

# SENATE BILL No. 1487

September 14, 2010, Introduced by Senators BARCIA, ALLEN, HUNTER, STAMAS, NOFS and CLARKE and referred to the Committee on Commerce and Tourism.

A bill to amend 1996 PA 381, entitled  
"Brownfield redevelopment financing act,"  
by amending section 13 (MCL 125.2663), as amended by 2007 PA 202.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 13. (1) Subject to section 15, the board may implement a  
2 brownfield plan. The brownfield plan may apply to 1 or more parcels  
3 of eligible property whether or not those parcels of eligible  
4 property are contiguous and may be amended to apply to additional  
5 parcels of eligible property. Except as otherwise authorized by  
6 this act, if more than 1 eligible property is included within the  
7 plan, the tax increment revenues under the plan shall be determined  
8 individually for each eligible property. Each plan or an amendment  
9 to a plan shall be approved by the governing body of the

1 municipality and shall contain all of the following:

2 (a) A description of the costs of the plan intended to be paid  
3 for with the tax increment revenues or, for a plan for eligible  
4 properties qualified on the basis that the property is owned or  
5 under the control of a land bank fast track authority, a listing of  
6 all eligible activities that may be conducted for 1 or more of the  
7 eligible properties subject to the plan.

8 (b) A brief summary of the eligible activities that are  
9 proposed for each eligible property or, for a plan for eligible  
10 properties qualified on the basis that the property is owned or  
11 under the control of a land bank fast track authority, a brief  
12 summary of eligible activities conducted for 1 or more of the  
13 eligible properties subject to the plan.

14 (c) An estimate of the captured taxable value and tax  
15 increment revenues for each year of the plan from the eligible  
16 property. The plan may provide for the use of part or all of the  
17 captured taxable value, including deposits in the local site  
18 remediation revolving fund, but the portion intended to be used  
19 shall be clearly stated in the plan. The plan shall not provide  
20 either for an exclusion from captured taxable value of a portion of  
21 the captured taxable value or for an exclusion of the tax levy of 1  
22 or more taxing jurisdictions unless the tax levy is excluded from  
23 tax increment revenues in section 2(dd), or unless the tax levy is  
24 excluded from capture under section 15.

25 (d) The method by which the costs of the plan will be  
26 financed, including a description of any advances made or  
27 anticipated to be made for the costs of the plan from the

1 municipality.

2 (e) The maximum amount of note or bonded indebtedness to be  
3 incurred, if any.

4 (f) The duration of the brownfield plan for eligible  
5 activities on eligible property which shall not exceed 35 years  
6 following the date of the resolution approving the plan amendment  
7 related to a particular eligible property. Each plan amendment  
8 shall also contain the duration of capture of tax increment  
9 revenues including the beginning date of the capture of tax  
10 increment revenues, which beginning date shall be identified in the  
11 brownfield plan and which beginning date shall not be later than 5  
12 years following the date of the resolution approving the plan  
13 amendment related to a particular eligible property and which  
14 duration shall not exceed the lesser of the period authorized under  
15 subsections (4) and (5) or 30 years from the beginning date of the  
16 capture of tax increment revenues. The date for the beginning of  
17 capture of tax increment revenues may be amended by the authority  
18 but not to a date later than 5 years after the date of the  
19 resolution adopting the plan **AMENDMENT**. The authority may not amend  
20 the date for the beginning of capture of tax increment revenues if  
21 the authority has begun to reimburse eligible activities from the  
22 capture of tax increment revenues. The authority may not amend the  
23 date for the beginning of capture if that amendment would lead to  
24 the duration of capture of tax increment revenues being longer than  
25 30 years or the period authorized under subsections (4) and (5). If  
26 the date for the beginning of capture of tax increment revenues is  
27 amended by the authority and that plan **AMENDMENT** includes the

1 capture of tax increment revenues for school operating purposes,  
2 then the authority ~~that amended that plan~~ shall notify the  
3 department and the Michigan economic growth authority within 30  
4 days of the approval of the amendment. **FOR PURPOSES OF THIS**  
5 **SUBDIVISION, "PLAN AMENDMENT" MEANS A PLAN RELATED TO A PARTICULAR**  
6 **ELIGIBLE PROPERTY, A PLAN AMENDMENT THAT INCLUDED A PARTICULAR**  
7 **ELIGIBLE PROPERTY WITHIN A PLAN, OR, IF A PROJECT FOR WHICH**  
8 **ELIGIBLE ACTIVITIES WERE IDENTIFIED IN A PLAN FAILS TO OCCUR, A**  
9 **SUBSEQUENT PLAN AMENDMENT THAT IDENTIFIES ELIGIBLE ACTIVITIES**  
10 **ASSOCIATED WITH A NEW PROJECT ON THAT ELIGIBLE PROPERTY IF THE**  
11 **AUTHORITY HAS NOT BEGUN TO REIMBURSE ELIGIBLE ACTIVITIES FROM THE**  
12 **CAPTURE OF TAX INCREMENT REVENUES FOR THAT ELIGIBLE PROPERTY.**

13 (g) An estimate of the impact of tax increment financing on  
14 the revenues of all taxing jurisdictions in which the eligible  
15 property is located.

