

HOUSE BILL NO. 6145

May 25, 2022, Introduced by Reps. Rabhi, Cynthia Johnson, Aiyash, Carra, Steven Johnson, Pohutsky, LaGrand, Reilly, Pepper and Jones and referred to the Committee on Tax Policy.

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending section 14a (MCL 125.2664a), as amended by 2021 PA 138.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 14a. (1) ~~The~~**Through December 31, 2022, the** governing
2 body and Michigan strategic fund shall determine whether to approve
3 a transformational brownfield plan in accordance with the
4 provisions of this section.

5 (2) The governing body shall make an initial determination as
6 to whether the transformational brownfield plan constitutes a

1 public purpose in accordance with section 14(5). If the governing
2 body determines the transformational brownfield plan does not
3 constitute a public purpose, it shall reject the transformational
4 brownfield plan.

5 (3) If the governing body determines that the transformational
6 brownfield plan constitutes a public purpose, the governing body
7 may then approve or reject the transformational brownfield plan, or
8 approve it with modification, by resolution based on all of the
9 following considerations:

10 (a) Whether the transformational brownfield plan meets the
11 requirements of section 2(vv), which must include a determination
12 that the transformational brownfield plan is calculated to, and has
13 the reasonable likelihood to, have a transformational impact on
14 local economic development and community revitalization based on
15 the extent of brownfield redevelopment and growth in population,
16 commercial activity, and employment that will result from the
17 transformational brownfield plan.

18 (b) Whether the transformational brownfield plan meets the
19 requirements of sections 13, 13b, and 13c.

20 (c) Whether the costs of eligible activities proposed are
21 reasonable and necessary to carry out the purposes of this act.

22 (d) Whether the amount of captured taxable value, construction
23 period tax capture revenues, withholding tax capture revenues, and
24 income tax capture revenues estimated to result from adoption of
25 the transformational brownfield plan are reasonable.

26 (e) Whether the transformational brownfield plan takes into
27 account the criteria described in section 90b(4) of the Michigan
28 strategic fund act, 1984 PA 270, MCL 125.2090b.

29 (f) Whether subject to subsection (22)(d), the

1 transformational brownfield plan includes provisions for affordable
2 housing.

3 (4) Within 90 days of the completion of an administratively
4 complete application and the analysis required under subsection
5 (5), the Michigan strategic fund shall approve or reject the
6 transformational brownfield plan, or approve it with modification,
7 by resolution based on the criteria in subsection (3).

8 (5) In determining whether to approve a transformational
9 brownfield plan under subsection (3)(c) and (d), the Michigan
10 strategic fund shall conduct a financial and underwriting analysis
11 of the developments included in the plan. The analysis shall
12 consider both projected rental rates at the time of project
13 delivery and potential increases in rental rates over time. The
14 Michigan strategic fund shall not approve the use of construction
15 period tax capture revenues, withholding tax capture revenues, and
16 income tax capture revenues beyond the amount determined to be
17 necessary for the project to be economically viable. The Michigan
18 strategic fund shall develop standardized underwriting criteria for
19 determining economic viability. The Michigan strategic fund shall
20 take into account the impact of the sales and use tax exemptions
21 under section 4d(n) of the general sales tax act, 1933 PA 167, MCL
22 205.54d, and section 4dd of the use tax act, 1937 PA 94, MCL
23 205.94dd, in determining the amount of construction period tax
24 capture revenues, withholding tax capture revenues, and income tax
25 capture revenues required for the project to be economically
26 viable. The Michigan strategic fund shall ensure that each
27 transformational brownfield plan includes a significant equity
28 contribution from the owner or developer as determined by the fund.

29 (6) The Michigan strategic fund shall require an independent,

1 third-party underwriting analysis under subsection (3)(d) for any
2 plan that proposes to use more than \$10,000,000.00 in any year in
3 withholding tax capture revenues and income tax capture revenues,
4 as determined by the first full year of tax capture under the plan.

5 The cost of the independent, third-party underwriting analysis
6 shall be paid by the owner or developer of the eligible property.

7 The Michigan strategic fund shall consult with the state treasurer
8 prior to approving any transformational brownfield plan subject to
9 this subsection. Nothing in this subsection shall limit the ability
10 of the Michigan strategic fund to utilize independent, third-party
11 analyses on plans not subject to this subsection.

