

*2009-2010*

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# **Ottawa County Brownfield Redevelopment Authority**



*Application Guide*

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# **Ottawa County Brownfield Redevelopment Authority**

**12220 Fillmore Street, Suite 260  
West Olive, MI 49460  
616.738.4852**

## **BROWNFIELD REDEVELOPMENT APPLICATION GUIDE**

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# Ottawa County Brownfield Redevelopment Authority

12220 Fillmore Street, Suite 260  
West Olive, MI 49460  
616.738.4852

## BROWNFIELD REDEVELOPMENT APPLICATION GUIDE

### A. Introduction:

This Application Guide has been prepared to assist entities interested in pursuing brownfield redevelopment through the Ottawa County Brownfield Redevelopment Authority (OCBRA). This Guide includes information on Michigan brownfield authorities in general, and on the OCBRA's specific policies, procedures, and application process. This Guide does not pertain to brownfield projects initiated through existing Brownfield Redevelopment Authorities in local units of government within Ottawa County. The following local units of government have established their own Brownfield Redevelopment Authorities.

<b>Authority</b>	<b>Date Established</b>
City of Ferrysburg	8/27/2008
Charter Township of Grand Haven	5/1/2008
City of Grand Haven	2/24/1998
Charter Township of Holland	10/9/2003
City of Holland	9/26/2001
Village of Spring Lake	7/14/1997
Charter Township of Zeeland	9/10/2003
City of Zeeland	8/30/2002

Any entity considering brownfield redevelopment should first contact the local unit of government (city, village, or township) in which the proposed project is located. The Ottawa County Brownfield Redevelopment Authority will act only if the local unit of government in which the project is located does not have a Brownfield Redevelopment Authority and supports the project.

### B. OCBRA Purpose Statement

The purpose of the OCBRA is to assist, at the request of the local units of government, in facilitating the rehabilitation, revitalization, and reuse of contaminated, obsolete, or underutilized property through the implementation of brownfield redevelopment plans in accordance with the provisions of Act 381 of 1996, as amended (the Act).

**C. Brownfield Redevelopment Authorities**

The Brownfield Redevelopment Financing Act, Public Act 381 of 1996, was originally adopted in an effort to encourage the redevelopment of tax reverted, environmentally contaminated, blighted, or functionally obsolete properties identified as “brownfields.”

The primary purpose of the Act was two-fold: first, it established the process by which a municipality may create a brownfield redevelopment authority, which is a municipal entity authorized to engage in brownfield redevelopment, and second, it identified the financial tools available to an authority to implement brownfield plans. Brownfield plans, along with their corresponding work programs, identify the eligible activities to be conducted to redevelop a specific property, and the funding mechanisms proposed.

**D. Ottawa County Brownfield Redevelopment Authority (OCBRA) Formation**

Ottawa County established its Brownfield Redevelopment Authority on June 10, 2008, following a public hearing, and in compliance with the process required by PA 381 of 1996, as amended. The Board members of the County’s Economic Development Corporation were appointed to serve as the Brownfield Redevelopment Authority Board. The organizational (first) meeting of the OCBRA was held on July 2, 2008. The OCBRA was originally formed to cover one particular project at one specific site. In 2009, the OCBRA was amended to be able to administer projects at any location in the county where the local unit of government in which the project is located does not have a Brownfield Redevelopment Authority and supports the project.

**E. OCBRA Bylaws**

The Bylaws of the OCBRA were adopted on July 2, 2008. The Bylaws set forth the rules and operating procedures for the OCBRA in accordance with the requirements of Act 381 of 1996, as amended. They address topics including the appointment, terms of office, and replacement of the Authority directors; the conduct of meetings; the election of officers, and; the conduct of fiscal affairs. The Bylaws were approved by the Ottawa County Board of Commissioners on July 22, 2008. A copy of the Bylaws is included in this Guide.

**F. OCBRA Brownfield Plan Proposal Review Criteria**

Brownfield plan proposals must be determined to constitute a public purpose. The OCBRA will evaluate proposals based on the following statutory factors:

1. The plan meets the statutory requirements.
2. The proposed method of financing the costs of eligible activities is feasible and the Authority has the ability to arrange the financing.
3. The costs of the eligible activities proposed are reasonable and necessary to carry out the purposes of the Act.
4. The amount of captured taxable value estimated to result from adoption of the plan is reasonable.

