

SENATE BILL No. 290

March 3, 2009, Introduced by Senators JACOBS, PRUSI, SWITALSKI, BRATER, OLSHOVE, WHITMER, HUNTER, GLEASON, CHERRY, ANDERSON, BARCIA, SCOTT, CLARKE and CLARK-COLEMAN and referred to the Committee on Commerce and Tourism.

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending section 15 (MCL 125.2665), as amended by 2007 PA 201.

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 approved by
8 the department after July 24, 1996 and before January 1, 2013.

1 However, except as provided in subdivision (e), an authority may
2 use taxes levied for school operating purposes captured from
3 eligible property without the approval of a work plan by the
4 department for the reasonable costs of 1 or more of the following:

5 (i) Site investigation activities required to conduct a
6 baseline environmental assessment and to evaluate compliance with
7 section 20107a of the natural resources and environmental
8 protection act, 1994 PA 451, MCL 324.20107a.

9 (ii) Completing a baseline environmental assessment report.

10 (iii) Preparing a plan for compliance with section 20107a of the
11 natural resources and environmental protection act, 1994 PA 451,
12 MCL 324.20107a.

13 (b) For eligible activities not described in section 13(15),
14 other than activities that are exempt from the work plan approval
15 process under subsection (1)(a), use funds from a local site
16 remediation revolving fund that are derived from taxes levied for
17 school operating purposes unless the eligible activities to be
18 conducted are eligible activities under part 201 of the natural
19 resources and environmental protection act, 1994 PA 451, MCL
20 324.20101 to 324.20142, consistent with a work plan that has been
21 approved by the department after July 24, 1996.

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

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

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

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

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

20 (a) A copy of the brownfield plan.

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

25 (c) A summary of available information on the historical and
26 current use of each eligible property, including a brief summary of
27 site conditions and what is known about environmental contamination

1 as that term is defined in section 20101 of the natural resources
2 and environmental protection act, 1994 PA 451, MCL 324.20101.

3 (d) Existing and proposed future zoning for each eligible
4 property.

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

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

9 (3) Upon receipt of a request for approval of a work plan
10 under subsection (2) or a portion of a work plan that pertains to
11 only baseline environmental assessment activities or due care
12 activities, or both, the department shall review the work plan
13 according to subsection (4) and provide 1 of the following written
14 responses to the requesting authority within 60 days:

15 (a) An unconditional approval.

16 (b) A conditional approval that delineates specific necessary
17 modifications to the work plan to meet the criteria of subsection
18 (4), including, but not limited to, individual activities to be
19 added or deleted from the work plan and revision of costs.

20 (c) If the work plan lacks sufficient information for the
21 department to respond under subdivision (a), (b), or (d) for any
22 specific activity, a letter stating with specificity the necessary
23 additions or changes to the work plan to be submitted before that
24 activity will be considered by the department. The department shall
25 respond under subdivision (a), (b), or (d) according to this
26 section for the other activities in the work plan.

27 (d) A denial if the property is not an eligible property under

1 this act, if the work plan contemplates the use of taxes levied for
2 school operating purposes prohibited by subsection (1)(e), or for
3 any specific activity if the activity is prohibited by subsection
4 (1)(d). The department may also deny any activity in a work plan
5 that does not meet the conditions in subsection (4) only if the
6 department cannot respond under subdivision (b) or (c). The
7 department shall accompany the denial with a letter that states
8 with specificity the reason for the denial. The department shall
9 respond under subdivision (a), (b), or (c) according to this
10 section for any activities in the work plan that are not denied
11 under this subdivision. If the department denies all or a portion
12 of a work plan under this subdivision, the authority may
13 subsequently resubmit the work plan.

14 (4) The department may approve a work plan if the following
15 conditions have been met:

16 (a) Whether some or all of the activities constitute due care
17 activities or additional response activities other than activities
18 that are exempt from the work plan approval process under
19 subsection (1)(a).

20 (b) The due care activities and response activities, other
21 than the activities that are exempt from the work plan approval
22 process under subsection (1)(a), are protective of the public
23 health, safety, and welfare and the environment. The department may
24 approve additional response activities that are more protective of
25 the public health, safety, and welfare and the environment than
26 required by section 20107a of the natural resources and
27 environmental protection act, 1994 PA 451, MCL 324.20107a, if those

1 activities provide public health or environmental benefit. In
2 review of a work plan that includes activities that are more
3 protective of the public health, safety, and welfare and the
4 environment, the department's considerations may include, but are
5 not limited to, all of the following:

6 (i) Proposed new land use and reliability of restrictions to
7 prevent exposure to contamination.

