

SUBSTITUTE FOR
HOUSE BILL NO. 4711

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending sections 15 and 16 (MCL 125.2665 and 125.2666), section
15 as amended by 2006 PA 32 and section 16 as amended by 2000 PA
145.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 before January 1, ~~2008~~2017. HOWEVER, EXCEPT AS PROVIDED IN
2 SUBDIVISION (E), AN AUTHORITY MAY USE TAXES LEVIED FOR SCHOOL
3 OPERATING PURPOSES CAPTURED FROM ELIGIBLE PROPERTY WITHOUT THE
4 APPROVAL OF A WORK PLAN BY THE DEPARTMENT FOR THE REASONABLE COSTS
5 OF 1 OR MORE OF THE FOLLOWING:

6 (i) SITE INVESTIGATION ACTIVITIES REQUIRED TO CONDUCT A
7 BASELINE ENVIRONMENTAL ASSESSMENT AND TO EVALUATE COMPLIANCE WITH
8 SECTION 20107A OF THE NATURAL RESOURCES AND ENVIRONMENTAL
9 PROTECTION ACT, 1994 PA 451, MCL 324.20107A.

10 (ii) EVALUATION OF DUE CARE ACTIVITIES.

11 (iii) COMPLETING A BASELINE ENVIRONMENTAL ASSESSMENT REPORT.

12 (iv) PREPARING A PLAN FOR COMPLIANCE WITH SECTION 20107A OF THE
13 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994 PA 451,
14 MCL 324.20107A.

15 (b) For eligible activities not described in section 13(15),
16 use funds from a local site remediation revolving fund that are
17 derived from taxes levied for school operating purposes unless the
18 eligible activities to be conducted are eligible activities under
19 part 201 of the natural resources and environmental protection act,
20 1994 PA 451, MCL 324.20101 to 324.20142, consistent with a work
21 plan or remedial action plan that has been approved by the
22 department after July 24, 1996.

23 (c) Use funds from a local site remediation revolving fund
24 created pursuant to section 8 that are derived from taxes levied
25 for school operating purposes for the eligible activities described
26 in section 13(15) unless the eligible activities to be conducted
27 are consistent with a work plan approved by the Michigan economic

1 growth authority.

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

5 (e) Use taxes levied for school operating purposes captured
6 from eligible property for response activities that benefit a party
7 liable under section 20126 of the natural resources and
8 environmental protection act, 1994 PA 451, MCL 324.20126, except
9 that a municipality that established the authority, for taxes
10 levied after 2004, may use taxes levied for school operating
11 purposes captured from eligible property for response activities
12 associated with a landfill.

13 (f) Use taxes captured from eligible property to pay for
14 administrative and operating activities of the authority or the
15 municipality on behalf of the authority except for costs described
16 in section 13(16) and for the reasonable costs for preparing a work
17 plan or remedial action plan for the eligible property, including
18 the actual cost of the review of the work plan or remedial action
19 plan under this section.

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

23 (a) A copy of the brownfield plan.

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

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

6 (d) Existing and proposed future zoning for each eligible
7 property.

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

10 (f) A separate work plan or remedial action plan, or part of a
11 work plan or remedial action plan, for each eligible activity to be
12 undertaken.

13 (3) Upon receipt of a request for approval of a work plan or
14 remedial action plan under subsection (2) ~~that pertains to baseline~~
15 ~~environmental assessment activities or due care activities, or~~
16 ~~both,~~ or a portion of a work plan or remedial action plan that
17 pertains to only baseline environmental assessment activities or
18 due care activities, or both, the department shall **REVIEW THE WORK**
19 **PLAN OR REMEDIAL ACTION PLAN ACCORDING TO SUBSECTION (4) AND**
20 provide 1 of the following written responses to the requesting
21 authority within 60 days:

22 (a) An unconditional approval.

23 (b) A conditional approval that delineates specific necessary
24 modifications to the work plan or remedial action plan **TO MEET THE**
25 **CRITERIA OF SUBSECTION (4)**, including, but not limited to,
26 individual activities to be added or deleted from the work plan or
27 remedial action plan and revision of costs.

1 (c) If the work plan or remedial action plan lacks sufficient
2 information for the department to respond under subdivision (a) or
3 (b), a letter stating with specificity the necessary additions or
4 changes to the work plan or remedial action plan to be submitted
5 before a plan will be considered by the department.

