

# HOUSE BILL No. 4198

February 8, 2011, Introduced by Reps. Slavens, Melton, Lane, Darany, Haugh, Townsend, Kandrevas, Smiley, Ananich, Dillon, McCann, Liss, Rutledge, Constan, Segal, Barnett, Bauer, Stapleton, Hovey-Wright, Hobbs, Irwin, Bledsoe, Switalski, Geiss, Stallworth, Cavanagh, Lipton, Byrum, Durhal, Lindberg, Howze, Santana, Brunner, Oakes, Brown, Talabi and Womack and referred to the Committee on Commerce.

A bill to amend 1996 PA 381, entitled "Brownfield redevelopment financing act," by amending section 15 (MCL 125.2665), as amended by 2007 PA 201.

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

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

2           (a) For eligible activities not described in section 13(15),

3 use taxes levied for school operating purposes captured from

4 eligible property unless the eligible activities to be conducted on

5 the eligible property are eligible activities under part 201 of the

6 natural resources and environmental protection act, 1994 PA 451,

7 MCL 324.20101 to 324.20142, consistent with a work plan approved by

8 the department after July 24, 1996 and before January 1, 2013.

9 However, except as provided in subdivision (e), an authority may

10 use taxes levied for school operating purposes captured from

1 eligible property without the approval of a work plan by the  
2 department for the reasonable costs of 1 or more of the following:

3 (i) Site investigation activities required to conduct a  
4 baseline environmental assessment and to evaluate compliance with  
5 section 20107a of the natural resources and environmental  
6 protection act, 1994 PA 451, MCL 324.20107a.

7 (ii) Completing a baseline environmental assessment report.

8 (iii) Preparing a plan for compliance with section 20107a of the  
9 natural resources and environmental protection act, 1994 PA 451,  
10 MCL 324.20107a.

11 (b) For eligible activities not described in section 13(15),  
12 other than activities that are exempt from the work plan approval  
13 process under subsection (1)(a), use funds from a local site  
14 remediation revolving fund that are derived from taxes levied for  
15 school operating purposes unless the eligible activities to be  
16 conducted are eligible activities under part 201 of the natural  
17 resources and environmental protection act, 1994 PA 451, MCL  
18 324.20101 to 324.20142, consistent with a work plan that has been  
19 approved by the department after July 24, 1996.

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

26 (d) Use taxes captured from eligible property to pay for  
27 eligible activities conducted before approval of the brownfield

1 plan except for costs described in section 13(16).

2 (e) Use taxes levied for school operating purposes captured  
3 from eligible property for response activities that benefit a party  
4 liable under section 20126 of the natural resources and  
5 environmental protection act, 1994 PA 451, MCL 324.20126, except  
6 that a municipality that established the authority may use taxes  
7 levied for school operating purposes captured from eligible  
8 property for response activities associated with a landfill.

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

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

18 (a) A copy of the brownfield plan.

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

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

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

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

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

7 (3) Upon receipt of a request for approval of a work plan  
8 under subsection (2) or a portion of a work plan that pertains to  
9 only baseline environmental assessment activities or due care  
10 activities, or both, the department shall review the work plan  
11 according to subsection (4) and provide 1 of the following written  
12 responses to the requesting authority within 60 days:

13 (a) An unconditional approval.

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

18 (c) If the work plan lacks sufficient information for the  
19 department to respond under subdivision (a), (b), or (d) for any  
20 specific activity, a letter stating with specificity the necessary  
21 additions or changes to the work plan to be submitted before that  
22 activity will be considered by the department. The department shall  
23 respond under subdivision (a), (b), or (d) according to this  
24 section for the other activities in the work plan.

25 (d) A denial if the property is not an eligible property under  
26 this act, if the work plan contemplates the use of taxes levied for  
27 school operating purposes prohibited by subsection (1)(e), or for

1 any specific activity if the activity is prohibited by subsection  
2 (1)(d). The department may also deny any activity in a work plan  
3 that does not meet the conditions in subsection (4) only if the  
4 department cannot respond under subdivision (b) or (c). The  
5 department shall accompany the denial with a letter that states  
6 with specificity the reason for the denial. The department shall  
7 respond under subdivision (a), (b), or (c) according to this  
8 section for any activities in the work plan that are not denied  
9 under this subdivision. If the department denies all or a portion  
10 of a work plan under this subdivision, the authority may  
11 subsequently resubmit the work plan.

