appointed or elected. The rules of procedure of the authority may also provide that the member's term on the board shall expire upon expiration of the member's service as a public official. The expiration of service as a public official shall be defined to also include the public official's resignation or removal from the position as a public official.

(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;—Am. 2014, Act 244, Imd. Eff. June 27, 2014.

### **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:

(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 authority, incur costs and expend funds from the local brownfield 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;—Am. 2016, Act 471, Eff. Apr. 5, 2017.

### **125.2658 Local brownfield revolving fund.**

Sec. 8. (1) An authority may establish a local brownfield revolving fund. A local brownfield revolving fund shall consist of funds deposited from the following sources:

(a) Funds appropriated or otherwise made available from public or private sources.

(b) Local tax and school operating tax increment revenue captured in excess of the amount authorized for eligible expenses under section 13(4) only when all of the following conditions are met:

(i) The excess capture occurs during the time of capture for the purpose of paying the costs permitted under section 13(4), or for not more than 5 years after the time that capture is required for the purpose of paying the costs permitted under section 13(4), or both.

(ii) The excess local tax capture shall not exceed the total of the cost of eligible activities approved in the brownfield plan.

(iii) The excess capture of taxes for school operating purposes shall not exceed the total of the cost of eligible department specific activities approved in the applicable brownfield plan, combined brownfield plan, or work plan. The total excess tax capture shall not exceed the total of the cost of eligible activities approved in the brownfield plan.

(iv) Excess tax increment revenues from taxes levied for school operating purposes for eligible activities authorized under section 13b(4) by the Michigan strategic fund shall not be captured for deposit in the local brownfield revolving fund.

(2) The capture of school operating tax increment revenue described in subsection (1)(b) is subject to the 50% capture specified in section 13b(14).

(3) The tax increment revenues from eligible property for deposit in the local brownfield revolving fund may include tax increment revenues attributable to taxes 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 pursuant to section 13(4).

(4) The local brownfield revolving fund may be used only to pay the costs of eligible activities on property that is located within the municipality and meets at least 1 of the conditions under section 2(o). However,

activities outlined in section 13b(8) may be conducted and funded on prospective properties.

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

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2012, Act 502, Imd. Eff. Dec. 28, 2012;—Am. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2020, Act 259, Imd. Eff. Dec. 29, 2020.

### **125.2658a State brownfield redevelopment fund.**

Sec. 8a. (1) The state brownfield redevelopment fund is created as a revolving fund within the department of treasury to be administered as provided in this section. The state treasurer shall direct the investment of the state brownfield redevelopment fund. Money in the state brownfield redevelopment fund at the close of the fiscal year shall remain in the state brownfield redevelopment fund and shall not lapse to the general fund.

(2) The state treasurer shall credit to the fund money from the following sources:

(a) All amounts deposited into the state brownfield redevelopment fund under subsection (4) and section 13b(14).

(b) The proceeds from repayment of a loan, including interest on those repayments, under subsection (3)(c)(vi).

(c) Interest on funds deposited into the state brownfield redevelopment fund.

(d) Money obtained from any other source authorized by law.

(3) The state brownfield redevelopment fund may be used only for the following purposes:

(a) Up to 15% of the amounts deposited annually into the state brownfield redevelopment fund may be used to pay administrative costs of all of the following:

(i) The Michigan strategic fund to implement this act.

(ii) The department to implement this act.

(iii) The department to implement part 196 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19601 to 324.19616.

(iv) The department of treasury to implement this act.

(b) To make deposits into the clean Michigan initiative bond fund under section 19606(2)(d) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19606, for use in providing grants and loans under section 19608(1)(a)(iv) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19608.

(c) To fund a grant and loan program created and operated by the Michigan strategic fund for the costs of eligible activities described in section 13b(4) on eligible properties. The grant and loan program shall provide for all of the following:

(i) The Michigan strategic fund shall create and operate a grant and loan program to provide grants and loans to fund eligible activities described in section 13b(4) on eligible property. The Michigan strategic fund shall develop and use a detailed application, approval, and compliance process adopted by resolution of the board of the Michigan strategic fund. This process shall be published and available on the Michigan strategic fund website. Program standards, guidelines, templates, or any other forms to implement the grant and loan program shall be approved by the board of the Michigan strategic fund. The Michigan strategic fund may delegate its approval authority under this subsection to a designee.

(ii) A person may apply to the Michigan strategic fund for approval of a grant or loan to fund eligible activities described in section 13b(4) on eligible property.

(iii) The Michigan strategic fund shall approve or deny an application not more than 60 days after receipt of an administratively complete application. If the application is neither approved nor denied within 60 days, it shall be considered by the board of the Michigan strategic fund, or its designee if delegated, for action at, or by, the next regularly scheduled board meeting. The Michigan strategic fund may delegate the approval or denial of an application to the chairperson of the Michigan strategic fund or other designees determined by the board.

(iv) When an application is approved under this subsection, the Michigan strategic fund shall enter into a written agreement with the applicant. The written agreement shall provide all the conditions imposed on the applicant and the terms of the grant or loan. The written agreement shall also provide for penalties if the applicant fails to comply with the provisions of the written agreement.

(v) After the Michigan strategic fund and the applicant have entered into a written agreement under subparagraph (iv), the Michigan strategic fund shall distribute the proceeds to the applicant according to the terms of the written agreement.

(vi) Any proceeds from repayment of a loan, including interest on those repayments, under this subsection shall be paid into the state brownfield redevelopment fund or to the fund from which the loan was generated, as defined in subsection (3)(b) and (c).

(d) To distribute construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues in accordance with a transformational brownfield plan under subsection (4).

(4) The state treasurer shall deposit annually from the general fund into the state brownfield redevelopment fund an amount equal to the construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues due to be transmitted under all transformational brownfield plans. The department of treasury shall distribute the construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues to an authority, or to the owner or developer of the eligible property to which the revenues are attributable, in accordance with section 16(8) and the terms of the written development or reimbursement agreement for each transformational brownfield plan. Amounts transferred into the state brownfield redevelopment fund attributable to a specific transformational brownfield plan shall be accounted for separately within the state brownfield redevelopment fund and shall not be used for any other purpose or activity under this section or for any transformational brownfield plan other than the plan to which the revenues are attributable or for the additional administrative costs under this section associated with the implementation of a transformational brownfield plan.

**History:** Add. 2012, Act 502, Imd. Eff. Dec. 28, 2012;—Am. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2017, Act 46, Eff. July 24, 2017.

#### **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.

#### **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, 13b, 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 brownfield revolving fund for the costs described in section 8.

(f) Construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues received under a transformational brownfield plan established under sections 13c and 14a.

(g) 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;—Am. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2017, Act 46, Eff. July 24, 2017.

#### **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) When adopting a brownfield plan, the board shall comply with the notice and approval provisions of section 14.

(2) 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 amended to apply to additional parcels of eligible property. Except as otherwise authorized by this act, if more than 1 eligible property is included within the plan, the tax increment revenues under the plan shall be determined individually for each 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 or, for a plan for eligible properties qualified on the basis that the property is owned by or under the control of a land bank fast track authority, a listing of all eligible activities that may be conducted for 1 or more of the eligible properties subject to the plan.

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

(c) An estimate of the captured taxable value and tax increment revenues for each year of the plan from the eligible property. The plan may provide for the use of part or all of the captured taxable value, including deposits in the local brownfield 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(ss), 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 proposed beginning date and duration of capture of tax increment revenues for each eligible property as determined under section 13b(16).

(g) An estimate of the future tax revenues of all taxing jurisdictions in which the eligible property is located to be generated during the term of the plan.

(h) A legal description of the 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.

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

(m) Other material that the authority or governing body considers pertinent to the brownfield plan.

(3) When taxes levied for school operating purposes are subject to capture under section 15, the percentage of school operating tax increment revenues captured relating to a parcel of eligible property under a brownfield plan shall not be greater than the percentage of local tax increment revenues that are captured under the brownfield plan relating to that parcel of eligible property.

(4) Except as provided in subsection (5) and sections 8, 13b(4) and (5), and 13c(12), tax increment revenues related to a brownfield plan shall be used only for 1 or more of the following:

(a) Costs of eligible activities attributable to the eligible property that produces the tax increment revenues.

(b) Eligible activities attributable to any eligible property for property that is owned by or under the control of a land bank fast track authority or a qualified local unit of government.

(5) A brownfield plan may only authorize the capture of tax increment revenue from eligible property until the year in which the total amount of tax increment revenues captured is equal to the sum of the costs permitted to be funded with tax increment revenues under this act or for not more than 30 years from the beginning date of the capture of the tax increment revenues for that eligible property, whichever occurs first. A brownfield plan may authorize the capture of additional local and school operating tax increment revenue from an eligible property for the local brownfield revolving fund created under section 8 during 1 or more of the following time frames:

(a) The time of capture described in this subsection for the purpose of paying the costs permitted under subsection (4) or section 13b(4).

