

BROWNFIELD REDEVELOPMENT FINANCING ACT (EXCERPT)
Act 381 of 1996

***** 125.2665.amended THIS AMENDED SECTION IS EFFECTIVE JULY 24, 2017 *****

125.2665.amended Work plan; documents to be submitted for approval; conditions for approval; written response; time limitations; department specific activities; review by department; approval or denial of work plan as final decision; appeal; approval by Michigan strategic fund; duties; criteria; failure to provide written response; final approval; report; distribution of remaining funds; extension of review period; approval of combined brownfield plan.

Sec. 15. (1) To seek department approval of a work plan under section 13b(6)(c), 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.

(2) Upon receipt of a request for approval of a work plan under subsection (1) or a portion of a work plan that pertains to only department specific activities, the department shall review the work plan according to subsection (3) and 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 to meet the criteria of subsection (3), including, but not limited to, individual activities to be modified, added, or deleted from the work plan and revision of costs. The department may not condition its approval on deletions from or modifications of the work plan relating to activities to be funded solely by tax increment revenues not attributable to taxes levied for school operating purposes.

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

(d) A denial if the property is not an eligible property under this act, if the work plan contemplates the use of taxes levied for school operating purposes prohibited by section 13b(10), or for any specific activity if the activity is prohibited by section 13b(6)(a). The department may also deny any activity in a work plan that does not meet the conditions in subsection (3) only if the department cannot respond under subsection (2)(b) or (c). The department shall accompany the denial with a letter that states with specificity the reason for the denial. The department shall respond under subsection (2)(a), (b), or (c) according to this section for any activities in the work plan that are not denied under this subdivision. If the department denies all or a portion of a work plan under this subdivision, the authority may subsequently resubmit the work plan.

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

(a) Whether some or all of the activities constitute department specific activities other than activities that are exempt from the work plan approval process under section 13b(8).

(b) The department specific activities, other than the activities that are exempt from the work plan approval process under section 13b(8), are protective of the public health, safety, and welfare and the environment. The department may approve department specific activities that are more protective of the public health, safety, and welfare and the environment than required by section 20107a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a, if those activities provide public health or environmental benefit. In review of a work plan that includes department specific activities that are more protective of the public health, safety, and welfare and the environment, the department's considerations may include, but are not limited to, all of the following:

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

(ii) The cost to implement activities minimally necessary to achieve due care compliance, the total cost of response activities, and the incremental cost of department specific activities in excess of those activities

minimally necessary to achieve due care compliance.

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

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

(4) If the department fails to provide a written response under subsection (2) within 60 days after receipt of a request for approval of a work plan, the authority may proceed with the activities as outlined in the work plan as submitted for approval. Except as provided in subsection (5), activities conducted pursuant to a work plan that was submitted to the department for approval but for which the department failed to provide a written response under subsection (2) shall be considered approved for the purposes of subsection (1). Within 45 days after receiving additional information requested from the authority under subsection (2)(c), the department shall review the additional information according to subsection (3) and provide 1 of the responses described in subsection (2) to the requesting authority for the specific activity. If the department does not provide a response to the requesting authority within 45 days after receiving the additional information requested under subsection (2)(c), the activity is approved under section 13b.

(5) The department may issue a written response to a work plan 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 as it was submitted for approval and failure to conduct these additional activities shall not affect the authority's ability to capture taxes under section 13b for the eligible activities described in the work plan initially submitted under subsection (4). In addition, at the option of the authority, these additional individual activities shall be considered part of the work plan of the authority and approved for purposes of section 13b. However, any response by the department under this subsection that identifies additional individual activities that must be carried out to satisfy part 201 or part 213 must be satisfactorily completed for the activities to be considered acceptable for the purposes of compliance with part 201 or part 213.

(6) If the department issues a written response under subsection (5) to a work plan and if the department's written response modifies an individual activity proposed by the work plan of the authority in a manner that reduces or eliminates a proposed response activity, the authority must complete those individual activities in accordance with the department's response in order for that portion of the work plan to be considered approved for purposes of section 13b, 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.

(7) It shall be in the sole discretion of an authority to propose to undertake department specific activities under subsection (3)(b) at an eligible property under a brownfield plan. The department shall not require a work plan to include department specific activities that are more protective of public health, safety, welfare, and the environment.

(8) The department shall review the portion of a work plan that includes department specific activities in accordance with subsection (3).

(9) The department's approval or denial of a work plan submitted under this section constitutes a final decision in regard to the use of taxes levied for school operating purposes but does not restrict an authority's use of tax increment revenues attributable to local taxes to pay for eligible activities under a brownfield plan. If a person is aggrieved by the final decision, the person may appeal under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(10) To seek Michigan strategic fund approval of a work plan under section 13b(4) or 13c(6), the authority shall submit all of the following for each eligible property:

(a) A copy of the brownfield plan or the transformational 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 13b(4) to be undertaken. For a transformational brownfield plan, the Michigan strategic fund shall prescribe the form and

content for the work plan to address additional eligible activities under section 2(o)(iv).

(g) A copy of the development agreement or reimbursement agreement required under section 13b(4) or 13c(6), 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.

(11) Upon receipt of a request for approval of a work plan, the Michigan strategic fund shall provide 1 of the following written responses to the requesting authority within 60 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.