5. Additional review considerations are as follows:
  - a. Overall benefit to the public
  - b. Extent of reuse of buildings
  - c. Extent of blight reduction
  - d. Creation of jobs
  - e. Creation of jobs in an area of high unemployment
  - f. Alleviation of contamination
  - g. Level of private sector contribution
  - h. Economic viability of the developer
  - i. Total acreage of brownfield eliminated

**G. OCBRA Policies**

The following have been approved as policies of the OCBRA. New policies and procedures, and/or amendments to those existing, may be recommended by any member of the Authority, and become effective upon approval by a majority vote. The policies are considered guidelines and may be modified by the OCBRA based on the merits of a specific application.

**Application Fee:** An application fee shall be required to be paid by the applicant at the first submittal of the brownfield plan proposal following the pre-application meeting. The fee will be calculated based on the total project investment. The application fee schedule is as follows:

Less than \$1 Million:	\$ 500
\$1 Million - \$10 Million:	\$1,500
\$10 Million and over:	\$3,000

**MDEQ and MEGA Application Review Fees:** Any review fees charged by the Michigan Department of Environmental Quality (MDEQ) and (MEGA) in association with the brownfield plan proposal and/or work plan are the responsibility of the applicant. OCBRA will require reimbursement for the payment of these fees.

**Administrative Costs:** Brownfield plan proposals that are approved to use tax increment financing (TIF) shall be subject to an administrative fee of up to 5% of the yearly TIF. This shall be the first payment made from the yearly captured tax and it shall be paid annually for the length of the reimbursement period. This administrative fee is an eligible activity per PA 381 of 1996, as amended.

**Interest:** Brownfield plan proposals that include interest charges are highly discouraged. The OCBRA will only consider a proposal that includes interest if it is determined that the project is not viable otherwise.

**Review Costs:** Any direct costs associated with the review of a brownfield plan proposal by other than Ottawa County staff shall be reimbursed by the applicant prior to the proposal moving to the next stage of the application process. This includes processing fees associated with attorney reviews and consultant services associated with work plan preparation and document submission.

**Consistency with Ottawa County Development Plan:** All brownfield plan proposals must be determined to be consistent with the County's development plan.

## **H. Application Process**

The following steps describe the application process adopted by the OCBRA. The process may be modified if the Authority determines that circumstances warrant a different approach.

1. Applicants seeking approval of a brownfield plan proposal shall complete the required application form and arrange for a pre-application meeting with the Ottawa County Planning and Performance Improvement staff. The purpose of this meeting is to discuss the project concept and eligible activities. Evidence of preliminary review and approval by the local governmental unit in which the proposed project is located must be provided to staff at the pre-application meeting.
2. Following the pre-application meeting and receipt of a completed brownfield plan proposal prepared in accordance with Section 13 of PA 381 of 1996, as amended, staff will schedule an OCBRA meeting. The applicant shall be responsible for presenting the proposal to the OCBRA and providing any additional or supplemental information that may be required.

The brownfield plan proposal, at a minimum, must address all applicable elements of Section 13 of PA 381 of 1996, as amended. These elements are summarized as follows:

- a. A description of the costs of the plan
  - 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
  - d. The method by which the costs of the plan will be financed, including a description of any advances made or anticipated.
  - e. The maximum amount of note or bonded indebtedness to be incurred
  - f. The duration of the plan for eligible activities
  - g. An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions
  - h. A legal description of the eligible property to which the plan applies
  - i. Estimates of the number of persons residing on each eligible property
  - j. A plan for establishing priority for relocation of persons displaced
  - k. Provisions for the costs of relocating persons displaced
  - l. A strategy for compliance with applicable provisions of PA 227 of 1972
3. The OCBRA may choose to review the brownfield plan proposal in its entirety, assign review of all, or a portion of the proposal, to a subcommittee of the Authority, to County staff, or depending on the content of the application, to a consultant. Based on the review, modifications may be required. Any costs associated with the review of the proposal by other than County staff shall be paid by the applicant.
  4. If the brownfield plan proposal is determined to be feasible, staff shall prepare a brownfield plan based on the proposal for formal consideration by the OCBRA.
  5. Prior to formal consideration of the brownfield plan by the OCBRA, the local government in which the project is located must approve the brownfield plan.

Documentation attesting to local government approval must be attached to the brownfield plan.