(b) For not more than 5 years after the date specified in subdivision (a).

**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;—Am. 2003, Act 259, Imd. Eff. Jan. 5, 2004;—Am. 2005, Act 101, Imd. Eff. July 22, 2005;—Am. 2006, Act 32, Imd. Eff. Feb. 23, 2006;—Am. 2006, Act 467, Imd. Eff. Dec. 20, 2006;—Am. 2007, Act 202, Imd. Eff. Dec. 27, 2007;—Am. 2010, Act 246, Imd. Eff. Dec. 14, 2010;—Am. 2010, Act 288, Imd. Eff. Dec. 16, 2010;—Am. 2012, Act 502, Imd. Eff. Dec. 28, 2012;—Am. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2017, Act 46, Eff. July 24, 2017;—Am. 2020, Act 259, Imd. Eff. Dec. 29, 2020.

**Compiler's note:** For transfer of powers and duties of department of environmental quality to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

### **125.2663a Cost recovery action.**

Sec. 13a. Costs of a response activity paid with tax increment revenues that are captured pursuant to section 13(4) may be recovered from a party that is responsible for an activity causing a release. 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 60 days' notice. This state or an authority that recovers costs under this section 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 brownfield revolving fund created pursuant to section 8, if such a fund has been established by the authority. If a local brownfield revolving 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 one 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.

**History:** Add. 2016, Act 471, Eff. Apr. 5, 2017.

### **125.2663b Use of taxes captured from eligible property.**

Sec. 13b. (1) An authority shall not expend tax increment revenues to acquire or prepare eligible property unless the acquisition or preparation is an eligible activity.

(2) An authority shall not enter into agreements with the taxing jurisdictions and the governing body of the municipality to share a portion of the taxes captured from an eligible property under this act. 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.

(3) Tax increment revenues captured from taxes levied by this state under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, or taxes levied by a local school district shall not be used to assist a land bank fast track authority with clearing or quieting title, acquiring, selling, or conveying property, except as provided in subsection (4).

(4) If a brownfield plan includes the use of taxes levied for school operating purposes captured from an eligible property for eligible activities that are not department specific activities, then 1 or more of the following apply:

(a) A combined brownfield plan or a work plan shall be approved by the Michigan strategic fund and a development agreement or reimbursement agreement between the municipality or authority and an owner or developer of eligible property is required before such tax increment may be used for infrastructure improvements that directly benefit eligible property, demolition of structures that is not response activity, lead, mold, or asbestos abatement that is not a department specific activity, site preparation that is not response activity, relocation of public buildings or operations for economic development purposes, or acquisition of property by a land bank fast track authority if acquisition of the property is for economic development purposes.

(b) Approval of a combined brownfield plan or a work plan by the Michigan strategic fund in the manner required under section 15(12) to (14) or (20) is required in order to use the tax increment revenues to assist a land bank fast track authority or qualified local governmental unit with clearing or quieting title, acquiring, selling, or conveying property.

(c) The combined brownfield plan or work plan to be submitted to the Michigan strategic fund under this subsection shall be in a form prescribed by the Michigan strategic fund.

(d) The eligible activities to be conducted and described in this subsection shall be consistent with the combined brownfield plan or work plan submitted by the authority to the Michigan strategic fund.

(e) The department's approval is not required for the capture of taxes levied for school operating purposes for eligible activities described in this section.

(5) If a brownfield plan includes the use of taxes levied for school operating purposes captured from eligible property for department specific activities, a combined brownfield plan or a work plan must be approved by the department with the exception of those activities identified in subsections (8) and (9).

(6) An authority shall not do any of the following:

(a) Use taxes captured from eligible property to pay for eligible activities conducted before approval of the brownfield plan.

(b) Use taxes captured from eligible property to pay for administrative and operating activities of the authority or the municipality on behalf of the authority for activities, other than those identified in subsection (7).

(c) Use taxes levied for school operating purposes captured from eligible property for activities other than those identified in subsections (4), (5), and (12).

(d) Use construction period tax capture revenues, withholding tax capture revenues, or income tax capture revenues to pay for eligible activities conducted before approval of the transformational brownfield plan except for costs described in section 13c(10).

(e) Use construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues for any expense other than as provided for in section 13c(2), except for the reasonable costs for

preparing a transformational brownfield plan and the additional administrative and operating expenses of the authority or municipality as are specifically associated with the implementation of a transformational brownfield plan. For purposes of this subsection, the reasonable costs of preparing a transformational brownfield plan include the reasonable costs of preparing an associated work plan, combined brownfield plan, and development or reimbursement agreement.

(7) An authority may use taxes captured from eligible property to pay for the administrative and operating costs under 1 or more of the following:

(a) Local taxes captured may be used for 1 or more of the following administrative and operating purposes:

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

(ii) Department specific activities conducted by or on behalf of the authority related directly to work conducted on prospective eligible properties prior to approval of the brownfield plan.

(iii) Reasonable costs of developing and preparing brownfield plans, combined plans, or work plans for which tax increment revenues may be used under subsection (4), including, but not limited to, legal and consulting fees that are not in the ordinary course of acquiring and developing real estate.

(iv) Reasonable cost of brownfield plan or work plan implementation, including, but not limited to, tracking and reporting data and plan compliance.

(b) Taxes levied for school operating purposes may be used for 1 or more of the following administrative and operating purposes:

(i) Reasonable costs of developing and preparing brownfield plans, combined brownfield plans, or work plans for which tax increment revenues may be used under section 13(4), including, but not limited to, legal and consulting fees that are not in the ordinary course of acquiring and developing real estate, not to exceed \$30,000.00.

(ii) Reasonable costs of brownfield plan or work plan implementation, including, but not limited to, tracking and reporting of data and plan compliance, not to exceed \$30,000.00.

(c) In each fiscal year of the authority, the amount of tax increment revenues attributable to local taxes that an authority can use for the purposes described in subdivisions (a) and (b) shall be determined as follows:

(i) For authorities that have 5 or fewer active projects, \$100,000.00.

(ii) For authorities that have 6 or more but fewer than 11 active projects, \$125,000.00.

(iii) For authorities that have 11 or more but fewer than 16 active projects, \$150,000.00.

(iv) For authorities that have 16 or more but fewer than 21 active projects, \$175,000.00.

(v) For authorities that have 21 or more but fewer than 26 active projects, \$200,000.00.

(vi) For authorities that have 26 or more but fewer than 31 active projects, \$300,000.00.

(vii) For authorities that have 31 or more but fewer than 54 active projects, \$500,000.00.

(viii) For authorities that have 54 or more but fewer than 74 active projects, \$700,000.00.

(ix) For authorities that have 74 or more but fewer than 99 active projects, \$900,000.00.

(x) For authorities that have 99 or more active projects, \$1,000,000.00.

(d) Nothing contained in this subsection shall limit the amount of funds that may be granted, loaned, or expended by a local brownfield revolving fund for eligible activities.

(e) As used in this subsection, "active project" means a project in which the authority is currently capturing taxes under this act. The amounts of tax increment revenues attributable to local taxes listed in this subsection that an authority can use for the purposes described in this subsection may be increased by 2% for each written agreement entered into by an authority in either of the following situations up to a total maximum increase of 10%:

(i) The authority is an authority established by a county and that authority enters into a written agreement with 1 or more municipalities within that county to serve as the only authority for those other municipalities.

(ii) The authority enters into a written agreement with 1 or more other authorities to administer 1 or more administrative operations of those other authorities.

(8) The limitations of subsections (4), (5), and (6) upon the use of taxes levied for school operating purposes shall not apply to the costs of 1 or more of the following incurred by a person other than the authority:

(a) Site investigation activities required to conduct a baseline environmental assessment and to evaluate compliance with sections 20107a and 21304c of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a and 324.21304c.

(b) Completing a baseline environmental assessment.

(c) Preparing a plan for compliance with sections 20107a and 21304c of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a and 324.21304c.

(d) Performing pre-demolition and building hazardous materials surveys.

(e) Asbestos, mold, and lead surveys.

(9) The limitations of subsections (4), (5), and (6) upon the use of local taxes and taxes levied for school operating purposes shall not apply to the following costs and expenses:

(a) For tax increment revenues attributable to taxes levied for school operating purposes, eligible activities associated with unanticipated response activities conducted on eligible property if that eligible property has been included in a brownfield plan, if the department is consulted in writing on the unanticipated response activities before they are conducted and the costs of those activities are subsequently included in a brownfield plan, combined brownfield plan or a work plan or amendment approved by the authority and approved by the department.

(b) For tax increment revenues attributable to local taxes, any eligible activities conducted on eligible property or prospective eligible properties prior to approval of the brownfield plan, if those costs and the eligible property are subsequently included in a brownfield plan approved by the authority.