6 ~~—— (4) In its review of a work plan or remedial action plan, the~~
7 ~~department shall consider all of the following:~~

8 ~~—— (a) Whether the individual activities included in the work~~
9 ~~plan or remedial action plan are sufficient to complete the~~
10 ~~eligible activity.~~

11 ~~—— (b) Whether each individual activity included in the work plan~~
12 ~~or remedial action plan is required to complete the eligible~~
13 ~~activity.~~

14 ~~—— (c) Whether the cost for each individual activity is~~
15 ~~reasonable.~~

16 (4) WITHIN 30 DAYS AFTER RECEIVING ADDITIONAL INFORMATION FROM
17 THE REQUESTING AUTHORITY UNDER SUBSECTION (3) (C), THE DEPARTMENT
18 SHALL REVIEW THE ADDITIONAL INFORMATION ACCORDING TO THIS
19 SUBSECTION AND PROVIDE 1 OF THE RESPONSES DESCRIBED IN SUBSECTION
20 (3) (A), (B), OR (C) TO THE REQUESTING AUTHORITY. IF THE DEPARTMENT
21 DOES NOT PROVIDE A RESPONSE TO THE REQUESTING AUTHORITY WITHIN 30
22 DAYS AFTER RECEIVING THE ADDITIONAL INFORMATION UNDER SUBSECTION
23 (3) (C), THE WORK PLAN OR REMEDIAL ACTION PLAN SHALL BE CONSIDERED
24 APPROVED FOR THE PURPOSES OF SUBSECTION (1). THE DEPARTMENT SHALL
25 REVIEW A WORK PLAN OR REMEDIAL ACTION PLAN AS FOLLOWS:

26 (A) THE DEPARTMENT SHALL DETERMINE WHETHER SOME OR ALL OF THE
27 ACTIVITIES CONSTITUTE DUE CARE ACTIVITIES OR ADDITIONAL RESPONSE

1 ACTIVITIES OTHER THAN ACTIVITIES THAT ARE EXEMPT FROM THE WORK PLAN
2 APPROVAL PROCESS UNDER SUBSECTION (1) (A) .

3 (B) THE DEPARTMENT SHALL DETERMINE WHETHER THE DUE CARE
4 ACTIVITIES OR ADDITIONAL RESPONSE ACTIVITIES, OTHER THAN ACTIVITIES
5 THAT ARE EXEMPT FROM THE WORK PLAN APPROVAL PROCESS UNDER
6 SUBSECTION (1) (A) , ARE PROTECTIVE OF THE PUBLIC HEALTH, SAFETY, AND
7 WELFARE AND THE ENVIRONMENT. THE DEPARTMENT SHALL NOT REJECT AN
8 ACTIVITY ON THE BASIS THAT THE ACTIVITY IS MORE PROTECTIVE OF THE
9 PUBLIC HEALTH, SAFETY, AND WELFARE AND THE ENVIRONMENT THAN
10 REQUIRED BY SECTION 20107A OF THE NATURAL RESOURCES AND
11 ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.20107A.

12 (C) AFTER THE DEPARTMENT MAKES THE DETERMINATIONS IN
13 SUBDIVISIONS (A) AND (B) , THE DEPARTMENT SHALL THEN DETERMINE
14 WHETHER THE ESTIMATED COSTS FOR THOSE ACTIVITIES AS A WHOLE ARE
15 REASONABLE FOR THE STATED PURPOSE.

16 (5) If the department fails to provide a written response
17 under subsection (3) within 60 days after receipt of a request for
18 approval of a work plan or remedial action plan, ~~that pertains to~~
19 ~~baseline environmental assessment activities or due care~~
20 ~~activities, or both,~~ the authority may proceed with the ~~baseline~~
21 ~~environmental assessment activities or due care activities, or~~
22 ~~both,~~ **ACTIVITIES** as outlined in the work plan or remedial action
23 plan as submitted for approval. Except as provided in subsection
24 (6) , ~~baseline environmental assessment activities or due care~~
25 ~~activities, or both,~~ **ACTIVITIES** conducted pursuant to a work plan
26 or remedial action plan that was submitted to the department for
27 approval but for which the department failed to provide a written

1 response under subsection (3) shall be considered approved for the
2 purposes of subsection (1).

3 (6) The department may issue a written response to a work plan
4 or remedial action plan ~~that pertains to baseline environmental~~
5 ~~assessment activities or due care activities, or both,~~ more than 60
6 days but less than 6 months after receipt of a request for
7 approval. If the department issues a written response under this
8 subsection, the authority is not required to conduct individual
9 activities that are in addition to the individual activities
10 included in the work plan or remedial action plan as it was
11 submitted for approval and failure to conduct these additional
12 activities shall not affect the authority's ability to capture
13 taxes under subsection (1) for the eligible activities described in
14 the work plan or remedial action plan initially submitted under
15 subsection (5). In addition, at the option of the authority, these
16 additional individual activities shall be considered part of the
17 work plan or remedial action plan of the authority and approved for
18 purposes of subsection (1). However, any response by the department
19 under this subsection that identifies additional individual
20 activities that must be carried out to satisfy ~~the baseline~~
21 ~~environmental assessment or due care requirements, or both, of part~~
22 201 of the natural resources and environmental protection act, 1994
23 PA 451, MCL 324.20101 to 324.20142, must be satisfactorily
24 completed for the ~~baseline environmental assessment or due care~~
25 ~~activities, or both,~~ **ACTIVITIES** to be considered acceptable for the
26 purposes of compliance with part 201 of the natural resources and
27 environmental protection act, 1994 PA 451, MCL 324.20101 to

1 324.20142.