6. Staff shall schedule a meeting with the full OCBRA to consider a resolution approving the brownfield plan.
7. Following approval by the OCBRA, staff shall schedule a public hearing on the brownfield plan before the Ottawa County Board of Commissioners. Notice of the time and place of the hearing must be published in twice in a newspaper of general circulation no more than 40, nor less than 10, days before the date of the hearing in compliance with the Act. The notice must meet all statutory requirements.
8. Not less than 10 days before the hearing, notice shall be provided to the taxing jurisdictions that levy taxes subject to the capture under the Act.
9. Not less than 10 days before the hearing, notice shall be provided to the Michigan Department of Environmental Quality and/or the Michigan Economic Growth Authority in accordance with the Act if the brownfield plan involves school tax capture.
10. The Board of County Commissioners holds the public hearing and determines whether the brownfield plan constitutes a public purpose based on the following considerations:
  - a. Whether the plan meets the statutory requirements
  - b. Whether the proposed method of financing the costs of eligible activities is feasible and the authority has the ability to arrange the financing
  - c. Whether the costs of eligible activities proposed are reasonable and necessary to carry out the purposes of the Act
  - d. Whether the amount of captured taxable value estimated to result from adoption of the plan is reasonable
11. Following approval of the brownfield plan by the Ottawa County Board of Commissioners, staff will review the associated work plan if school taxes are proposed to be captured, and coordinate with the applicant in the preparation of the work plan for submittal to the Michigan Department of Environmental Quality and/or the Michigan Economic Growth Authority.
12. When all necessary approvals are received, the reimbursement agreement is finalized by staff and provided to the developer for signature.
13. Once all necessary approvals are received and the reimbursement agreement signed, the project may commence.
14. Questions regarding this process should be directed to the Ottawa County Planning and Performance Improvement Department at 616.738.4852 or [plan@miottawa.org](mailto:plan@miottawa.org).

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BROWNFIELD REDEVELOPMENT APPLICATION GUIDE

*OTTAWA COUNTY BROWNFIELD  
REDEVELOPMENT AUTHORITY  
BYLAWS*

**OTTAWA COUNTY  
BROWNFIELD REDEVELOPMENT AUTHORITY**

**BYLAWS**

*Approved by OCBRA July 2, 2008*

- ARTICLE I:           Legal Basis**  
The Ottawa County Brownfield Redevelopment Authority is established pursuant to the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of the State of Michigan of 1996, as amended (“Act”), and the Resolution of Intent to Create a Brownfield Redevelopment Authority within Ottawa County, approved May 13, 2008, and the Resolution to Create the Ottawa County Brownfield Redevelopment Authority and to Appoint the Brownfield Redevelopment Authority Board, approved June 10, 2008 (“Resolution”) by the Ottawa County Board of Commission (“County Commission”).
- ARTICLE II:           Name**  
The name of the Authority is the “Ottawa County Brownfield Redevelopment Authority for the Fillmore/U.S. 31 Site.” The address is 12220 Fillmore Street, West Olive, MI 49460.
- ARTICLE III:         Directors**
- Section 1.           General Powers.** The business and affairs of the Authority shall be managed by its Board of Directors (“Board”), except as otherwise provided by statute or by these Bylaws. The Authority and Board may exercise all powers conferred by the Act and the Resolution, or otherwise delegated by the County Commission. Notwithstanding the above, the Authority and Board shall have no authority to incur any debt, contract, or liability that is binding or otherwise enforceable on or against Ottawa County or its general fund.
- Section 2.           Members.** The Board shall consist of the Members or Directors appointed by the County Commission.
- Section 3.           Terms, Replacement and Vacancies.** After their initial terms as set by the County Commission in the Resolution, each Director shall serve for a term of three years. Subsequent Directors shall be appointed in the same manner as original appointments at the expiration of each Director’s term of office. A Director whose term of office has expired shall continue to hold office until the County Commission has appointed his/her successor. The County Commission may reappoint a Director to serve additional terms. If a vacancy is created, the County Commission shall appoint a successor within sixty (60) days to hold office for the remainder of the term of office so vacated.
- Section 4.           Removal.** A Director may be removed from office for inefficiency, neglect of duty, or misconduct or malfeasance, by a majority vote of the County Commissioners appointed and serving.

