

HOUSE BILL No. 5554

October 27, 2009, Introduced by Reps. Byrum and Mayes and referred to the Committee on Banking and Financial Services.

A bill to amend 1986 PA 281, entitled
"The local development financing act,"
by amending section 2 (MCL 125.2152), as amended by 2007 PA 200.

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 municipality
3 to an authority or to another person on behalf of the authority in
4 anticipation of repayment by the authority. Evidence of the intent
5 to repay an advance may include, but is not limited to, an executed
6 agreement to repay, provisions contained in a tax increment
7 financing plan approved prior to the advance, or a resolution of
8 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~~**211.155**.

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 area
13 designated in the tax increment financing plan that meets all of
14 the following requirements:

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

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

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

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

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

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

26 (h) "Captured assessed value" means the amount in any 1 year
27 by which the current assessed value of the eligible property

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

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

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

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

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

26 (m) "Development program" means the implementation of a
27 development plan.

1 (n) "Eligible advance" means an advance made before August 19,
2 1993.

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

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

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

18 (ii) Agricultural processing.

19 (iii) A high technology activity.

20 (iv) The production of energy by the processing of goods or
21 materials by physical or chemical change by a small power
22 production facility as defined by the federal energy regulatory
23 commission pursuant to the public utility regulatory policies act
24 of 1978, Public Law 95-617, which facility is fueled primarily by
25 biomass or wood waste. This act does not affect a person's rights
26 or liabilities under law with respect to groundwater contamination
27 described in this subparagraph. This subparagraph applies only if

1 all of the following requirements are met:

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

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

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

20 (v) A business incubator.

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

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

24 (s) "High technology activity" means that term as defined in
25 section 3 of the Michigan economic growth authority act, 1995 PA
26 24, MCL 207.803.

27 (t) "Initial assessed value" means the assessed value of the

1 eligible property identified in the tax increment financing plan
2 or, for a certified technology park, the assessed value of any real
3 and personal property included in the tax increment financing plan,
4 at the time the resolution establishing the tax increment financing
5 plan is approved as shown by the most recent assessment roll for
6 which equalization has been completed at the time the resolution is
7 adopted or, for property that becomes eligible property in other
8 than a certified technology park after the date the plan is
9 approved, at the time the property becomes eligible property.

10 Property exempt from taxation at the time of the determination of
11 the initial assessed value shall be included as zero. Property for
12 which a specific local tax is paid in lieu of property tax shall
13 not be considered exempt from taxation. The initial assessed value
14 of property for which a specific local tax was paid in lieu of
15 property tax shall be determined as provided in subdivision (cc).

16 (u) "Michigan economic development corporation" means the
17 public body corporate created under section 28 of article VII of
18 the state constitution of 1963 and the urban cooperation act of
19 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual
20 interlocal agreement effective April 5, 1999 between local
21 participating economic development corporations formed under the
22 economic development corporations act, 1974 PA 338, MCL 125.1601 to
23 125.1636, and the Michigan strategic fund. If the Michigan economic
24 development corporation is unable for any reason to perform its
25 duties under this act, those duties may be exercised by the
26 Michigan strategic fund.

27 (v) "Michigan strategic fund" means the Michigan strategic

1 fund as described in the Michigan strategic fund act, 1984 PA 270,
2 MCL 125.2001 to 125.2094.

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

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

13 (i) A requirement to pay proceeds derived from ad valorem
14 property taxes or taxes levied in lieu of ad valorem property
15 taxes.

16 (ii) A management contract or a contract for professional
17 services.

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

21 (iv) A requirement to pay or reimburse a person for the cost of
22 insurance for, or to maintain, property subject to a lease, land
23 contract, purchase agreement, or other agreement.

24 (v) A letter of credit, paying agent, transfer agent, bond
25 registrar, or trustee fee associated with a contract, agreement,
26 bond, or note.

