

Act No. 727
Public Acts of 2002
Approved by the Governor
December 30, 2002
Filed with the Secretary of State
December 30, 2002
EFFECTIVE DATE: December 30, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Rep. Allen

ENROLLED HOUSE BILL No. 6502

AN ACT to amend 1996 PA 381, entitled "An act to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans relating to the designation and treatment of brownfield redevelopment zones; to promote the revitalization of environmentally distressed areas; to prescribe the powers and duties of brownfield redevelopment authorities; to permit the issuance of bonds and other evidences of indebtedness by an authority; to authorize the acquisition and disposal of certain property; to authorize certain funds; to prescribe certain powers and duties of certain state officers and agencies; and to authorize and permit the use of certain tax increment financing," by amending sections 13 and 15 (MCL 125.2663 and 125.2665), as amended by 2000 PA 145.

The People of the State of Michigan enact:

Sec. 13. (1) Subject to section 15, the board may implement a brownfield plan. The brownfield plan may apply to 1 or more parcels of eligible property whether or not those parcels of eligible property are contiguous and may be amended to apply to additional parcels of eligible property. If more than 1 parcel of eligible property is included within the plan, the tax increment revenues under the plan shall be determined individually for each parcel of eligible property. Each plan or an amendment to a plan shall be approved by the governing body of the municipality and shall contain all of the following:

- (a) A description of the costs of the plan intended to be paid for with the tax increment revenues.
- (b) A brief summary of the eligible activities that are proposed for each eligible property.
- (c) An estimate of the captured taxable value and tax increment revenues for each year of the plan from each parcel of eligible property and in the aggregate. The plan may provide for the use of part or all of the captured taxable value, including deposits in the local site remediation revolving fund, but the portion intended to be used shall be clearly stated in the plan. The plan shall not provide either for an exclusion from captured taxable value of a portion of the captured taxable value or for an exclusion of the tax levy of 1 or more taxing jurisdictions unless the tax levy is excluded from tax increment revenues in section 2(aa), or unless the tax levy is excluded from capture under section 15.
- (d) The method by which the costs of the plan will be financed, including a description of any advances made or anticipated to be made for the costs of the plan from the municipality.
- (e) The maximum amount of note or bonded indebtedness to be incurred, if any.
- (f) The duration of the brownfield plan, which shall not exceed the lesser of the period authorized under subsections (4) and (5) or 30 years.
- (g) An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the eligible property is located.
- (h) A legal description of each parcel of eligible property to which the plan applies, a map showing the location and dimensions of each eligible property, a statement of the characteristics that qualify the property as eligible property,

and a statement of whether personal property is included as part of the eligible property. If the project is on property that is functionally obsolete, the taxpayer shall include, with the application, an affidavit signed by a level 3 or level 4 assessor, that states that it is the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion.

(i) Estimates of the number of persons residing on each eligible property to which the plan applies and the number of families and individuals to be displaced. If occupied residences are designated for acquisition and clearance by the authority, the plan shall include a demographic survey of the persons to be displaced, a statistical description of the housing supply in the community, including the number of private and public units in existence or under construction, the condition of those in existence, the number of owner-occupied and renter-occupied units, the annual rate of turnover of the various types of housing and the range of rents and sale prices, an estimate of the total demand for housing in the community, and the estimated capacity of private and public housing available to displaced families and individuals.

(j) A plan for establishing priority for the relocation of persons displaced by implementation of the plan.

(k) Provision for the costs of relocating persons displaced by implementation of the plan, and financial assistance and reimbursement of expenses, including litigation expenses and expenses incident to the transfer of title, in accordance with the standards and provisions of the uniform relocation assistance and real property acquisition policies act of 1970, Public Law 91-646, 84 Stat. 1894.

(l) A strategy for compliance with 1972 PA 227, MCL 213.321 to 213.332.

(m) A description of proposed use of the local site remediation revolving fund.

(n) Other material that the authority or governing body considers pertinent.

(2) The percentage of all taxes levied on a parcel of eligible property for school operating expenses that is captured and used under a brownfield plan and all tax increment finance plans under 1975 PA 197, MCL 125.1651 to 125.1681, the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, or the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174, shall not be greater than the combination of the plans' percentage capture and use of all local taxes levied for purposes other than for the payment of principal of and interest on either obligations approved by the electors or obligations pledging the unlimited taxing power of the local unit of government. This subsection shall apply only when taxes levied for school operating purposes are subject to capture under section 15.

