

SENATE BILL No. 537

May 24, 2007, Introduced by Senators HUNTER, RICHARDVILLE, PATTERSON, SANBORN, GILBERT, PAPPAGEORGE, JANSEN, BIRKHOLZ, ALLEN, BROWN, GARCIA, THOMAS and JACOBS and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending section 13 (MCL 125.2663), as amended by 2006 PA 467.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) Subject to section 15, the board may implement a
2 brownfield plan. The brownfield plan may apply to 1 or more parcels
3 of eligible property whether or not those parcels of eligible
4 property are contiguous and may be amended to apply to additional
5 parcels of eligible property. Except as otherwise authorized by
6 this act, if more than 1 parcel of eligible property is included
7 within the plan, the tax increment revenues under the plan shall be
8 determined individually for each parcel of eligible property. Each
9 plan or an amendment to a plan shall be approved by the governing

1 body of the municipality and shall contain all of the following:

2 (a) A description of the costs of the plan intended to be paid
3 for with the tax increment revenues or, for a plan for eligible
4 properties qualified on the basis that the property is owned or
5 under the control of a land bank fast track authority, a listing of
6 all eligible activities that may be conducted for 1 or more of the
7 eligible properties subject to the plan.

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

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

1 (d) The method by which the costs of the plan will be
2 financed, including a description of any advances made or
3 anticipated to be made for the costs of the plan from the
4 municipality.

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

7 (f) The duration of the brownfield plan for eligible
8 activities on eligible property, including the beginning date of
9 the capture of tax increment revenues, which beginning date shall
10 not be later than 5 years following the date of the resolution
11 approving the plan amendment related to a particular eligible
12 property and which duration shall not exceed the lesser of the
13 period authorized under subsections (4) and (5) or 30 years.

14 (g) An estimate of the impact of tax increment financing on
15 the revenues of all taxing jurisdictions in which the eligible
16 property is located.

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

27 (i) Estimates of the number of persons residing on each

1 eligible property to which the plan applies and the number of
2 families and individuals to be displaced. If occupied residences
3 are designated for acquisition and clearance by the authority, the
4 plan shall include a demographic survey of the persons to be
5 displaced, a statistical description of the housing supply in the
6 community, including the number of private and public units in
7 existence or under construction, the condition of those in
8 existence, the number of owner-occupied and renter-occupied units,
9 the annual rate of turnover of the various types of housing and the
10 range of rents and sale prices, an estimate of the total demand for
11 housing in the community, and the estimated capacity of private and
12 public housing available to displaced families and individuals.

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

15 (k) Provision for the costs of relocating persons displaced by
16 implementation of the plan, and financial assistance and
17 reimbursement of expenses, including litigation expenses and
18 expenses incident to the transfer of title, in accordance with the
19 standards and provisions of the uniform relocation assistance and
20 real property acquisition policies act of 1970, Public Law 91-646.

21 (l) A strategy for compliance with 1972 PA 227, MCL 213.321 to
22 213.332.

23 (m) A description of proposed use of the local site
24 remediation revolving fund.

25 (n) Other material that the authority or governing body
26 considers pertinent.

27 (2) The percentage of all taxes levied on a parcel of eligible

1 property for school operating expenses that is captured and used
2 under a brownfield plan and all tax increment finance plans under
3 1975 PA 197, MCL 125.1651 to 125.1681, the tax increment finance
4 authority act, 1980 PA 450, MCL 125.1801 to 125.1830, or the local
5 development financing act, 1986 PA 281, MCL 125.2151 to 125.2174,
6 shall not be greater than the combination of the plans' percentage
7 capture and use of all local taxes levied for purposes other than
8 for the payment of principal of and interest on either obligations
9 approved by the electors or obligations pledging the unlimited
10 taxing power of the local unit of government. This subsection shall
11 apply only when taxes levied for school operating purposes are
12 subject to capture under section 15.

13 (3) Except as provided in this subsection and subsections (5),
14 (15), and (16), tax increment revenues related to a brownfield plan
15 shall be used only for costs of eligible activities attributable to
16 the eligible property, the captured taxable value of which produces
17 the tax increment revenues, including the cost of principal of and
18 interest on any obligation issued by the authority to pay the costs
19 of eligible activities attributable to the eligible property, and
20 the reasonable costs of preparing a work plan or remedial action
21 plan for the eligible property, including the actual cost of the
22 review of the work plan or remedial action plan under section 15.
23 For property owned or under the control of a land bank fast track
24 authority, tax increment revenues related to a brownfield plan may
25 be used for eligible activities attributable to any eligible
26 property owned or under the control of the land bank fast track
27 authority, the cost of principal of and interest on any obligation

1 issued by the authority to pay the costs of eligible activities,
2 the reasonable costs of preparing a work plan or remedial action
3 plan, and the actual cost of the review of the work plan or
4 remedial action plan under section 15. Tax increment revenues
5 captured from taxes levied by this state under the state education
6 tax act, 1993 PA 331, MCL 211.901 to 211.906, or taxes levied by a
7 local school district shall not be used for eligible activities
8 described in section 2(m)(iv)(E).