27 (y) "On behalf of an authority", in relation to an eligible

1 advance made by a municipality or an eligible obligation or other
2 protected obligation issued or incurred by a municipality, means in
3 anticipation that an authority would transfer tax increment
4 revenues or reimburse the municipality from tax increment revenues
5 in an amount sufficient to fully make payment required by the
6 eligible advance made by a municipality, or eligible obligation or
7 other protected obligation issued or incurred by the municipality,
8 if the anticipation of the transfer or receipt of tax increment
9 revenues from the authority is pursuant to or evidenced by 1 or
10 more of the following:

11 (i) A reimbursement agreement between the municipality and an
12 authority it established.

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

15 (iii) A resolution of the authority agreeing to make payments to
16 the incorporating unit.

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

19 (z) "Other protected obligation" means:

20 (i) A qualified refunding obligation issued to refund an
21 obligation described in subparagraph (ii) or (iii), an obligation that
22 is not a qualified refunding obligation that is issued to refund an
23 eligible obligation, or a qualified refunding obligation issued to
24 refund an obligation described in this subparagraph.

25 (ii) An obligation issued or incurred by an authority or by a
26 municipality on behalf of an authority after August 19, 1993, but
27 before December 31, 1994, to finance a project described in a tax

1 increment finance plan approved by the municipality in accordance
2 with this act before August 19, 1993, for which a contract for
3 final design is entered into by the municipality or authority
4 before March 1, 1994.

5 (iii) An obligation incurred by an authority or municipality
6 after August 19, 1993, to reimburse a party to a development
7 agreement entered into by a municipality or authority before August
8 19, 1993, for a project described in a tax increment financing plan
9 approved in accordance with this act before August 19, 1993, and
10 undertaken and installed by that party in accordance with the
11 development agreement.

12 (iv) An ongoing management or professional services contract
13 with the governing body of a county that was entered into before
14 March 1, 1994 and that was preceded by a series of limited term
15 management or professional services contracts with the governing
16 body of the county, the last of which was entered into before
17 August 19, 1993.

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

19 (i) A street, road, bridge, storm water or sanitary sewer,
20 sewage treatment facility, facility designed to reduce, eliminate,
21 or prevent the spread of identified soil or groundwater
22 contamination, drainage system, retention basin, pretreatment
23 facility, waterway, waterline, water storage facility, rail line,
24 electric, gas, telephone or other communications, or any other type
25 of utility line or pipeline, or other similar or related structure
26 or improvement, together with necessary easements for the structure
27 or improvement. Except for rail lines, utility lines, or pipelines,

1 the structures or improvements described in this subparagraph shall
2 be either owned or used by a public agency, functionally connected
3 to similar or supporting facilities owned or used by a public
4 agency, or designed and dedicated to use by, for the benefit of, or
5 for the protection of the health, welfare, or safety of the public
6 generally, whether or not used by a single business entity. Any
7 road, street, or bridge shall be continuously open to public
8 access. A public facility shall be located on public property or in
9 a public, utility, or transportation easement or right-of-way.

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

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

19 (iv) An improvement to a facility used by the public or a
20 public facility as those terms are defined in section 1 of 1966 PA
21 1, MCL 125.1351, which improvement is made to comply with the
22 barrier free design requirements of the state construction code
23 promulgated under the Stille-DeRossett-Hale single state
24 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

25 (v) All of the following costs approved by the Michigan
26 economic development corporation:

27 (A) Operational costs and the costs related to the

1 acquisition, improvement, preparation, demolition, disposal,
 2 construction, reconstruction, remediation, rehabilitation,
 3 restoration, preservation, maintenance, repair, furnishing, and
 4 equipping of land and other assets that are or may become eligible
 5 for depreciation under the internal revenue code of 1986 for a
 6 business incubator located in a certified technology park.

7 (B) Costs related to the acquisition, improvement,
 8 preparation, demolition, disposal, construction, reconstruction,
 9 remediation, rehabilitation, restoration, preservation,
 10 maintenance, repair, furnishing, and equipping of land and other
 11 assets that, if privately owned, would be eligible for depreciation
 12 under the internal revenue code of 1986 for laboratory facilities,
 13 research and development facilities, conference facilities,
 14 teleconference facilities, testing, training facilities, and
 15 quality control facilities that are or that support eligible
 16 property under subdivision (p) (iii), that are owned by a public
 17 entity, and that are located within a certified technology park.

