

# HOUSE BILL No. 4711

May 3, 2007, Introduced by Reps. Huizenga, Clemente, Espinoza, Robert Jones, Meadows, LeBlanc, Coulouris, Griffin, Kathleen Law, Spade, Constan, Polidori, Hammel, Byrum, Warren and Hildenbrand and referred to the Committee on New Economy and Quality of Life.

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

1 action plan approved by the department after July 24, 1996 and  
2 before January 1, ~~2008~~ 2017. HOWEVER, AN AUTHORITY MAY USE TAXES  
3 LEVIED FOR SCHOOL OPERATING PURPOSES CAPTURED FROM ELIGIBLE  
4 PROPERTY WITHOUT THE APPROVAL OF A WORK PLAN BY THE DEPARTMENT FOR  
5 SITE INVESTIGATION ACTIVITIES, EVALUATING OF DUE CARE ACTIVITIES,  
6 PREPARING A BASELINE ENVIRONMENTAL ASSESSMENT, AND PREPARING  
7 DOCUMENTATION OF COMPLIANCE WITH SECTION 20107A OF THE NATURAL  
8 RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL  
9 324.20107A.

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

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

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

27 (e) Use taxes levied for school operating purposes captured

1 from eligible property for response activities that benefit a party  
2 liable under section 20126 of the natural resources and  
3 environmental protection act, 1994 PA 451, MCL 324.20126, except  
4 that a municipality that established the authority, for taxes  
5 levied after 2004, may use taxes levied for school operating  
6 purposes captured from eligible property for response activities  
7 associated with a landfill.

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

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

18 (a) A copy of the brownfield plan.

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

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

1 (d) Existing and proposed future zoning for each eligible  
2 property.

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

5 (f) A separate work plan or remedial action plan, or part of a  
6 work plan or remedial action plan, for each eligible activity to be  
7 undertaken.

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

17 (a) An unconditional approval.

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

23 (c) If the work plan or remedial action plan lacks sufficient  
24 information for the department to respond under subdivision (a) or  
25 (b), a letter stating with specificity the necessary additions or  
26 changes to the work plan or remedial action plan to be submitted  
27 before a plan will be considered by the department.

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

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

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

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

(4) WITHIN 14 DAYS AFTER RECEIVING ADDITIONAL INFORMATION FROM THE REQUESTING AUTHORITY UNDER SUBSECTION (3) (C), THE DEPARTMENT SHALL REVIEW THE ADDITIONAL INFORMATION ACCORDING TO THIS SUBSECTION AND PROVIDE 1 OF THE RESPONSES DESCRIBED IN SUBSECTION (3) (A), (B), OR (C) TO THE REQUESTING AUTHORITY. IF THE DEPARTMENT DOES NOT PROVIDE A RESPONSE TO THE REQUESTING AUTHORITY WITHIN 14 DAYS AFTER RECEIVING THE ADDITIONAL INFORMATION UNDER SUBSECTION (3) (C), THE WORK PLAN SHALL BE CONSIDERED APPROVED FOR THE PURPOSES OF SUBSECTION (1). THE DEPARTMENT SHALL REVIEW A WORK PLAN OR REMEDIAL ACTION PLAN AS FOLLOWS:

(A) THE DEPARTMENT SHALL DETERMINE WHETHER SOME OR ALL OF THE ACTIVITIES CONSTITUTE DUE CARE ACTIVITIES OR ADDITIONAL RESPONSE ACTIVITIES OTHER THAN ACTIVITIES THAT ARE EXEMPT FROM THE WORK PLAN APPROVAL PROCESS UNDER SUBSECTION (1) (A).

(B) THE DEPARTMENT SHALL DETERMINE WHETHER THE DUE CARE ACTIVITIES OR ADDITIONAL RESPONSE ACTIVITIES, OTHER THAN ACTIVITIES THAT ARE EXEMPT FROM THE WORK PLAN APPROVAL PROCESS UNDER

1 SUBSECTION (1) (A), ARE PROTECTIVE OF THE PUBLIC HEALTH, SAFETY, AND  
2 WELFARE AND THE ENVIRONMENT. THE DEPARTMENT SHALL NOT REJECT AN  
3 ACTIVITY ON THE BASIS THAT THE ACTIVITY IS MORE PROTECTIVE OF THE  
4 PUBLIC HEALTH, SAFETY, AND WELFARE AND THE ENVIRONMENT THAN  
5 REQUIRED BY SECTION 20107A OF THE NATURAL RESOURCES AND  
6 ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.20107A.

7 (C) AFTER THE DEPARTMENT MAKES THE DETERMINATIONS IN  
8 SUBDIVISIONS (A) AND (B), THE DEPARTMENT SHALL THEN DETERMINE  
9 WHETHER THE ESTIMATED COSTS FOR THOSE ACTIVITIES AS A WHOLE ARE  
10 REASONABLE FOR THE STATED PURPOSE.

11 (5) If the department fails to provide a written response  
12 under subsection (3) within 60 days after receipt of a request for  
13 approval of a work plan or remedial action plan, ~~that pertains to~~  
14 ~~baseline environmental assessment activities or due care~~  
15 ~~activities, or both,~~ the authority may proceed with the baseline  
16 ~~environmental assessment activities or due care activities, or~~  
17 ~~both,~~ **ACTIVITIES** as outlined in the work plan or remedial action  
18 plan as submitted for approval. Except as provided in subsection  
19 (6), ~~baseline environmental assessment activities or due care~~  
20 ~~activities, or both,~~ **ACTIVITIES** conducted pursuant to a work plan  
21 or remedial action plan that was submitted to the department for  
22 approval but for which the department failed to provide a written  
23 response under subsection (3) shall be considered approved for the  
24 purposes of subsection (1).

