

HOUSE BILL No. 4197

February 12, 2003, Introduced by Rep. Ward and referred to the Committee on Local Government and Urban Policy.

A bill to amend 1986 PA 281, entitled
"The local development financing act,"
by amending section 2 (MCL 125.2152), as amended by 2000 PA 248.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

9 (b) "Assessed value" means 1 of the following:

10 (i) For valuations made before January 1, 1995, the state
11 equalized valuation as determined under the general property tax

1 act, 1893 PA 206, MCL 211.1 to 211.157.

2 (ii) For valuations made after December 31, 1994, the taxable
3 value as determined under section 27a of the general property tax
4 act, 1893 PA 206, MCL 211.27a.

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

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

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

10 (f) "Business development area" means an area designated as a
11 certified industrial park under this act prior to the effective
12 date of the amendatory act that added this subdivision, or an
13 area designated in the tax increment financing plan that meets
14 all of the following requirements:

15 (i) The area is zoned to allow its use for eligible
16 property.

17 (ii) The area has a site plan or plat approved by the city,
18 village, or township in which the area is located.

19 (g) "Business incubator" means real and personal property
20 that meets all of the following requirements:

21 (i) Is located in a certified technology park.

22 (ii) Is subject to an agreement under section 12a.

23 (iii) Is developed for the primary purpose of attracting 1 or
24 more owners or tenants who will engage in activities that would
25 each separately qualify the property as eligible property under
26 subdivision (p)(iii).

27 (h) "Captured assessed value" means the amount in any 1 year

1 by which the current assessed value of the eligible property
2 identified in the tax increment financing plan or, for a
3 certified technology park, the real and personal property
4 included in the tax increment financing plan, including the
5 current assessed value of property for which specific local taxes
6 are paid in lieu of property taxes as determined pursuant to
7 subdivision ~~-(bb)-~~ (cc), exceeds the initial assessed value. The
8 state tax commission shall prescribe the method for calculating
9 captured assessed value.

10 (i) "Certified business park" means a business development
11 area that has been designated by the Michigan economic
12 development corporation as meeting criteria established by the
13 Michigan economic development corporation. The criteria shall
14 establish standards for business development areas including, but
15 not limited to, use, types of building materials, landscaping,
16 setbacks, parking, storage areas, and management.

17 (j) "Certified technology park" means that portion of the
18 authority district designated by a written agreement entered into
19 pursuant to section 12a between the authority, the municipality,
20 and the Michigan economic development corporation.

21 (k) "Chief executive officer" means the mayor or city manager
22 of a city, the president of a village, or, for other local units
23 of government or school districts, the person charged by law with
24 the supervision of the functions of the local unit of government
25 or school district.

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

1 (m) "Development program" means the implementation of a
2 development plan.

3 (n) "Eligible advance" means an advance made before
4 August 19, 1993.

5 (o) "Eligible obligation" means an obligation issued or
6 incurred by an authority or by a municipality on behalf of an
7 authority before August 19, 1993 and its subsequent refunding by
8 a qualified refunding obligation. Eligible obligation includes
9 an authority's written agreement entered into before August 19,
10 1993 to pay an obligation issued after August 18, 1993 and before
11 December 31, 1996 by another entity on behalf of the authority.

12 (p) "Eligible property" means land improvements, buildings,
13 structures, and other real property, and machinery, equipment,
14 furniture, and fixtures, or any part or accessory thereof whether
15 completed or in the process of construction comprising an
16 integrated whole, located within an authority district, of which
17 the primary purpose and use is or will be 1 of the following:

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

20 (ii) Agricultural processing.

21 (iii) A high technology activity.

22 (iv) The production of energy by the processing of goods or
23 materials by physical or chemical change by a small power
24 production facility as defined by the federal energy regulatory
25 commission pursuant to the public utility regulatory policies act
26 of 1978, Public Law 95-617, 92 Stat. 3117, which facility is
27 fueled primarily by biomass or wood waste. This act does not

1 affect a person's rights or liabilities under law with respect to
2 groundwater contamination described in this subparagraph. This
3 subparagraph applies only if all of the following requirements
4 are met:

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

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

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

23 (v) A business incubator.

24 (q) "Fiscal year" means the fiscal year of the authority.

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

1 (s) "High technology activity" means that term as defined in
2 section 3 of the Michigan economic growth authority act, 1995 PA
3 24, MCL 207.803.

