

HOUSE BILL No. 6635

November 14, 2006, Introduced by Rep. Amos and referred to the Committee on Commerce.

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending sections 4 and 13 (MCL 125.2654 and 125.2663), section
4 as amended by 2005 PA 101 and section 13 as amended by 2006 PA
32.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) A governing body may declare by resolution adopted
2 by a majority of its members elected and serving its intention to
3 create and provide for the operation of an authority.

4 (2) In the resolution of intent, the governing body shall set
5 a date for holding a public hearing on the adoption of a proposed
6 resolution creating the authority. Notice of the public hearing

1 shall be published twice in a newspaper of general circulation in
2 the municipality, not less than 20 nor more than 40 days before the
3 date of the hearing. The notice shall state the date, time, and
4 place of the hearing. **THE NOTICE OF HEARING WITHIN THE TIME FRAME**
5 **DESCRIBED IN THIS SUBSECTION SHALL BE MAILED BY CERTIFIED MAIL TO**
6 **THE GOVERNING BODY OF EACH TAXING JURISDICTION LEVYING TAXES THAT**
7 **WOULD BE SUBJECT TO CAPTURE IF THE AUTHORITY IS ESTABLISHED AND A**
8 **BROWNFIELD PLAN IS APPROVED.** At that hearing, a citizen, taxpayer,
9 official from a taxing jurisdiction whose millage may be subject to
10 capture under a brownfield plan, or property owner of the
11 municipality has the right to be heard in regard to the
12 establishment of the authority.

13 (3) Not more than 30 days after the public hearing, if the
14 governing body intends to proceed with the establishment of the
15 authority, the governing body shall adopt, by majority vote of its
16 members elected and serving, a resolution establishing the
17 authority. The adoption of the resolution is subject to all
18 applicable statutory or charter provisions with respect to the
19 approval or disapproval by the chief executive or other officer of
20 the municipality and the adoption of a resolution over his or her
21 veto. This resolution shall be filed with the secretary of state
22 promptly after its adoption.

23 (4) The proceedings establishing an authority shall be
24 presumptively valid unless contested in a court of competent
25 jurisdiction within 60 days after the filing of the resolution with
26 the secretary of state.

27 (5) The exercise by an authority of the powers conferred by

1 this act shall be considered to be an essential governmental
2 function and benefit to, and a legitimate public purpose of, the
3 state, the authority, and the municipality or units.

4 (6) If the board implements or modifies a brownfield plan that
5 contains a qualified facility, the governing body shall mail notice
6 of that implementation or modification to each taxing jurisdiction
7 that levies ad valorem property taxes in the municipality. Not more
8 than 60 days after receipt of that notice, the governing body of a
9 taxing jurisdiction levying ad valorem property taxes that would
10 otherwise be subject to capture may exempt its taxes from capture
11 by adopting a resolution to that effect and filing a copy with the
12 clerk of the municipality in which the qualified facility is
13 located. The resolution takes effect when filed with that clerk and
14 remains effective until a copy of a resolution rescinding that
15 resolution is filed with that clerk.

16 Sec. 13. (1) Subject to section 15, the board may implement a
17 brownfield plan. The brownfield plan may apply to 1 or more parcels
18 of eligible property whether or not those parcels of eligible
19 property are contiguous and may be amended to apply to additional
20 parcels of eligible property. Except as otherwise authorized by
21 this act, if more than 1 parcel of eligible property is included
22 within the plan, the tax increment revenues under the plan shall be
23 determined individually for each parcel of eligible property. Each
24 plan or an amendment to a plan shall be approved by the governing
25 body of the municipality and shall contain all of the following:

26 (a) A description of the costs of the plan intended to be paid
27 for with the tax increment revenues or, for a plan for eligible

1 properties qualified on the basis that the property is owned or
2 under the control of a land bank fast track authority, a listing of
3 all eligible activities that may be conducted for 1 or more of the
4 eligible properties subject to the plan.

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

11 (c) An estimate of the captured taxable value and tax
12 increment revenues for each year of the plan from each parcel of
13 eligible property, or from all eligible properties qualified on the
14 basis that the property is owned or under the control of a land
15 bank fast track authority, and in the aggregate. The plan may
16 provide for the use of part or all of the captured taxable value,
17 including deposits in the local site remediation revolving fund,
18 but the portion intended to be used shall be clearly stated in the
19 plan. The plan shall not provide either for an exclusion from
20 captured taxable value of a portion of the captured taxable value
21 or for an exclusion of the tax levy of 1 or more taxing
22 jurisdictions unless the tax levy is excluded from tax increment
23 revenues in section 2(dd), or unless the tax levy is excluded from
24 capture under section 15.