12 (4) The department may approve a work plan if the following  
13 conditions have been met:

14 (a) Whether some or all of the activities constitute due care  
15 activities or additional response activities other than activities  
16 that are exempt from the work plan approval process under  
17 subsection (1)(a).

18 (b) The due care activities and response activities, other  
19 than the activities that are exempt from the work plan approval  
20 process under subsection (1)(a), are protective of the public  
21 health, safety, and welfare and the environment. The department may  
22 approve additional response activities that are more protective of  
23 the public health, safety, and welfare and the environment than  
24 required by section 20107a of the natural resources and  
25 environmental protection act, 1994 PA 451, MCL 324.20107a, if those  
26 activities provide public health or environmental benefit. In  
27 review of a work plan that includes activities that are more

1 protective of the public health, safety, and welfare and the  
2 environment, the department's considerations may include, but are  
3 not limited to, all of the following:

4 (i) Proposed new land use and reliability of restrictions to  
5 prevent exposure to contamination.

6 (ii) Cost of implementation activities minimally necessary to  
7 achieve due care compliance, the incremental cost of all additional  
8 response activities relative to the cost of all response  
9 activities, and the total cost of all response activities.

10 (iii) Long-term obligations associated with leaving  
11 contamination in place and the value of reducing or eliminating  
12 these obligations.

13 (c) The estimated costs for the activities as a whole are  
14 reasonable for the stated purpose. Except as provided in  
15 subdivision (b), the department shall make the determination in  
16 this subdivision only after the department determines that the  
17 conditions in subdivisions (a) and (b) have been met.

18 (5) If the department fails to provide a written response  
19 under subsection (3) within 60 days after receipt of a request for  
20 approval of a work plan, the authority may proceed with the  
21 activities as outlined in the work plan as submitted for approval.  
22 Except as provided in subsection (6), activities conducted pursuant  
23 to a work plan that was submitted to the department for approval  
24 but for which the department failed to provide a written response  
25 under subsection (3) shall be considered approved for the purposes  
26 of subsection (1). Within 45 days after receiving additional  
27 information requested from the authority under subsection (3)(c),

1 the department shall review the additional information according to  
2 subsection (4) and provide 1 of the responses described in  
3 subsection (3) to the requesting authority for the specific  
4 activity. If the department does not provide a response to the  
5 requesting authority within 45 days after receiving the additional  
6 information requested under subsection (3)(c), the activity is  
7 approved under subsection (1).

8 (6) The department may issue a written response to a work plan  
9 more than 60 days but less than 6 months after receipt of a request  
10 for approval. If the department issues a written response under  
11 this subsection, the authority is not required to conduct  
12 individual activities that are in addition to the individual  
13 activities included in the work plan as it was submitted for  
14 approval and failure to conduct these additional activities shall  
15 not affect the authority's ability to capture taxes under  
16 subsection (1) for the eligible activities described in the work  
17 plan initially submitted under subsection (5). In addition, at the  
18 option of the authority, these additional individual activities  
19 shall be considered part of the work plan of the authority and  
20 approved for purposes of subsection (1). However, any response by  
21 the department under this subsection that identifies additional  
22 individual activities that must be carried out to satisfy part 201  
23 of the natural resources and environmental protection act, 1994 PA  
24 451, MCL 324.20101 to 324.20142, must be satisfactorily completed  
25 for the activities to be considered acceptable for the purposes of  
26 compliance with part 201 of the natural resources and environmental  
27 protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

1           (7) If the department issues a written response under  
2 subsection (6) to a work plan and if the department's written  
3 response modifies an individual activity proposed by the work plan  
4 of the authority in a manner that reduces or eliminates a proposed  
5 response activity, the authority must complete those individual  
6 activities in accordance with the department's response in order  
7 for that portion of the work plan to be considered approved for  
8 purposes of subsection (1), unless 1 or more of the following  
9 conditions apply:

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

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

17           (8) It shall be in the sole discretion of an authority to  
18 propose to undertake additional response activities at an eligible  
19 property under a brownfield plan. The department shall not require  
20 a work plan to include additional response activities.