- Section 5.**           **Conflict of Interest.** A Director who has a direct or indirect pecuniary interest in any matter before the Authority shall disclose his/her interest prior to any discussion of that matter by the Authority, which disclosure shall become a part of the record of the Authority's official proceedings. The interested Director shall further refrain from participation in the Authority's action relating to the matter. Each Director, upon taking office and annually thereafter, shall acknowledge in writing that they have read and agree to abide by this section.
- Section 6.**           **Meetings.** Meetings of the Board may be called by or at the request of the Chairperson of the Board or any two Directors, in writing, and signed and submitted to the Secretary of the Board. The meetings of the Board shall be held in compliance with the Open Meetings Act, and the appropriate notice of such meeting shall be provided to the public. The Board shall hold an annual meeting in the first calendar quarter of each year at which time officers of the Board shall be elected as provided in Article IV, Section 2.
- Section 7.**           **Notice.** Notice of any meetings shall be given in accordance with the Open Meetings Act (Act No. 267 of the Public Acts of 1976).
- Section 8.**           **Quorum.** A majority of the members of the Directors appointed and serving constitutes a quorum for the transaction of the business at any meeting of the Board, provided, that a majority of the Board present may adjourn the meeting from time to time without further notice.
- Section 9.**           **Participation by Communication Equipment.** A Director may participate in a meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this provision constitutes presence at the meeting.
- Section 10.**          **Committees.** The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the Directors of the Authority. The Board may designate one or more Directors as alternate members of a committee, who may replace an absent or disqualified member at a meeting of the committee. In the absence or disqualification of a member of a committee, the members thereof present at the meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of such an absent or disqualified member. A committee, and each member thereof, shall serve at the pleasure of the Board. All committees shall be advisory only, and shall not exercise the powers of the Board for the Authority.
- Section 11.**          **Compensation.** Members of the Board shall serve without compensation, but shall be reimbursed for reasonable actual and necessary expenses.

**Section 12.**           **Agenda for Meetings.** The Chairperson shall cause an agenda to be prepared and, if possible, circulated to the Directors prior to the meeting. The Directors may add items to the Agenda at the meeting.

**Section 13.**           **Order of Business**

Generally and subject to the Chairperson's and/or Directors' discretion at each meeting Board meetings should adhere to the following order of business:

- a.     Call to Order
- b.     Roll Call
- c.     Adoption of Agenda
- d.     Action on Previous Meeting Minutes
- e.     Correspondence/communications
- f.     Committee and Liaison Reports
- g.     Old Business
- h.     New Business
- i.     Closed Sessions (if Necessary)
- j.     Public Comment
- k.     Adjournment

**Section 14.**           **Conduct of Meetings.** The person elected "Chairperson" in the first meeting each year of the Board shall preside at all meetings of the Board. In the absence of the Chairperson, the person elected vice-chairperson shall preside. Board members wishing to speak shall first obtain the approval of the chairperson and each person who speaks shall address the chairperson. Other persons at the meeting shall not speak unless recognized by the chairperson. The Chairperson may limit the time allotted to each person on public comments. Since the purpose of the meeting is to discuss public business and not address individual personalities, "personal attacks" on Directors or other government officials and employees are prohibited and shall be considered "out of order". The Chairperson shall call to order any Director or member of the public, who is being disorderly by speaking or otherwise disrupting the proceedings, by failing to be germane, by speaking longer than the allotted time, or by speaking vulgarities or personal attacks. If a member or the public shall be ruled out of order, he or she shall not be permitted to speak further at the same meeting except upon special leave by the Board. If the person shall continue to be disorderly and to disrupt the meeting, the Chairperson may order the person to leave the meeting. The Chairperson may appoint a "sergeant at arms," who may be a Director or other person to assist him or her in enforcing the provisions of this Bylaw.

**Section 15.**           **Minutes.** The Secretary shall be responsible for maintaining the official record and minutes of each meeting of the Board. The minutes shall include all the actions and decisions of the Board. The minutes shall include the names of the movant and second on all motions and resolutions and the vote of the members thereon. The record shall also state whether the vote was by voice or by roll call; when by roll call. The Secretary shall maintain, in his or her office, copies of each resolution or other matter acted upon by the Board, as well as the official minutes.

**Section 16.** **Rules.** Robert's Rules of Order (Newly Revised) shall govern all questions of procedure not otherwise provided by these Bylaws or by state law. The Chairperson other person he or she so designates shall serve as the Board's parliamentarian.

**Section 17.** **Votes.** Except as provided regarding a conflict of interest, whenever the Chairperson puts a question to the Directors, every Director present shall vote on the question. No member present shall abstain from voting "yes" or "no" unless he or she has received the unanimous permission of the Directors in attendance. Except as otherwise provided herein, the Board may cause voting by voice or direct a roll call vote. Any Director may ask for a roll call vote. However, the election of the Board officers may be by secret ballot with the approval of a majority of Directors present. Matters arising at a meeting of the Board, except for those decisions required by the law or these Bylaws, shall be decided by a majority of the Directors present.

#### **ARTICLE IV: Officers**

**Section 1.** **Officers.** The officers of the Authority shall be elected by the Board and shall consist of a Chairperson, Vice Chairperson, Secretary, and Treasurer. The Board may also appoint a Recording Secretary who need not be a member of the Board. The same person may hold two or more offices, but an officer shall not execute, acknowledge, or verify an instrument in more than one capacity if the instrument is required by law or Bylaws to be executed, acknowledged or verified by two or more officers. The County Treasurer shall serve as the Authority's Treasurer and is exempt from the term of office limitations contained in Article IV, Section 2. Prior to assuming the duties of the officers, a member shall qualify by taking and subscribing to the oath of office provided in Section 1 of Article XI of the State Constitution of 1963.