12 (7) Except as otherwise provided in this subsection, the
13 Michigan strategic fund may not approve a transformational
14 brownfield plan that proposes to use more than 50% of the
15 withholding tax capture revenues or 50% of the income tax capture
16 revenues. The Michigan strategic fund may modify the amount of
17 withholding tax capture revenues and income tax capture revenues
18 before approving a transformational brownfield plan in order to
19 bring the transformational brownfield plan into compliance with
20 subsection (5). The Michigan strategic fund may approve a
21 transformational brownfield plan that proposes to use more than 50%
22 of the income tax capture revenues if 1 of the following applies:

23 (a) The income tax capture revenues are attributable to the
24 election under section 13c(13).

25 (b) The applicable eligible properties within the
26 transformational brownfield plan are subject to a written, binding
27 affordable housing agreement with the local governmental unit,
28 which agreement shall be provided to the Michigan strategic fund,
29 in which case the Michigan strategic fund may approve a

1 transformational brownfield plan that proposes to use up to 100% of
2 the income tax capture revenues, subject to the underwriting and
3 financial analysis required under subsection (5).

4 (8) The Michigan strategic fund shall require the owner or
5 developer of the eligible property to certify the actual capital
6 investment, as determined in accordance with section 2(o)(iv) and
7 section 2(vv), upon the completion of construction and before the
8 commencement of reimbursement from withholding tax capture
9 revenues, income tax capture revenues, or tax increment revenues,
10 for the plan or the distinct phase or project within the plan for
11 which reimbursement will be provided. If the actual capital
12 investment is less than the amount included in the plan, the
13 Michigan strategic fund shall review the determination under
14 subsection (5) and may modify the amount of reimbursement if, and
15 to the extent, such a modification is necessary to maintain
16 compliance with subsection (5). The transformational brownfield
17 plan, work plan, and development and reimbursement agreement shall
18 include provisions to enforce the requirements and remedies under
19 this subsection. If the actual level of capital investment does not
20 meet the applicable minimum investment requirement under section
21 2(vv) and is outside of the safe harbor under subsection (15), the
22 Michigan strategic fund may take 1 of the following remedial
23 actions:

24 (a) For a plan that consists of a single development, reduce
25 the amount of reimbursement under the plan.

26 (b) For a plan that consists of distinct phases or projects,
27 where the failure to meet the minimum investment threshold is the
28 result of failure to undertake additional distinct phases or
29 projects as provided for in the plan, 1 or more of the following:

1 (i) Permanently rescind the authorization to use tax increment
2 revenues, construction period tax capture revenues, withholding tax
3 capture revenues, and income tax capture revenues for the
4 additional distinct phases or projects in the plan.

5 (ii) If the Michigan strategic fund determines that the
6 applicable owner or developer acted in bad faith, reduce the amount
7 of reimbursement for completed phases of the plan.

8 (9) Upon approval by the Michigan strategic fund, the minimum
9 investment requirements in section 2(vv) and limitation under
10 subsection (22)(a) and (b) may be waived if the transformational
11 brownfield plan meets 1 of the following criteria:

12 (a) Is for eligible property in an area approved by the state
13 housing development authority as eligible for blight elimination
14 program funding under the housing finance agency innovation fund
15 for the hardest hit housing markets authorized pursuant to the
16 emergency economic stabilization act of 2008, Public Law 110-343,
17 12 USC 5201 to 5261. For purposes of this subdivision, an area
18 approved as eligible for blight elimination program funding means
19 that specific portion or portions of a municipality where the
20 Michigan state housing development authority approved the
21 expenditure of blight elimination program funds pursuant to an
22 application identifying the target areas.

23 (b) Is for eligible property in a municipality that was
24 subject to a state of emergency under the emergency management act,
25 1976 PA 390, MCL 30.401 to 30.421, issued for drinking water
26 contamination.

27 (c) Is for eligible property that is a historic resource if
28 the Michigan strategic fund determines the redevelopment is not
29 economically feasible absent the transformational brownfield plan.

1 (d) Is for eligible property that is located in a city,
2 village, or township with a population of less than 25,000 or that
3 is otherwise eligible for the corresponding population tier in
4 section 2(vv)(vi), as determined in accordance with subsection (15),
5 if the Michigan strategic fund determines that the redevelopment is
6 not economically feasible absent the transformational brownfield
7 plan.

8 (10) In determining whether a plan under subsection (9) has a
9 transformational impact for purposes of section 2(vv) and
10 subsection (3)(a), the governing body and Michigan strategic fund
11 shall consider the impact of the transformational brownfield plan
12 in relation to existing investment and development conditions in
13 the project area and whether the transformational brownfield plan
14 will act as a catalyst for additional revitalization of the area in
15 which it is located.

16 (11) The Michigan strategic fund may not approve more than 5
17 transformational brownfield plans under subsection (9) in a
18 calendar year, except that if the Michigan strategic fund approves
19 fewer than 5 plans in a calendar year under subsection (9), the
20 unused approval authority shall carry forward into future calendar
21 years and remain available until December 31, ~~2027.~~**2022**. The
22 Michigan strategic fund also shall not approve more than 5
23 transformational brownfield plans under subsection (9) in any
24 individual city, village, or township prior to December 31, 2022.

25 (12) Except as provided in this subsection, amendments to an
26 approved transformational brownfield plan shall be submitted by the
27 authority to the governing body and to the Michigan strategic fund
28 for approval or rejection following the same notice necessary for
29 approval or rejection of the original transformational brownfield

1 plan. Notice is not required for revisions in the estimates of tax
2 increment revenues, construction period tax capture revenues,
3 withholding tax capture revenues, or income tax capture revenues.

4 (13) Except as provided in this subsection, an amendment to an
5 approved transformational brownfield plan under section 13c(1)
6 shall not be considered a new plan approval subject to the
7 limitation in subsection (22)(a). The Michigan strategic fund may
8 consider an amendment as a new plan approval only where the
9 amendment adds eligible property and the Michigan strategic fund
10 determines that approving the addition as an amendment would be
11 inconsistent with the purposes of this act.

12 (14) The procedure, adequacy of notice, and findings under
13 this section shall be presumptively valid unless contested in a
14 court of competent jurisdiction within 60 days after approval of
15 the transformational brownfield plan by the Michigan strategic
16 fund. An approved amendment to a conclusive transformational
17 brownfield plan shall likewise be conclusive unless contested
18 within 60 days after approval of the amendment by the Michigan
19 strategic fund. If a resolution adopting an amendment to the
20 transformational brownfield plan is contested, the original
21 resolution adopting the transformational brownfield plan is not
22 open to contest.

23 (15) The determination as to whether a transformational
24 brownfield plan complies with the minimum investment requirements
25 in section 2(vv) shall be made with reference to the most recent
26 decennial census data available at the time of approval by the
27 authority. A plan in a municipality that exceeds a population tier
28 under section 2(vv) by not more than 10% of the maximum population
29 for that tier shall, upon election of the authority, be subject to

1 the investment requirement for that tier. A transformational
2 brownfield plan that is expected to result in, or does result in, a
3 total capital investment that is within 10% of the applicable
4 minimum investment requirement shall be considered to satisfy the
5 applicable requirement under section 2(vv).

6 (16) For purposes of a transformational brownfield plan,
7 determination as to whether property is functionally obsolete as
8 defined under section 2(u) may include considerations of economic
9 obsolescence as determined in accordance with the Michigan state
10 tax commission's assessor's manual.

11 (17) Any positive or negative determination by the Michigan
12 strategic fund under this section shall be supported by objective
13 analysis and documented in the record of its proceedings.

14 (18) The Michigan strategic fund shall charge and collect a
15 reasonable application fee as necessary to cover the costs
16 associated with the review and approval of a transformational
17 brownfield plan.

18 (19) The Michigan strategic fund shall not commit, and the
19 department of treasury shall not disburse, more than \$40,000,000.00
20 in total annual tax capture. For purposes of this subsection,
21 "total annual tax capture" means the total annual amount of income
22 tax capture revenues and withholding tax capture revenues that may
23 be reimbursed each calendar year under all transformational
24 brownfield plans. If the amount committed or disbursed in a
25 calendar year is less than \$40,000,000.00, the difference between
26 that amount and \$40,000,000.00 shall be available to be committed
27 or disbursed in subsequent calendar years and shall be in addition
28 to the annual limit otherwise applicable.

29 (20) The Michigan strategic fund shall not commit, and the

1 department of treasury shall not disburse, a total amount of income
2 tax capture revenues and withholding tax capture revenues that
3 exceeds \$800,000,000.00.

4 (21) The Michigan strategic fund shall not approve more than a
5 total of \$200,000,000.00 in construction period tax capture
6 revenues and in projected sales and use tax exemptions under
7 section 4d(n) of the general sales tax act, 1933 PA 167, MCL
8 205.54d, and section 4dd of the use tax act, 1937 PA 94, MCL
9 205.94dd. The Michigan strategic fund shall project the value of
10 the sales and use tax exemptions under each transformational
11 brownfield plan at the time of plan approval and shall require such
12 information from the owner or developer as is necessary to perform
13 this calculation. The Michigan strategic fund also shall require
14 the owner or developer of the eligible property to report the
15 actual value of the sales and use tax exemptions each tax year of
16 the construction period and at the end of the construction period.
17 If the value of the actual sales and use tax exemptions and
18 construction period tax capture revenues under all transformational
19 brownfield plans exceeds the limit of \$200,000,000.00 under this
20 subsection by more than a de minimis amount, as determined by the
21 state treasurer, the state treasurer shall take corrective action
22 and may reduce future disbursements to achieve compliance with the
23 aggregate limitation under subsection (20) and this subsection. The
24 corrective action described in this subsection shall not reduce the
25 disbursement for an individual plan by an amount that is more than
26 the amount by which the value of the sales and use tax exemptions
27 for that plan exceeded the amount projected at the time of plan
28 approval and included in the plan. The Michigan strategic fund and
29 department of treasury shall prescribe specific methods for

1 implementing this section within 60 days of the effective date of
2 the amendatory act that added this section.

3 (22) The Michigan strategic fund shall comply with all of the
4 following:

5 (a) Not approve more than 5 transformational brownfield plans
6 in a calendar year, except that if the Michigan strategic fund
7 approves fewer than 5 plans in a calendar year, the unused approval
8 authority shall carry forward into future calendar years and remain
9 available until December 31, ~~2027~~-2022.

10 (b) Not approve more than 5 transformational brownfield plans
11 in any individual city, village, or township prior to December 31,
12 2022.

13 (c) Ensure an equitable geographic distribution of plans
14 approved under this subsection, which shall achieve a balance
15 between the needs of municipalities of differing sizes and
16 differing geographic areas of the state. Subject to the receipt of
17 qualified transformational brownfield plans meeting the criteria
18 under this section and section 13c, the Michigan strategic fund
19 shall set a target that not less than 35% of the total
20 transformational brownfield plans approved under this act prior to
21 December 31, ~~2027~~-2022 will be located in cities, villages, and
22 townships with a population of less than 100,000.

23 (d) In coordination with the governing body, shall determine
24 the appropriate provisions regarding affordable housing on a plan-
25 by-plan basis.

26 (23) In the event of a proposed change in ownership of
27 eligible property subject to a transformational brownfield plan for
28 which reimbursement will continue, the approval of the Michigan
29 strategic fund is required prior to the assignment or transfer of

1 the development and reimbursement agreement.

2 (24) If the Michigan strategic fund approves a
3 transformational brownfield plan and work plan, and subsequent to
4 that approval, amendments are made to this act, the Michigan
5 strategic fund may amend those plans to make conforming and
6 consistent changes to the approved transformational brownfield plan
7 and work plan on an administrative basis, provided that those
8 changes do not result in any increase in the aggregate total amount
9 of reimbursement authorized under the initial transformational
10 brownfield plan. The authority of the Michigan strategic fund to
11 administratively amend transformational brownfield plans and work
12 plans under this subsection also applies to transformational
13 brownfield plans and work plans entered into before the effective
14 date of the amendatory act that added this sentence.

15 (25) The Michigan strategic fund shall not approve any new
16 transformational brownfield plans after December 31, ~~2027~~.**2022**. A
17 transformational brownfield plan approved prior to December 31,
18 2022 shall remain in effect and may be amended in accordance with
19 the provisions of this act.

20 (26) Upon approval by the Michigan strategic fund, the mixed-
21 use requirement in section 2(vv) may be waived for a brownfield
22 plan that otherwise meets the location, population, and minimum
23 investment requirement under section 2(vv) (vi).