

Act No. 270  
Public Acts of 1996  
Approved by the Governor  
June 12, 1996  
Filed with the Secretary of State  
June 12, 1996

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

Introduced by Senators Stille, Dunaskiss, Emmons and Shugars

# **ENROLLED SENATE BILL No. 993**

AN ACT to amend sections 2, 11a, and 14 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 revenues; and to authorize and permit the use of tax increment financing," section 2 as amended by Act No. 331 of the Public Acts of 1994, section 11a as amended by Act No. 282 of the Public Acts of 1994, and section 14 as amended by Act No. 333 of the Public Acts of 1993, being sections 125.2152, 125.2161a, and 125.2164 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 2, 11a, and 14 of Act No. 281 of the Public Acts of 1986, section 2 as amended by Act No. 331 of the Public Acts of 1994, section 11a as amended by Act No. 282 of the Public Acts of 1994, and section 14 as amended by Act No. 333 of the Public Acts of 1993, being sections 125.2152, 125.2161a, and 125.2164 of the Michigan Compiled Laws, are 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) "Assessed value" means 1 of the following:

(i) For valuations made before January 1, 1995, the state equalized valuation as determined under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(ii) For valuations made after December 31, 1994, the taxable value as determined under section 27a of Act No. 206 of the Public Acts of 1893, being section 211.27a of the Michigan Compiled Laws.

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

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

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

(f) "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 (w), exceeds the initial assessed value. The state tax commission shall prescribe the method for calculating captured assessed value.

(g) "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.

(h) "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.

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

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

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

(l) "Eligible obligation" means an obligation issued or incurred by an authority or by a municipality on behalf of an authority before August 19, 1993 and its subsequent refunding by a qualified refunding obligation.

(m) "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.

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

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

(p) "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 (w).

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

(r) "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. An obligation does not include those bonds that have been economically defeased by refunding bonds issued under this act. 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.

(s) "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.

(t) "Other protected obligation" means:

(i) A qualified refunding obligation issued to refund an obligation described in subparagraph (ii) or (iii), an obligation that is not a qualified refunding obligation that is issued to refund an eligible obligation, or a qualified refunding obligation issued to refund an obligation described in this subparagraph.

(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.

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

(u) "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.

(v) "Qualified refunding obligation" means an obligation issued or incurred by an authority or by a municipality on behalf of an authority to refund an obligation if the refunding obligation meets both of the following:

(i) The net present value of the principal and interest to be paid on the refunding obligation, including the cost of issuance, will be less than the net present value of the principal and interest to be paid on the obligation being refunded, as calculated using a method approved by the department of treasury.

(ii) The net present value of the sum of the tax increment revenues described in subdivision (y)(ii) and the distributions under section 11a to repay the refunding obligation will not be greater than the net present value of the sum of the tax increment revenues described in subdivision (y)(i) and the distributions under section 11a to repay the obligation being refunded, as calculated using a method approved by the department of treasury.

(w) "Specific local taxes" means a tax levied under Act No. 198 of the Public Acts of 1974, being sections 207.551 to 207.572 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 125.2123 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.

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

(y) "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.

(ii) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of the state pursuant to 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.

(iii) 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.

(iv) The amount of tax increment revenues authorized to be included under subparagraph (ii), 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 (ii).

(z) "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.

Sec. 11a. (1) If the amount of tax increment revenues lost as a result of the reduction of taxes levied by local school districts for school operating purposes required by the millage limitations under section 1211 of the school code of 1976, Act No. 451 of the Public Acts of 1976, being section 380.1211 of the Michigan Compiled Laws, reduced by the amount of tax increment revenues received from the capture of taxes levied under or attributable to the state education tax act, will cause the tax increment revenues received in a fiscal year by an authority under section 13 to be insufficient to repay an eligible advance or to pay an eligible obligation, the legislature shall appropriate and distribute to the authority the amount described in subsection (5).

(2) Not less than 30 days before the first day of a fiscal year, an authority eligible to retain tax increment revenues from taxes levied by a local or intermediate school district or this state or to receive a distribution under this section for that fiscal year shall file a claim with the department of treasury. The claim shall include the following information:

(a) The property tax millage rates levied in 1993 by local school districts within the jurisdictional area of the authority for school operating purposes.

(b) 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.

(c) 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.

(d) The tax increment revenues the authority estimates it would have received for that fiscal year if property taxes were levied by local school districts within the jurisdictional area of the authority for school operating purposes at the millage rates described in subdivision (a) and if no property taxes were levied by this state under the state education tax act.