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

22 (bb) "Qualified refunding obligation" means an obligation
 23 issued or incurred by an authority or by a municipality on behalf
 24 of an authority to refund an obligation if ~~the~~ **1 OR MORE OF THE**
 25 **FOLLOWING APPLY:**

26 (i) **THE** refunding obligation meets both of the following:

27 (A) ~~(i)~~ The net present value of the principal and interest to

1 be paid on the refunding obligation, including the cost of
2 issuance, will be less than the net present value of the principal
3 and interest to be paid on the obligation being refunded, as
4 calculated using a method approved by the department of treasury.

5 (B) ~~(ii)~~—The net present value of the sum of the tax increment
6 revenues described in subdivision (ee) (ii) and the distributions
7 under section 11a to repay the refunding obligation will not be
8 greater than the net present value of the sum of the tax increment
9 revenues described in subdivision (ee) (ii) and the distributions
10 under section 11a to repay the obligation being refunded, as
11 calculated using a method approved by the department of treasury.

12 (ii) THE REFUNDING OBLIGATION IS ISSUED TO REFUND AN OTHER
13 PROTECTED OBLIGATION OR AN ELIGIBLE OBLIGATION AND THAT REFUNDING
14 OBLIGATION IS ISSUED BEFORE DECEMBER 31, 2012.

15 (cc) "Specific local taxes" means a tax levied under 1974 PA
16 198, MCL 207.551 to 207.572, the obsolete property rehabilitation
17 act, 2000 PA 146, MCL 125.2781 to 125.2797, the commercial
18 redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the
19 enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123, 1953 PA
20 189, MCL 211.181 to 211.182, and the technology park development
21 act, 1984 PA 385, MCL 207.701 to 207.718. The initial assessed
22 value or current assessed value of property subject to a specific
23 local tax is the quotient of the specific local tax paid divided by
24 the ad valorem millage rate. However, after 1993, the state tax
25 commission shall prescribe the method for calculating the initial
26 assessed value and current assessed value of property for which a
27 specific local tax was paid in lieu of a property tax.

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

3 (ee) "Tax increment revenues" means the amount of ad valorem
4 property taxes and specific local taxes attributable to the
5 application of the levy of all taxing jurisdictions upon the
6 captured assessed value of eligible property within the district
7 or, for purposes of a certified technology park, real or personal
8 property that is located within the certified technology park and
9 included within the tax increment financing plan, subject to the
10 following requirements:

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

18 (ii) Tax increment revenues include ad valorem property taxes
19 and specific local taxes attributable to the application of the
20 levy of the state pursuant to the state education tax act, 1993 PA
21 331, MCL 211.901 to 211.906, and local or intermediate school
22 districts upon the captured assessed value of real and personal
23 property in the development area in an amount equal to the amount
24 necessary, without regard to subparagraph (i), for the following
25 purposes:

26 (A) To repay eligible advances, eligible obligations, and
27 other protected obligations.

1 (B) To fund or to repay an advance or obligation issued by or
2 on behalf of an authority to fund the cost of public facilities
3 related to or for the benefit of eligible property located within a
4 certified technology park to the extent the public facilities have
5 been included in an agreement under section 12a(3), not to exceed
6 50%, as determined by the state treasurer, of the amounts levied by
7 the state pursuant to the state education tax act, 1993 PA 331, MCL
8 211.901 to 211.906, and local and intermediate school districts for
9 a period not to exceed 15 years, as determined by the state
10 treasurer, if the state treasurer determines that the capture under
11 this subparagraph is necessary to reduce unemployment, promote
12 economic growth, and increase capital investment in the
13 municipality.

14 (iii) Tax increment revenues do not include any of the
15 following:

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

19 (B) Ad valorem property taxes and specific local taxes
20 attributable to ad valorem property taxes excluded by the tax
21 increment financing plan of the authority from the determination of
22 the amount of tax increment revenues to be transmitted to the
23 authority.

24 (C) Ad valorem property taxes exempted from capture under
25 section 4(3) or specific local taxes attributable to such ad
26 valorem property taxes.

27 (D) Ad valorem property taxes specifically levied for the

1 payment of principal and interest of obligations approved by the
2 electors or obligations pledging the unlimited taxing power of the
3 local governmental unit or specific local taxes attributable to
4 such ad valorem property taxes.