(c) For tax increment revenues attributable to taxes levied for school operating purposes, eligible activities described in subsection (4) and conducted on eligible property or prospective eligible properties prior to approval of the brownfield plan, if those costs and the eligible property are subsequently included in a brownfield plan approved by the authority and a combined brownfield plan or work plan approved by the Michigan strategic fund.

(d) Reasonable cost of developing and preparing brownfield plans, combined brownfield plans, or work plans for which tax increment revenues may be used under section 13(4), including, but not limited to, legal and consulting fees that are not in the ordinary course of acquiring and developing real estate.

(e) Reasonable cost of brownfield plan or work plan implementation, including, but not limited to, tracking and reporting of data and plan compliance.

(10) An authority shall not use taxes levied for school operating purposes captured from eligible property for response activities that benefit a party responsible for an activity causing a release under section 20126 or 21323a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20126 and 324.21323a, except that a municipality that established the authority may use taxes levied for school operating purposes captured from eligible property for response activities associated with a landfill.

(11) A brownfield authority may reimburse advances, with or without interest, made by a municipality under section 7(3), a land bank fast track authority, or any other person or entity for costs of eligible activities with any source of revenue available for use of the brownfield authority under this act.

(12) A brownfield authority may capture taxes for the payment of interest, as follows:

(a) If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of eligible activities and interest thereon, the authority may capture local taxes for the payment of that interest.

(b) If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of department specific activities and interest thereon included in a combined brownfield plan or a work plan approved by the department, the authority may capture taxes levied for school operating purposes and local taxes for the payment of that interest.

(c) If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of eligible activities that are not department specific activities and interest thereon included in a combined brownfield plan or a work plan approved by the Michigan strategic fund, the authority may capture taxes levied for school operating purposes and local taxes for the payment of that interest provided that the Michigan strategic fund grants an approval for the capture of taxes levied for school operating purposes to pay such interest.

(13) An authority may enter into agreements related to these reimbursements and payments described in this section. A reimbursement agreement for these purposes and the obligations under that reimbursement agreement shall not be subject to section 13 or the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(14) Notwithstanding anything to the contrary in this act, for a brownfield plan that includes the capture of taxes levied for school operating purposes from each eligible property included in a brownfield plan after January 1, 2013, an authority shall pay to the department of treasury at least once annually an amount equal to 50% of the taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, including 50% of that portion of specific taxes attributable to, but not levied under, the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, that are captured under the brownfield plan until the expiration of the earlier of the following:

(a) Twenty-five years of capture of tax increment revenues from such eligible property included in the brownfield plan.

(b) The later of:

(i) The date of repayment of all eligible expenses relative to such eligible property.

(ii) The date excess capture is terminated under subsection (16).

(15) The department of treasury shall deposit the amounts described in subsection (14) into the state brownfield redevelopment fund. If an authority makes a payment as required under subsection (14) to the department of treasury, the local taxes levied on that parcel and used to reimburse eligible activities under a brownfield plan shall not be increased or decreased due to that payment. If, due to an appeal of any tax assessment, an authority is required to reimburse a taxpayer for any portion of the amount paid to the department of treasury under this subsection, the department of treasury shall reimburse that amount to the authority within 30 days after receiving a request from the authority for reimbursement.

(16) The brownfield plan shall include a proposed beginning date of capture. If the actual beginning date of capture of tax increment revenues is later than 5 years following the date of the adoption of the brownfield plan resolution, then the maximum number of years of capture will decrease. The end date of capture must be no later than 35 years after the date of the adoption of the brownfield plan resolution. The authority may amend the beginning date of capture of tax increment revenues for a particular eligible property as long as the authority has not begun to reimburse eligible activities from the capture of tax increment revenues from that eligible property. Any tax increment revenues captured from an eligible property before the beginning date of capture of tax increment revenues for that eligible property shall revert proportionately to the respective tax bodies.

**History:** Add. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2017, Act 46, Eff. July 24, 2017;—Am. 2020, Act 259, Imd. Eff. Dec. 29, 2020.

### **125.2663c Transformational brownfield plan.**

Sec. 13c. (1) Subject to the approval of the governing body and Michigan strategic fund under section 14a, the board may implement a transformational brownfield plan. The transformational brownfield plan may consist of a single development on eligible property or a series of developments on eligible property that are part of a related program of investment, whether or not located on contiguous parcels, and may be amended to apply to additional parcels of eligible property. Each amendment to a transformational brownfield plan shall be approved by the governing body of the municipality in which it is located and the Michigan strategic fund and shall be consistent with the approval requirements in this section.

(2) A transformational brownfield plan may authorize the use of construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, and tax increment revenues for eligible activities described in section 2(o)(iv). Except as provided for in section 13b(6)(d), tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues shall be used only for the costs of eligible activities included within the transformational brownfield plan to which the revenues are attributable, including the cost of principal of and interest on any obligation to pay the cost of the eligible activities.

(3) A transformational brownfield plan is a brownfield plan and, except as otherwise provided, is subject to sections 13, 13a, 13b, 14, and 15 of this act. In addition to the information required under section 13(2), a transformational brownfield plan shall contain all of the following:

(a) The basis for designating the plan as a transformational brownfield plan under section 2(vv).

(b) A description of the costs of the transformational brownfield plan intended to be paid for with construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues.

(c) An estimate of the amount of construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues expected to be generated for each year of the transformational brownfield plan from the eligible property.

(d) The beginning date and duration of capture of construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues for each eligible property as determined under subsections (8) and (11).

(4) Subject to section 14a(7), the transformational brownfield plan may provide for the use of part or all of the tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues. The portion of tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues to be used may vary over the duration of the transformational brownfield plan, but the portion intended to be used shall be clearly stated in the transformational brownfield plan.

(5) Approval of a transformational brownfield plan, or an amendment to a transformational brownfield plan, shall be in accordance with the notice, approval, and public hearing requirements of sections 14 and 14a, except that the governing body shall provide notice to the Michigan strategic fund not less than 30 days before the hearing on a transformational brownfield plan.

(6) If a transformational brownfield plan authorizes the use of construction period tax capture revenues,

withholding tax capture revenues, or income tax capture revenues, approval of a combined brownfield plan or work plan by the Michigan strategic fund and a written development or reimbursement agreement between the owner or developer of the eligible property, the authority, and the Michigan strategic fund are required. If a plan authorizes the use of tax increment revenues for eligible activities under section 2(o)(iv) other than eligible activities described in section 13b, approval of a work plan or combined brownfield plan by the Michigan strategic fund to use tax increment revenues for those additional eligible activities is required. A work plan or combined brownfield plan under this subsection shall be consolidated with a work plan or combined brownfield plan under section 13b(4). The eligible activities to be conducted shall be consistent with the work plan submitted by the authority to the Michigan strategic fund.

(7) Upon approval of the transformational brownfield plan by the governing body and Michigan strategic fund, and the execution of the written development or reimbursement agreement, the transfer and distribution of construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues as specified in this act and in the plan shall be binding on this state and the collection and transmission of the amount of tax increment revenues as specified in this act and in the plan shall be binding on all taxing units levying ad valorem property taxes or specific taxes against property subject to the transformational brownfield plan.

(8) A transformational brownfield plan shall not authorize the capture or use of tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, or income tax capture revenues after the year in which the total amount of the revenue captured under the transformational brownfield plan is equal to the sum of the costs permitted to be funded with the revenue under the transformational brownfield plan.

(9) The brownfield authority and Michigan strategic fund may reimburse advances, with or without interest, made by a municipality under section 7(3), a land bank fast track authority, or any other person or entity for costs of eligible activities included within a transformational brownfield plan using tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, or income tax capture revenues attributable to that plan. Upon approval of the Michigan strategic fund, the amount of tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues authorized to be captured under a transformational brownfield plan may include amounts required for the payment of interest under this subsection. A written development or reimbursement agreement shall be entered into under subsection (6) before any reimbursement or payment using tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, or income tax capture revenues may commence. A reimbursement agreement for these purposes and the obligations under that reimbursement agreement shall not be subject to section 12 or the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(10) Eligible activities conducted on eligible property prior to approval of the transformational brownfield plan may be reimbursed from tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues if those costs and the eligible property are subsequently included in a transformational brownfield plan approved by the governing body and Michigan strategic fund, a combined brownfield plan or work plan approved by the Michigan strategic fund, and a written development or reimbursement agreement under subsection (6). Reimbursement under this subsection shall be limited to eligible expenses incurred within 90 days of the approval of the transformational brownfield plan by the Michigan strategic fund.