25 (6) The department may issue a written response to a work plan  
26 or remedial action plan ~~that pertains to baseline environmental~~  
27 ~~assessment activities or due care activities, or both,~~ more than 60

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

24 (7) If the department issues a written response under  
25 subsection (6) to a work plan or remedial action plan ~~that pertains~~  
26 ~~to baseline environmental assessment activities or due care~~  
27 ~~activities, or both, and if the department's written response~~

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

10 (a) Obligations for the individual activity have been issued  
11 by the authority, or by a municipality on behalf of the authority,  
12 to fund the individual activity prior to issuance of the  
13 department's response.

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

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

23 (9) ~~The department may reject the portion of a work plan or~~  
24 ~~remedial action plan that includes additional response activities~~  
25 ~~and may consider the level of risk reduction that will be~~  
26 ~~accomplished by the additional response activities in determining~~  
27 ~~whether to approve or reject the work plan or remedial action plan~~



1 ~~or a portion of a plan.~~ THE DEPARTMENT SHALL REVIEW THE PORTION OF  
2 A WORK PLAN OR REMEDIAL ACTION PLAN THAT INCLUDES ADDITIONAL  
3 RESPONSE ACTIVITIES IN ACCORDANCE WITH SUBSECTION (4).

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

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

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

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

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 not  
3 been captured under this section for the previous calendar year.

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

7 (a) A copy of the brownfield plan.

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

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

14 (d) Existing and proposed future zoning for each eligible  
15 property.

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

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

20 (g) A copy of the development agreement required under section  
21 13(15), which shall include, but is not limited to, a detailed  
22 summary of any and all ownership interests, monetary  
23 considerations, fees, revenue and cost sharing, charges, or other  
24 financial arrangements or other consideration between the parties.

25 (14) Upon receipt of a request for approval of a work plan,  
26 the Michigan economic growth authority shall provide 1 of the  
27 following written responses to the requesting authority within 65

1 days:

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

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

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

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

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

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

20 (c) Whether the cost for each individual activity is  
21 reasonable.

22 (d) The overall benefit to the public.

23 (e) The extent of reuse of vacant buildings and redevelopment  
24 of blighted property.

25 (f) Creation of jobs.

26 (g) Whether the eligible property is in an area of high  
27 unemployment.

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

3 (i) The level of private sector contribution.

4 (j) The cost gap that exists between the site and a similar  
5 greenfield site as determined by the Michigan economic growth  
6 authority.

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

10 (l) Whether the financial statements of the developer,  
11 landowner, or corporate entity indicate that the developer,  
12 landowner, or corporate entity is financially sound and that the  
13 project of the developer, landowner, or corporate entity that is  
14 included in the work plan is economically sound.

15 (m) Other state and local incentives available to the  
16 developer, landowner, or corporate entity for the project of the  
17 developer, landowner, or corporate entity that is included in the  
18 work plan.

19 (n) Any other criteria that the Michigan economic growth  
20 authority considers appropriate for the determination of  
21 eligibility or for approval of the work plan.

22 (16) If the Michigan economic growth authority fails to  
23 provide a written response under subsection (14) within 65 days  
24 after receipt of a request for approval of a work plan, the  
25 eligible activities shall be considered approved and the authority  
26 may proceed with the eligible activities described in section  
27 13(15) as outlined in the work plan as submitted for approval.

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

3           (18) The authority shall reimburse the Michigan economic  
4 growth authority for the actual cost incurred by the Michigan  
5 economic growth authority or a contractor of the Michigan economic  
6 growth authority to review a work plan under this section.

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

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

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

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

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

25           (21) An authority shall not use taxes levied for school  
26 operating purposes captured from eligible property for eligible  
27 activities for a qualified facility or for eligible activities for

1 property located in an economic opportunity zone.

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

5       (2) The authority shall expend the tax increment revenues  
6 received only in accordance with the brownfield plan. All surplus  
7 funds not deposited in the local site remediation revolving fund of  
8 the authority under section 13(5) shall revert proportionately to  
9 the respective taxing bodies, except as provided in section 15(20).

10 The governing body may abolish the plan when it finds that the  
11 purposes for which the plan was established are accomplished.

12 However, the plan shall not be abolished until the principal and  
13 interest on bonds issued under section 17 and all other obligations  
14 to which the tax increment revenues are pledged have been paid or  
15 funds sufficient to make the payment have been segregated.

16       (3) The authority shall submit annually to the governing body  
17 and the state tax commission a financial report on the status of  
18 the activities of the authority. The report shall include all of  
19 the following:

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

21       (b) The amount and purpose of expenditures of tax increment  
22 revenues.

23       (c) The amount of principal and interest on all outstanding  
24 indebtedness.

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

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

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

3           (g) All additional information that the governing body or the  
4 state tax commission considers necessary.

5           (4) The state tax commission shall collect the financial  
6 reports submitted under subsection (3), compile and analyze the  
7 information contained in those reports, and submit annually a  
8 report based on that information to all of the following standing  
9 committees of the legislature:

10          (a) In the house of representatives, the committees  
11 responsible for natural resource management, conservation,  
12 environmental protection, **COMMERCE**, and taxation.

13          (b) In the senate, the committees responsible for natural  
14 resource management, conservation, environmental protection,  
15 **COMMERCE**, and taxation.