**Section 2.** **Nomination, Election and Term of Office.** The officers of the Authority shall be elected by the Board following initial adoption of the Bylaws, and thereafter at an annual meeting held during the first calendar quarter of each year. Candidates shall be nominated by the Directors. The term of each office shall be for one (1) year. Each officer shall hold office until his/her successor is appointed.

**Section 3.** **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled at any meeting of the Board of the unexpired portion of the terms of such office.

**Section 4.** **Chairperson and Vice Chairperson.** The Chairperson shall be the presiding officer of the Board, but he or she may from time to time delegate all of any part of his/her duties to the Vice Chairperson. He or she, or in his/her absence, the Vice Chairperson, shall preside at all meetings of the Board, shall be ex-officio a member of all standing committees, and shall have the general powers and duties of supervision and management of the affairs of the Board and act as the spokesperson for the Authority.

**Section 5. Secretary and Recording Secretary.** The Secretary or Recording Secretary shall attend all meetings of the Board and record all votes and minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. They shall further perform all duties of the office of Secretary as provided by law or these Bylaws.

**Section 6. Treasurer.** The Treasurer shall have custody of the funds of the Authority and shall keep full and accurate accounts of receipts and disbursements in financial records belonging to the Authority and shall deposit all monies in the name and to the credit of the Authority in such depositories as may be designated by the County Commission. The Treasurer shall disburse the funds of the Authority upon presentment of proper vouchers and billings for such disbursements and shall render to the Directors, at its regular meetings or when the Directors so require, an account of all transactions of the Authority.

**Section 7. Delegation of Duties of Offices.** In the absence of any officer of the Authority, or for any other reason that the Board may deem sufficient, the Board may delegate, from time to time and for such time as it may deem appropriate, the powers or duties, of such officer to any other officer, or to any Director, provided a majority of the Board then in office concurs therein.

**Section 8. Executive Committee.** The Chairperson, Vice Chairperson and Secretary/Treasurer shall comprise the Executive Committee. The Executive Committee may, upon a majority vote, authorize the expenditure of up to \$500 for any expense listed as an eligible item for expenditure under Public Act 381. The Executive Committee must report any such expenditure to the Board at the next regularly scheduled Board meeting.

**ARTICLE V: Contracts, Loans, Checks and Deposits**

**Section 1. Contracts.** The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Authority

**Section 2. Loans/Grants.** No grant or loan shall be contracted on behalf of the Authority and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board and approved by the County Commission. Such authority may be general or confined to specific instances.

**Section 3. Checks/Drafts/Payments.** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of the Authority, shall be signed by such officer or officers, agent or agents of the Authority and in such manner as shall from time to time be determined by resolution of the Board.

**Section 4.**           **Deposits.** All funds of the Authority not otherwise employed shall be deposited from time to time to the credit of the authority in such banks, trust companies or other depositories as determined by the County Commission.

**ARTICLE VI:       Fiscal Year**  
The fiscal year of the Authority shall correspond at all time to the fiscal year of the County of Ottawa.

**ARTICLE VII:     Miscellaneous**

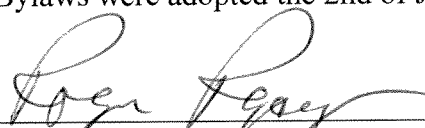
**Section 1.**       **Seal.** The Board, upon finding it necessary, shall provide a corporate seal, which shall be the official seal of the Authority.

**Section 2.**       **Waiver of Notice.** When the Board or any committee thereof may take action after notice to any person or after lapse of a prescribed period of time, the action may be taken without notice and without lapse of the period of time, if at any time before or after the action is completed the person entitled to notice or to participation in the action to be taken submits a signed waiver of such requirements.

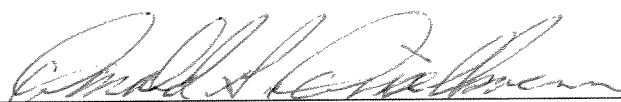
**ARTICLE VIII:    Amendments**  
These Bylaws may be altered, amended or repealed by the affirmative vote of a majority of the County Commissioners appointed and serving at any regular or special meeting called for that purpose, provided that at least a thirty day notice of the proposed alteration, amendment, or repeal is given prior to the meeting upon which the action is to be taken.