(11) The duration of the capture of withholding tax capture revenues and income tax capture revenues under a transformational brownfield plan for a particular eligible property shall not exceed the lesser of the period authorized under subsection (8) or 20 years from the beginning date of the capture of withholding tax capture revenues and income tax capture revenues for that eligible property. The beginning date for the capture of tax increment revenues, withholding tax capture revenues, and income tax capture revenues for an eligible property shall not be later than 5 years following the date the Michigan strategic fund approves the inclusion of the eligible property in a transformational brownfield plan. Subject to the approval of the governing body and Michigan strategic fund, the authority may amend the beginning date of capture of tax increment revenues, withholding tax capture revenues, and income tax capture revenues to a date not later than 5 years following the date the Michigan strategic fund approved inclusion of the eligible property in the transformational brownfield plan so long as capture of the revenues under the transformational brownfield plan has not yet commenced.

(12) For purposes of subsection (1), a series of developments on parcels that are not contiguous shall be considered a related program of investment if all of the following are met:

(a) The developments are proposed to be undertaken concurrently or in reasonable succession.

(b) For developments under affiliated ownership, the developments are reasonably contiguous and are part

of a program of investment in a logically defined geography, including, but not limited to, a downtown district as defined in section 201 of the recodified tax increment financing act, 2018 PA 57, MCL 125.4201, or a principal shopping district or business improvement district as defined in section 1 of 1961 PA 120, MCL 125.981, and including areas that are logically related to those districts and that will promote infill development.

(c) For developments under unrelated ownership, in addition to the criteria described in subdivisions (a) and (b), the developments are part of a master development plan, area plan, sub-area plan, or similar development plan that has been approved or adopted by resolution of the governing body.

(d) The designation of the developments as a related program of investment is consistent with the purposes of this act and is not a combination of unrelated or minimally related projects calculated to meet the minimum investment threshold.

(13) Where undeveloped property included in a transformational brownfield plan has been designated as a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, upon the request of the owner or developer of the eligible property and the local governmental unit that designated the zone, the Michigan strategic fund, and a city levying a tax under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787, may elect under section 9(4) of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2689, to terminate the exemptions, deductions, or credits provided for in section 9(1)(b) and (c) of that act, and reimburse the authority, or owner or developer of the eligible property, an annual amount equal to the revenue collected for each tax year as a result of the termination of the exemptions, deductions, or credits that would otherwise be in effect. In implementing this subsection, all of the following apply:

(a) The authority and Michigan strategic fund shall include amounts anticipated to be collected under this subsection in the income tax capture revenues authorized to be used under the transformational brownfield plan and associated work plan or combined brownfield plan.

(b) The state treasurer shall calculate for each tax year the amount of revenue the state of Michigan collected as a result of the operation of this subsection and shall deposit that amount as income tax capture revenues into the state brownfield redevelopment fund, where the funds shall be transmitted in the manner provided for in sections 8a(4) and 16(8).

(c) A city levying a city income tax under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787, shall calculate for each tax year the amount of revenue the city collected as a result of the operation of this subsection and shall enter into a binding reimbursement agreement with the authority, and owner or developer of the eligible property, providing for the payment of the amounts to the authority, or the owner or developer of the eligible property, for eligible activities as provided for in the transformational brownfield plan. City income taxes administered by the department of treasury pursuant to the city income tax act, 1964 PA 284, MCL 141.501 to 141.787, shall be subject to the procedures of subdivision (b) regarding the calculation and deposit of any revenue collected as a result of the operation of this subsection.

(d) The department of treasury may require the owner or developer to submit any information necessary for the calculation of revenue collected pursuant to the operation of this subsection. This state has no obligation for calculating revenues to be collected pursuant to the operation of this subsection where the required information is not reported.

(14) The authority and governing body are solely responsible for deciding whether to seek approval of a brownfield plan as a transformational brownfield plan. Nothing in this section or section 14a shall operate to prejudice or limit consideration of a brownfield plan under sections 13 and 14, including a decision by the Michigan strategic fund not to approve a plan as a transformational brownfield plan.

(15) Nothing in this act is intended to preclude an authority established by a county from seeking approval of a brownfield plan as a transformational brownfield plan. In the event that an authority established by a county seeks approval of a plan that extends into more than 1 of its component local units of government and that plan includes eligible property in more than 1 municipality that is not a county, the minimum investment requirements of section 2(vv) shall be established with reference to combined population of the municipalities that are not a county in which the eligible property is located.

**History:** Add. 2017, Act 46, Eff. July 24, 2017;—Am. 2021, Act 138, Imd. Eff. Dec. 27, 2021.

**125.2664 Brownfield plan; approval; public hearing; record; notice; public purpose; determination; amendments to plan; validity of procedure, notice, and findings; presumption; abolishment or termination of plan.**

Sec. 14. (1) Before approving a brownfield plan for an eligible property, the governing body shall hold a public hearing on the brownfield plan. By resolution, the governing body may delegate the public hearing process to the authority or to a subcommittee of the governing body subject to final approval by the governing body.

(2) 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.

(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 section.

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

(3) At the time set for the hearing on the brownfield plan required under subsection (1), the governing body shall ensure that interested persons have an opportunity to be heard and that written communications with reference to the brownfield plan are received and considered. The governing body shall ensure that a record of the public hearing is made and preserved, including all data presented at the hearing.

(4) Not less than 10 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 notify the taxing jurisdictions 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. Not less than 10 days before the hearing on the brownfield plan, the governing body shall provide notice of the hearing to the department if the brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities that require the approval of a combined brownfield plan or a work plan by the department under section 13b(6)(c) and the Michigan strategic fund, or its designee, if the brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities subject to section 13b(4).

(5) 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 sections 13 and 13b.

(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.

(6) 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 increment revenues.

(7) 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.

(8) A brownfield plan or plan amendment may be abolished or terminated according to this subsection subject to all of the following:

(a) The governing body may abolish a brownfield plan when it finds that the purposes for which the plan was established are accomplished.

(b) The governing body may terminate a brownfield plan or plan amendment for an eligible property if the project for which eligible activities were identified in the brownfield plan or plan amendment fails to occur with respect to the eligible property for at least 2 years following the date of the resolution approving the brownfield plan or plan amendment, provided that the governing body first does both of the following:

(i) Gives 30 days' prior written notice to the developer at its last known address by certified mail or other method that documents proof of delivery attempted.

(ii) Provides the developer an opportunity to be heard at a public meeting.

(c) If a brownfield plan or plan amendment is terminated under subdivision (b), the governing body may approve a new brownfield plan or plan amendment for the eligible property under which tax increment revenues may be captured for up to the period of time provided under section 13(5).

(d) Notwithstanding anything in this subsection to the contrary, a brownfield plan or plan amendment shall not be abolished or terminated 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 identified or segregated.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2016, Act 471, Eff. Apr. 5, 2017.

### **125.2664a Transformational brownfield plan; approval and review by governing body and Michigan strategic fund.**

Sec. 14a. (1) The governing body and Michigan strategic fund shall determine whether to approve a transformational brownfield plan in accordance with the provisions of this section.

(2) The governing body shall make an initial determination as to whether the transformational brownfield plan constitutes a public purpose in accordance with section 14(5). If the governing body determines the transformational brownfield plan does not constitute a public purpose, it shall reject the transformational brownfield plan.

(3) If the governing body determines that the transformational brownfield plan constitutes a public purpose, the governing body may then approve or reject the transformational brownfield plan, or approve it with modification, by resolution based on all of the following considerations:

(a) Whether the transformational brownfield plan meets the requirements of section 2(vv), which must include a determination that the transformational brownfield plan is calculated to, and has the reasonable likelihood to, have a transformational impact on local economic development and community revitalization based on the extent of brownfield redevelopment and growth in population, commercial activity, and employment that will result from the transformational brownfield plan.

(b) Whether the transformational brownfield plan meets the requirements of sections 13, 13b, and 13c.

(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, construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues estimated to result from adoption of the transformational brownfield plan are reasonable.

(e) Whether the transformational brownfield plan takes into account the criteria described in section 90b(4) of the Michigan strategic fund act, 1984 PA 270, MCL 125.2090b.

(f) Whether subject to subsection (22)(d), the transformational brownfield plan includes provisions for affordable housing.

(4) Within 90 days of the completion of an administratively complete application and the analysis required under subsection (5), the Michigan strategic fund shall approve or reject the transformational brownfield plan, or approve it with modification, by resolution based on the criteria in subsection (3).

(5) In determining whether to approve a transformational brownfield plan under subsection (3)(c) and (d), the Michigan strategic fund shall conduct a financial and underwriting analysis of the developments included in the plan. The analysis shall consider both projected rental rates at the time of project delivery and potential increases in rental rates over time. The Michigan strategic fund shall not approve the use of construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues beyond the amount determined to be necessary for the project to be economically viable. The Michigan strategic fund shall develop standardized underwriting criteria for determining economic viability. The Michigan strategic fund shall take into account the impact of the sales and use tax exemptions under section 4d(n) of the general sales tax act, 1933 PA 167, MCL 205.54d, and section 4dd of the use tax act, 1937 PA 94, MCL 205.94dd, in determining the amount of construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues required for the project to be economically viable. The Michigan strategic fund shall ensure that each transformational brownfield plan includes a significant equity contribution from the owner or developer as determined by the fund.