16 (h) A legal description of the eligible property to which the  
17 plan applies, a map showing the location and dimensions of each  
18 eligible property, a statement of the characteristics that qualify  
19 the property as eligible property, and a statement of whether  
20 personal property is included as part of the eligible property. If  
21 the project is on property that is functionally obsolete, the  
22 taxpayer shall include, with the application, an affidavit signed  
23 by a level 3 or level 4 assessor, that states that it is the  
24 assessor's expert opinion that the property is functionally  
25 obsolete and the underlying basis for that opinion.

26 (i) Estimates of the number of persons residing on each  
27 eligible property to which the plan applies and the number of

1 families and individuals to be displaced. If occupied residences  
2 are designated for acquisition and clearance by the authority, the  
3 plan shall include a demographic survey of the persons to be  
4 displaced, a statistical description of the housing supply in the  
5 community, including the number of private and public units in  
6 existence or under construction, the condition of those in  
7 existence, the number of owner-occupied and renter-occupied units,  
8 the annual rate of turnover of the various types of housing and the  
9 range of rents and sale prices, an estimate of the total demand for  
10 housing in the community, and the estimated capacity of private and  
11 public housing available to displaced families and individuals.

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

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

20 (l) A strategy for compliance with 1972 PA 227, MCL 213.321 to  
21 213.332.

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

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

26 (2) The percentage of all taxes levied on a parcel of eligible  
27 property for school operating expenses that is captured and used

1 under a brownfield plan and all tax increment finance plans under  
2 1975 PA 197, MCL 125.1651 to 125.1681, the tax increment finance  
3 authority act, 1980 PA 450, MCL 125.1801 to 125.1830, or the local  
4 development financing act, 1986 PA 281, MCL 125.2151 to 125.2174,  
5 shall not be greater than the combination of the plans' percentage  
6 capture and use of all local taxes levied for purposes other than  
7 for the payment of principal of and interest on either obligations  
8 approved by the electors or obligations pledging the unlimited  
9 taxing power of the local unit of government. This subsection shall  
10 apply only when taxes levied for school operating purposes are  
11 subject to capture under section 15.

12 (3) Except as provided in this subsection and subsections (5),  
13 (15), and (16), tax increment revenues related to a brownfield plan  
14 shall be used only for costs of eligible activities attributable to  
15 the eligible property, the captured taxable value of which produces  
16 the tax increment revenues, including the cost of principal of and  
17 interest on any obligation issued by the authority to pay the costs  
18 of eligible activities attributable to the eligible property, and  
19 the reasonable costs of preparing a brownfield plan or a work plan  
20 for the eligible property, including the actual cost of the review  
21 of the work plan under section 15. For property owned or under the  
22 control of a land bank fast track authority, tax increment revenues  
23 related to a brownfield plan may be used for eligible activities  
24 attributable to any eligible property owned or under the control of  
25 the land bank fast track authority, the cost of principal of and  
26 interest on any obligation issued by the authority to pay the costs  
27 of eligible activities, the reasonable costs of preparing a work

1 plan, and the actual cost of the review of the work plan under  
2 section 15. Except as provided in subsection (18), tax increment  
3 revenues captured from taxes levied by this state under the state  
4 education tax act, 1993 PA 331, MCL 211.901 to 211.906, or taxes  
5 levied by a local school district shall not be used for eligible  
6 activities described in section 2(m)(iv)(E).

7 (4) Except as provided in subsection (5), a brownfield plan  
8 shall not authorize the capture of tax increment revenue from  
9 eligible property after the year in which the total amount of tax  
10 increment revenues captured is equal to the sum of the costs  
11 permitted to be funded with tax increment revenues under this act.