(3) Except as provided in subsections (5), (15), and (16), tax increment revenues related to a brownfield plan shall be used only for costs of eligible activities attributable to the eligible property, the captured taxable value of which produces the tax increment revenues, including the cost of principal of and interest on any obligation issued by the authority to pay the costs of eligible activities attributable to the eligible property, and the reasonable costs of preparing a work plan or remedial action plan for the eligible property, including the actual cost of the review of the work plan or remedial action plan under section 15.

(4) Except as provided in subsection (5), a brownfield plan shall not authorize the capture of tax increment revenue from eligible property after the year in which the total amount of tax increment revenues captured is equal to the sum of the costs of eligible activities attributable to the eligible property including the cost of principal of and interest on any obligation issued by the authority to pay the costs of eligible activities on the eligible property, and the reasonable cost of preparing a work plan or remedial action plan for eligible property, and the actual cost of the department's review of the work plan or remedial action plan.

(5) A brownfield plan may authorize the capture of additional tax increment revenue from an eligible property in excess of the amount authorized under subsection (4) during the time of capture for the purpose of paying the costs of eligible activities under subsection (3), or for not more than 5 years after the time that capture is required for the purpose of paying the costs of eligible activities under subsection (3), or both. Excess revenues captured under this subsection shall be deposited in the local site remediation revolving fund created under section 8 and used for the purposes authorized in section 8. If tax increment revenues levied for school operating purposes from eligible property are captured by the authority for purposes authorized under subsection (3), the tax increment revenues captured for deposit in the local site remediation revolving fund also may include tax increment revenues levied for school operating purposes in an amount not greater than the tax increment revenues levied for school operating purposes captured from the eligible property by the authority for the purposes authorized under subsection (3). Excess revenues from taxes levied for school operating purposes for eligible activities authorized under subsection (15) by the Michigan economic growth authority shall not be captured for deposit in the local site remediation revolving fund.

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

(7) Costs of eligible activities attributable to eligible property include all costs that are necessary or related to a release from the eligible property, including eligible activities on properties affected by a release from the eligible property. For purposes of this subsection, "release" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(8) Costs of a response activity paid with tax increment revenues that are captured pursuant to subsection (3) may be recovered from a person who is liable for the costs of eligible activities at an eligible property. This state or an

authority may undertake cost recovery for tax increment revenue captured. Before an authority or this state may institute a cost recovery action, it must provide the other with 120 days' notice. This state or an authority that recovers costs under this subsection shall apply those recovered costs to the following, in the following order of priority:

- (a) The reasonable attorney fees and costs incurred by this state or an authority in obtaining the cost recovery.
- (b) One of the following:

- (i) If an authority undertakes the cost recovery action, the authority shall deposit the remaining recovered funds into the local site remediation fund created pursuant to section 8, if such a fund has been established by the authority. If a local site remediation fund has not been established, the authority shall disburse the remaining recovered funds to the local taxing jurisdictions in the proportion that the local taxing jurisdictions' taxes were captured.

- (ii) If this state undertakes a cost recovery action, this state shall deposit the remaining recovered funds into the revitalization revolving loan fund established under section 20108a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20108a.

- (iii) If this state and an authority each undertake a cost recovery action, undertake a cost recovery action jointly, or 1 on behalf of the other, the amount of any remaining recovered funds shall be deposited pursuant to subparagraphs (i) and (ii) in the proportion that the tax increment revenues being recovered represent local taxes and taxes levied for school operating purposes, respectively.

- (9) Approval of the brownfield plan or an amendment to a brownfield plan shall be in accordance with the notice and approval provisions of this section and section 14.

- (10) Before approving a brownfield plan for an eligible property, the governing body shall hold a public hearing on the brownfield plan. Notice of the time and place of the hearing shall be given by publication twice in a newspaper of general circulation designated by the municipality, the first of which shall be not less than 20 or more than 40 days before the date set for the hearing.

- (11) Notice of the time and place of the hearing on a brownfield plan shall contain all of the following:

- (a) A description of the property to which the plan applies in relation to existing or proposed highways, streets, streams, or otherwise.