(6) The Michigan strategic fund shall require an independent, third-party underwriting analysis under subsection (3)(d) for any plan that proposes to use more than \$10,000,000.00 in any year in withholding tax capture revenues and income tax capture revenues, as determined by the first full year of tax capture under the plan. The cost of the independent, third-party underwriting analysis shall be paid by the owner or developer of the eligible property. The Michigan strategic fund shall consult with the state treasurer prior to approving any transformational brownfield plan subject to this subsection. Nothing in this subsection shall limit the ability of the Michigan strategic fund to utilize independent, third-party analyses on plans not subject to this subsection.

(7) Except as otherwise provided in this subsection, the Michigan strategic fund may not approve a transformational brownfield plan that proposes to use more than 50% of the withholding tax capture revenues or 50% of the income tax capture revenues. The Michigan strategic fund may modify the amount of

withholding tax capture revenues and income tax capture revenues before approving a transformational brownfield plan in order to bring the transformational brownfield plan into compliance with subsection (5). The Michigan strategic fund may approve a transformational brownfield plan that proposes to use more than 50% of the income tax capture revenues if 1 of the following applies:

(a) The income tax capture revenues are attributable to the election under section 13c(13).

(b) The applicable eligible properties within the transformational brownfield plan are subject to a written, binding affordable housing agreement with the local governmental unit, which agreement shall be provided to the Michigan strategic fund, in which case the Michigan strategic fund may approve a transformational brownfield plan that proposes to use up to 100% of the income tax capture revenues, subject to the underwriting and financial analysis required under subsection (5).

(8) The Michigan strategic fund shall require the owner or developer of the eligible property to certify the actual capital investment, as determined in accordance with section 2(o)(iv) and section 2(vv), upon the completion of construction and before the commencement of reimbursement from withholding tax capture revenues, income tax capture revenues, or tax increment revenues, for the plan or the distinct phase or project within the plan for which reimbursement will be provided. If the actual capital investment is less than the amount included in the plan, the Michigan strategic fund shall review the determination under subsection (5) and may modify the amount of reimbursement if, and to the extent, such a modification is necessary to maintain compliance with subsection (5). The transformational brownfield plan, work plan, and development and reimbursement agreement shall include provisions to enforce the requirements and remedies under this subsection. If the actual level of capital investment does not meet the applicable minimum investment requirement under section 2(vv) and is outside of the safe harbor under subsection (15), the Michigan strategic fund may take 1 of the following remedial actions:

(a) For a plan that consists of a single development, reduce the amount of reimbursement under the plan.

(b) For a plan that consists of distinct phases or projects, where the failure to meet the minimum investment threshold is the result of failure to undertake additional distinct phases or projects as provided for in the plan, 1 or more of the following:

(i) Permanently rescind the authorization to use tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues for the additional distinct phases or projects in the plan.

(ii) If the Michigan strategic fund determines that the applicable owner or developer acted in bad faith, reduce the amount of reimbursement for completed phases of the plan.

(9) Upon approval by the Michigan strategic fund, the minimum investment requirements in section 2(vv) and limitation under subsection (22)(a) and (b) may be waived if the transformational brownfield plan meets 1 of the following criteria:

(a) Is for eligible property in an area approved by the state housing development authority as eligible for blight elimination program funding under the housing finance agency innovation fund for the hardest hit housing markets authorized pursuant to the emergency economic stabilization act of 2008, Public Law 110-343, 12 USC 5201 to 5261. For purposes of this subdivision, an area approved as eligible for blight elimination program funding means that specific portion or portions of a municipality where the Michigan state housing development authority approved the expenditure of blight elimination program funds pursuant to an application identifying the target areas.

(b) Is for eligible property in a municipality that was subject to a state of emergency under the emergency management act, 1976 PA 390, MCL 30.401 to 30.421, issued for drinking water contamination.

(c) Is for eligible property that is a historic resource if the Michigan strategic fund determines the redevelopment is not economically feasible absent the transformational brownfield plan.

(d) Is for eligible property that is located in a city, village, or township with a population of less than 25,000 or that is otherwise eligible for the corresponding population tier in section 2(vv)(vi), as determined in accordance with subsection (15), if the Michigan strategic fund determines that the redevelopment is not economically feasible absent the transformational brownfield plan.

(10) In determining whether a plan under subsection (9) has a transformational impact for purposes of section 2(vv) and subsection (3)(a), the governing body and Michigan strategic fund shall consider the impact of the transformational brownfield plan in relation to existing investment and development conditions in the project area and whether the transformational brownfield plan will act as a catalyst for additional revitalization of the area in which it is located.

(11) The Michigan strategic fund may not approve more than 5 transformational brownfield plans under subsection (9) in a calendar year, except that if the Michigan strategic fund approves fewer than 5 plans in a calendar year under subsection (9), the unused approval authority shall carry forward into future calendar years and remain available until December 31, 2027. The Michigan strategic fund also shall not approve more

than 5 transformational brownfield plans under subsection (9) in any individual city, village, or township prior to December 31, 2022.

(12) Except as provided in this subsection, amendments to an approved transformational brownfield plan shall be submitted by the authority to the governing body and to the Michigan strategic fund for approval or rejection following the same notice necessary for approval or rejection of the original transformational brownfield plan. Notice is not required for revisions in the estimates of tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, or income tax capture revenues.

(13) Except as provided in this subsection, an amendment to an approved transformational brownfield plan under section 13c(1) shall not be considered a new plan approval subject to the limitation in subsection (22)(a). The Michigan strategic fund may consider an amendment as a new plan approval only where the amendment adds eligible property and the Michigan strategic fund determines that approving the addition as an amendment would be inconsistent with the purposes of this act.

(14) The procedure, adequacy of notice, and findings under this section shall be presumptively valid unless contested in a court of competent jurisdiction within 60 days after approval of the transformational brownfield plan by the Michigan strategic fund. An approved amendment to a conclusive transformational brownfield plan shall likewise be conclusive unless contested within 60 days after approval of the amendment by the Michigan strategic fund. If a resolution adopting an amendment to the transformational brownfield plan is contested, the original resolution adopting the transformational brownfield plan is not open to contest.

(15) The determination as to whether a transformational brownfield plan complies with the minimum investment requirements in section 2(vv) shall be made with reference to the most recent decennial census data available at the time of approval by the authority. A plan in a municipality that exceeds a population tier under section 2(vv) by not more than 10% of the maximum population for that tier shall, upon election of the authority, be subject to the investment requirement for that tier. A transformational brownfield plan that is expected to result in, or does result in, a total capital investment that is within 10% of the applicable minimum investment requirement shall be considered to satisfy the applicable requirement under section 2(vv).

(16) For purposes of a transformational brownfield plan, determination as to whether property is functionally obsolete as defined under section 2(u) may include considerations of economic obsolescence as determined in accordance with the Michigan state tax commission's assessor's manual.

(17) Any positive or negative determination by the Michigan strategic fund under this section shall be supported by objective analysis and documented in the record of its proceedings.

(18) The Michigan strategic fund shall charge and collect a reasonable application fee as necessary to cover the costs associated with the review and approval of a transformational brownfield plan.

(19) The Michigan strategic fund shall not commit, and the department of treasury shall not disburse, more than \$40,000,000.00 in total annual tax capture. For purposes of this subsection, "total annual tax capture" means the total annual amount of income tax capture revenues and withholding tax capture revenues that may be reimbursed each calendar year under all transformational brownfield plans. If the amount committed or disbursed in a calendar year is less than \$40,000,000.00, the difference between that amount and \$40,000,000.00 shall be available to be committed or disbursed in subsequent calendar years and shall be in addition to the annual limit otherwise applicable.

(20) The Michigan strategic fund shall not commit, and the department of treasury shall not disburse, a total amount of income tax capture revenues and withholding tax capture revenues that exceeds \$800,000,000.00.