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

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

1 increment revenues attributable to taxes levied for school
2 operating purposes in an amount not greater than the tax increment
3 revenues levied for school operating purposes captured from the
4 eligible property by the authority for the purposes authorized
5 under subsection (3). Excess tax increment revenues from taxes
6 levied for school operating purposes for eligible activities
7 authorized under subsection (15) by the Michigan economic growth
8 authority shall not be captured for deposit in the local site
9 remediation revolving fund.

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

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

20 (8) Costs of a response activity paid with tax increment
21 revenues that are captured pursuant to subsection (3) may be
22 recovered from a person who is liable for the costs of eligible
23 activities at an eligible property. This state or an authority may
24 undertake cost recovery for tax increment revenue captured. Before
25 an authority or this state may institute a cost recovery action, it
26 must provide the other with 120 days' notice. This state or an
27 authority that recovers costs under this subsection shall apply

1 those recovered costs to the following, in the following order of
2 priority:

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

5 (b) One of the following:

6 (i) If an authority undertakes the cost recovery action, the
7 authority shall deposit the remaining recovered funds into the
8 local site remediation fund created pursuant to section 8, if such
9 a fund has been established by the authority. If a local site
10 remediation fund has not been established, the authority shall
11 disburse the remaining recovered funds to the local taxing
12 jurisdictions in the proportion that the local taxing
13 jurisdictions' taxes were captured.

14 (ii) If this state undertakes a cost recovery action, this
15 state shall deposit the remaining recovered funds into the
16 revitalization revolving loan fund established under section 20108a
17 of the natural resources and environmental protection act, 1994 PA
18 451, MCL 324.20108a.

19 (iii) If this state and an authority each undertake a cost
20 recovery action, undertake a cost recovery action jointly, or 1 on
21 behalf of the other, the amount of any remaining recovered funds
22 shall be deposited pursuant to subparagraphs (i) and (ii) in the
23 proportion that the tax increment revenues being recovered
24 represent local taxes and taxes levied for school operating
25 purposes, respectively.

26 (9) Approval of the brownfield plan or an amendment to a
27 brownfield plan shall be in accordance with the notice and approval

1 provisions of this section and section 14.

2 (10) Before approving a brownfield plan for an eligible
3 property, the governing body shall hold a public hearing on the
4 brownfield plan. Notice of the time and place of the hearing shall
5 be given by publication twice in a newspaper of general circulation
6 designated by the municipality, the first of which shall be not
7 less than 20 or more than 40 days before the date set for the
8 hearing.

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

11 (a) A description of the property to which the plan applies in
12 relation to existing or proposed highways, streets, streams, or
13 otherwise.

14 (b) A statement that maps, plats, and a description of the
15 brownfield plan are available for public inspection at a place
16 designated in the notice and that all aspects of the brownfield
17 plan are open for discussion at the public hearing required by this
18 section.

19 (c) Any other information that the governing body considers
20 appropriate.

21 (12) At the time set for the hearing on the brownfield plan
22 required under subsection (10), the governing body shall provide an
23 opportunity for interested persons to be heard and shall receive
24 and consider communications in writing with reference to the
25 brownfield plan. The governing body shall make and preserve a
26 record of the public hearing, including all data presented at the
27 hearing.

1 (13) Not less than 20 days before the hearing on the
2 brownfield plan, the governing body shall provide notice of the
3 hearing to the taxing jurisdictions that levy taxes subject to
4 capture under this act. The authority shall fully inform the taxing
5 jurisdictions about the fiscal and economic implications of the
6 proposed brownfield plan. At that hearing, an official from a
7 taxing jurisdiction with millage that would be subject to capture
8 under this act has the right to be heard in regard to the adoption
9 of the brownfield plan.