4 (t) "Initial assessed value" means the assessed value of the
5 eligible property identified in the tax increment financing plan
6 or, for a certified technology park, the assessed value of any
7 real and personal property included in the tax increment
8 financing plan, at the time the resolution establishing the tax
9 increment financing plan is approved as shown by the most recent
10 assessment roll for which equalization has been completed at the
11 time the resolution is adopted or, for property that becomes
12 eligible property in other than a certified technology park after
13 the date the plan is approved, at the time the property becomes
14 eligible property. Property exempt from taxation at the time of
15 the determination of the initial assessed value shall be included
16 as zero. Property for which a specific local tax is paid in lieu
17 of property tax shall not be considered exempt from taxation.
18 The initial assessed value of property for which a specific local
19 tax was paid in lieu of property tax shall be determined as
20 provided in subdivision ~~-(bb)-~~ (cc).

21 (u) "Michigan economic development corporation" means the
22 public body corporate created under section 28 of article VII of
23 the state constitution of 1963 and the urban cooperation act of
24 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a
25 contractual interlocal agreement effective April 5, 1999 between
26 local participating economic development corporations formed
27 under the economic development corporations act, 1974 PA 338, MCL

1 125.1601 to 125.1636, and the Michigan strategic fund. If the
2 Michigan economic development corporation is unable for any
3 reason to perform its duties under this act, those duties may be
4 exercised by the Michigan strategic fund.

5 (v) "Michigan strategic fund" means the Michigan strategic
6 fund as described in the Michigan strategic fund act, 1984 PA
7 270, MCL 125.2001 to 125.2093.

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

9 (x) "Obligation" means a written promise to pay, whether
10 evidenced by a contract, agreement, lease, sublease, bond, or
11 note, or a requirement to pay imposed by law. An obligation does
12 not include a payment required solely because of default upon an
13 obligation, employee salaries, or consideration paid for the use
14 of municipal offices. An obligation does not include those bonds
15 that have been economically defeased by refunding bonds issued
16 under this act. Obligation includes, but is not limited to, the
17 following:

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

21 (ii) A management contract or a contract for professional
22 services.

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

26 (iv) A requirement to pay or reimburse a person for the cost
27 of insurance for, or to maintain, property subject to a lease,

1 land contract, purchase agreement, or other agreement.

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

5 (y) "On behalf of an authority", in relation to an eligible
6 advance made by a municipality or an eligible obligation or other
7 protected obligation issued or incurred by a municipality, means
8 in anticipation that an authority would transfer tax increment
9 revenues or reimburse the municipality from tax increment
10 revenues in an amount sufficient to fully make payment required
11 by the eligible advance made by a municipality, or eligible
12 obligation or other protected obligation issued or incurred by
13 the municipality, if the anticipation of the transfer or receipt
14 of tax increment revenues from the authority is pursuant to or
15 evidenced by 1 or more of the following:

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

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

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

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

24 (z) "Other protected obligation" means:

25 (i) A qualified refunding obligation issued to refund an
26 obligation described in subparagraph (ii) or (iii), an obligation
27 that is not a qualified refunding obligation that is issued to

1 refund an eligible obligation, or a qualified refunding
2 obligation issued to refund an obligation described in this
3 subparagraph.

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

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

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

24 (aa) "Public facility" means 1 or more of the following:

25 (i) A street, road, bridge, storm water or sanitary sewer,
26 sewage treatment facility, facility designed to reduce,
27 eliminate, or prevent the spread of identified soil or

1 groundwater contamination, drainage system, retention basin,
2 pretreatment facility, waterway, waterline, water storage
3 facility, rail line, electric, gas, telephone or other
4 communications, or any other type of utility line or pipeline, or
5 other similar or related structure or improvement, together with
6 necessary easements for the structure or improvement. Except for
7 rail lines, utility lines, or pipelines, the structures or
8 improvements described in this subparagraph shall be either owned
9 or used by a public agency, functionally connected to similar or
10 supporting facilities owned or used by a public agency, or
11 designed and dedicated to use by, for the benefit of, or for the
12 protection of the health, welfare, or safety of the public
13 generally, whether or not used by a single business entity. Any
14 road, street, or bridge shall be continuously open to public
15 access. A public facility shall be located on public property or
16 in a public, utility, or transportation easement or
17 right-of-way.

18 (ii) The acquisition and disposal of land that is proposed or
19 intended to be used in the development of eligible property or an
20 interest in that land, demolition of structures, site
21 preparation, and relocation costs.