- (b) A statement that maps, plats, and a description of the brownfield plan are available for public inspection at a place designated in the notice and that all aspects of the brownfield plan are open for discussion at the public hearing required by this subsection.

- (c) Any other information that the governing body considers appropriate.

- (12) At the time set for the hearing on the brownfield plan required under subsection (10), the governing body shall provide an opportunity for interested persons to be heard and shall receive and consider communications in writing with reference to the brownfield plan. The governing body shall make and preserve a record of the public hearing, including all data presented at the hearing.

- (13) Not less than 20 days before the hearing on the brownfield plan, the governing body shall provide notice of the hearing to the taxing jurisdictions that levy taxes subject to capture under this act. The authority shall fully inform the taxing jurisdictions about the fiscal and economic implications of the proposed brownfield plan. At that hearing, an official from a taxing jurisdiction with millage that would be subject to capture under this act has the right to be heard in regard to the adoption of the brownfield plan.

- (14) The authority shall not enter into agreements with the taxing jurisdictions and the governing body of the municipality to share a portion of the captured taxable value of an eligible property. Upon adoption of the plan, the collection and transmission of the amount of tax increment revenues as specified in this act shall be binding on all taxing units levying ad valorem property taxes or specific taxes against property located in the zone.

- (15) If a brownfield plan includes the capture of taxes levied for school operating purposes or the use of tax increment revenues related to a brownfield plan for the cost of eligible activities attributable to more than 1 eligible property that is adjacent and contiguous to all other eligible properties covered by the development agreement, whether or not the captured taxes are levied for school operating purposes, approval of a work plan by the Michigan economic growth authority before January 1, 2008 to use school operating taxes and a development agreement between the municipality and an owner or developer of eligible property are required if the revenues will be used for infrastructure improvements that directly benefit eligible property, demolition of structures that is not response activity under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, lead or asbestos abatement, or site preparation that is not response activity under section 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101. The eligible activities to be conducted described in this subsection shall be consistent with the work plan submitted by the authority to the Michigan economic growth authority. The department's approval is not required for the capture of taxes levied for school operating purposes for eligible activities described in this subsection.

- (16) A brownfield authority may reimburse reasonable and actual administrative and operating expenses that include, but are not limited to, baseline environmental assessments, due care activities, and additional response

activities, related directly to work conducted by the authority on prospective eligible properties prior to approval of the brownfield plan and on eligible properties and for eligible activities after the approval of the brownfield plan, only from captured local taxes not to exceed \$75,000.00 for each authority in each fiscal year. Reasonable and actual administrative and operating expenses do not include reasonable costs of preparing a work plan or remedial action plan or the cost of the review of a work plan for which taxes may be used under section 13(3).

Sec. 15. (1) An authority shall not do any of the following:

(a) For eligible activities not described in section 13(15), use taxes levied for school operating purposes captured from eligible property unless the eligible activities to be conducted on the eligible property are eligible activities under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, consistent with a work plan or remedial action plan approved by the department after July 24, 1996 and before January 1, 2008.

(b) For eligible activities not described in section 13(15), use funds from a local site remediation revolving fund that are derived from taxes levied for school operating purposes unless the eligible activities to be conducted are eligible activities under part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, consistent with a work plan or remedial action plan that has been approved by the department after July 24, 1996.

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

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

(e) Use taxes levied for school operating purposes captured from eligible property for response activities that benefit a party liable under section 20126 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20126.

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

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

(a) A copy of the brownfield plan.

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

(c) A summary of available information on the historical and current use of each eligible property, including a brief summary of site conditions and what is known about environmental contamination as that term is defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

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

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

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

(3) Upon receipt of a request for approval of a work plan or remedial action plan under subsection (2) that pertains to baseline environmental assessment activities or due care activities, or both, or a portion of a work plan or remedial action plan that pertains to only baseline environmental assessment activities or due care activities, or both, the department shall provide 1 of the following written responses to the requesting authority within 60 days:

(a) An unconditional approval.

(b) A conditional approval that delineates specific necessary modifications to the work plan or remedial action plan, including, but not limited to, individual activities to be added or deleted from the work plan or remedial action plan and revision of costs.

(c) If the work plan or remedial action plan lacks sufficient information for the department to respond under subdivision (a) or (b), a letter stating with specificity the necessary additions or changes to the work plan or remedial action plan to be submitted before a plan will be considered by the department.