5 (E) The amount of ad valorem property taxes or specific taxes
6 captured by a downtown development authority under 1975 PA 197, MCL
7 125.1651 to 125.1681, tax increment financing authority under the
8 tax increment finance authority act, 1980 PA 450, MCL 125.1801 to
9 125.1830, or brownfield redevelopment authority under the
10 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
11 to 125.2672, if those taxes were captured by these other
12 authorities on the date that the initial assessed value of a parcel
13 of property was established under this act.

14 (iv) The amount of tax increment revenues authorized to be
15 included under subparagraph (ii), and required to be transmitted to
16 the authority under section 13(1), from ad valorem property taxes
17 and specific local taxes attributable to the application of the
18 levy of the state education tax act, 1993 PA 331, MCL 211.901 to
19 211.906, or a local school district or an intermediate school
20 district upon the captured assessed value of real and personal
21 property in a development area shall be determined separately for
22 the levy by the state, each school district, and each intermediate
23 school district as the product of sub-subparagraphs (A) and (B):

24 (A) The percentage that the total ad valorem taxes and
25 specific local taxes available for distribution by law to the
26 state, local school district, or intermediate school district,
27 respectively, bears to the aggregate amount of ad valorem millage

1 taxes and specific taxes available for distribution by law to the
2 state, each local school district, and each intermediate school
3 district.

4 (B) The maximum amount of ad valorem property taxes and
5 specific local taxes considered tax increment revenues under
6 subparagraph (ii).

7 (ff) "Urban township" means a township that meets 1 or more of
8 the following:

9 (i) Meets all of the following requirements:

10 (A) Has a population of 20,000 or more, or has a population of
11 10,000 or more but is located in a county with a population of
12 400,000 or more.

13 (B) Adopted a master zoning plan before February 1, 1987.

14 (C) Provides sewer, water, and other public services to all or
15 a part of the township.

16 (ii) Meets all of the following requirements:

17 (A) Has a population of less than 20,000.

18 (B) Is located in a county with a population of 250,000 or
19 more but less than 400,000, and that county is located in a
20 metropolitan statistical area.

21 (C) Has within its boundaries a parcel of property under
22 common ownership that is 800 acres or larger and is capable of
23 being served by a railroad, and located within 3 miles of a limited
24 access highway.

25 (D) Establishes an authority before December 31, 1998.

26 (iii) Meets all of the following requirements:

27 (A) Has a population of less than 20,000.

1 (B) Has a state equalized valuation for all real and personal
2 property located in the township of more than \$200,000,000.00.

3 (C) Adopted a master zoning plan before February 1, 1987.

4 (D) Is a charter township under the charter township act, 1947
5 PA 359, MCL 42.1 to 42.34.

6 (E) Has within its boundaries a combination of parcels under
7 common ownership that is 800 acres or larger, is immediately
8 adjacent to a limited access highway, is capable of being served by
9 a railroad, and is immediately adjacent to an existing sewer line.

10 (F) Establishes an authority before March 1, 1999.

11 (iv) Meets all of the following requirements:

12 (A) Has a population of 13,000 or more.

13 (B) Is located in a county with a population of 150,000 or
14 more.

15 (C) Adopted a master zoning plan before February 1, 1987.

16 (v) Meets all of the following requirements:

17 (A) Is located in a county with a population of 1,000,000 or
18 more.

19 (B) Has a written agreement with an adjoining township to
20 develop 1 or more public facilities on contiguous property located
21 in both townships.

22 (C) Has a master plan in effect.

23 (vi) Meets all of the following requirements:

24 (A) Has a population of less than 10,000.

25 (B) Has a state equalized valuation for all real and personal
26 property located in the township of more than \$280,000,000.00.

27 (C) Adopted a master zoning plan before February 1, 1987.

1 (D) Has within its boundaries a combination of parcels under
2 common ownership that is 199 acres or larger, is located within 1
3 mile of a limited access highway, and is located within 1 mile of
4 an existing sewer line.

5 (E) Has rail service.

6 (F) Establishes an authority before May 7, 2009.