22 (iii) All administrative and real and personal property
23 acquisition and disposal costs related to a public facility
24 described in subparagraphs (i) and (iv), including, but not
25 limited to, architect's, engineer's, legal, and accounting fees
26 as permitted by the district's development plan.

27 (iv) An improvement to a facility used by the public or a

1 public facility as those terms are defined in section 1 of 1966
2 PA 1, MCL 125.1351, which improvement is made to comply with the
3 barrier free design requirements of the state construction code
4 promulgated under the ~~state construction code act of 1972~~
5 **Stille-DeRossett-Hale single state construction code act**, 1972 PA
6 230, MCL 125.1501 to 125.1531.

7 (v) All of the following costs approved by the Michigan
8 economic development corporation:

9 (A) Operational costs and the costs related to the
10 acquisition, improvement, preparation, demolition, disposal,
11 construction, reconstruction, remediation, rehabilitation,
12 restoration, preservation, maintenance, repair, furnishing, and
13 equipping of land and other assets that are or may become
14 eligible for depreciation under the internal revenue code of 1986
15 for a business incubator located in a certified technology park.

16 (B) Costs related to the acquisition, improvement,
17 preparation, demolition, disposal, construction, reconstruction,
18 remediation, rehabilitation, restoration, preservation,
19 maintenance, repair, furnishing, and equipping of land and other
20 assets that, if privately owned, would be eligible for
21 depreciation under the internal revenue code of 1986 for
22 laboratory facilities, research and development facilities,
23 conference facilities, teleconference facilities, testing,
24 training facilities, and quality control facilities that are or
25 that support eligible property under subdivision (p)(iii), that
26 are owned by a public entity, and that are located within a
27 certified technology park.

1 (vi) Operating and planning costs included in a plan pursuant
2 to section 12(1)(f), including costs of marketing property within
3 the district and attracting development of eligible property
4 within the district.

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

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

15 (ii) The net present value of the sum of the tax increment
16 revenues described in subdivision (ee)(ii) and the distributions
17 under section 11a to repay the refunding obligation will not be
18 greater than the net present value of the sum of the tax
19 increment revenues described in subdivision (ee)(ii) and the
20 distributions under section 11a to repay the obligation being
21 refunded, as calculated using a method approved by the department
22 of treasury.

23 (cc) "Specific local taxes" means a tax levied under 1974 PA
24 198, MCL 207.551 to 207.572, the obsolete property rehabilitation
25 act, **2000 PA 146, MCL 125.2781 to 125.2797**, the commercial
26 redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the
27 enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123, 1953

1 PA 189, MCL 211.181 to 211.182, and the technology park
2 development act, 1984 PA 385, MCL 207.701 to 207.718. The
3 initial assessed value or current assessed value of property
4 subject to a specific local tax is the quotient of the specific
5 local tax paid divided by the ad valorem millage rate. However,
6 after 1993, the state tax commission shall prescribe the method
7 for calculating the initial assessed value and current assessed
8 value of property for which a specific local tax was paid in lieu
9 of a property tax.

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

12 (ee) "Tax increment revenues" means the amount of ad valorem
13 property taxes and specific local taxes attributable to the
14 application of the levy of all taxing jurisdictions upon the
15 captured assessed value of eligible property within the district
16 or, for purposes of a certified technology park, real or personal
17 property that is located within the certified technology park and
18 included within the tax increment financing plan, subject to the
19 following requirements:

20 (i) Tax increment revenues include ad valorem property taxes
21 and specific local taxes attributable to the application of the
22 levy of all taxing jurisdictions, other than the state pursuant
23 to the state education tax act, 1993 PA 331, MCL 211.901 to
24 211.906, and local or intermediate school districts, upon the
25 captured assessed value of real and personal property in the
26 development area for any purpose authorized by this act.

27 (ii) Tax increment revenues include ad valorem property taxes

1 and specific local taxes attributable to the application of the
2 levy of the state pursuant to the state education tax act, 1993
3 PA 331, MCL 211.901 to 211.906, and local or intermediate school
4 districts upon the captured assessed value of real and personal
5 property in the development area in an amount equal to the amount
6 necessary, without regard to subparagraph (i), for the following
7 purposes:

8 (A) To repay eligible advances, eligible obligations, and
9 other protected obligations.