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

18 (15) Except as provided by subsection (18), if a brownfield
19 plan includes the capture of taxes levied for school operating
20 purposes, ~~or the use of tax increment revenues related to a~~
21 ~~brownfield plan for the cost of eligible activities attributable to~~
22 ~~more than 1 eligible property that is adjacent and contiguous to~~
23 ~~all other eligible properties covered by the development agreement,~~
24 ~~whether or not the captured taxes are levied for school operating~~
25 ~~purposes,~~ approval of a work plan by the Michigan economic growth
26 authority before January 1, ~~2008~~ 2012 to use school operating taxes
27 and a development agreement between the municipality and an owner

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

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

18 (a) In each fiscal year of the authority, ~~\$75,000.00~~ **THE**
19 **AMOUNT DESCRIBED IN SUBSECTION (19)** for the following purposes for
20 tax increment revenues attributable to local taxes:

21 (i) Reasonable and actual administrative and operating expenses
22 of the authority.

23 (ii) Baseline environmental assessments, due care activities,
24 and additional response activities **CONDUCTED BY OR ON BEHALF OF THE**
25 **AUTHORITY** related directly to work conducted on prospective
26 eligible properties prior to approval of the brownfield plan.

27 (b) Reasonable costs of preparing **OR ADMINISTERING A**

1 **BROWNFIELD PLAN**, a work plan, or **A** remedial action plan or the cost
2 of the review of a work plan for which tax increment revenues may
3 be used under section 13(3).

4 (C) **REASONABLE COSTS OF SITE INVESTIGATIONS, BASELINE**
5 **ENVIRONMENTAL ASSESSMENTS, AND DUE CARE ACTIVITIES CONDUCTED BY OR**
6 **ON BEHALF OF A PERSON OTHER THAN THE AUTHORITY RELATED DIRECTLY TO**
7 **WORK CONDUCTED ON PROSPECTIVE ELIGIBLE PROPERTIES PRIOR TO APPROVAL**
8 **OF THE BROWNFIELD PLAN.**

9 (17) A brownfield authority may reimburse advances, with or
10 without interest, made by a municipality under section 7(3), a land
11 bank fast track authority, or any other person or entity for costs
12 of eligible activities with any source of revenue available for use
13 of the brownfield authority under this act and may enter into
14 agreements related to those reimbursements. A reimbursement
15 agreement for these purposes and the obligations under that
16 reimbursement agreement shall not be subject to section 12 or the
17 revised municipal finance act, 2001 PA 34, MCL 141.2101 to
18 141.2821.

19 (18) If a brownfield plan includes the capture of taxes levied
20 for school operating purposes, approval of a work plan by the
21 Michigan economic growth authority in the manner required under
22 section 15(14) to (16) is required in order to use tax increment
23 revenues attributable to taxes levied for school operating purposes
24 for purposes of eligible activities described in section 2(m)(iv)(E)
25 for 1 or more parcels of eligible property. The work plan to be
26 submitted to the Michigan economic growth authority under this
27 subsection shall be in a form prescribed by the Michigan economic

1 growth authority. The eligible activities to be conducted and
2 described in this subsection shall be consistent with the work plan
3 submitted by the authority to the Michigan economic growth
4 authority. The department's approval is not required for the
5 capture of taxes levied for school operating purposes for eligible
6 activities described in this section.

7 (19) IN EACH FISCAL YEAR OF THE AUTHORITY, THE LIMITATIONS OF
8 SECTION 15(1) UPON THE USE OF TAX INCREMENT REVENUES BY AN
9 AUTHORITY SHALL NOT APPLY TO THE COSTS AND EXPENSES DESCRIBED IN
10 SUBSECTION (16) (A) TO THE FOLLOWING EXTENT:

11 (A) FOR AUTHORITIES THAT HAVE 5 OR FEWER PROJECTS THAT CAPTURE
12 TAXES UNDER THIS ACT, \$75,000.00.

13 (B) FOR AUTHORITIES THAT HAVE 6 OR MORE BUT FEWER THAN 11
14 PROJECTS THAT CAPTURE TAXES UNDER THIS ACT, \$100,000.00.

15 (C) FOR AUTHORITIES THAT HAVE 11 OR MORE BUT FEWER THAN 16
16 PROJECTS THAT CAPTURE TAXES UNDER THIS ACT, \$125,000.00.

17 (D) FOR AUTHORITIES THAT HAVE 16 OR MORE BUT FEWER THAN 21
18 PROJECTS THAT CAPTURE TAXES UNDER THIS ACT, \$150,000.00.

19 (E) FOR AUTHORITIES THAT HAVE 21 OR MORE BUT FEWER THAN 26
20 PROJECTS THAT CAPTURE TAXES UNDER THIS ACT, \$175,000.00.

21 (F) FOR AUTHORITIES THAT HAVE 26 OR MORE PROJECTS THAT CAPTURE
22 TAXES UNDER THIS ACT, \$200,000.00.