2 (7) If the department issues a written response under
3 subsection (6) to a work plan or remedial action plan ~~that pertains~~
4 ~~to baseline environmental assessment activities or due care~~
5 ~~activities, or both,~~ and if the department's written response
6 modifies an individual activity proposed by the work plan or
7 remedial action plan of the authority in a manner that reduces or
8 eliminates a proposed response activity, the authority must
9 complete those individual activities ~~included in the baseline~~
10 ~~environmental assessment or due care activities, or both,~~ in
11 accordance with the department's response in order for that portion
12 of the work plan or remedial action plan to be considered approved
13 for purposes of subsection (1), unless 1 or more of the following
14 conditions apply:

15 (a) Obligations for the individual activity have been issued
16 by the authority, or by a municipality on behalf of the authority,
17 to fund the individual activity prior to issuance of the
18 department's response.

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

22 (8) It shall be in the sole discretion of an authority to
23 propose to undertake additional response activities at an eligible
24 property under a brownfield plan. The department shall not require
25 a work plan or remedial action plan ~~for either baseline~~
26 ~~environmental assessment activities or due care activities, or~~
27 ~~both,~~ to include additional response activities.

1 ~~(9) The department may reject the portion of a work plan or~~
2 ~~remedial action plan that includes additional response activities~~
3 ~~and may consider the level of risk reduction that will be~~
4 ~~accomplished by the additional response activities in determining~~
5 ~~whether to approve or reject the work plan or remedial action plan~~
6 ~~or a portion of a plan. THE DEPARTMENT SHALL REVIEW THE PORTION OF~~
7 **A WORK PLAN OR REMEDIAL ACTION PLAN THAT INCLUDES ADDITIONAL**
8 **RESPONSE ACTIVITIES IN ACCORDANCE WITH SUBSECTION (4).**

9 ~~(10) The department's approval or rejection~~ **DENIAL** ~~of a work~~
10 ~~plan under subsection (1) (a) or (b) or remedial action plan for~~
11 ~~additional response activities is final. OR REMEDIAL ACTION PLAN~~
12 **UNDER THIS SECTION CONSTITUTES A FINAL DECISION IN REGARD TO THE**
13 **USE OF TAXES LEVIED FOR SCHOOL OPERATING PURPOSES BUT DOES NOT**
14 **RESTRICT AN AUTHORITY'S USE OF TAX INCREMENT REVENUES ATTRIBUTABLE**
15 **TO LOCAL TAXES TO PAY FOR ELIGIBLE ACTIVITIES UNDER A BROWNFIELD**
16 **PLAN.**

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

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

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

3 ~~(b) The amount of revenue this state would have received if~~
4 ~~taxes levied for school operating purposes had not been captured~~
5 ~~under this section for the previous calendar year. THE AMOUNT OF~~
6 ~~TAX INCREMENT REVENUES APPROVED BY THE DEPARTMENT, INCLUDING TAXES~~
7 ~~LEVIED FOR SCHOOL OPERATING PURPOSES, TO CONDUCT ELIGIBLE~~
8 ~~ACTIVITIES.~~

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

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

15 (a) A copy of the brownfield plan.

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

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

22 (d) Existing and proposed future zoning for each eligible
23 property.

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

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

1 (g) A copy of the development agreement required under section
2 13(15), which shall include, but is not limited to, a detailed
3 summary of any and all ownership interests, monetary
4 considerations, fees, revenue and cost sharing, charges, or other
5 financial arrangements or other consideration between the parties.

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

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

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

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

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

24 (a) Whether the individual activities included in the work
25 plan are sufficient to complete the eligible activity.

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

1 (c) Whether the cost for each individual activity is
2 reasonable.

3 (d) The overall benefit to the public.

4 (e) The extent of reuse of vacant buildings and redevelopment
5 of blighted property.

6 (f) Creation of jobs.

7 (g) Whether the eligible property is in an area of high
8 unemployment.

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

11 (i) The level of private sector contribution.

12 (j) The cost gap that exists between the site and a similar
13 greenfield site as determined by the Michigan economic growth
14 authority.