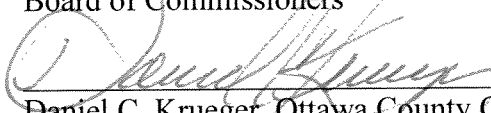
**CERTIFICATIONS**

I HEREBY CERTIFY that the above Bylaws were adopted the 2nd of July, 2008.

  
\_\_\_\_\_  
Ottawa County Brownfield Redevelopment Authority

I HEREBY CERTIFY that the above Bylaws were adopted the 22<sup>nd</sup> of July, 2008.

  
\_\_\_\_\_  
Donald G. Disselkoen, Chairperson Ottawa County  
Board of Commissioners

  
\_\_\_\_\_  
Daniel C. Krueger, Ottawa County Clerk

**Ottawa County  
Brownfield Redevelopment Authority**

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BROWNFIELD REDEVELOPMENT APPLICATION GUIDE

***BROWNFIELD PLAN  
PROPOSAL APPLICATION***

*Application*

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# Ottawa County Brownfield Redevelopment Authority



*Brownfield Plan Proposal*

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Brownfield Redevelopment Authority  
12220 Fillmore Street, Suite 260  
West Olive, MI 49460  
616.738.4852  
plan@miottawa.org

## **BROWNFIELD PLAN PROPOSAL APPLICATION**

Date:

Project Name:

### **Applicant Information**

Current Owner:

Address:

Telephone:

E-mail:

Applicant Name:

Applicant Company / Organization:

Address:

Telephone:

E-mail:

Applicant's Representative:

Applicant Company / Organization:

Address:

Telephone:

E-mail:

**Proposal Information**

Project Name:

Address / Location:

State Parcel Number(s)

Project Size:

Current Use(s):

Historic Use(s):

Current Zoning:

Current Master Plan Designation:

Current State Equalized Value of Site:

Estimated State Equalized Value of Site After Project Completion:

Project Description:

Status of Local Governmental Unit Approval(s):

Full-time-equivalent Jobs Retained:

Full-time-equivalent Jobs Created:

Basis for Eligibility:

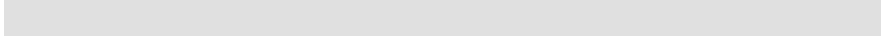
List of Eligible Activities:

Project Financing:

Total Anticipated Investment:

Incentives Requested:

Project Timeline (Start and End Dates):



By signature below, I attest that I am authorized to submit this Application on behalf of the identified Applicant, and that all information provided and attached to this Application is true and accurate to the best of the Applicant’s knowledge, information, and belief. The Applicant has reviewed, understands, and agrees to comply with Ottawa County Brownfield Redevelopment Authority (OCBRA) policies, procedures and its fee structure. The Applicant also acknowledges its understanding that all information provided to OCBRA becomes public and subject to disclosure. Finally, by signing, the Applicant verifies that neither Ottawa County, its employees and officers, nor the OCBRA or its directors, offices or agents have made any promises, or assurances regarding approval of a Brownfield Redevelopment Plan Proposal or any tax relief or other public or private incentives, financing or other benefits that may or may not ultimately result from the Application and subsequent state and local approvals.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please submit the following if available:

- Site Plan
- Feasibility Studies
- Market Analysis
- Environmental Studies
- Project Timeline

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BROWNFIELD REDEVELOPMENT APPLICATION GUIDE

*SUMMARY OF THE BROWNFIELD  
REDEVELOPMENT FINANCING ACT:  
PUBLIC ACT 381 OF 1996, AS AMENDED*

(2008 State of Michigan)

www.michigan.gov  
(To Print: use your browser's print function)

Release Date: April 01, 2003

Last Update: April 15, 2009

**Contact:** Darlene Van Dale 989-705-3453

**Agency:** Environmental Quality

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## Summary of the Brownfield Redevelopment Financing Act, PA 381 of 1996, As Amended

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### HISTORY

When the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381) was passed in September of 1996 it was creative; it was a financing statute with economic and environmental benefit. It allowed municipalities to establish a brownfield redevelopment authority (BRA), adopt brownfield redevelopment financing plans, and capture incremental local and school property taxes from redeveloped contaminated properties to pay for the environmental costs associated with those properties. In essence, it established a way for property improvements associated with cleanup and redevelopment to pay for environmental activities necessary for safe redevelopment. It was novel, the only one of its kind in the country. The law went unchanged until it was improved in 2000.