(21) The Michigan strategic fund shall not approve more than a total of \$200,000,000.00 in construction period tax capture revenues and in projected sales and use tax exemptions under section 4d(n) of the general sales tax act, 1933 PA 167, MCL 205.54d, and section 4dd of the use tax act, 1937 PA 94, MCL 205.94dd. The Michigan strategic fund shall project the value of the sales and use tax exemptions under each transformational brownfield plan at the time of plan approval and shall require such information from the owner or developer as is necessary to perform this calculation. The Michigan strategic fund also shall require the owner or developer of the eligible property to report the actual value of the sales and use tax exemptions each tax year of the construction period and at the end of the construction period. If the value of the actual sales and use tax exemptions and construction period tax capture revenues under all transformational brownfield plans exceeds the limit of \$200,000,000.00 under this subsection by more than a de minimis amount, as determined by the state treasurer, the state treasurer shall take corrective action and may reduce future disbursements to achieve compliance with the aggregate limitation under subsection (20) and this subsection. The corrective action described in this subsection shall not reduce the disbursement for an individual plan by an amount that is more than the amount by which the value of the sales and use tax exemptions for that plan exceeded the amount projected at the time of plan approval and included in the plan. The Michigan strategic fund and department of treasury shall prescribe specific methods for implementing

this section within 60 days of the effective date of the amendatory act that added this section.

(22) The Michigan strategic fund shall comply with all of the following:

(a) Not approve more than 5 transformational brownfield plans in a calendar year, except that if the Michigan strategic fund approves fewer than 5 plans in a calendar year, the unused approval authority shall carry forward into future calendar years and remain available until December 31, 2027.

(b) Not approve more than 5 transformational brownfield plans in any individual city, village, or township prior to December 31, 2022.

(c) Ensure an equitable geographic distribution of plans approved under this subsection, which shall achieve a balance between the needs of municipalities of differing sizes and differing geographic areas of the state. Subject to the receipt of qualified transformational brownfield plans meeting the criteria under this section and section 13c, the Michigan strategic fund shall set a target that not less than 35% of the total transformational brownfield plans approved under this act prior to December 31, 2027 will be located in cities, villages, and townships with a population of less than 100,000.

(d) In coordination with the governing body, shall determine the appropriate provisions regarding affordable housing on a plan-by-plan basis.

(23) In the event of a proposed change in ownership of eligible property subject to a transformational brownfield plan for which reimbursement will continue, the approval of the Michigan strategic fund is required prior to the assignment or transfer of the development and reimbursement agreement.

(24) If the Michigan strategic fund approves a transformational brownfield plan and work plan, and subsequent to that approval, amendments are made to this act, the Michigan strategic fund may amend those plans to make conforming and consistent changes to the approved transformational brownfield plan and work plan on an administrative basis, provided that those changes do not result in any increase in the aggregate total amount of reimbursement authorized under the initial transformational brownfield plan. The authority of the Michigan strategic fund to administratively amend transformational brownfield plans and work plans under this subsection also applies to transformational brownfield plans and work plans entered into before the effective date of the amendatory act that added this sentence.

(25) The Michigan strategic fund shall not approve any new transformational brownfield plans after December 31, 2027. A transformational brownfield plan approved prior to December 31, 2022 shall remain in effect and may be amended in accordance with the provisions of this act.

(26) Upon approval by the Michigan strategic fund, the mixed-use requirement in section 2(vv) may be waived for a brownfield plan that otherwise meets the location, population, and minimum investment requirement under section 2(vv)(vi).

**History:** Add. 2017, Act 46, Eff. July 24, 2017;—Am. 2021, Act 138, Imd. Eff. Dec. 27, 2021.

**125.2665 Work plan; documents to be submitted for approval; conditions for approval; written response; time limitations; department specific activities; review by department; approval or denial of work plan as final decision; appeal; approval by Michigan strategic fund; duties; criteria; failure to provide written response; final approval; report; distribution of remaining funds; extension of review period; approval of combined brownfield plan.**

Sec. 15. (1) To seek department approval of a work plan under section 13b(6)(c), 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.

(2) Upon receipt of a request for approval of a work plan under subsection (1) or a portion of a work plan that pertains to only department specific activities, the department shall review the work plan according to subsection (3) and 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 to meet the

criteria of subsection (3), including, but not limited to, individual activities to be modified, added, or deleted from the work plan and revision of costs. The department may not condition its approval on deletions from or modifications of the work plan relating to activities to be funded solely by tax increment revenues not attributable to taxes levied for school operating purposes.

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

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

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

(a) Whether some or all of the activities constitute department specific activities other than activities that are exempt from the work plan approval process under section 13b(8).

(b) The department specific activities, other than the activities that are exempt from the work plan approval process under section 13b(8), are protective of the public health, safety, and welfare and the environment. The department may approve department specific activities that are more protective of the public health, safety, and welfare and the environment than required by section 20107a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a, if those activities provide public health or environmental benefit. In review of a work plan that includes department specific activities that are more protective of the public health, safety, and welfare and the environment, the department's considerations may include, but are not limited to, all of the following:

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

(ii) The cost to implement activities minimally necessary to achieve due care compliance, the total cost of response activities, and the incremental cost of department specific activities in excess of those activities minimally necessary to achieve due care compliance.

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

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

(4) If the department fails to provide a written response under subsection (2) within 60 days after receipt of a request for approval of a work plan, the authority may proceed with the activities as outlined in the work plan as submitted for approval. Except as provided in subsection (5), activities conducted pursuant to a work plan that was submitted to the department for approval but for which the department failed to provide a written response under subsection (2) shall be considered approved for the purposes of subsection (1). Within 45 days after receiving additional information requested from the authority under subsection (2)(c), the department shall review the additional information according to subsection (3) and provide 1 of the responses described in subsection (2) to the requesting authority for the specific activity. If the department does not provide a response to the requesting authority within 45 days after receiving the additional information requested under subsection (2)(c), the activity is approved under section 13b.

(5) The department may issue a written response to a work plan 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 as it was submitted for approval and failure to conduct these additional activities shall not affect the authority's ability to capture taxes under section 13b for the eligible activities described in the work plan initially submitted under subsection (4). In addition, at the option of the authority, these additional individual activities shall be considered part of the work plan of the authority and approved for purposes of section 13b. However, any response by the department under this subsection that identifies additional individual activities that must be carried out to satisfy part 201 or part 213 must be satisfactorily completed for the activities to be considered acceptable for the purposes of compliance with part 201 or part 213.

(6) If the department issues a written response under subsection (5) to a work plan and if the department's

written response modifies an individual activity proposed by the work plan of the authority in a manner that reduces or eliminates a proposed response activity, the authority must complete those individual activities in accordance with the department's response in order for that portion of the work plan to be considered approved for purposes of section 13b, 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.

(7) It shall be in the sole discretion of an authority to propose to undertake department specific activities under subsection (3)(b) at an eligible property under a brownfield plan. The department shall not require a work plan to include department specific activities that are more protective of public health, safety, welfare, and the environment.

(8) The department shall review the portion of a work plan that includes department specific activities in accordance with subsection (3).

(9) The department's approval or denial of a work plan submitted under this section constitutes a final decision in regard to the use of taxes levied for school operating purposes but does not restrict an authority's use of tax increment revenues attributable to local taxes to pay for eligible activities under a brownfield plan. If a person is aggrieved by the final decision, the person may appeal under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(10) To seek Michigan strategic fund approval of a work plan under section 13b(4) or 13c(6), the authority shall submit all of the following for each eligible property:

(a) A copy of the brownfield plan or the transformational 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 13b(4) to be undertaken. For a transformational brownfield plan, the Michigan strategic fund shall prescribe the form and content for the work plan to address additional eligible activities under section 2(o)(iv).

(g) A copy of the development agreement or reimbursement agreement required under section 13b(4) or 13c(6), 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.

(11) Upon receipt of a request for approval of a work plan, the Michigan strategic fund shall provide 1 of the following written responses to the requesting authority within 60 days following receipt of a request for approval or within 7 days following the first meeting of the board after the 60-day period following receipt of the request for approval, whichever is later:

(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.

(12) In its review of a work plan under section 13b(4) or 13c(6), the Michigan strategic fund 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) 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.

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

(l) 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.

(m) Any other criteria that the Michigan strategic fund considers appropriate for the determination of eligibility or for approval of the work plan.

(13) If the Michigan strategic fund fails to provide a written response under subsection (11) within 60 days following receipt of a request for approval of a work plan or within 7 days following the first meeting of the board after the 60-day period following receipt of the request for approval of a work plan, whichever is later, or 90 days following receipt of a request for approval in the case of a transformational brownfield plan or within 7 days following the first meeting of the board after the 90-day period following receipt of a request for approval in the case of a transformational brownfield plan, whichever is later, the eligible activities shall be considered approved and the authority may proceed with the eligible activities described in sections 13b(4) and 13c(6) as outlined in the work plan as submitted for approval.

(14) The Michigan strategic fund approval of a work plan under sections 13b(4) and 13c(6) is final.

(15) The Michigan strategic fund shall submit a report each year to each member of the legislature as provided in section 16(4).

(16) All taxes levied for school operating purposes that are not used for eligible activities consistent with a combined brownfield plan or a work plan approved by the department or the Michigan strategic fund or for the payment of interest under sections 13 and 13b and that are not deposited in a local brownfield revolving fund shall be distributed proportionately between the local school district and the school aid fund.