8 (ii) Cost of implementation activities minimally necessary to
9 achieve due care compliance, the incremental cost of all additional
10 response activities relative to the cost of all response
11 activities, and the total cost of all response activities.

12 (iii) Long-term obligations associated with leaving
13 contamination in place and the value of reducing or eliminating
14 these obligations.

15 (c) The estimated costs for the activities as a whole are
16 reasonable for the stated purpose. Except as provided in
17 subdivision (b), the department shall make the determination in
18 this subdivision only after the department determines that the
19 conditions in subdivisions (a) and (b) have been met.

20 (5) If the department fails to provide a written response
21 under subsection (3) within 60 days after receipt of a request for
22 approval of a work plan, the authority may proceed with the
23 activities as outlined in the work plan as submitted for approval.
24 Except as provided in subsection (6), activities conducted pursuant
25 to a work plan that was submitted to the department for approval
26 but for which the department failed to provide a written response
27 under subsection (3) shall be considered approved for the purposes

1 of subsection (1). Within 45 days after receiving additional
2 information requested from the authority under subsection (3)(c),
3 the department shall review the additional information according to
4 subsection (4) and provide 1 of the responses described in
5 subsection (3) to the requesting authority for the specific
6 activity. If the department does not provide a response to the
7 requesting authority within 45 days after receiving the additional
8 information requested under subsection (3)(c), the activity is
9 approved under subsection (1).

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

1 compliance with part 201 of the natural resources and environmental
2 protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

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

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

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

19 (8) It shall be in the sole discretion of an authority to
20 propose to undertake additional response activities at an eligible
21 property under a brownfield plan. The department shall not require
22 a work plan to include additional response activities.

23 (9) The department shall review the portion of a work plan
24 that includes additional response activities in accordance with
25 subsection (4).

26 (10) The department's approval or denial of a work plan
27 submitted under this section constitutes a final decision in regard

1 to the use of taxes levied for school operating purposes but does
2 not restrict an authority's use of tax increment revenues
3 attributable to local taxes to pay for eligible activities under a
4 brownfield plan. If a person is aggrieved by the final decision,
5 the person may appeal under section 631 of the revised judicature
6 act of 1961, 1961 PA 236, MCL 600.631.

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

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

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

20 (b) The amount of tax increment revenues approved by the
21 department in the immediately preceding calendar year, including
22 taxes levied for school operating purposes, to conduct eligible
23 activities.

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

27 (a) A copy of the brownfield plan.

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

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

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

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

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

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

19 (14) Upon receipt of a request for approval of a work plan,
20 the Michigan economic growth authority shall provide 1 of the
21 following written responses to the requesting authority within 65
22 days:

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

25 (b) A conditional approval that delineates specific necessary
26 modifications to the work plan, including, but not limited to,
27 individual activities to be added or deleted from the work plan and

1 revision of costs.

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

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

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

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

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

16 (d) The overall benefit to the public.

17 (e) The extent of reuse of vacant buildings and redevelopment
18 of blighted property.

19 (f) Creation of jobs.

20 (g) Whether the eligible property is in an area of high
21 unemployment.

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

24 (i) The level of private sector contribution.

25 (j) The cost gap that exists between the site and a similar
26 greenfield site as determined by the Michigan economic growth
27 authority.

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

4 (l) Whether the project of the developer, landowner, or
5 corporate entity that is included in the work plan is financially
6 and economically sound.

7 (m) Other state and local incentives available to the
8 developer, landowner, or corporate entity for the project of the
9 developer, landowner, or corporate entity that is included in the
10 work plan.

11 (n) Any other criteria that the Michigan economic growth
12 authority considers appropriate for the determination of
13 eligibility or for approval of the work plan.

14 (16) If the Michigan economic growth authority fails to
15 provide a written response under subsection (14) within 65 days
16 after receipt of a request for approval of a work plan, the
17 eligible activities shall be considered approved and the authority
18 may proceed with the eligible activities described in section
19 13(15) as outlined in the work plan as submitted for approval.

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

22 (18) The authority shall reimburse the Michigan economic
23 growth authority for the actual cost incurred by the Michigan
24 economic growth authority or a contractor of the Michigan economic
25 growth authority to review a work plan under this section.

26 (19) The Michigan economic growth authority shall submit a
27 report each year on or before March 1 to each member of the

1 legislature that contains all of the following:

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

4 (b) The amount of tax increment revenues approved by the
5 Michigan economic growth authority in the immediately preceding
6 calendar year, including taxes levied for school operating
7 purposes, to conduct eligible activities.

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

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

19 (22) The department's approval of a work plan under subsection
20 (3)(a) or (b) does not imply an entitlement to reimbursement of the
21 costs of the eligible activities if the work plan is not
22 implemented as approved.