25 (d) The method by which the costs of the plan will be
26 financed, including a description of any advances made or
27 anticipated to be made for the costs of the plan from the

1 municipality.

2 (e) The maximum amount of note or bonded indebtedness to be
3 incurred, if any.

4 (f) The duration of the brownfield plan, which shall not
5 exceed the lesser of the period authorized under subsections (4)
6 and (5) or 30 years.

7 (g) An estimate of the impact of tax increment financing on
8 the revenues of all taxing jurisdictions in which the eligible
9 property is located.

10 (h) A legal description of each parcel of eligible property to
11 which the plan applies, a map showing the location and dimensions
12 of each eligible property, a statement of the characteristics that
13 qualify the property as eligible property, and a statement of
14 whether personal property is included as part of the eligible
15 property. If the project is on property that is functionally
16 obsolete, the taxpayer shall include, with the application, an
17 affidavit signed by a level 3 or level 4 assessor, that states that
18 it is the assessor's expert opinion that the property is
19 functionally obsolete and the underlying basis for that opinion.

20 (i) Estimates of the number of persons residing on each
21 eligible property to which the plan applies and the number of
22 families and individuals to be displaced. If occupied residences
23 are designated for acquisition and clearance by the authority, the
24 plan shall include a demographic survey of the persons to be
25 displaced, a statistical description of the housing supply in the
26 community, including the number of private and public units in
27 existence or under construction, the condition of those in

1 existence, the number of owner-occupied and renter-occupied units,
2 the annual rate of turnover of the various types of housing and the
3 range of rents and sale prices, an estimate of the total demand for
4 housing in the community, and the estimated capacity of private and
5 public housing available to displaced families and individuals.

6 (j) A plan for establishing priority for the relocation of
7 persons displaced by implementation of the plan.

8 (k) Provision for the costs of relocating persons displaced by
9 implementation of the plan, and financial assistance and
10 reimbursement of expenses, including litigation expenses and
11 expenses incident to the transfer of title, in accordance with the
12 standards and provisions of the uniform relocation assistance and
13 real property acquisition policies act of 1970, Public Law 91-646.

14 (l) A strategy for compliance with 1972 PA 227, MCL 213.321 to
15 213.332.

16 (m) A description of proposed use of the local site
17 remediation revolving fund.

18 (n) Other material that the authority or governing body
19 considers pertinent.

20 (2) The percentage of all taxes levied on a parcel of eligible
21 property for school operating expenses that is captured and used
22 under a brownfield plan and all tax increment finance plans under
23 1975 PA 197, MCL 125.1651 to 125.1681, the tax increment finance
24 authority act, 1980 PA 450, MCL 125.1801 to 125.1830, or the local
25 development financing act, 1986 PA 281, MCL 125.2151 to 125.2174,
26 shall not be greater than the combination of the plans' percentage
27 capture and use of all local taxes levied for purposes other than

1 for the payment of principal of and interest on either obligations
2 approved by the electors or obligations pledging the unlimited
3 taxing power of the local unit of government. This subsection shall
4 apply only when taxes levied for school operating purposes are
5 subject to capture under section 15.

6 (3) Except as provided in this subsection and subsections (5),
7 (15), and (16), tax increment revenues related to a brownfield plan
8 shall be used only for costs of eligible activities attributable to
9 the eligible property, the captured taxable value of which produces
10 the tax increment revenues, including the cost of principal of and
11 interest on any obligation issued by the authority to pay the costs
12 of eligible activities attributable to the eligible property, and
13 the reasonable costs of preparing a work plan or remedial action
14 plan for the eligible property, including the actual cost of the
15 review of the work plan or remedial action plan under section 15.
16 For property owned or under the control of a land bank fast track
17 authority, tax increment revenues related to a brownfield plan may
18 be used for eligible activities attributable to any eligible
19 property owned or under the control of the land bank fast track
20 authority, the cost of principal of and interest on any obligation
21 issued by the authority to pay the costs of eligible activities,
22 the reasonable costs of preparing a work plan or remedial action
23 plan, and the actual cost of the review of the work plan or
24 remedial action plan under section 15. Tax increment revenues
25 captured from taxes levied by this state under the state education
26 tax act, 1993 PA 331, MCL 211.901 to 211.906, or taxes levied by a
27 local school district shall not be used for eligible activities

1 described in section 2(m) (iv) (E) .

2 (4) Except as provided in subsection (5), a brownfield plan
3 shall not authorize the capture of tax increment revenue from
4 eligible property after the year in which the total amount of tax
5 increment revenues captured is equal to the sum of the costs
6 permitted to be funded with tax increment revenues under this act.

