

SENATE BILL No. 718

September 23, 2003, Introduced by Senators CASSIS, SWITALSKI, KUIPERS, CROPEY, TOY, ALLEN, GARCIA, BIRKHOLZ, BISHOP and BARCIA and referred to the Committee on Finance.

A bill to amend 1996 PA 381, entitled "Brownfield redevelopment financing act," by amending section 15 (MCL 125.2665), as amended by 2002 PA 727.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 15. (1) An authority shall not do any of the
2 following:

3 (a) For eligible activities not described in section 13(15),
4 use taxes levied for school operating purposes captured from
5 eligible property unless the eligible activities to be conducted
6 on the eligible property are eligible activities under part 201
7 of the natural resources and environmental protection act, 1994
8 PA 451, MCL 324.20101 to 324.20142, consistent with a work plan
9 or remedial action plan approved by the department after July 24,
10 1996 and before January 1, 2008.

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1 (b) For eligible activities not described in section 13(15),
2 use funds from a local site remediation revolving fund that are
3 derived from taxes levied for school operating purposes unless
4 the eligible activities to be conducted are eligible activities
5 under part 201 of the natural resources and environmental
6 protection act, 1994 PA 451, MCL 324.20101 to 324.20142,
7 consistent with a work plan or remedial action plan that has been
8 approved by the department after July 24, 1996.

9 (c) Use funds from a local site remediation revolving fund
10 created pursuant to section 8 that are derived from taxes levied
11 for school operating purposes for the eligible activities
12 described in section 13(15) unless the eligible activities to be
13 conducted are consistent with a work plan approved by the
14 Michigan economic growth authority.

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

18 (e) Use taxes levied for school operating purposes captured
19 from eligible property for response activities that benefit a
20 party, **except for a municipality that established the authority,**
21 **that is** liable under section 20126 of the natural resources and
22 environmental protection act, 1994 PA 451, MCL 324.20126.

23 (f) Use taxes captured from eligible property to pay for
24 administrative and operating activities of the authority or the
25 municipality on behalf of the authority except for costs
26 described in section 13(16) and for the reasonable costs for
27 preparing a work plan or remedial action plan for the eligible

1 property, including the actual cost of the review of the work
2 plan or remedial action plan under this section.

3 (2) To seek department approval of a work plan under
4 subsection (1)(a) or (b) or remedial action plan, the authority
5 shall submit all of the following for each eligible property:

6 (a) A copy of the brownfield plan.

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

11 (c) A summary of available information on the historical and
12 current use of each eligible property, including a brief summary
13 of site conditions and what is known about environmental
14 contamination as that term is defined in section 20101 of the
15 natural resources and environmental protection act, 1994 PA 451,
16 MCL 324.20101.

17 (d) Existing and proposed future zoning for each eligible
18 property.

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

21 (f) A separate work plan or remedial action plan, or part of
22 a work plan or remedial action plan, for each eligible activity
23 to be undertaken.

24 (3) Upon receipt of a request for approval of a work plan or
25 remedial action plan under subsection (2) that pertains to
26 baseline environmental assessment activities or due care
27 activities, or both, or a portion of a work plan or remedial

1 action plan that pertains to only baseline environmental
2 assessment activities or due care activities, or both, the
3 department shall provide 1 of the following written responses to
4 the requesting authority within 60 days:

5 (a) An unconditional approval.

6 (b) A conditional approval that delineates specific necessary
7 modifications to the work plan or remedial action plan,
8 including, but not limited to, individual activities to be added
9 or deleted from the work plan or remedial action plan and
10 revision of costs.

11 (c) If the work plan or remedial action plan lacks sufficient
12 information for the department to respond under subdivision (a)
13 or (b), a letter stating with specificity the necessary additions
14 or changes to the work plan or remedial action plan to be
15 submitted before a plan will be considered by the department.

16 (4) In its review of a work plan or remedial action plan, the
17 department shall consider all of the following:

18 (a) Whether the individual activities included in the work
19 plan or remedial action plan are sufficient to complete the
20 eligible activity.

21 (b) Whether each individual activity included in the work
22 plan or remedial action plan is required to complete the eligible
23 activity.

24 (c) Whether the cost for each individual activity is
25 reasonable.

26 (5) If the department fails to provide a written response
27 under subsection (3) within 60 days after receipt of a request

1 for approval of a work plan or remedial action plan that pertains
2 to baseline environmental assessment activities or due care
3 activities, or both, the authority may proceed with the baseline
4 environmental assessment activities or due care activities, or
5 both, as outlined in the work plan or remedial action plan as
6 submitted for approval. Except as provided in subsection (6),
7 baseline environmental assessment activities or due care
8 activities, or both, conducted pursuant to a work plan or
9 remedial action plan that was submitted to the department for
10 approval but for which the department failed to provide a written
11 response under subsection (3) shall be considered approved for
12 the purposes of subsection (1).

