

SENATE BILL No. 742

August 18, 2009, Introduced by Senator ALLEN and referred to the Committee on Commerce and Tourism.

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending sections 2 and 16 (MCL 125.2652 and 125.2666), section
2 as amended by 2007 PA 204 and section 16 as amended by 2007 PA
203.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Additional response activities" means response activities
3 identified as part of a brownfield plan that are in addition to
4 baseline environmental assessment activities and due care
5 activities for an eligible property.

6 (b) "Authority" means a brownfield redevelopment authority
7 created under this act.

8 (c) "Baseline environmental assessment" means that term as

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

3 (d) "Baseline environmental assessment activities" means those
4 response activities identified as part of a brownfield plan that
5 are necessary to complete a baseline environmental assessment for
6 an eligible property in the brownfield plan.

7 (e) "Blighted" means property that meets any of the following
8 criteria as determined by the governing body:

9 (i) Has been declared a public nuisance in accordance with a
10 local housing, building, plumbing, fire, or other related code or
11 ordinance.

12 (ii) Is an attractive nuisance to children because of physical
13 condition, use, or occupancy.

14 (iii) Is a fire hazard or is otherwise dangerous to the safety
15 of persons or property.

16 (iv) Has had the utilities, plumbing, heating, or sewerage
17 permanently disconnected, destroyed, removed, or rendered
18 ineffective so that the property is unfit for its intended use.

19 (v) Is tax reverted property owned by a qualified local
20 governmental unit, by a county, or by this state. The sale, lease,
21 or transfer of tax reverted property by a qualified local
22 governmental unit, county, or this state after the property's
23 inclusion in a brownfield plan shall not result in the loss to the
24 property of the status as blighted property for purposes of this
25 act.

26 (vi) Is property owned or under the control of a land bank fast
27 track authority under the land bank fast track act, **2003 PA 258,**

1 **MCL 124.751 TO 124.774**, whether or not located within a qualified
2 local governmental unit. Property included within a brownfield plan
3 prior to the date it meets the requirements of this subdivision to
4 be eligible property shall be considered to become eligible
5 property as of the date the property is determined to have been or
6 becomes qualified as, or is combined with, other eligible property.
7 The sale, lease, or transfer of the property by a land bank fast
8 track authority after the property's inclusion in a brownfield plan
9 shall not result in the loss to the property of the status as
10 blighted property for purposes of this act.

11 (vii) Has substantial subsurface demolition debris buried on
12 site so that the property is unfit for its intended use.

13 (f) "Board" means the governing body of an authority.

14 (g) "Brownfield plan" means a plan that meets the requirements
15 of section 13 and is adopted under section 14.

16 (h) "Captured taxable value" means the amount in 1 year by
17 which the current taxable value of an eligible property subject to
18 a brownfield plan, including the taxable value or assessed value,
19 as appropriate, of the property for which specific taxes are paid
20 in lieu of property taxes, exceeds the initial taxable value of
21 that eligible property. The state tax commission shall prescribe
22 the method for calculating captured taxable value.

23 (i) "Chief executive officer" means the mayor of a city, the
24 village manager of a village, the township supervisor of a
25 township, or the county executive of a county or, if the county
26 does not have an elected county executive, the chairperson of the
27 county board of commissioners.

1 (j) "Department" means the department of environmental
2 quality.

3 (k) "Due care activities" means those response activities
4 identified as part of a brownfield plan that are necessary to allow
5 the owner or operator of an eligible property in the plan to comply
6 with the requirements of section 20107a of the natural resources
7 and environmental protection act, 1994 PA 451, MCL 324.20107a.

8 (l) "Economic opportunity zone" means 1 or more parcels of
9 property that meet all of the following:

10 (i) That together are 40 or more acres in size.

11 (ii) That contain a manufacturing facility that consists of
12 500,000 or more square feet.

13 (iii) That are located in a municipality that has a population
14 of ~~30,000~~ 40,000 or less and that is contiguous to a qualified
15 local governmental unit.

16 (m) "Eligible activities" or "eligible activity" means 1 or
17 more of the following:

18 (i) Baseline environmental assessment activities.

19 (ii) Due care activities.

20 (iii) Additional response activities.

21 (iv) For eligible activities on eligible property that was used
22 or is currently used for commercial, industrial, or residential
23 purposes that is in a qualified local governmental unit, that is
24 owned or under the control of a land bank fast track authority, or
25 that is located in an economic opportunity zone, and is a facility,
26 functionally obsolete, or blighted, and except for purposes of
27 former section 38d of the single business tax act, 1975 PA 228, the

1 following additional activities:

2 (A) Infrastructure improvements that directly benefit eligible
3 property.