7 (5) A brownfield plan may authorize the capture of additional
8 tax increment revenue from an eligible property in excess of the
9 amount authorized under subsection (4) during the time of capture
10 for the purpose of paying the costs permitted under subsection (3),
11 or for not more than 5 years after the time that capture is
12 required for the purpose of paying the costs permitted under
13 subsection (3), or both. Excess revenues captured under this
14 subsection shall be deposited in the local site remediation
15 revolving fund created under section 8 and used for the purposes
16 authorized in section 8. If tax increment revenues attributable to
17 taxes levied for school operating purposes from eligible property
18 are captured by the authority for purposes authorized under
19 subsection (3), the tax increment revenues captured for deposit in
20 the local site remediation revolving fund also may include tax
21 increment revenues attributable to taxes levied for school
22 operating purposes in an amount not greater than the tax increment
23 revenues levied for school operating purposes captured from the
24 eligible property by the authority for the purposes authorized
25 under subsection (3). Excess tax increment revenues from taxes
26 levied for school operating purposes for eligible activities
27 authorized under subsection (15) by the Michigan economic growth

1 authority shall not be captured for deposit in the local site
2 remediation revolving fund.

3 (6) An authority shall not expend tax increment revenues to
4 acquire or prepare eligible property, unless the acquisition or
5 preparation is an eligible activity.

6 (7) Costs of eligible activities attributable to eligible
7 property include all costs that are necessary or related to a
8 release from the eligible property, including eligible activities
9 on properties affected by a release from the eligible property. For
10 purposes of this subsection, "release" means that term as defined
11 in section 20101 of the natural resources and environmental
12 protection act, 1994 PA 451, MCL 324.20101.

13 (8) Costs of a response activity paid with tax increment
14 revenues that are captured pursuant to subsection (3) may be
15 recovered from a person who is liable for the costs of eligible
16 activities at an eligible property. This state or an authority may
17 undertake cost recovery for tax increment revenue captured. Before
18 an authority or this state may institute a cost recovery action, it
19 must provide the other with 120 days' notice. This state or an
20 authority that recovers costs under this subsection shall apply
21 those recovered costs to the following, in the following order of
22 priority:

23 (a) The reasonable attorney fees and costs incurred by this
24 state or an authority in obtaining the cost recovery.

25 (b) One of the following:

26 (i) If an authority undertakes the cost recovery action, the
27 authority shall deposit the remaining recovered funds into the

1 local site remediation fund created pursuant to section 8, if such
2 a fund has been established by the authority. If a local site
3 remediation fund has not been established, the authority shall
4 disburse the remaining recovered funds to the local taxing
5 jurisdictions in the proportion that the local taxing
6 jurisdictions' taxes were captured.

7 (ii) If this state undertakes a cost recovery action, this
8 state shall deposit the remaining recovered funds into the
9 revitalization revolving loan fund established under section 20108a
10 of the natural resources and environmental protection act, 1994 PA
11 451, MCL 324.20108a.

12 (iii) If this state and an authority each undertake a cost
13 recovery action, undertake a cost recovery action jointly, or 1 on
14 behalf of the other, the amount of any remaining recovered funds
15 shall be deposited pursuant to subparagraphs (i) and (ii) in the
16 proportion that the tax increment revenues being recovered
17 represent local taxes and taxes levied for school operating
18 purposes, respectively.

19 (9) Approval of the brownfield plan or an amendment to a
20 brownfield plan shall be in accordance with the notice and approval
21 provisions of this section and section 14.

22 (10) Before approving a brownfield plan for an eligible
23 property, the governing body shall hold a public hearing on the
24 brownfield plan. Notice of the time and place of the hearing shall
25 be given by publication twice in a newspaper of general circulation
26 designated by the municipality, the first of which shall be not
27 less than 20 or more than 40 days before the date set for the

1 hearing.

2 (11) Notice of the time and place of the hearing on a
3 brownfield plan shall contain all of the following:

4 (a) A description of the property to which the plan applies in
5 relation to existing or proposed highways, streets, streams, or
6 otherwise.

7 (b) A statement that maps, plats, and a description of the
8 brownfield plan are available for public inspection at a place
9 designated in the notice and that all aspects of the brownfield
10 plan are open for discussion at the public hearing required by this
11 section.

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

14 (12) At the time set for the hearing on the brownfield plan
15 required under subsection (10), the governing body shall provide an
16 opportunity for interested persons to be heard and shall receive
17 and consider communications in writing with reference to the
18 brownfield plan. The governing body shall make and preserve a
19 record of the public hearing, including all data presented at the
20 hearing.