(e) A list and documentation of eligible obligations, eligible advances, and other protected obligations and the payments due on each of those eligible obligations, eligible advances, or other protected obligations in that fiscal year, and the total amount of all the payments due on those eligible obligations, eligible advances, and other protected obligations in that fiscal year.

(f) 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, and to be used for, the payment of an eligible obligation or the repayment of an eligible advance. 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 project.

(g) 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) For the fiscal year that commences after September 30, 1993 and before October 1, 1994, an authority may make a claim with all information required by subsection (2) at any time after the effective date of this section.

(4) After review and verification of claims submitted pursuant to this section, amounts appropriated by the state in compliance with this act shall be distributed as 2 equal payments on March 1 and September 1 after receipt of a claim. An authority shall allocate a distribution it receives for an eligible obligation issued on behalf of a municipality to the municipality.

(5) Subject to subsections (6) and (7), the aggregate amount to be appropriated and distributed pursuant to this section to an authority shall be the sum of the amounts determined pursuant to subdivisions (a) and (b) minus the amount determined pursuant to subdivision (c), as follows:

(a) The amount by which the tax increment revenues the authority would have received for the fiscal year, if property taxes were levied by local school districts for school operating purposes at the millage rates described in subsection (2)(a) and if no property taxes were levied under the state education tax act, exceed the tax increment revenues the authority actually received for the fiscal year.

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

(c) An excess amount required to be reported pursuant to subsection (2)(g) that had not previously decreased a distribution.

(6) The amount distributed under subsection (5) shall not exceed the difference between the amount described in subsection (2)(e) and the sum of the amounts described in subsection (2)(c) and (f).

(7) If, based upon the tax increment financing plan in effect on August 19, 1993, the payment due on eligible obligations or eligible advances anticipates the use of excess prior year tax increment revenues permitted by law to be retained by the authority, and if the sum of the amounts described in subsection (2)(c) and (f) plus the amount to be distributed under subsections (5) and (6) is less than the amount described in subsection (2)(e), the amount to be distributed under subsections (5) and (6) shall be increased by the amount of the shortfall. However, the amount authorized to be distributed pursuant to this section shall not exceed that portion of the cumulative difference, for each preceding fiscal year, between the amount that could have been distributed pursuant to subsection (5) and the amount actually distributed pursuant to subsections (5) and (6) and this subsection.

(8) A distribution under this section replacing tax increment revenues pledged by an authority or a municipality is subject to the lien of the pledge, whether or not there has been physical delivery of the distribution.

(9) Obligations for which distributions are made pursuant to 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.

(10) Not later than July 1 of each year, the authority shall certify to the local tax collecting treasurer the amount of the distribution required under subsection (5), calculated without regard to the receipt of tax increment revenues attributable to local or intermediate school district operating taxes or attributable to taxes levied under the state education tax act.

(11) Calculations of distribution under this section and claims reports required to be made under subsection (2) shall be made on the basis of each development area of the authority.

Sec. 14. (1) By resolution of its board and subject to the limitations set forth in this section, the authority may authorize, issue, and sell its tax increment bonds to finance a development program or to refund or refund in advance obligations issued under this act. The bonds shall mature in 30 years or less and are subject to 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. The authority may pledge for debt service requirements the tax increment revenues to be received from an eligible property. The bonds issued under this section shall be considered a single series for the purposes of section 4 of chapter V of the municipal finance act, Act No. 202 of the Public Acts of 1943, being section 135.4 of the Michigan Compiled Laws.

(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, if authorized by the voters of the municipality, pledge its full faith and credit for the payment of the principal of and interest on the authority's tax increment bonds. The municipality may pledge as additional security for the bonds any money received by the authority or the municipality pursuant to section 10.

(3) Bonds and notes issued by the authority and the interest on and income from those bonds and notes are exempt from taxation by the state or a political subdivision of this state.

(4) Notwithstanding any other provision of this act, if the state treasurer determines that an authority or municipality can issue a qualified refunding obligation and the authority or municipality does not make a good faith effort to issue the qualified refunding obligation as determined by the state treasurer, the state treasurer may reduce the amount claimed by the authority or municipality under section 11a by an amount equal to the net present value saving that would have been realized had the authority or municipality refunded the obligation or the state treasurer may require a reduction in the capture of tax increment revenues from taxes levied by a local or intermediate school district or this state by an amount equal to the net present value savings that would have been realized had the authority or municipality refunded the obligation. This subsection does not authorize the state treasurer to require the authority or municipality to pledge security greater than the security pledged for the obligation being refunded.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

(a) Senate Bill No. 992.

(b) House Bill No. 5072.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved -----

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Governor.