(4) In its review of a work plan or remedial action plan, the department shall consider all of the following:

(a) Whether the individual activities included in the work plan or remedial action plan are sufficient to complete the eligible activity.

(b) Whether each individual activity included in the work plan or remedial action plan is required to complete the eligible activity.

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

(5) If the department fails to provide a written response under subsection (3) within 60 days after receipt of a request for approval of a work plan or remedial action plan that pertains to baseline environmental assessment activities or due care activities, or both, the authority may proceed with the baseline environmental assessment activities or due care activities, or both, as outlined in the work plan or remedial action plan as submitted for approval. Except as provided in subsection (6), baseline environmental assessment activities or due care activities, or both, conducted pursuant to a work plan or remedial action plan that was submitted to the department for approval but for which the department failed to provide a written response under subsection (3) shall be considered approved for the purposes of subsection (1).

(6) The department may issue a written response to a work plan or remedial action plan that pertains to baseline environmental assessment activities or due care activities, or both, more than 60 days but less than 6 months after receipt of a request for approval. If the department issues a written response under this subsection, the authority is not required to conduct individual activities that are in addition to the individual activities included in the work plan or remedial action plan as it was submitted for approval and failure to conduct these additional activities shall not affect the authority's ability to capture taxes under subsection (1) for the eligible activities described in the work plan or remedial action plan initially submitted under subsection (5). In addition, at the option of the authority, these additional individual activities shall be considered part of the work plan or remedial action plan of the authority and approved for purposes of subsection (1). However, any response by the department under this subsection that identifies additional individual activities that must be carried out to satisfy the baseline environmental assessment or due care requirements, or both, of part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, must be satisfactorily completed for the baseline environmental assessment or due care activities, or both, to be considered acceptable for the purposes of compliance with part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

(7) If the department issues a written response under subsection (6) to a work plan or remedial action plan that pertains to baseline environmental assessment activities or due care activities, or both, and if the department's written response modifies an individual activity proposed by the work plan or remedial action plan of the authority in a manner that reduces or eliminates a proposed response activity, the authority must complete those individual activities included in the baseline environmental assessment or due care activities, or both, in accordance with the department's response in order for that portion of the work plan or remedial action plan to be considered approved for purposes of subsection (1), unless 1 or more of the following conditions apply:

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

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

(8) It shall be in the sole discretion of an authority to propose to undertake additional response activities at an eligible property under a brownfield plan. The department shall not require a work plan or remedial action plan for either baseline environmental assessment activities or due care activities, or both, to include additional response activities.

(9) The department may reject the portion of a work plan or remedial action plan that includes additional response activities and may consider the level of risk reduction that will be accomplished by the additional response activities in determining whether to approve or reject the work plan or remedial action plan or a portion of a plan.

(10) The department's approval or rejection of a work plan under subsection (1)(a) or (b) or remedial action plan for additional response activities is final.

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

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

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

(b) The amount of revenue this state would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.

(c) The amount of revenue each local governmental unit would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.

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

(a) A copy of the brownfield plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The overall benefit to the public.

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

(f) Creation of jobs.

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

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

(i) The level of private sector contribution.

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

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

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

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

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

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

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

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

(19) The Michigan economic growth authority shall submit a report each year on or before March 1 to each member of the legislature that contains all of the following:

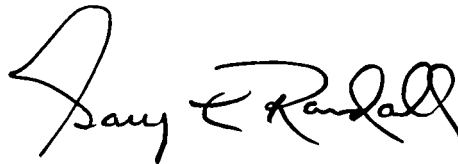
(a) A compilation and summary of all the information submitted under subsection (13).

(b) The amount of revenue this state would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.

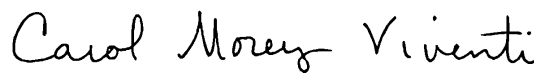
(c) The amount of revenue each local governmental unit would have received if taxes levied for school operating purposes had not been captured under this section for the previous calendar year.

(20) All taxes levied for school operating purposes that are not used for eligible activities consistent with a work plan approved by the department or the Michigan economic growth authority and that are not deposited in a local site remediation revolving fund shall be distributed proportionately between the local school district and the school aid fund.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.