4 (B) Demolition of structures that is not response activity
5 under section 20101 of the natural resources and environmental
6 protection act, 1994 PA 451, MCL 324.20101.

7 (C) Lead or asbestos abatement.

8 (D) Site preparation that is not response activity under
9 section 20101 of the natural resources and environmental protection
10 act, 1994 PA 451, MCL 324.20101.

11 (E) Assistance to a land bank fast track authority in clearing
12 or quieting title to, or selling or otherwise conveying, property
13 owned or under the control of a land bank fast track authority or
14 the acquisition of property by the land bank fast track authority
15 if the acquisition of the property is for economic development
16 purposes.

17 (v) Relocation of public buildings or operations for economic
18 development purposes.

19 (vi) For eligible activities on eligible property that is a
20 qualified facility that is not located in a qualified local
21 governmental unit and that is a facility, functionally obsolete, or
22 blighted, the following additional activities:

23 (A) Infrastructure improvements that directly benefit eligible
24 property.

25 (B) Demolition of structures that is not response activity
26 under section 20101 of the natural resources and environmental
27 protection act, 1994 PA 451, MCL 324.20101.

1 (C) Lead or asbestos abatement.

2 (D) Site preparation that is not response activity under
3 section 20101 of the natural resources and environmental protection
4 act, 1994 PA 451, MCL 324.20101.

5 (vii) For eligible activities on eligible property that is not
6 located in a qualified local governmental unit and that is a
7 facility, functionally obsolete, or blighted, the following
8 additional activities:

9 (A) Demolition of structures that is not response activity
10 under section 20101 of the natural resources and environmental
11 protection act, 1994 PA 451, MCL 324.20101.

12 (B) Lead or asbestos abatement.

13 (viii) Reasonable costs of developing and preparing brownfield
14 plans and work plans.

15 (ix) For property that is not located in a qualified local
16 governmental unit and that is a facility, functionally obsolete, or
17 blighted, that is a former mill that has not been used for
18 industrial purposes for the immediately preceding 2 years, that is
19 located along a river that is a federal superfund site listed under
20 the comprehensive environmental response, compensation, and
21 liability act of 1980, ~~42 USC 9601 to 9675~~ **PUBLIC LAW 96-510**, and
22 that is located in a city with a population of less than 10,000
23 persons, the following additional activities:

24 (A) Infrastructure improvements that directly benefit the
25 property.

26 (B) Demolition of structures that is not response activity
27 under section 20101 of the natural resources and environmental

1 protection act, 1994 PA 451, MCL 324.20101.

2 (C) Lead or asbestos abatement.

3 (D) Site preparation that is not response activity under
4 section 20101 of the natural resources and environmental protection
5 act, 1994 PA 451, MCL 324.20101.

6 (x) For eligible activities on eligible property that is
7 located north of the 45th parallel, that is a facility,
8 functionally obsolete, or blighted, and the owner or operator of
9 which makes new capital investment of \$250,000,000.00 or more in
10 this state, the following additional activities:

11 (A) Demolition of structures that is not response activity
12 under section 20101 of the natural resources and environmental
13 protection act, 1994 PA 451, MCL 324.20101.

14 (B) Lead or asbestos abatement.

15 (xi) Reasonable costs of environmental insurance.

16 (n) Except as otherwise provided in this subdivision,
17 "eligible property" means property for which eligible activities
18 are identified under a brownfield plan that was used or is
19 currently used for commercial, industrial, public, or residential
20 purposes, including personal property located on the property, to
21 the extent included in the brownfield plan, and that is 1 or more
22 of the following:

23 (i) Is in a qualified local governmental unit and is a
24 facility, functionally obsolete, or blighted and includes parcels
25 that are adjacent or contiguous to that property if the development
26 of the adjacent and contiguous parcels is estimated to increase the
27 captured taxable value of that property.

1 (ii) Is not in a qualified local governmental unit and is a
2 facility, and includes parcels that are adjacent or contiguous to
3 that property if the development of the adjacent and contiguous
4 parcels is estimated to increase the captured taxable value of that
5 property.

6 (iii) Is tax reverted property owned or under the control of a
7 land bank fast track authority.

8 (iv) Is not in a qualified local governmental unit, is a
9 qualified facility, and is a facility, functionally obsolete, or
10 blighted, if the eligible activities on the property are limited to
11 the eligible activities identified in subdivision (m) (vi) .

12 (v) Is not in a qualified local governmental unit and is a
13 facility, functionally obsolete, or blighted, if the eligible
14 activities on the property are limited to the eligible activities
15 identified in subdivision (m) (vii) .

16 (vi) Is not in a qualified local governmental unit and is a
17 facility, functionally obsolete, or blighted, if the eligible
18 activities on the property are limited to the eligible activities
19 identified in subdivision (m) (ix) .