The June 2000 amendments were major and again, innovative. They provided municipalities with additional tools to encourage brownfield redevelopment by introducing the "qualified local governmental units" concept. This allowed tax increment financing to pay for a wider variety activities on more types of properties. Brownfields now included blighted or functionally obsolete properties which became eligible properties in qualified local governmental units. Eligible activities were expanded to include infrastructure improvements, demolition, lead and asbestos abatement, and site preparation in those communities. And, the other incentive of equal importance was the eligibility to apply for the Single Business Tax Credit (now the Michigan Business Tax) for eligible property included in an approved brownfield plan.

Act 381 was amended again in December of 2002. The main provision was extension of the sunset through December 2007 for approval of work plans to capture school taxes to conduct eligible activities under a brownfield plan.

The amendment to Act 381 in December 2007 extended the sunset through December 2012; however, numerous other changes were made. The amendments included new eligible activities, changes to the public notification and hearing process, clarification of several provisions, changes to the work plan approval process to increase local authority and streamline the process, and increases in the annual cap for a BRA's annual administrative and operating expenses, to name a few. This document summarizes the amendments; however, a more in-depth look can be found in the presentation and handout from the February 2008 Brownfield Redevelopment Workshops which are at [www.michigan.gov/deqbrownfields](http://www.michigan.gov/deqbrownfields) and then select Brownfield Grants and Loans. Act 381, as amended, can be found at: [www.legislature.mi.gov](http://www.legislature.mi.gov).

\*This document does not discuss the eligibility of land bank fast track authorities or other property-specific exceptions where tax capture and use is limited to local taxes only.

### GENERAL PROVISIONS

- A municipality may establish one or more BRAs to implement brownfield plans.
- A county may operate a BRA on behalf of a municipality located within the county only if the municipality concurs with the provisions of the brownfield plan for the eligible property located within the municipality.
- A BRA may develop a brownfield plan that identifies which properties the BRA will conduct eligible activities on and from which it will capture taxes.
- A municipality must hold a public hearing before approval of a brownfield plan.

### TAX CAPTURE PROVISIONS

- All incremental property taxes that come from the increased value of an eligible property, including taxes levied for school operating purposes, can be captured. Capture must start within 5 years of the base year, which is the year the property was added to the brownfield plan, and cannot exceed 30 years. Taxes already captured as part of an existing tax increment financing plan (under other state laws) and taxes levied to pay off specific obligations are exempt.
- For the purposes of Act 381, school taxes are the local school operating tax and the state education tax.
- Approval of a work plan by the Department of Environmental Quality (DEQ) is necessary if school taxes will be used to conduct certain eligible environmental response activities.
- Approval of a work plan by the Michigan Economic Growth Authority (MEGA) is necessary if school taxes will be used to conduct any eligible non-environmental activities.
- The percentage of local taxes captured must be equal to or greater than the percentage of school taxes captured - considering all tax capture plans in place under Act 381 or other state laws.
- A BRA may issue revenue and tax increment financing bonds and notes to finance the eligible activities and use tax increment revenues to pay off the obligations.
- Interest costs associated with financing of the eligible activities can be reimbursed with captured taxes.
- A BRA may establish a local site remediation revolving fund and place excess captured taxes from properties at which eligible activities are conducted into the fund. The BRA can use the fund to conduct eligible activities at other eligible properties.
- Depending on the number of active projects, a BRA may capture up to \$300,000 per year in local taxes for reasonable and actual administrative and operating expenses of the BRA.
- School taxes may not be used for response activities that benefit a party who is liable under [Section 20126 of Part 201](#), Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).
- The state or BRA may take appropriate legal action to recover the costs of eligible activities funded through tax capture from person(s) who are liable for the contamination.

#### **HOW CAPTURED TAXES CAN BE USED**

Captured taxes can be used pay for the costs of eligible activities conducted on eligible property.

#### **Eligible Property**

Eligible property is property that was used or is currently used for commercial, industrial, public, or residential purposes, including personal property, and is a facility as defined in Part 201 of the NREPA, functionally obsolete or blighted.

#### **Eligible Activities**

Where the property is located determines activity eligibility as follows:

##### **Eligible activities statewide**

- Response activities to complete a Baseline Environmental Assessment (BEA)
- Response activities needed for an owner or operator to comply with the due care requirements of Part 201 of the NREPA
- Additional response activities that go beyond BEA or due care activities
- Demolition
- Lead or asbestos abatement
- Reasonable costs of developing/preparing brownfield plans and work plans
- Reasonable costs of environmental insurance

##### **Eligible activities in a qualified local governmental unit**

In addition to the statewide activities identified above, the following additional activities are eligible:

- Infrastructure improvements that directly benefit the property
- Site preparation that is not a response activity

\*\*See the definition eligible property in Act 381 to determine the eligibility of contiguous and adjacent parcels.

