

Act No. 331
Public Acts of 1994
Approved by the Governor
October 13, 1994
Filed with the Secretary of State
October 14, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senator Arthurhultz

ENROLLED SENATE BILL No. 1035

AN ACT to amend section 2 of Act No 281 of the Public Acts of 1986 entitled as amended An act to encourage local development to prevent conditions of unemployment and promote economic growth to provide for the establishment of local development finance authorities and to prescribe their powers and duties to provide for the creation of a board to govern an authority and to prescribe its powers and duties to provide for the creation and implementation of development plans to authorize the acquisition and disposal of interests in real and personal property to permit the issuance of bonds and other evidences of indebtedness by an authority to prescribe powers and duties of certain state officers and agencies to reimburse authorities for certain losses of tax increment revenue and to authorize and permit the use of tax increment financing as amended by Act No 282 of the Public Acts of 1994 being section 125 2152 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Section 2 of Act No 281 of the Public Acts of 1986 as amended by Act No 282 of the Public Acts of 1994 being section 125 2152 of the Michigan Compiled Laws is amended to read as follows

Sec 2 As used in this act

(a) Advance means a transfer of funds made by a municipality to an authority or to another person on behalf of the authority in anticipation of repayment by the authority Evidence of the intent to repay an advance may include but is not limited to an executed agreement to repay provisions contained in a tax increment financing plan approved prior to the advance or a resolution of the authority or the municipality

(b) Authority means a local development finance authority created pursuant to this act

(c) Authority district means an area or areas within which an authority exercises its powers

(d) Board means the governing body of an authority

(e) Captured assessed value means the amount in any 1 year by which the current assessed value as equalized of the eligible property identified in the tax increment financing plan including the current assessed value of property for which specific local taxes are paid in lieu of property taxes as determined pursuant to subdivision (u) exceeds the initial assessed value The state tax commission shall prescribe the method for calculating captured assessed value

(f) Certified industrial park means an area of land designated by the department of commerce as meeting all of the following requirements

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

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

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

(iv) The developer of the land agrees to comply with other requirements not inconsistent with subparagraphs (i) to (iii) imposed upon property classified as a certified industrial park by the department of commerce under the certified

industrial park program Compliance with these other requirements is not a prerequisite to meeting the requirement of this subparagraph

(g) Chief executive officer means the mayor or city manager of a city the president of a village or for other local units of government or school districts the person charged by law with the supervision of the functions of the local unit of government or school district

(h) Development plan means that information and those requirements for a development set forth in section 15

(i) Development program means the implementation of a development plan

(j) Eligible advance means an advance made before August 19 1993

(k) Eligible obligation means an obligation issued or incurred by an authority or by a municipality on behalf of an authority before August 19 1993

(l) Eligible property means land improvements buildings structures and other real property and machinery equipment furniture and fixtures or any part or accessory thereof whether completed or in the process of construction comprising an integrated whole located within an authority district of which the primary purpose and use is 1 of the following

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

(ii) Agricultural processing

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

(iv) The production of energy by the processing of goods or materials by physical or chemical change by a small power production facility as defined by the federal energy regulatory commission pursuant to the public utility regulatory policies act of 1978 Public Law 95 617 92 Stat 3117 which facility is fueled primarily by biomass or wood waste This act does not affect a person's rights or liabilities under law with respect to groundwater contamination described in this subparagraph This subparagraph applies only if all of the following requirements are met

(A) Tax increment revenues captured from the eligible property will be used to finance or will be pledged for debt service on tax increment bonds used to finance a public facility in or near the authority district designed to reduce eliminate or prevent the spread of identified soil and groundwater contamination pursuant to law

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

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

(m) Fiscal year means the fiscal year of the authority

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

(o) Initial assessed value means the assessed value as equalized of the eligible property identified in the tax increment financing plan at the time the resolution establishing the tax increment financing plan is approved as shown by the most recent assessment roll for which equalization has been completed at the time the resolution is adopted Property exempt from taxation at the time of the determination of the initial assessed value shall be included as zero Property for which a specific local tax is paid in lieu of property tax shall not be considered exempt from taxation The initial assessed value of property for which a specific local tax was paid in lieu of property tax shall be determined as provided in subdivision (u)

(p) Municipality means a city village or urban township

(q) Obligation means a written promise to pay whether evidenced by a contract agreement lease sublease bond or note or a requirement to pay imposed by law An obligation does not include a payment required solely because of default upon an obligation employee salaries or consideration paid for the use of municipal offices Obligation includes but is not limited to the following

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

(ii) A management contract or a contract for professional services

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

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

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

(r) On behalf of an authority in relation to an eligible advance made or an eligible obligation issued or incurred by a municipality means in anticipation that an authority would transfer tax increment revenues or reimburse the municipality from tax increment revenues in an amount sufficient to fully make payment required by the eligible obligation issued or incurred by the municipality if the anticipation of the transfer or receipt of tax increment revenues from the authority is pursuant to or evidenced by 1 or more of the following