20 (vii) Is located north of the 45th parallel, is a facility,
21 functionally obsolete, or blighted, and the owner or operator makes
22 new capital investment of \$250,000,000.00 or more in this state.
23 Eligible property does not include qualified agricultural property
24 exempt under section 7ee of the general property tax act, 1893 PA
25 206, MCL 211.7ee, from the tax levied by a local school district
26 for school operating purposes to the extent provided under section
27 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

1 (o) "Environmental insurance" means liability insurance for
2 environmental contamination and cleanup that is not otherwise
3 required by state or federal law.

4 (p) "Facility" means that term as defined in section 20101 of
5 the natural resources and environmental protection act, 1994 PA
6 451, MCL 324.20101.

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

8 (r) "Functionally obsolete" means that the property is unable
9 to be used to adequately perform the function for which it was
10 intended due to a substantial loss in value resulting from factors
11 such as overcapacity, changes in technology, deficiencies or
12 superadequacies in design, or other similar factors that affect the
13 property itself or the property's relationship with other
14 surrounding property.

15 (s) "Governing body" means the elected body having legislative
16 powers of a municipality creating an authority under this act.

17 (t) "Infrastructure improvements" means a street, road,
18 sidewalk, parking facility, pedestrian mall, alley, bridge, sewer,
19 sewage treatment plant, property designed to reduce, eliminate, or
20 prevent the spread of identified soil or groundwater contamination,
21 drainage system, waterway, waterline, water storage facility, rail
22 line, utility line or pipeline, or other similar or related
23 structure or improvement, together with necessary easements for the
24 structure or improvement, owned or used by a public agency or
25 functionally connected to similar or supporting property owned or
26 used by a public agency, or designed and dedicated to use by, for
27 the benefit of, or for the protection of the health, welfare, or

1 safety of the public generally, whether or not used by a single
2 business entity, provided that any road, street, or bridge shall be
3 continuously open to public access and that other property shall be
4 located in public easements or rights-of-way and sized to
5 accommodate reasonably foreseeable development of eligible property
6 in adjoining areas.

7 (u) "Initial taxable value" means the taxable value of an
8 eligible property identified in and subject to a brownfield plan at
9 the time the resolution adding that eligible property in the
10 brownfield plan is adopted, as shown either by the most recent
11 assessment roll for which equalization has been completed at the
12 time the resolution is adopted or, if provided by the brownfield
13 plan, by the next assessment roll for which equalization will be
14 completed following the date the resolution adding that eligible
15 property in the brownfield plan is adopted. Property exempt from
16 taxation at the time the initial taxable value is determined shall
17 be included with the initial taxable value of zero. Property for
18 which a specific tax is paid in lieu of property tax shall not be
19 considered exempt from taxation. The state tax commission shall
20 prescribe the method for calculating the initial taxable value of
21 property for which a specific tax was paid in lieu of property tax.

22 (v) "Land bank fast track authority" means an authority
23 created under the land bank fast track act, 2003 PA 258, MCL
24 124.751 to 124.774.

25 (w) "Local taxes" means all taxes levied other than taxes
26 levied for school operating purposes.

27 (x) "Municipality" means all of the following:

1 (i) A city.

2 (ii) A village.

3 (iii) A township in those areas of the township that are outside
4 of a village.

5 (iv) A township in those areas of the township that are in a
6 village upon the concurrence by resolution of the village in which
7 the zone would be located.

8 (v) A county.

9 (y) "Owned or under the control of" means that a land bank
10 fast track authority has 1 or more of the following:

11 (i) An ownership interest in the property.

12 (ii) A tax lien on the property.

13 (iii) A tax deed to the property.

14 (iv) A contract with this state or a political subdivision of
15 this state to enforce a lien on the property.

16 (v) A right to collect delinquent taxes, penalties, or
17 interest on the property.

18 (vi) The ability to exercise its authority over the property.

19 (z) "Qualified facility" means a landfill facility area of 140
20 or more contiguous acres that is located in a city and that
21 contains a landfill, a material recycling facility, and an asphalt
22 plant that are no longer in operation.

23 (aa) "Qualified local governmental unit" means that term as
24 defined in the obsolete property rehabilitation act, 2000 PA 146,
25 MCL 125.2781 to 125.2797.

26 (bb) "Qualified taxpayer" means that term as defined in former
27 sections 38d and 38g of the single business tax act, 1975 PA 228,

1 or section 437 of the Michigan business tax act, 2007 PA 36, MCL
2 208.1437.

3 (cc) "Response activity" means that term as defined in section
4 20101 of the natural resources and environmental protection act,
5 1994 PA 451, MCL 324.20101.