12 (5) A brownfield plan may authorize the capture of additional  
13 tax increment revenue from an eligible property in excess of the  
14 amount authorized under subsection (4) during the time of capture  
15 for the purpose of paying the costs permitted under subsection (3),  
16 or for not more than 5 years after the time that capture is  
17 required for the purpose of paying the costs permitted under  
18 subsection (3), or both. Excess revenues captured under this  
19 subsection shall be deposited in the local site remediation  
20 revolving fund created under section 8 and used for the purposes  
21 authorized in section 8. If tax increment revenues attributable to  
22 taxes levied for school operating purposes from eligible property  
23 are captured by the authority for purposes authorized under  
24 subsection (3), the tax increment revenues captured for deposit in  
25 the local site remediation revolving fund also may include tax  
26 increment revenues attributable to taxes levied for school  
27 operating purposes in an amount not greater than the tax increment

1 revenues levied for school operating purposes captured from the  
2 eligible property by the authority for the purposes authorized  
3 under subsection (3). Excess tax increment revenues from taxes  
4 levied for school operating purposes for eligible activities  
5 authorized under subsection (15) by the Michigan economic growth  
6 authority shall not be captured for deposit in the local site  
7 remediation revolving fund.

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

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

18 (8) Costs of a response activity paid with tax increment  
19 revenues that are captured pursuant to subsection (3) may be  
20 recovered from a person who is liable for the costs of eligible  
21 activities at an eligible property. This state or an authority may  
22 undertake cost recovery for tax increment revenue captured. Before  
23 an authority or this state may institute a cost recovery action, it  
24 must provide the other with 120 days' notice. This state or an  
25 authority that recovers costs under this subsection shall apply  
26 those recovered costs to the following, in the following order of  
27 priority:



1 (a) The reasonable attorney fees and costs incurred by this  
2 state or an authority in obtaining the cost recovery.

3 (b) One of the following:

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

12 (ii) If this state undertakes a cost recovery action, this  
13 state shall deposit the remaining recovered funds into the  
14 revitalization revolving loan fund established under section 20108a  
15 of the natural resources and environmental protection act, 1994 PA  
16 451, MCL 324.20108a.

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

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

27 (10) Before approving a brownfield plan for an eligible

1 property, the governing body shall hold a public hearing on the  
2 brownfield plan. By resolution, the governing body may delegate the  
3 public hearing process to the authority or to a subcommittee of the  
4 governing body subject to final approval by the governing body.  
5 Notice of the time and place of the hearing shall be given by  
6 publication twice in a newspaper of general circulation designated  
7 by the municipality, not less than 10 or more than 40 days before  
8 the date set for the hearing.

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

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

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

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

21 (12) At the time set for the hearing on the brownfield plan  
22 required under subsection (10), the governing body shall ensure  
23 that interested persons have an opportunity to be heard and that  
24 written communications with reference to the brownfield plan are  
25 received and considered. The governing body shall ensure that a  
26 record of the public hearing is made and preserved, including all  
27 data presented at the hearing.

1           (13) Not less than 10 days before the hearing on the  
2 brownfield plan, the governing body shall provide notice of the  
3 hearing to the taxing jurisdictions that levy taxes subject to  
4 capture under this act. The authority shall fully inform the taxing  
5 jurisdictions about the fiscal and economic implications of the  
6 proposed brownfield plan. At that hearing, an official from a  
7 taxing jurisdiction with millage that would be subject to capture  
8 under this act has the right to be heard in regard to the adoption  
9 of the brownfield plan. Not less than 10 days before the hearing on  
10 the brownfield plan, the governing body shall provide notice of the  
11 hearing to the department if the brownfield plan involves the use  
12 of taxes levied for school operating purposes to pay for eligible  
13 activities that require the approval of a work plan by the  
14 department under section 15(1)(a) and the Michigan economic growth  
15 authority, or its designee, if the brownfield plan involves the use  
16 of taxes levied for school operating purposes to pay for eligible  
17 activities subject to subsection (15) or (18).

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

26           (15) Except as provided by subsection (18), if a brownfield  
27 plan includes the capture of taxes levied for school operating

1 purposes approval of a work plan by the Michigan economic growth  
2 authority before January 1, 2013 to use taxes levied for school  
3 operating purposes and a development agreement or reimbursement  
4 agreement between the municipality or authority and an owner or  
5 developer of eligible property are required if the taxes levied for  
6 school operating purposes will be used for infrastructure  
7 improvements that directly benefit eligible property, demolition of  
8 structures that is not response activity under part 201 of the  
9 natural resources and environmental protection act, 1994 PA 451,  
10 MCL 324.20101 to 324.20142, lead or asbestos abatement, site  
11 preparation that is not response activity under section 20101 of  
12 the natural resources and environmental protection act, 1994 PA  
13 451, MCL 324.20101, relocation of public buildings or operations  
14 for economic development purposes, or acquisition of property by a  
15 land bank fast track authority if acquisition of the property is  
16 for economic development purposes. The eligible activities to be  
17 conducted described in this subsection shall be consistent with the  
18 work plan submitted by the authority to the Michigan economic  
19 growth authority. The department's approval is not required for the  
20 capture of taxes levied for school operating purposes for eligible  
21 activities described in this subsection.