21           (9) The department shall review the portion of a work plan  
22 that includes additional response activities in accordance with  
23 subsection (4).

24           (10) The department's approval or denial of a work plan  
25 submitted under this section constitutes a final decision in regard  
26 to the use of taxes levied for school operating purposes but does  
27 not restrict an authority's use of tax increment revenues



1 attributable to local taxes to pay for eligible activities under a  
2 brownfield plan. If a person is aggrieved by the final decision,  
3 the person may appeal under section 631 of the revised judicature  
4 act of 1961, 1961 PA 236, MCL 600.631.

5 (11) The authority shall reimburse the department for the  
6 actual cost incurred by the department or a contractor of the  
7 department to review a work plan under subsection (1)(a) or (b)  
8 under this section. Funds paid to the department under this  
9 subsection shall be deposited in the cost recovery subaccount of  
10 the cleanup and redevelopment fund created under section 20108 of  
11 the natural resources and environmental protection act, 1994 PA  
12 451, MCL 324.20108.

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

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

18 (b) The amount of tax increment revenues approved by the  
19 department in the immediately preceding calendar year, including  
20 taxes levied for school operating purposes, to conduct eligible  
21 activities.

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

25 (a) A copy of the brownfield plan.

26 (b) Current ownership information for each eligible property  
27 and a summary of available information on proposed future

1 ownership, including the amount of any delinquent taxes, interest,  
2 and penalties that may be due.

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

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

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

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

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

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

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

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

27 (c) A denial and a letter stating with specificity the reason

1 for the denial. If a work plan is denied under this subsection, the  
2 work plan may be subsequently resubmitted.

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

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

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

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

14 (d) The overall benefit to the public.

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

17 (f) Creation of jobs.

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

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

22 (i) The level of private sector contribution.

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

26 (k) If the developer or projected occupant of the new  
27 development is moving from another location in this state, whether

1 the move will create a brownfield.

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

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

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

12 (16) If the Michigan economic growth authority fails to  
13 provide a written response under subsection (14) within 65 days  
14 after receipt of a request for approval of a work plan, the  
15 eligible activities shall be considered approved and the authority  
16 may proceed with the eligible activities described in section  
17 13(15) as outlined in the work plan as submitted for approval.

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

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

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

27 (a) A compilation and summary of all the information submitted

1 under subsection (13).

2 (b) The amount of tax increment revenues approved by the  
3 Michigan economic growth authority in the immediately preceding  
4 calendar year, including taxes levied for school operating  
5 purposes, to conduct eligible activities.

6 (20) All taxes levied for school operating purposes that are  
7 not used for eligible activities consistent with a work plan  
8 approved by the department or the Michigan economic growth  
9 authority or for the payment of interest under section 13 and that  
10 are not deposited in a local site remediation revolving fund shall  
11 be distributed proportionately between the local school district  
12 and the school aid fund.

13 (21) An authority shall not use taxes levied for school  
14 operating purposes captured from eligible property for eligible  
15 activities for a qualified facility or for eligible activities for  
16 property located in an economic opportunity zone.

17 (22) The department's approval of a work plan under subsection  
18 (3)(a) or (b) does not imply an entitlement to reimbursement of the  
19 costs of the eligible activities if the work plan is not  
20 implemented as approved.

21 (23) The applicant and the department can, by mutual  
22 agreement, extend the time period for any review described in this  
23 section. An agreement described in this subsection shall be  
24 documented in writing.

25 **(24) BEGINNING JULY 1, 2011, THE AUTHORITY SHALL NOT USE TAX**  
26 **INCREMENT REVENUES TO PAY OR REIMBURSE A BUSINESS ENTITY FOR**  
27 **ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES UNLESS THE BUSINESS**

1 ENTITY STATES, IN WRITING, THAT THE BUSINESS ENTITY WILL NOT  
2 KNOWINGLY HIRE OR CONTRACT WITH ANY BUSINESS ENTITY THAT KNOWINGLY  
3 HIRES AN INDIVIDUAL WHO IS NOT AUTHORIZED UNDER FEDERAL LAW TO WORK  
4 IN THE UNITED STATES.