6 (dd) "Specific taxes" means a tax levied under 1974 PA 198,
7 MCL 207.551 to 207.572; the commercial redevelopment act, 1978 PA
8 255, MCL 207.651 to 207.668; the enterprise zone act, 1985 PA 224,
9 MCL 125.2101 to 125.2123; 1953 PA 189, MCL 211.181 to 211.182; the
10 technology park development act, 1984 PA 385, MCL 207.701 to
11 207.718; the obsolete property rehabilitation act, 2000 PA 146, MCL
12 125.2781 to 125.2797; the neighborhood enterprise zone act, 1992 PA
13 147, MCL 207.771 to 207.786; the commercial rehabilitation act,
14 2005 PA 210, MCL 207.841 to 207.856; or that portion of the tax
15 levied under the tax reverted clean title act, 2003 PA 260, MCL
16 211.1021 to 211.1026, that is not required to be distributed to a
17 land bank fast track authority.

18 (ee) "Tax increment revenues" means the amount of ad valorem
19 property taxes and specific taxes attributable to the application
20 of the levy of all taxing jurisdictions upon the captured taxable
21 value of each parcel of eligible property subject to a brownfield
22 plan and personal property located on that property. Tax increment
23 revenues exclude ad valorem property taxes specifically levied for
24 the payment of principal of and interest on either obligations
25 approved by the electors or obligations pledging the unlimited
26 taxing power of the local governmental unit, and specific taxes
27 attributable to those ad valorem property taxes. Tax increment

1 revenues attributable to eligible property also exclude the amount
2 of ad valorem property taxes or specific taxes captured by a
3 downtown development authority, tax increment finance authority, or
4 local development finance authority if those taxes were captured by
5 these other authorities on the date that eligible property became
6 subject to a brownfield plan under this act.

7 (ff) "Taxable value" means the value determined under section
8 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

9 (gg) "Taxes levied for school operating purposes" means all of
10 the following:

11 (i) The taxes levied by a local school district for operating
12 purposes.

13 (ii) The taxes levied under the state education tax act, 1993
14 PA 331, MCL 211.901 to 211.906.

15 (iii) That portion of specific taxes attributable to taxes
16 described under subparagraphs (i) and (ii).

17 (hh) "Work plan" means a plan that describes each individual
18 activity to be conducted to complete eligible activities and the
19 associated costs of each individual activity.

20 (ii) "Zone" means, for an authority established before June 6,
21 2000, a brownfield redevelopment zone designated under this act.

22 Sec. 16. (1) The municipal and county treasurers shall
23 transmit tax increment revenues to the authority not more than ~~30~~
24 14 days after tax increment revenues are collected.

25 (2) The authority shall expend the tax increment revenues
26 received only in accordance with the brownfield plan. All surplus
27 funds not deposited in the local site remediation revolving fund of

1 the authority under section 13(5) shall revert proportionately to
2 the respective taxing bodies, except as provided in section 15(20).
3 The governing body may abolish the plan when it finds that the
4 purposes for which the plan was established are accomplished.
5 However, the plan shall not be abolished until the principal and
6 interest on bonds issued under section 17 and all other obligations
7 to which the tax increment revenues are pledged have been paid or
8 funds sufficient to make the payment have been segregated.

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

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

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

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

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

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

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

23 (g) The amount of tax increment revenues attributable to taxes
24 levied for school operating purposes used for activities described
25 in section 15(1)(a) and section 2(m)(vii).

26 (h) All additional information that the governing body or the
27 state tax commission considers necessary.

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

6 (a) In the house of representatives, the committees
7 responsible for natural resource management, conservation,
8 environmental protection, commerce, economic development, and
9 taxation.

10 (b) In the senate, the committees responsible for natural
11 resource management, conservation, environmental protection,
12 economic development, and taxation.

13 (5) In addition to any other requirements under this act, not
14 less than once every 3 years beginning not later than June 30,
15 2008, the auditor general shall conduct and report a performance
16 postaudit on the effectiveness, efficiency, and economy of the
17 program established under this act. As part of the performance
18 postaudit, the auditor general shall assess the extent to which the
19 implementation of the program by the department and the Michigan
20 economic growth authority facilitate and affect the redevelopment
21 or reuse of eligible property and identify any factors that inhibit
22 the program's effectiveness. The performance postaudit shall also
23 assess the extent to which the interpretation of statutory
24 language, the development of guidance or administrative rules, and
25 the implementation of the program by the department and the
26 Michigan economic growth authority is consistent with the
27 fundamental objective of facilitating and supporting timely and

1 efficient brownfield redevelopment of eligible properties. Copies
2 of the performance postaudits shall be provided to the governor,
3 the clerk of the house of representatives, the secretary of the
4 senate, and the chairpersons of the senate and house of
5 representatives standing committees on commerce and economic
6 development.