10 (B) To fund or to repay an advance or obligation issued by or
11 on behalf of an authority to fund the cost of public facilities
12 related to or for the benefit of eligible property located within
13 a certified technology park to the extent the public facilities
14 have been included in an agreement under section 12a(3), not to
15 exceed 50%, as determined by the state treasurer, of the amounts
16 levied by the state pursuant to the state education tax act, 1993
17 PA 331, MCL 211.901 to 211.906, and local and intermediate school
18 districts for a period not to exceed 15 years, as determined by
19 the state treasurer, if the state treasurer determines that the
20 capture under this subparagraph is necessary to reduce
21 unemployment, promote economic growth, and increase capital
22 investment in the municipality.

23 (iii) Tax increment revenues do not include any of the
24 following:

25 (A) Ad valorem property taxes or specific local taxes that
26 are excluded from and not made part of the tax increment
27 financing plan.

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

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

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

14 (E) The amount of ad valorem property taxes or specific taxes
15 captured by a downtown development authority under 1975 PA 197,
16 MCL 125.1651 to 125.1681, tax increment financing authority under
17 the tax increment finance authority act, 1980 PA 450,
18 MCL 125.1801 to 125.1830, or brownfield redevelopment authority
19 under the brownfield redevelopment financing act, 1996 PA 381,
20 MCL 125.2651 to 125.2672, if those taxes were captured by these
21 other authorities on the date that the initial assessed value of
22 a parcel of property was established under this act.

23 (iv) The amount of tax increment revenues authorized to be
24 included under subparagraph (ii), and required to be transmitted
25 to the authority under section 13(1), from ad valorem property
26 taxes and specific local taxes attributable to the application of
27 the levy of the state education tax act, 1993 PA 331, MCL 211.901

1 to 211.906, or a local school district or an intermediate school
 2 district upon the captured assessed value of real and personal
 3 property in a development area shall be determined separately for
 4 the levy by the state, each school district, and each
 5 intermediate school district as the product of sub-subparagraphs
 6 (A) and (B):

7 (A) The percentage that the total ad valorem taxes and
 8 specific local taxes available for distribution by law to the
 9 state, local school district, or intermediate school district,
 10 respectively, bears to the aggregate amount of ad valorem millage
 11 taxes and specific taxes available for distribution by law to the
 12 state, each local school district, and each intermediate school
 13 district.

14 (B) The maximum amount of ad valorem property taxes and
 15 specific local taxes considered tax increment revenues under
 16 subparagraph (ii).

17 (ff) "Urban township" means a township **with a population of**
 18 **15,000 or more located in a county with a population of 125,000**
 19 **or more.** ~~that meets 1 or more of the following:~~

20 ~~—— (i) Meets all of the following requirements:~~

21 ~~—— (A) Has a population of 20,000 or more, or has a population~~
 22 ~~of 10,000 or more but is located in a county with a population of~~
 23 ~~400,000 or more.~~

24 ~~—— (B) Adopted a master zoning plan before February 1, 1987.~~

25 ~~—— (C) Provides sewer, water, and other public services to all~~
 26 ~~or a part of the township.~~

27 ~~—— (ii) Meets all of the following requirements:~~

- 1 ~~—— (A) Has a population of less than 20,000.~~
- 2 ~~—— (B) Is located in a county with a population of 250,000 or~~
3 ~~more but less than 400,000, and that county is located in a~~
4 ~~metropolitan statistical area.~~
- 5 ~~—— (C) Has within its boundaries a parcel of property under~~
6 ~~common ownership that is 800 acres or larger and is capable of~~
7 ~~being served by a railroad, and located within 3 miles of a~~
8 ~~limited access highway.~~
- 9 ~~—— (D) Establishes an authority before December 31, 1998.~~
- 10 ~~—— (iii) Meets all of the following requirements:~~
- 11 ~~—— (A) Has a population of less than 20,000.~~
- 12 ~~—— (B) Has a state equalized value for all real and personal~~
13 ~~property located in the township of more than \$200,000,000.00.~~
- 14 ~~—— (C) Adopted a master zoning plan before February 1, 1987.~~
- 15 ~~—— (D) Is a charter township under the charter township act,~~
16 ~~1947 PA 359, MCL 42.1 to 42.34.~~
- 17 ~~—— (E) Has within its boundaries a combination of parcels under~~
18 ~~common ownership that is 800 acres or larger, is immediately~~
19 ~~adjacent to a limited access highway, is capable of being served~~
20 ~~by a railroad, and is immediately adjacent to an existing sewer~~
21 ~~line.~~
- 22 ~~—— (F) Establishes an authority before March 1, 1999.~~