21 (13) Not less than 20 days before the hearing on the
22 brownfield plan, the governing body shall provide notice of the
23 hearing to the taxing jurisdictions that levy taxes subject to
24 capture under this act. **THE NOTICE OF HEARING WITHIN THE TIME FRAME**
25 **DESCRIBED IN THIS SUBSECTION SHALL BE MAILED BY CERTIFIED MAIL TO**
26 **THE GOVERNING BODY OF EACH TAXING JURISDICTION LEVYING TAXES THAT**
27 **WOULD BE SUBJECT TO CAPTURE IF THE BROWNFIELD PLAN IS APPROVED OR**

1 **AMENDED.** The authority shall fully inform the taxing jurisdictions
2 about the fiscal and economic implications of the proposed
3 brownfield plan. At that hearing, an official from a taxing
4 jurisdiction with millage that would be subject to capture under
5 this act has the right to be heard in regard to the adoption of the
6 brownfield plan.

7 (14) The authority shall not enter into agreements with the
8 taxing jurisdictions and the governing body of the municipality to
9 share a portion of the captured taxable value of an eligible
10 property. Upon adoption of the plan, the collection and
11 transmission of the amount of tax increment revenues as specified
12 in this act shall be binding on all taxing units levying ad valorem
13 property taxes or specific taxes against property located in the
14 zone.

15 (15) Except as provided by subsection (18), if a brownfield
16 plan includes the capture of taxes levied for school operating
17 purposes or the use of tax increment revenues related to a
18 brownfield plan for the cost of eligible activities attributable to
19 more than 1 eligible property that is adjacent and contiguous to
20 all other eligible properties covered by the development agreement,
21 whether or not the captured taxes are levied for school operating
22 purposes, approval of a work plan by the Michigan economic growth
23 authority before January 1, 2008 to use school operating taxes and
24 a development agreement between the municipality and an owner or
25 developer of eligible property are required if the revenues will be
26 used for infrastructure improvements that directly benefit eligible
27 property, demolition of structures that is not response activity

1 under part 201 of the natural resources and environmental
2 protection act, 1994 PA 451, MCL 324.20101 to 324.20142, lead or
3 asbestos abatement, or site preparation that is not response
4 activity under section 20101 of the natural resources and
5 environmental protection act, 1994 PA 451, MCL 324.20101. The
6 eligible activities to be conducted described in this subsection
7 shall be consistent with the work plan submitted by the authority
8 to the Michigan economic growth authority. The department's
9 approval is not required for the capture of taxes levied for school
10 operating purposes for eligible activities described in this
11 subsection.

12 (16) The limitations of section 15(1) upon use of tax
13 increment revenues by an authority shall not apply to the following
14 costs and expenses:

15 (a) In each fiscal year of the authority, \$75,000.00 for the
16 following purposes for tax increment revenues attributable to local
17 taxes:

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

20 (ii) Baseline environmental assessments, due care activities,
21 and additional response activities related directly to work
22 conducted on prospective eligible properties prior to approval of
23 the brownfield plan.

24 (b) Reasonable costs of preparing a work plan or remedial
25 action plan or the cost of the review of a work plan for which tax
26 increment revenues may be used under section 13(3).

27 (17) A brownfield authority may reimburse advances, with or

1 without interest, made by a municipality under section 7(3), a land
2 bank fast track authority, or any other person or entity for costs
3 of eligible activities with any source of revenue available for use
4 of the brownfield authority under this act and may enter into
5 agreements related to those reimbursements. A reimbursement
6 agreement for these purposes and the obligations under that
7 reimbursement agreement shall not be subject to section 12 or the
8 revised municipal finance act, 2001 PA 34, MCL 141.2101 to
9 141.2821.

10 (18) If a brownfield plan includes the capture of taxes levied
11 for school operating purposes, approval of a work plan by the
12 Michigan economic growth authority in the manner required under
13 section 15(14) to (16) is required in order to use tax increment
14 revenues attributable to taxes levied for school operating purposes
15 for purposes of eligible activities described in section 2(m) (iv) (E)
16 for 1 or more parcels of eligible property. The work plan to be
17 submitted to the Michigan economic growth authority under this
18 subsection shall be in a form prescribed by the Michigan economic
19 growth authority. The eligible activities to be conducted and
20 described in this subsection shall be consistent with the work plan
21 submitted by the authority to the Michigan economic growth
22 authority. The department's approval is not required for the
23 capture of taxes levied for school operating purposes for eligible
24 activities described in this section.