(17) The department's approval of a work plan under subsection (2)(a) or (b) does not imply an entitlement to reimbursement of the costs of the eligible activities if the work plan is not implemented as approved.

(18) The party seeking work plan approval and the department can, by mutual agreement, extend the time period for any review described in this section. An agreement described in this subsection shall be documented in writing.

(19) If a brownfield plan includes the capture of taxes levied for school operating purposes, the chairperson of the Michigan strategic fund may approve, without a meeting of the fund board, combined brownfield plans and work plans that address eligible activities described in section 13b(4) totaling an amount of \$1,000,000.00 or less according to subsections (10), (11), (12), (13), and (14) that include reimbursement of taxes levied for school operating purposes.

(20) In lieu of seeking approval of a work plan under section 13b(4) or (6)(c) or section 13c(6), an authority may seek approval of a combined brownfield plan from the department or Michigan strategic fund under this subsection as follows:

(a) To seek approval of a combined brownfield plan under this subsection, the authority shall, at least 30 days before the hearing on the combined brownfield plan to allow for consultation between the authority and the department or the Michigan strategic fund and at least 60 days in the case of a transformational brownfield plan, provide notice that the authority will be seeking approval of a combined brownfield plan in lieu of a work plan to 1 or more of the following:

(i) The department, if the combined brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities that require approval by the department under section 13b(6)(c).

(ii) The Michigan strategic fund, if the combined brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities subject to subsection (12) or section 13c(6), or the use of construction period tax capture revenues, withholding tax capture revenues, or income tax capture revenues.

(b) After the governing body approves a combined brownfield plan, the authority shall submit the combined brownfield plan to the department under the circumstances described in subdivision (a)(i) or Michigan strategic fund under the circumstances described in subdivision (a)(ii).

(c) The department shall review a combined brownfield plan according to subdivision (e). The Michigan strategic fund shall review a combined brownfield plan according to subdivision (f).

(d) Upon receipt of a combined brownfield plan under subdivision (b), the department or Michigan strategic fund shall provide 1 of the following written responses to the requesting authority within 60 days or, in the case of a transformational brownfield plan, within 90 days:

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

(ii) A conditional approval that delineates specific necessary modifications to the combined brownfield

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

(iii) A denial and a letter stating with specificity the reason for the denial. If a combined brownfield plan is denied under this subdivision, the combined brownfield plan may be subsequently resubmitted.

(e) The department may approve a combined brownfield plan if the authority submits the information identified in subsection (1) and if the conditions identified in subsection (3) are met.

(f) The Michigan strategic fund shall consider the criteria identified in subsection (12) to the extent reasonably applicable to the type of activities proposed as part of a combined brownfield plan when approving or denying the combined brownfield plan and, in the case of a transformational brownfield plan, shall also consider the criteria described in section 14a(3).

(g) If the department or Michigan strategic fund issues a written response to a requesting authority under subdivision (d)(i) or (ii), the governing body or its designee may administratively approve any modifications to a combined brownfield plan required by the written response without the need to follow the notice and approval process required by section 14(6) unless the modifications add 1 or more parcels of eligible property or increase the maximum amount of tax increment revenues or, in the case of a transformational brownfield plan, construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues approved for the project.

(h) If the department or Michigan strategic fund fails to provide a written response under subdivision (d) within 60 days after receipt of a complete combined brownfield plan, or 90 days in the case of a transformational brownfield plan, the eligible activities shall be considered approved as submitted.

(i) The approval of a combined brownfield plan by the department or Michigan strategic fund under this subsection is final.

**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;—Am. 2003, Act 283, Imd. Eff. Jan. 8, 2004;—Am. 2005, Act 101, Imd. Eff. July 22, 2005;—Am. 2006, Act 32, Imd. Eff. Feb. 23, 2006;—Am. 2007, Act 201, Imd. Eff. Dec. 27, 2007;—Am. 2012, Act 502, Imd. Eff. Dec. 28, 2012;—Am. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2017, Act 46, Eff. July 24, 2017;—Am. 2020, Act 259, Imd. Eff. Dec. 29, 2020.

**Compiler's note:** For transfer of powers and duties of department of environmental quality to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

**125.2665a Retention and payment of taxes levied under state education tax act; conditions; use; application for approval by authority; information to be included; approval, modification, or denial of application by department of treasury; appropriation and distribution of amount; aggregate amount; lien; obligations; copy of application; calculations; legislative intent; definitions.**

Sec. 15a. (1) If the amount of tax increment revenues lost as a result of the personal property tax exemptions provided by section 1211(1) and (4) of the revised school code, 1976 PA 451, MCL 380.1211, section 3 of the state education tax act, 1993 PA 331, MCL 211.903, section 14(4) of 1974 PA 198, MCL 207.564, and section 9k of the general property tax act, 1893 PA 206, MCL 211.9k, will reduce the allowable school tax capture received in a fiscal year, then, notwithstanding any other provision of this act, the authority, with approval of the department of treasury under subsection (3), may request the local tax collecting treasurer to retain and pay to the authority taxes levied within the municipality under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, to be used for the following:

(a) To repay an advance made before June 5, 2008.

(b) To repay an obligation issued or incurred before June 5, 2008.

(c) To pay or reimburse a developer or owner of eligible property or a municipality that created the authority for eligible activities pursuant to a development and reimbursement agreement entered into not before June 5, 2008.

(d) To pay for eligible activities identified in a brownfield plan, or an amendment to that plan approved by board of the authority before September 3, 2008 if the plan contains all of the following and the work plan for the capture of school taxes has been approved before June 5, 2009:

(i) A detailed description of the project.

(ii) A statement of the estimated cost of the project.

(iii) The specific location of the project.

(iv) The name of any developer of the project.

(2) Not later than June 15 of each year, or for 2013 only, before March 28, 2014, an authority eligible under subsection (1) to have taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, retained and paid to the authority under this section, shall apply for approval with the department of treasury. The application for approval shall include the following information:

(a) The property tax millage rates expected to be levied by local school districts within the jurisdictional area of the authority for school operating purposes for that fiscal year.

(b) The tax increment revenues estimated to be received by the authority for that fiscal year based upon actual property tax levies of all taxing jurisdictions within the jurisdictional area of the authority.

(c) The tax increment revenues the authority estimates it would have received for that fiscal year if the personal property tax exemptions described in subsection (1) were not in effect.

(d) A list of advances, obligations, development and reimbursement agreements, and projects included in brownfield plans described in subsection (1), and shall separately identify the payments due on each of those advances, obligations, development agreements, and eligible activities in that fiscal year, and the total amount of all the payments due on all of those in that fiscal year.

(e) The amount of money, other than tax increment revenues, estimated to be received in that fiscal year by the authority that is primarily pledged to, or would be used for, the repayment of an advance, the payment of an obligation, the payment of eligible activities pursuant to a development and reimbursement agreement, or the payment of eligible activities identified in a brownfield plan described in subsection (1). That amount shall not include excess tax increment revenues of the authority that are permitted by law to be retained by the authority for purposes that further the development program. However, that amount shall include money to be obtained from sources authorized by law, which law is enacted on or after December 1, 1993, for use by the municipality or authority to finance a development plan.

(f) The amount of a distribution received pursuant to this act for a fiscal year in excess of or less than the distribution that would have been required if calculated upon actual tax increment revenues received for that fiscal year.

(3) Not later than August 15 of each year, based on the calculations under subsection (5), the department of treasury shall approve, modify, or deny the application for approval to have taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, retained and paid to the authority under this section. If the application for approval contains the information required under subsection (2)(a) through (f) and appears to be in substantial compliance with the provisions of this section, then the department of treasury shall approve the application. If the application is denied by the department of treasury, then the department of treasury shall provide the opportunity for a representative of the authority to discuss the denial within 21 days after the denial occurs and shall sustain or modify its decision within 30 days after receiving information from the authority. If the application for approval is approved or modified by the department of treasury, the local tax collecting treasurer shall retain and pay to the authority the amount described in subsection (5) as approved by the department of treasury. If the department of treasury denies the authority's application for approval, the local tax collecting treasurer shall not retain or pay to the authority the taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906. An approval by the department does not prohibit a subsequent audit of taxes retained in accordance with the procedures currently authorized by law.

(4) Each year the legislature shall appropriate and distribute an amount sufficient to pay each authority the following:

(a) If the amount to be retained and paid under subsection (3) is less than the amount calculated under subsection (5), the difference between those amounts.

(b) If the application for approval is denied by the department of treasury, an amount verified by the department equal to the amount calculated under subsection (5).