13 (6) The department may issue a written response to a work
14 plan or remedial action plan that pertains to baseline
15 environmental assessment activities or due care activities, or
16 both, more than 60 days but less than 6 months after receipt of a
17 request for approval. If the department issues a written
18 response under this subsection, the authority is not required to
19 conduct individual activities that are in addition to the
20 individual activities included in the work plan or remedial
21 action plan as it was submitted for approval and failure to
22 conduct these additional activities shall not affect the
23 authority's ability to capture taxes under subsection (1) for the
24 eligible activities described in the work plan or remedial action
25 plan initially submitted under subsection (5). In addition, at
26 the option of the authority, these additional individual
27 activities shall be considered part of the work plan or remedial

1 action plan of the authority and approved for purposes of
2 subsection (1). However, any response by the department under
3 this subsection that identifies additional individual activities
4 that must be carried out to satisfy the baseline environmental
5 assessment or due care requirements, or both, of part 201 of the
6 natural resources and environmental protection act, 1994 PA 451,
7 MCL 324.20101 to 324.20142, must be satisfactorily completed for
8 the baseline environmental assessment or due care activities, or
9 both, to be considered acceptable for the purposes of compliance
10 with part 201 of the natural resources and environmental
11 protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

12 (7) If the department issues a written response under
13 subsection (6) to a work plan or remedial action plan that
14 pertains to baseline environmental assessment activities or due
15 care activities, or both, and if the department's written
16 response modifies an individual activity proposed by the work
17 plan or remedial action plan of the authority in a manner that
18 reduces or eliminates a proposed response activity, the authority
19 must complete those individual activities included in the
20 baseline environmental assessment or due care activities, or
21 both, in accordance with the department's response in order for
22 that portion of the work plan or remedial action plan to be
23 considered approved for purposes of subsection (1), unless 1 or
24 more of the following conditions apply:

25 (a) Obligations for the individual activity have been issued
26 by the authority, or by a municipality on behalf of the
27 authority, to fund the individual activity prior to issuance of

1 the department's response.

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

5 (8) It shall be in the sole discretion of an authority to
6 propose to undertake additional response activities at an
7 eligible property under a brownfield plan. The department shall
8 not require a work plan or remedial action plan for either
9 baseline environmental assessment activities or due care
10 activities, or both, to include additional response activities.

11 (9) The department may reject the portion of a work plan or
12 remedial action plan that includes additional response activities
13 and may consider the level of risk reduction that will be
14 accomplished by the additional response activities in determining
15 whether to approve or reject the work plan or remedial action
16 plan or a portion of a plan.

17 (10) The department's approval or rejection of a work plan
18 under subsection (1)(a) or (b) or remedial action plan for
19 additional response activities is final.

20 (11) The authority shall reimburse the department for the
21 actual cost incurred by the department or a contractor of the
22 department to review a work plan under subsection (1)(a) or (b)
23 or remedial action plan under this section. Funds paid to the
24 department under this subsection shall be deposited in the cost
25 recovery subaccount of the cleanup and redevelopment fund created
26 under section 20108 of the natural resources and environmental
27 protection act, 1994 PA 451, MCL 324.20108.

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

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

6 (b) The amount of revenue this state would have received if
7 taxes levied for school operating purposes had not been captured
8 under this section for the previous calendar year.

9 (c) The amount of revenue each local governmental unit would
10 have received if taxes levied for school operating purposes had
11 not been captured under this section for the previous calendar
12 year.

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

17 (a) A copy of the brownfield plan.

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

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

24 (d) Existing and proposed future zoning for each eligible
25 property.

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

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

3 (g) A copy of the development agreement required under
4 section 13(15), which shall include, but is not limited to, a
5 detailed summary of any and all ownership interests, monetary
6 considerations, fees, revenue and cost sharing, charges, or other
7 financial arrangements or other consideration between the
8 parties.

9 (14) Upon receipt of a request for approval of a work plan,
10 the Michigan economic growth authority shall provide 1 of the
11 following written responses to the requesting authority within 65
12 days:

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

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

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

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

27 (a) Whether the individual activities included in the work

1 plan are sufficient to complete the eligible activity.

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

4 (c) Whether the cost for each individual activity is
5 reasonable.

6 (d) The overall benefit to the public.

7 (e) The extent of reuse of vacant buildings and redevelopment
8 of blighted property.

9 (f) Creation of jobs.

10 (g) Whether the eligible property is in an area of high
11 unemployment.

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

14 (i) The level of private sector contribution.

15 (j) The cost gap that exists between the site and a similar
16 greenfield site as determined by the Michigan economic growth
17 authority.

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

21 (l) Whether the financial statements of the developer,
22 landowner, or corporate entity indicate that the developer,
23 landowner, or corporate entity is financially sound and that the
24 project of the developer, landowner, or corporate entity that is
25 included in the work plan is economically sound.

26 (m) Other state and local incentives available to the
27 developer, landowner, or corporate entity for the project of the

1 developer, landowner, or corporate entity that is included in the
2 work plan.

3 (n) Any other criteria that the Michigan economic growth
4 authority considers appropriate for the determination of
5 eligibility or for approval of the work plan.

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

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

15 (18) The authority shall reimburse the Michigan economic
16 growth authority for the actual cost incurred by the Michigan
17 economic growth authority or a contractor of the Michigan
18 economic growth authority to review a work plan under this
19 section.

20 (19) The Michigan economic growth authority shall submit a
21 report each year on or before March 1 to each member of the
22 legislature that contains all of the following:

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

25 (b) The amount of revenue this state would have received if
26 taxes levied for school operating purposes had not been captured
27 under this section for the previous calendar year.

1 (c) The amount of revenue each local governmental unit would
2 have received if taxes levied for school operating purposes had
3 not been captured under this section for the previous calendar
4 year.

5 (20) All taxes levied for school operating purposes that are
6 not used for eligible activities consistent with a work plan
7 approved by the department or the Michigan economic growth
8 authority and that are not deposited in a local site remediation
9 revolving fund shall be distributed proportionately between the
10 local school district and the school aid fund.