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

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

23 (m) Other state and local incentives available to the
24 developer, landowner, or corporate entity for the project of the
25 developer, landowner, or corporate entity that is included in the
26 work plan.

27 (n) Any other criteria that the Michigan economic growth

1 authority considers appropriate for the determination of
2 eligibility or for approval of the work plan.

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

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

11 (18) The authority shall reimburse the Michigan economic
12 growth authority for the actual cost incurred by the Michigan
13 economic growth authority or a contractor of the Michigan economic
14 growth authority to review a work plan under this section.

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

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

20 ~~(b) The amount of revenue this state would have received if~~
21 ~~taxes levied for school operating purposes had not been captured~~
22 ~~under this section for the previous calendar year. THE AMOUNT OF~~
23 ~~TAX INCREMENT REVENUES APPROVED BY THE DEPARTMENT, INCLUDING TAXES~~
24 ~~LEVIED FOR SCHOOL OPERATING PURPOSES, TO CONDUCT ELIGIBLE~~
25 ~~ACTIVITIES.~~

26 ~~—— (c) The amount of revenue each local governmental unit would~~
27 ~~have received if taxes levied for school operating purposes had not~~

~~been captured under this section for the previous calendar year.~~

(20) All taxes levied for school operating purposes that are not used for eligible activities consistent with a work plan approved by the department or the Michigan economic growth authority or for the payment of interest under section 13 and that are not deposited in a local site remediation revolving fund shall be distributed proportionately between the local school district and the school aid fund.

(21) An authority shall not use taxes levied for school operating purposes captured from eligible property for eligible activities for a qualified facility or for eligible activities for property located in an economic opportunity zone.

(22) THE DEPARTMENT'S APPROVAL OF A WORK PLAN OR REMEDIAL ACTION PLAN UNDER SUBSECTION (4) (A) OR (B) DOES NOT IMPLY AN ENTITLEMENT TO REIMBURSEMENT OF THE COSTS OF THE ELIGIBLE ACTIVITIES IF THE WORK PLAN IS NOT IMPLEMENTED AS APPROVED.

(23) THE APPLICANT AND THE DEPARTMENT CAN, BY MUTUAL AGREEMENT, EXTEND THE TIME PERIOD FOR ANY REVIEW DESCRIBED IN THIS SECTION. AN AGREEMENT DESCRIBED IN THIS SUBSECTION SHALL BE DOCUMENTED IN WRITING.

Sec. 16. (1) The municipal and county treasurers shall transmit tax increment revenues to the authority not more than 30 days after tax increment revenues are collected.

(2) The authority shall expend the tax increment revenues received only in accordance with the brownfield plan. All surplus funds not deposited in the local site remediation revolving fund of the authority under section 13(5) shall revert proportionately to

1 the respective taxing bodies, except as provided in section 15(20).
2 The governing body may abolish the plan when it finds that the
3 purposes for which the plan was established are accomplished.
4 However, the plan shall not be abolished until the principal and
5 interest on bonds issued under section 17 and all other obligations
6 to which the tax increment revenues are pledged have been paid or
7 funds sufficient to make the payment have been segregated.

8 (3) The authority shall submit annually to the governing body
9 and the state tax commission a financial report on the status of
10 the activities of the authority. The report shall include all of
11 the following:

12 (a) The amount and source of tax increment revenues received.

13 (b) The amount and purpose of expenditures of tax increment
14 revenues.

15 (c) The amount of principal and interest on all outstanding
16 indebtedness.

17 (d) The initial taxable value of all eligible property subject
18 to the brownfield plan.

19 (e) The captured taxable value realized by the authority.

20 (f) Information concerning any transfer of ownership of or
21 interest in each eligible property.

22 **(G) THE AMOUNT OF TAX INCREMENT REVENUES ATTRIBUTABLE TO TAXES**
23 **LEVIED FOR SCHOOL OPERATING PURPOSES USED FOR ACTIVITIES DESCRIBED**
24 **IN SECTION 15(4)(C) AND SECTION 2(M)(vii) .**

25 **(H) ~~(g)~~** All additional information that the governing body or
26 the state tax commission considers necessary.

27 (4) The state tax commission shall collect the financial

1 reports submitted under subsection (3), compile and analyze the
2 information contained in those reports, and submit annually a
3 report based on that information to all of the following standing
4 committees of the legislature:

5 (a) In the house of representatives, the committees
6 responsible for natural resource management, conservation,
7 environmental protection, **COMMERCE, ECONOMIC DEVELOPMENT,** and
8 taxation.

9 (b) In the senate, the committees responsible for natural
10 resource management, conservation, environmental protection,
11 **COMMERCE,** and taxation.