(5) Subject to subsection (6), the aggregate amount under this section shall be the sum of the amounts determined under subdivisions (a) and (b) minus the amount determined under subdivision (c), as follows:

(a) The amount by which the tax increment revenues the authority would have received and retained for the fiscal year, excluding taxes exempt under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff, if the personal property tax exemptions described in subsection (1) were not in effect, exceed the tax increment revenues the authority actually received for the fiscal year. For fiscal years beginning January 1, 2019 and thereafter, the amount under this subdivision shall be calculated using the greater of the following:

(i) The captured assessed value of industrial personal property, commercial personal property, and the personal property component of exemption certificates granted under 1974 PA 198, MCL 207.551 to 207.572, that are sited on property classified as either industrial or commercial, for the authority's fiscal year ending in the current year.

(ii) The 2013 captured assessed value of industrial personal property, commercial personal property, and the personal property component of exemption certificates granted under 1974 PA 198, MCL 207.551 to 207.572, that are sited on property classified as either industrial or commercial.

(b) A shortfall required to be reported under subsection (2)(f) that had not previously increased a distribution.

(c) An excess amount required to be reported under subsection (2)(f) that had not previously decreased a

distribution.

(6) A distribution or taxes retained under this section replacing tax increment revenues pledged by an authority or a municipality are subject to any lien of the pledge described in subsection (1), whether or not there has been physical delivery of the distribution.

(7) Obligations for which distributions are made under this section are not a debt or liability of this state; do not create or constitute an indebtedness, liability, or obligation of this state; and are not and do not constitute a pledge of the faith and credit of this state.

(8) Not later than September 15 of each year, the authority shall provide a copy of the application for approval approved by the department of treasury to the local tax collecting treasurer and provide the amount of the taxes retained and paid to the authority under subsection (5).

(9) Calculations of amounts retained and paid and appropriations to be distributed under this section shall be made on the basis of each development area of the authority.

(10) The state tax commission may provide that the calculations under this section and the calculation of allowable capture of school taxes shall be made for each calendar year's tax increment revenues using a 12-month debt payment period used by the authority and approved by the state tax commission.

(11) It is the intent of the legislature that, to the extent that the total amount of taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, that are allowed to be retained under this section and sections 213c, 312b, and 411b of the recodified tax increment financing act, 2018 PA 57, MCL 125.4213c, 125.4312b, and 125.4411b, exceeds the difference of the total school aid fund revenue for the tax year minus the estimated amount of revenue the school aid fund would have received for the tax year had the tax exemptions described in subsection (1) and the earmark created by section 515 of the Michigan business tax act, 2007 PA 36, MCL 208.1515, not taken effect, the general fund shall reimburse the school aid fund the difference.

(12) As used in this section:

(a) "Advance" means that term as defined in section 201 of the recodified tax increment financing act, 2018 PA 57, MCL 125.4201.

(b) "Obligation" means that term as defined in section 201 of the recodified tax increment financing act, 2018 PA 57, MCL 125.4201.

**History:** Add. 2008, Act 154, Imd. Eff. June 5, 2008;—Am. 2014, Act 20, Imd. Eff. Feb. 25, 2014;—Am. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2018, Act 480, Imd. Eff. Dec. 27, 2018.

#### **125.2665b Reimbursement to intermediate school districts.**

Sec. 15b. (1) Beginning January 1, 2021, and each year thereafter, from the state school aid fund this state shall reimburse each intermediate school district for any tax increment revenues captured by an authority under this act for property taxes levied for operating purposes under section 625a, sections 681 to 690, or sections 1722 to 1729 of the revised school code, 1976 PA 451, MCL 380.625a, 380.681 to 380.690, and 380.1722 to 380.1729.

(2) The amounts reimbursed under subsection (1) shall be used by the intermediate school district only for the purposes for which the property taxes were originally levied.

(3) The Michigan strategic fund and the Michigan economic development corporation shall work with the department of treasury in identifying the amount of tax revenues captured by an authority that are to be reimbursed under subsection (1).

**History:** Add. 2020, Act 279, Eff. Mar. 24, 2021.

#### **125.2666 Tax increment revenues; transmission to authority; expenditure; reversion of surplus funds; financial status report; collection and compilation of financial reports by department and Michigan strategic fund; reporting obligations; performance postaudit report by auditor general; report by owner or developer for active project within brownfield plan; requirements applicable to transformational brownfield plan.**

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 brownfield revolving fund of the authority under section 8 shall revert proportionately to the respective taxing bodies, except as provided in section 15(16).

(3) The authority shall submit annually to the governing body, the department, and the Michigan strategic fund a financial report on the status of the activities of the authority for each calendar year. The report shall include all of the following:

(a) The total amount of local taxes that are approved for capture and the total amount of taxes levied for

school operating purposes that are approved for capture for each parcel included in a brownfield plan.

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

(c) The amount and source of tax increment revenues received for each active brownfield plan, including the amount of tax increment revenues captured in the most recent tax year and the cumulative amount of tax increment revenues captured for each brownfield plan.

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

(e) The captured taxable value realized by the authority for each eligible property subject to the brownfield plan.

(f) The amount of actual capital investment made for each project.

(g) The amount of tax increment revenues attributable to taxes levied for school operating purposes used for activities described in section 13b(6)(c), section 2(o)(i)(F) and (G), and section 2(o)(ii)(B) and (C).

(h) The number of residential units constructed or rehabilitated for each project.

(i) The amount, by square foot, of new or rehabilitated residential, retail, commercial, or industrial space for each project.

(j) The number of new jobs created at the project.

(k) A copy of all brownfield plan amendments approved by the local unit of government.

(l) All additional information that the governing body, the department, or the Michigan strategic fund considers necessary.

(4) The department and the Michigan strategic fund shall collect the financial reports submitted under subsection (3), compile a combined report, which includes the use of local taxes, taxes levied for school operating purposes, and the state brownfield redevelopment fund, based on the information contained in those reports and any additional information considered necessary, and submit annually a report based on that information to each member of the legislature.

(5) Beginning on January 1, 2013, all of the following reporting obligations apply:

(a) The department shall on a quarterly basis post on its website the name, location, and amount of tax increment revenues, including taxes levied for school operating purposes, for each project approved by the department under this act during the immediately preceding quarter.

(b) The Michigan strategic fund shall on a quarterly basis post on its website the name, location, and amount of tax increment revenues, including taxes levied for school operating purposes, for each project approved by the Michigan strategic fund under this act during the immediately preceding quarter.

(6) In addition to any other requirements under this act, not less than once every 3 years beginning not later than June 30, 2008, the auditor general shall conduct and report a performance postaudit on the effectiveness of the program established under this act. As part of the performance postaudit, the auditor general shall assess the extent to which the implementation of the program by the department and the Michigan strategic fund facilitate and affect the redevelopment or reuse of eligible property and identify any factors that inhibit the program's effectiveness. The performance postaudit shall also assess the extent to which the interpretation of statutory language, the development of guidance or administrative rules, and the implementation of the program by the department and the Michigan strategic fund is consistent with the fundamental objective of facilitating and supporting timely and efficient brownfield redevelopment of eligible properties.

(7) The owner or developer for an active project included within a brownfield plan must annually submit to the authority a report on the status of the project. The report shall be in a form developed by the authority and must contain information necessary for the authority to report under subsection (3)(f), (h), (i), (j), and (k). The authority may waive the requirement to submit a report under this subsection. As used in this subsection, "active project" means a project for which the authority is currently capturing taxes under this act.

(8) For a transformational brownfield plan, all of the following shall also apply:

(a) The state treasurer shall transfer to the state brownfield redevelopment fund each fiscal year an amount equal to the construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues under all approved plans as provided for in section 8a(4). Funds shall be transmitted to the authority, or owner or developer of the eligible property to which the revenues are attributable, within 30 days of transfer to the state brownfield redevelopment fund.

(b) The authority, the department, and the Michigan strategic fund shall follow the reporting requirements of subsections (3), (4), and (5) with respect to all approved transformational brownfield plans, and shall provide information on the amount and use of construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues to the same extent required for tax increment revenues.

(c) The owner or developer of active projects included within a transformational brownfield plan shall provide the information required for the authority, the department, and the Michigan strategic fund to satisfy the reporting and audit requirements of this section.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2007, Act 203, Imd. Eff. Dec. 27, 2007;—Am. 2012, Act 502, Imd. Eff. Dec. 28, 2012;—Am. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2017, Act 46, Eff. July 24, 2017;—Am. 2020, Act 259, Imd. Eff. Dec. 29, 2020.

### **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 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 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 Repealed. 2016, Act 471, Eff. Apr. 5, 2017.**

**Compiler's note:** The repealed section pertained to prohibition against capturing tax increment revenues from taxes levied before December 31, 1996.

**125.2672 Repealed. 2016, Act 471, Eff. Apr. 5, 2017.**

**Compiler's note:** The repealed section pertained to conditional effective date.

**CAUTION!**  
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