5 (25) BEGINNING JULY 1, 2011, THE AUTHORITY SHALL NOT USE TAX  
6 INCREMENT REVENUES TO PAY OR REIMBURSE A BUSINESS ENTITY FOR  
7 ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES UNLESS THE BUSINESS  
8 ENTITY STATES, IN WRITING, THAT THE BUSINESS ENTITY WILL DO ALL OF  
9 THE FOLLOWING:

10 (A) HIRE ONLY RESIDENTS OF THIS STATE TO PERFORM ELIGIBLE  
11 ACTIVITIES ON ELIGIBLE PROPERTIES UNDER THIS ACT UNLESS THE  
12 AUTHORITY DETERMINES THAT THE ELIGIBLE ACTIVITIES CANNOT BE  
13 PERFORMED BY USING ONLY RESIDENTS OF THIS STATE FOR 1 OR MORE OF  
14 THE FOLLOWING:

15 (i) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR  
16 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

17 (ii) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS  
18 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE  
19 NEEDED.

20 (B) CONTRACT WITH BUSINESSES THAT AGREE TO HIRE ONLY RESIDENTS  
21 OF THIS STATE TO PERFORM ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES  
22 UNDER THIS ACT UNLESS THE AUTHORITY DETERMINES THAT THE ELIGIBLE  
23 ACTIVITIES CANNOT BE PERFORMED BY USING ONLY RESIDENTS OF THIS  
24 STATE FOR 1 OR MORE OF THE FOLLOWING:

25 (i) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR  
26 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

27 (ii) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS

1 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE  
2 NEEDED.

3 (26) BEGINNING JULY 1, 2011, THE WRITTEN AGREEMENT DESCRIBED  
4 IN SUBSECTIONS (24) AND (25) SHALL ALSO CONTAIN A REMEDY PROVISION  
5 THAT PROVIDES FOR ALL OF, BUT NOT LIMITED TO, A REQUIREMENT THAT  
6 THE BUSINESS ENTITY MAY BE REQUIRED TO REPAY SOME OR ALL OF THE  
7 PAYMENTS OR REIMBURSEMENTS RECEIVED UNDER THIS ACT IF THE ELIGIBLE  
8 BUSINESS IS DETERMINED TO BE IN VIOLATION OF THE PROVISIONS OF  
9 SUBSECTION (24) OR (25), AS DETERMINED BY THE AUTHORITY.

10 (27) EACH AUTHORITY SHALL REPORT TO THE BOARD OF THE MICHIGAN  
11 STRATEGIC FUND AND ON OCTOBER 1 ON THE ACTIVITIES OF THE AUTHORITY.  
12 THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE  
13 FOLLOWING:

14 (A) THE NUMBER OF MICHIGAN RESIDENTS EMPLOYED IN NEW JOBS IN  
15 THE IMMEDIATELY PRECEDING YEAR IN WHICH SUBSECTIONS (24) AND (25)  
16 APPLY.

17 (B) THE TOTAL NUMBER OF NEW JOBS CREATED IN ALL JOBS IN THE  
18 IMMEDIATELY PRECEDING YEAR IN WHICH SUBSECTIONS (24) AND (25)  
19 APPLY.

20 (C) THE SPECIFIC REASONS FOR EACH DETERMINATION OF EXEMPTION  
21 FROM THE PROVISIONS OF SUBSECTION (25) (A) OR (B) MADE BY THE  
22 AUTHORITY AND THE NUMBER OF JOBS RELATED TO EACH DETERMINATION.

23 (28) THE ATTORNEY GENERAL OR APPROPRIATE AGENCY OF THIS STATE  
24 SHALL BE RESPONSIBLE FOR ANY ENFORCEMENT NECESSARY TO ENSURE  
25 COMPLIANCE AFTER THE APPLICANT HAS SIGNED THE AGREEMENT UNDER THE  
26 PROVISIONS DESCRIBED IN SUBSECTIONS (24), (25), AND (26).