23 (23) The applicant and the department can, by mutual
24 agreement, extend the time period for any review described in this
25 section. An agreement described in this subsection shall be
26 documented in writing.

27 **(24) BEGINNING JULY 1, 2009, THE AUTHORITY SHALL NOT USE TAX**

1 INCREMENT REVENUES TO PAY OR REIMBURSE A BUSINESS ENTITY FOR
2 ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES UNLESS THE BUSINESS
3 ENTITY STATES, IN WRITING, THAT THE BUSINESS ENTITY WILL NOT
4 KNOWINGLY HIRE OR CONTRACT WITH ANY BUSINESS ENTITY THAT KNOWINGLY
5 HIRES AN INDIVIDUAL WHO IS NOT AUTHORIZED UNDER FEDERAL LAW TO WORK
6 IN THE UNITED STATES.

7 (25) BEGINNING JULY 1, 2009, THE AUTHORITY SHALL NOT USE TAX
8 INCREMENT REVENUES TO PAY OR REIMBURSE A BUSINESS ENTITY FOR
9 ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES UNLESS THE BUSINESS
10 ENTITY STATES, IN WRITING, THAT THE BUSINESS ENTITY WILL DO ALL OF
11 THE FOLLOWING:

12 (A) HIRE ONLY RESIDENTS OF THIS STATE TO PERFORM ELIGIBLE
13 ACTIVITIES ON ELIGIBLE PROPERTIES UNDER THIS ACT UNLESS THE
14 AUTHORITY DETERMINES THAT THE ELIGIBLE ACTIVITIES CANNOT BE
15 PERFORMED BY USING ONLY RESIDENTS OF THIS STATE FOR 1 OR MORE OF
16 THE FOLLOWING:

17 (i) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR
18 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

19 (ii) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS
20 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE
21 NEEDED.

22 (B) CONTRACT WITH BUSINESSES THAT AGREE TO HIRE ONLY RESIDENTS
23 OF THIS STATE TO PERFORM ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES
24 UNDER THIS ACT UNLESS THE AUTHORITY DETERMINES THAT THE ELIGIBLE
25 ACTIVITIES CANNOT BE PERFORMED BY USING ONLY RESIDENTS OF THIS
26 STATE FOR 1 OR MORE OF THE FOLLOWING:

27 (i) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR

1 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

2 (ii) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS
3 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE
4 NEEDED.

5 (26) BEGINNING JULY 1, 2009, THE WRITTEN AGREEMENT DESCRIBED
6 IN SUBSECTIONS (24) AND (25) SHALL ALSO CONTAIN A REMEDY PROVISION
7 THAT PROVIDES FOR ALL OF, BUT NOT LIMITED TO, A REQUIREMENT THAT
8 THE BUSINESS ENTITY MAY BE REQUIRED TO REPAY SOME OR ALL OF THE
9 PAYMENTS OR REIMBURSEMENTS RECEIVED UNDER THIS ACT IF THE ELIGIBLE
10 BUSINESS IS DETERMINED TO BE IN VIOLATION OF THE PROVISIONS OF
11 SUBSECTION (24) OR (25), AS DETERMINED BY THE AUTHORITY.

12 (27) EACH AUTHORITY SHALL REPORT TO THE BOARD OF THE MICHIGAN
13 STRATEGIC FUND AND ON OCTOBER 1 ON THE ACTIVITIES OF THE AUTHORITY.
14 THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE
15 FOLLOWING:

16 (A) THE NUMBER OF MICHIGAN RESIDENTS EMPLOYED IN NEW JOBS IN
17 THE IMMEDIATELY PRECEDING YEAR IN WHICH SUBSECTIONS (24) AND (25)
18 APPLY.

19 (B) THE TOTAL NUMBER OF NEW JOBS CREATED IN ALL JOBS IN THE
20 IMMEDIATELY PRECEDING YEAR IN WHICH SUBSECTIONS (24) AND (25)
21 APPLY.

22 (C) THE SPECIFIC REASONS FOR EACH DETERMINATION OF EXEMPTION
23 FROM THE PROVISIONS OF SUBSECTION (25) (A) OR (B) MADE BY THE
24 AUTHORITY AND THE NUMBER OF JOBS RELATED TO EACH DETERMINATION.

25 (28) THE ATTORNEY GENERAL OR APPROPRIATE AGENCY OF THIS STATE
26 SHALL BE RESPONSIBLE FOR ANY ENFORCEMENT NECESSARY TO ENSURE
27 COMPLIANCE AFTER THE APPLICANT HAS SIGNED THE AGREEMENT UNDER THE

1 PROVISIONS DESCRIBED IN SUBSECTIONS (24), (25), AND (26).