22 (16) The limitations of section 15(1) upon use of tax  
23 increment revenues by an authority shall not apply to the following  
24 costs and expenses:

25 (a) In each fiscal year of the authority, the amount described  
26 in subsection (19) for the following purposes for tax increment  
27 revenues attributable to local taxes:

1           (i) Reasonable and actual administrative and operating expenses  
2 of the authority.

3           (ii) Baseline environmental assessments, due care activities,  
4 and additional response activities conducted by or on behalf of the  
5 authority related directly to work conducted on prospective  
6 eligible properties prior to approval of the brownfield plan.

7           (b) Reasonable costs of preparing a work plan or the cost of  
8 the review of a work plan for which tax increment revenues may be  
9 used under section 13(3).

10           (c) For tax increment revenues attributable to local taxes,  
11 reasonable costs of site investigations described in section  
12 15(1)(a)(i), baseline environmental assessments, and due care  
13 activities incurred by a person other than the authority related  
14 directly to work conducted on eligible property or prospective  
15 eligible properties prior to approval of the brownfield plan, if  
16 those costs and the eligible property are included in a brownfield  
17 plan approved by the authority.

18           (17) A brownfield authority may reimburse advances, with or  
19 without interest, made by a municipality under section 7(3), a land  
20 bank fast track authority, or any other person or entity for costs  
21 of eligible activities with any source of revenue available for use  
22 of the brownfield authority under this act. If an authority  
23 reimburses a person or entity under this section for an advance for  
24 the payment or reimbursement of the cost of eligible activities and  
25 interest thereon, the authority may capture local taxes for the  
26 payment of that interest. If an authority reimburses a person or  
27 entity under this section for an advance for the payment or

1 reimbursement of the cost of baseline environmental assessments,  
2 due care, and additional response activities and interest thereon  
3 included in a work plan approved by the department, the authority  
4 may capture taxes levied for school operating purposes and local  
5 taxes for the payment of that interest. If an authority reimburses  
6 a person or entity under this section for an advance for the  
7 payment or reimbursement of the cost of eligible activities that  
8 are not baseline environmental assessments, due care, and  
9 additional response activities and interest thereon included in a  
10 work plan approved by the Michigan economic growth authority, the  
11 authority may capture taxes levied for school operating purposes  
12 and local taxes for the payment of that interest provided that the  
13 Michigan economic growth authority grants an approval for the  
14 capture of taxes levied for school operating purposes to pay such  
15 interest. An authority may enter into agreements related to these  
16 reimbursements and payments. A reimbursement agreement for these  
17 purposes and the obligations under that reimbursement agreement  
18 shall not be subject to section 12 or the revised municipal finance  
19 act, 2001 PA 34, MCL 141.2101 to 141.2821.

20 (18) If a brownfield plan includes the capture of taxes levied  
21 for school operating purposes, approval of a work plan by the  
22 Michigan economic growth authority in the manner required under  
23 section 15(14) to (16) is required in order to use tax increment  
24 revenues attributable to taxes levied for school operating purposes  
25 for purposes of eligible activities described in section 2(m) (iv) (E)  
26 for 1 or more parcels of eligible property. The work plan to be  
27 submitted to the Michigan economic growth authority under this

1 subsection shall be in a form prescribed by the Michigan economic  
2 growth authority. The eligible activities to be conducted and  
3 described in this subsection shall be consistent with the work plan  
4 submitted by the authority to the Michigan economic growth  
5 authority. The department's approval is not required for the  
6 capture of taxes levied for school operating purposes for eligible  
7 activities described in this section.

8 (19) In each fiscal year of the authority, the amount of tax  
9 increment revenues attributable to local taxes that an authority  
10 can use for the purposes described in subsection (16)(a) shall be  
11 determined as follows:

12 (a) For authorities that have 5 or fewer active projects,  
13 \$100,000.00.

14 (b) For authorities that have 6 or more but fewer than 11  
15 active projects, \$125,000.00.

16 (c) For authorities that have 11 or more but fewer than 16  
17 active projects, \$150,000.00.

18 (d) For authorities that have 16 or more but fewer than 21  
19 active projects, \$175,000.00.

20 (e) For authorities that have 21 or more but fewer than 26  
21 active projects, \$200,000.00.

22 (f) For authorities that have 26 or more active projects,  
23 \$300,000.00.

24 (20) As used in subsection (19), "active project" means a  
25 project in which the authority is currently capturing taxes under  
26 this act.