(12) In its review of a work plan under section 13b(4) or 13c(6), the Michigan strategic fund 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) 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.

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

(l) 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.

(m) Any other criteria that the Michigan strategic fund considers appropriate for the determination of eligibility or for approval of the work plan.

(13) If the Michigan strategic fund fails to provide a written response under subsection (11) within 60 days after receipt of a request for approval of a work plan or 90 days in the case of a transformational brownfield plan, the eligible activities shall be considered approved and the authority may proceed with the eligible activities described in sections 13b(4) and 13c(6) as outlined in the work plan as submitted for approval.

(14) The Michigan strategic fund approval of a work plan under sections 13b(4) and 13c(6) is final.

(15) The Michigan strategic fund shall submit a report each year to each member of the legislature as provided in section 16(4).

(16) All taxes levied for school operating purposes that are not used for eligible activities consistent with a combined brownfield plan or a work plan approved by the department or the Michigan strategic fund or for the payment of interest under sections 13 and 13b and that are not deposited in a local brownfield revolving fund shall be distributed proportionately between the local school district and the school aid fund.

(17) The department's approval of a work plan under subsection (2)(a) or (b) does not imply an entitlement to reimbursement of the costs of the eligible activities if the work plan is not implemented as approved.

(18) The party seeking work plan approval and the department can, by mutual agreement, extend the time period for any review described in this section. An agreement described in this subsection shall be documented in writing.

(19) If a brownfield plan includes the capture of taxes levied for school operating purposes, the chairperson of the Michigan strategic fund may approve, without a meeting of the fund board, combined brownfield plans and work plans that address eligible activities described in section 13b(4) totaling an amount of \$1,000,000.00 or less according to subsections (10), (11), (12), (13), and (14).

(20) In lieu of seeking approval of a work plan under section 13b(4) or (6)(c) or section 13c(6), an authority may seek approval of a combined brownfield plan from the department or Michigan strategic fund under this subsection as follows:

(a) To seek approval of a combined brownfield plan under this subsection, the authority shall, at least 30

days before the hearing on the combined brownfield plan to allow for consultation between the authority and the department or the Michigan strategic fund and at least 60 days in the case of a transformational brownfield plan, provide notice that the authority will be seeking approval of a combined brownfield plan in lieu of a work plan to 1 or more of the following:

(i) The department, if the combined brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities that require approval by the department under section 13b(6)(c).

(ii) The Michigan strategic fund, if the combined brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities subject to subsection (12) or section 13c(6), or the use of construction period tax capture revenues, withholding tax capture revenues, or income tax capture revenues.

(b) After the governing body approves a combined brownfield plan, the authority shall submit the combined brownfield plan to the department under the circumstances described in subdivision (a)(i) or Michigan strategic fund under the circumstances described in subdivision (a)(ii).

(c) The department shall review a combined brownfield plan according to subdivision (e). The Michigan strategic fund shall review a combined brownfield plan according to subdivision (f).

(d) Upon receipt of a combined brownfield plan under subdivision (b), the department or Michigan strategic fund shall provide 1 of the following written responses to the requesting authority within 60 days or, in the case of a transformational brownfield plan, within 90 days:

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

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

(iii) A denial and a letter stating with specificity the reason for the denial. If a combined brownfield plan is denied under this subdivision, the combined brownfield plan may be subsequently resubmitted.

(e) The department may approve a combined brownfield plan if the authority submits the information identified in subsection (1) and if the conditions identified in subsection (3) are met.

(f) The Michigan strategic fund shall consider the criteria identified in subsection (12) to the extent reasonably applicable to the type of activities proposed as part of a combined brownfield plan when approving or denying the combined brownfield plan and, in the case of a transformational brownfield plan, shall also consider the criteria described in section 14a(3).

(g) If the department or Michigan strategic fund issues a written response to a requesting authority under subdivision (d)(i) or (ii), the governing body or its designee may administratively approve any modifications to a combined brownfield plan required by the written response without the need to follow the notice and approval process required by section 14(6) unless the modifications add 1 or more parcels of eligible property or increase the maximum amount of tax increment revenues or, in the case of a transformational brownfield plan, construction period tax capture revenues, withholding tax capture revenues, and income tax capture revenues approved for the project.

(h) If the department or Michigan strategic fund fails to provide a written response under subdivision (d) within 60 days after receipt of a complete combined brownfield plan, or 90 days in the case of a transformational brownfield plan, the eligible activities shall be considered approved as submitted.

(i) The approval of a combined brownfield plan by the department or Michigan strategic fund under this subsection is final.

History: 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2002, Act 727, Imd. Eff. Dec. 30, 2002;—Am. 2003, Act 283, Imd. Eff. Jan. 8, 2004;—Am. 2005, Act 101, Imd. Eff. July 22, 2005;—Am. 2006, Act 32, Imd. Eff. Feb. 23, 2006;—Am. 2007, Act 201, Imd. Eff. Dec. 27, 2007;—Am. 2012, Act 502, Imd. Eff. Dec. 28, 2012;—Am. 2016, Act 471, Eff. Apr. 5, 2017;—Am. 2017, Act 46, Eff. July 24, 2017.

Compiler's note: For transfer of powers and duties of department of environmental quality to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.