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

(ii) A requirement imposed by law that the authority transfer tax increment revenues to the municipality

(iii) A resolution of the authority agreeing to make payments to the incorporating unit

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

(s) Other protected obligation means

(i) An obligation issued to refund a bond or note that is an eligible obligation

(ii) An obligation issued or incurred by an authority or by a municipality on behalf of an authority after August 19 1993 but before December 31 1994 to finance a project described in a tax increment finance plan approved by the municipality in accordance with this act before August 19 1993 for which a contract for final design is entered into by the municipality or authority before March 1 1994

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

(t) Public facility means 1 or more of the following

(i) A street road bridge sewer sewage treatment facility facility designed to reduce eliminate or prevent the spread of identified soil or groundwater contamination drainage system waterway waterline water storage facility rail line utility line or pipeline or other similar or related structure or improvement together with necessary easements for the structure or improvement owned or used by a public agency or functionally connected to similar or supporting facilities 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 facilities shall be located in public easements or rights of way and sized to accommodate reasonably foreseeable development of eligible property in adjoining areas

(ii) The acquisition and disposal of real and personal property or an interest in that property demolition of structures site preparation relocation costs building rehabilitation and all administrative costs related to a public facility including but not limited to architect's engineer's legal and accounting fees as contained in the resolution establishing the district's development plan

(iii) An improvement to a facility used by the public or a public facility as those terms are defined in section 1 of Act No 1 of the Public Acts of 1966 being section 125 1351 of the Michigan Compiled Laws which improvement is made to comply with the barrier free design requirements of the state construction code promulgated under the state construction code act of 1972 Act No 230 of the Public Acts of 1972 being sections 125 1501 to 125 1531 of the Michigan Compiled Laws

(u) Specific local taxes means a tax levied under Act No 198 of the Public Acts of 1974 being sections 207 551 to 207 571 of the Michigan Compiled Laws the commercial redevelopment act Act No 255 of the Public Acts of 1978 being sections 207 651 to 207 668 of the Michigan Compiled Laws the enterprise zone act Act No 224 of the Public Acts of 1985 being sections 125 2101 to 125 2122 of the Michigan Compiled Laws Act No 189 of the Public Acts of 1953 being sections 211 181 to 211 182 of the Michigan Compiled Laws and the technology park development act Act No 385 of the Public Acts of 1984 being sections 207 701 to 207 718 of the Michigan Compiled Laws The initial assessed value or current assessed value of property subject to a specific local tax is the quotient of the specific local tax paid divided by the ad valorem millage rate However after 1993 the state tax commission shall prescribe the method for calculating the initial assessed value and current assessed value of property for which a specific local tax was paid in lieu of a property tax

(v) State fiscal year means the annual period commencing October 1 of each year

(w) Tax increment revenues means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the capture assessed value of real and personal property in the development area subject to the following requirements

(i) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions other than the state pursuant to the state education tax act Act No 331 of the Public Acts of 1993 being sections 211 901 to 211 906 of the Michigan Compiled Laws and local or intermediate school districts upon the captured assessed value of real and personal property in the development area for any purpose authorized by this act

(u) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of the state pursuant to the state education tax act Act No 331 of the Public Acts of 1993 and local or intermediate school districts upon the captured assessed value of real and personal property in the development area in an amount equal to the amount necessary without regard to subparagraph (i) to repay eligible advances eligible obligations and other protected obligations

(v) Tax increment revenues do not include any of the following

(A) Ad valorem property taxes or specific local taxes attributable either to a portion of the captured assessed value shared with taxing jurisdictions within the jurisdictional area of the authority or to a portion of value of property that may be excluded from captured assessed value

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

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

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

(v) The amount of tax increment revenues authorized to be included under subparagraph (u) and required to be transmitted to the authority under section 13(1) from ad valorem property taxes and specific local taxes attributable to the application of the levy of the state education tax act a local school district or an intermediate school district upon the captured assessed value of real and personal property in a development area shall be determined separately for the levy by the state each school district and each intermediate school district as the product of sub subparagraphs (A) and (B)

(A) The percentage which the total ad valorem taxes and specific local taxes available for distribution by law to the state local school district or intermediate school district respectively bears to the aggregate amount of ad valorem millage taxes and specific taxes available for distribution by law to the state each local school district and each intermediate school district

(B) The maximum amount of ad valorem property taxes and specific local taxes considered tax increment revenues under subparagraph (u)

(x) Urban township means a township that meets all of the following requirements

(i) Has a population of 20 000 or more or has a population of 10 000 or more but is located in a county with a population of 400 000 or more

(ii) Adopted a master zoning plan before February 1 1987

(iii) Provides sewer water and other public services to all or a part of the township

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor