

BROWNFIELD REDEVELOPMENT FINANCING ACT (EXCERPT)
Act 381 of 1996

125.2663b Use of taxes captured from eligible property.

Sec. 13b. (1) An authority shall not expend tax increment revenues to acquire or prepare eligible property unless the acquisition or preparation is an eligible activity.

(2) An authority shall not enter into agreements with the taxing jurisdictions and the governing body of the municipality to share a portion of the taxes captured from an eligible property under this act, unless the agreement is related to another tax increment finance authority that has been established under the recodified tax increment finance act, 2018 PA 57, MCL 125.4101 to 125.4915, forgoing or transferring its tax capture to allow an authority to instead capture and utilize those taxes to pay for the eligible activities for an eligible property and only for a period of time not to exceed the duration of the plan for that eligible property. On adoption of the plan, the collection and transmission of the amount of tax increment revenues as specified in this act are binding on all taxing units levying ad valorem property taxes or specific taxes against property located in the zone.

(3) Tax increment revenues captured from taxes levied by this state under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, or taxes levied by a local school district must not be used to assist a land bank fast track authority with clearing or quieting title, acquiring, selling, or conveying property, except as provided in subsection (4).

(4) If a brownfield plan includes the use of taxes levied for school operating purposes captured from an eligible property for eligible activities that are not department specific activities, then 1 or more of the following apply:

(a) A combined brownfield plan or a work plan must be approved by the Michigan strategic fund and a development agreement or reimbursement agreement between the municipality or authority and an owner or developer of eligible property is required before such tax increment may be used for any of the following:

(i) Infrastructure improvements that directly benefit eligible property.

(ii) Demolition of structures that is not response activity.

(iii) Lead, mold, or asbestos abatement that is not a department specific activity.

(iv) Site preparation that is not response activity.

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

(vi) Acquisition of property by a land bank fast track authority if acquisition of the property is for economic development purposes.

(b) Except as otherwise provided in this subdivision, if the work plan or combined brownfield plan is requesting reimbursement for housing development activities, the work plan or combined brownfield plan must be approved by the Michigan state housing development authority and a development agreement or reimbursement agreement between the municipality or authority and an owner or developer of eligible property that stipulates price and income monitoring for residential units is required before such tax increment may be used for housing development activities. A work plan or combined brownfield plan is not required to be approved by the Michigan state housing development authority under this subdivision if all of the housing property for which housing development activities are identified under the plan will be sold or rented at a market rate and will not be subsidized.

(c) Approval of a combined brownfield plan or a work plan by the Michigan strategic fund in the manner required under section 15(12) to (14) or (20) is required to use the tax increment revenues to assist a land bank fast track authority or qualified local governmental unit with clearing or quieting title, acquiring, selling, or conveying property.

(d) The combined brownfield plan or work plan to be submitted to the Michigan strategic fund or Michigan state housing development authority under this subsection must be in a form prescribed by the Michigan strategic fund or the Michigan state housing development authority, as applicable.

(e) The eligible activities to be conducted and described in this subsection must be consistent with the combined brownfield plan or work plan submitted by the authority to the Michigan strategic fund or the Michigan state housing development authority, or both, as applicable.

(f) The department's approval is not required for the capture of taxes levied for school operating purposes for eligible activities described in this section.

(5) If a brownfield plan includes the use of taxes levied for school operating purposes captured from eligible property for department specific activities, a combined brownfield plan or a work plan must be approved by the department with the exception of those activities identified in subsections (8) and (9).

(6) An authority shall not do any of the following:

(a) Use taxes captured from eligible property to pay for eligible activities conducted before approval of the

brownfield plan.

(b) Use taxes captured from eligible property to pay for administrative and operating activities of the authority or the municipality on behalf of the authority for activities, other than those identified in subsection (7).

(c) Use taxes levied for school operating purposes captured from eligible property for activities other than those identified in subsections (4), (5), and (12).

(d) Use construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, or sales and use tax capture revenues to pay for eligible activities conducted before approval of the transformational brownfield plan except for costs described in section 13c(10).

(e) Use construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, and sales and use tax capture revenues for any expense other than as provided for in section 13c(2), except for the reasonable costs for preparing a transformational brownfield plan and the additional administrative and operating expenses of the authority or municipality as are specifically associated with the implementation of a transformational brownfield plan. For purposes of this subsection, the reasonable costs of preparing a transformational brownfield plan include the reasonable costs of preparing an associated work plan, combined brownfield plan, and development or reimbursement agreement.

(7) An authority may use taxes captured from eligible property to pay for the administrative and operating costs under 1 or more of the following:

(a) Local taxes captured may be used for 1 or more of the following administrative and operating purposes:

(i) Reasonable and actual administrative and operating expenses of the authority, including costs to implement, monitor, and maintain compliance with the income and price monitoring responsibilities associated with housing development activities.

(ii) Department specific activities conducted by or on behalf of the authority related directly to work conducted on prospective eligible properties before approval of the brownfield plan.

(iii) Reasonable costs of developing and preparing brownfield plans, combined plans, or work plans for which tax increment revenues may be used under subsection (4), including, but not limited to, both of the following:

(A) Legal and consulting fees that are not in the ordinary course of acquiring and developing real estate.

(B) Fees and expenses, including licensing, permitting, planning, engineering, architectural, testing, legal, and accounting fees, not described in sub-subparagraph (A).

(iv) Reasonable cost of brownfield plan or work plan implementation, including, but not limited to, tracking and reporting data and plan compliance and costs to implement, monitor, and maintain compliance with the income and price monitoring responsibilities associated with housing development activities.

(b) Taxes levied for school operating purposes may be used for 1 or more of the following administrative and operating purposes:

(i) Reasonable costs of developing and preparing brownfield plans, combined brownfield plans, or work plans for which tax increment revenues may be used under section 13(4), including, but not limited to, both of the following:

(A) Legal and consulting fees that are not in the ordinary course of acquiring and developing real estate, not to exceed \$30,000.00.

(B) Fees and expenses, including licensing, permitting, planning, engineering, architectural, testing, legal, and accounting fees, not described in sub-subparagraph (A).

(ii) Reasonable costs of brownfield plan or work plan implementation, including, but not limited to, tracking and reporting of data and plan compliance, and costs to implement, monitor, and maintain compliance with the income and price monitoring responsibilities associated with housing development activities, not to exceed \$50,000.00.

(c) In each fiscal year of the authority, the amount of tax increment revenues attributable to local taxes that an authority may use for the purposes described in subdivisions (a) and (b) is determined as follows:

(i) For authorities that have 5 or fewer active projects, \$125,000.00.

(ii) For authorities that have 6 or more but fewer than 11 active projects, \$165,000.00.

(iii) For authorities that have 11 or more but fewer than 16 active projects, \$200,000.00.

(iv) For authorities that have 16 or more but fewer than 21 active projects, \$225,000.00.

(v) For authorities that have 21 or more but fewer than 26 active projects, \$250,000.00.

(vi) For authorities that have 26 or more but fewer than 31 active projects, \$400,000.00.

(vii) For authorities that have 31 or more but fewer than 54 active projects, \$650,000.00.

(viii) For authorities that have 54 or more but fewer than 74 active projects, \$900,000.00.

(ix) For authorities that have 74 or more but fewer than 99 active projects, \$1,400,000.00.

(x) For authorities that have 99 or more active projects, \$2,000,000.00.

(d) This subsection does not limit the amount of funds that may be granted, loaned, or expended by a local brownfield revolving fund for eligible activities.

(e) As used in this subsection, "active project" means either a project for which the authority is currently capturing taxes under this act or a project for which an authority has ongoing obligations to implement, monitor, or maintain compliance with the income and price monitoring responsibilities associated with housing development activities, or both. The amounts of tax increment revenues attributable to local taxes listed in this subsection that an authority can use for the purposes described in this subsection may be increased by 2% for each written agreement entered into by an authority in either of the following situations up to a total maximum increase of 10%:

(i) The authority is an authority established by a county and that authority enters into a written agreement with 1 or more municipalities within that county to serve as the only authority for those other municipalities.

(ii) The authority enters into a written agreement with 1 or more other authorities to administer 1 or more administrative operations of those other authorities.

(8) The limitations of subsections (4), (5), and (6) on the use of taxes levied for school operating purposes do not apply to the costs of 1 or more of the following incurred by a person other than the authority:

(a) Site investigation activities required to conduct a baseline environmental assessment and to evaluate compliance with sections 20107a and 21304c of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a and 324.21304c.

(b) Completing a baseline environmental assessment.

(c) Preparing a plan for compliance with sections 20107a and 21304c of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a and 324.21304c.

(d) Performing pre-demolition and building hazardous materials surveys.

(e) Asbestos, mold, and lead surveys.

(f) Asbestos, mold, lead, and building hazardous materials abatement and demolition, in an amount not to exceed \$250,000.00.

(9) The limitations of subsections (4), (5), and (6) on the use of local taxes and taxes levied for school operating purposes do not apply to the following costs and expenses:

(a) For tax increment revenues attributable to taxes levied for school operating purposes, eligible activities associated with unanticipated response activities conducted on eligible property if that eligible property has been included in a brownfield plan, the department is consulted in writing on the unanticipated response activities before they are conducted, and the costs of those activities are subsequently included in a brownfield plan, combined brownfield plan or a work plan or amendment approved by the authority and approved by the department.

(b) For tax increment revenues attributable to local taxes, any eligible activities conducted on eligible property or prospective eligible properties before approval of the brownfield plan, if those costs and the eligible property are subsequently included in a brownfield plan approved by the authority.

(c) For tax increment revenues attributable to taxes levied for school operating purposes, eligible activities described in subsection (4) and conducted on eligible property or prospective eligible properties before approval of the brownfield plan, if those costs and the eligible property are subsequently included in a brownfield plan approved by the authority and a combined brownfield plan or work plan approved by the Michigan strategic fund or the Michigan state housing development authority, or both, as applicable.

(d) Reasonable cost of developing and preparing brownfield plans, combined brownfield plans, or work plans for which tax increment revenues may be used under section 13(4), including, but not limited to, legal and consulting fees that are not in the ordinary course of acquiring and developing real estate.

(e) Reasonable cost of brownfield plan or work plan implementation, including, but not limited to, tracking and reporting of data and plan compliance.

(10) An authority shall not use taxes levied for school operating purposes captured from eligible property for response activities that benefit a party responsible for an activity causing a release under section 20126 or 21323a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20126 and 324.21323a, except that a municipality that established the authority may use taxes levied for school operating purposes captured from eligible property for response activities associated with a landfill.

(11) A brownfield authority may reimburse advances, with or without interest, made by a municipality under section 7(3), a land bank fast track authority, or any other person or entity for costs of eligible activities with any source of revenue available for use of the brownfield authority under this act.

(12) A brownfield authority may capture taxes for the payment of interest, as follows:

(a) If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of eligible activities and interest thereon, the authority may capture local taxes for the payment of that interest.

(b) If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of department specific activities and interest thereon included in a combined brownfield plan or a work plan approved by the department, the authority may capture taxes levied for school operating purposes and local taxes for the payment of that interest.

(c) If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of eligible activities that are not department specific activities and interest thereon included in a combined brownfield plan or a work plan approved by the Michigan strategic fund or the Michigan state housing development authority, or both, as applicable, the authority may capture taxes levied for school operating purposes and local taxes for the payment of that interest if the Michigan strategic fund or the Michigan state housing development authority, as applicable, grants an approval for the capture of taxes levied for school operating purposes to pay that interest.

(13) An authority may enter into agreements related to these reimbursements and payments described in this section. A reimbursement agreement for these purposes and the obligations under that reimbursement agreement are not subject to section 13 or the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(14) Notwithstanding anything to the contrary in this act, for a brownfield plan that includes the capture of taxes levied for school operating purposes from each eligible property included in a brownfield plan after January 1, 2013, an authority shall pay to the department of treasury at least once annually an amount equal to 50% of the taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, including 50% of that portion of specific taxes attributable to, but not levied under, the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, that are captured under the brownfield plan until the expiration of the earlier of the following:

(a) Twenty-five years of capture of tax increment revenues from such eligible property included in the brownfield plan.

(b) The later of the following:

(i) The date of repayment of all eligible expenses relative to such eligible property.

(ii) The date excess capture is terminated under subsection (16).

(15) The department of treasury shall deposit the amounts described in subsection (14) into the state brownfield redevelopment fund. If an authority makes a payment as required under subsection (14) to the department of treasury, the local taxes levied on that parcel and used to reimburse eligible activities under a brownfield plan must not be increased or decreased due to that payment. If, due to an appeal of any tax assessment, an authority is required to reimburse a taxpayer for any portion of the amount paid to the department of treasury under this subsection, the department of treasury shall reimburse that amount to the authority within 30 days after receiving a request from the authority for reimbursement.

(16) The brownfield plan must include a proposed beginning date of capture. If the actual beginning date of capture of tax increment revenues is later than 5 years following the date of the adoption of the brownfield plan resolution, then the maximum number of years of capture will decrease. The end date of capture must be no later than 35 years after the date of the adoption of the brownfield plan resolution. The authority may amend the beginning date of capture of tax increment revenues for a particular eligible property as long as the authority has not begun to reimburse eligible activities from the capture of tax increment revenues from that eligible property. Any tax increment revenues captured from an eligible property before the beginning date of capture of tax increment revenues for that eligible property must revert proportionately to the respective tax bodies.

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