At a BRA's discretion, property taxes from an eligible property in excess of the amount needed to pay for the eligible activities can be captured and deposited into a local site remediation revolving fund (LSRRF). This excess capture can continue for up to five years after the aforementioned costs are reimbursed. The LSRRF can be used only for eligible activities on other eligible properties within the municipality. Excess school tax capture is limited to the amount of school taxes captured/used to reimburse the actual cost of the environmental response activities or up to five years, whichever comes first. Excess school taxes cannot be captured on activities approved by the MEGA; however, the LSRRF may be used to fund MEGA-eligible activities on eligible properties.

### **SCHOOL TAXES & WORK PLANS**

A BRA cannot use school taxes to reimburse the cost of certain eligible activities unless the activities are consistent with a work plan approved by the DEQ or MEGA prior to the work being conducted. Work plans for use of school taxes must be approved by December 31, 2012.

#### **Eligible activities requiring DEQ approval**

- All BEA, due care, and additional response activities IF school taxes will be used to reimburse interest costs associated with the financing of these activities
- Implementation of response activities to comply with due care requirements of Part 201 (does not include due care evaluation and due care plan)
- Implementation of additional response activities
- Reasonable costs of environmental insurance

#### **Eligible activities requiring MEGA approval**

- Infrastructure improvements that directly benefit the property
- Demolition that is not a response activity
- Lead or asbestos abatement
- Site preparation that is not a response activity.

As indicated previously, interest costs are an eligible expense. MEGA approval of interest is required for all activities approved in a work plan by the MEGA. DEQ approval of interest is not required for activities approved in a work plan by the DEQ.

Sufficient time must be allowed for work plan review and must be taken into consideration during the planning phase of the project. The statute requires that a written response be provided regarding work plan acceptability. Review periods are dependent upon the types of eligible activities to be conducted and which agency is completing the review. They are statutorily mandated as follows:

- DEQ BEA and due care activities: **60 days**
- MEGA non-environmental activities: **65 days**
- DEQ additional response activities: The statute does not specify a review period; however, work plans must be reviewed within six (6) months under Part 201 of the NREPA. Under most circumstances you can expect a response much quicker than this, often within the 60 days.
- DEQ review of requested additional information: **45 days**

For a combined DEQ/MEGA work plan, you will receive separate written responses from each agency regarding its review and determination.

Detailed instructions for preparing and submitting a work plan under Act 381 can be found by linking to the Act 381 Work Plan Instructions at [www.michigan.gov/brownfieldauthority](http://www.michigan.gov/brownfieldauthority). You are **strongly encouraged** to contact the appropriate agency representative to discuss the project **prior** to submission of an Act 381 work plan (see agency contacts below). This will help save time on preparation of the work plan, prevent inclusion of ineligible activities that would not be approved, and

reduce agency review time and cost.

**QUESTIONS?**

For answers to questions frequently asked of the DEQ regarding Act 381, please link to the [Frequently Asked Questions](#) document in Microsoft Word format.

Questions regarding preparation and submission of an Act 381 work plan should be directed to the agency responsible for review of the eligible activity.

**DEQ-Remediation and Redevelopment Division**

Darlene Van Dale, 989-705-3453, [vandaled@michigan.gov](mailto:vandaled@michigan.gov) or

Ron Smedley, 517-373-4805, [smedleyr@michigan.gov](mailto:smedleyr@michigan.gov)

**Michigan Economic Development Corporation**

Peter Anastor, 517-373-9014, [anastorp1@michigan.org](mailto:anastorp1@michigan.org) or

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Brownfield Redevelopment Authority**

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BROWNFIELD REDEVELOPMENT APPLICATION GUIDE

*BROWNFIELD REDEVELOPMENT  
FINANCING ACT:  
ACT 381 OF 1996*

(Michigan Compiled Laws Complete through PA 162 of 2008)

**BROWNFIELD REDEVELOPMENT FINANCING ACT**  
**Act 381 of 1996**

AN ACT to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans; to create brownfield redevelopment zones; to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, tax reverted, blighted, or functionally obsolete property; 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.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2003, Act 259, Imd. Eff. Jan. 5, 2004.

*The People of the State of Michigan enact:*

**125.2651 Short title.**

Sec. 1. This act shall be known and may be cited as the “brownfield redevelopment financing act”.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

**125.2652 Definitions.**

Sec. 2. As used in this act:

(a) "Additional response activities" means response activities identified as part of a brownfield plan that are in addition to baseline environmental assessment activities and due care activities for an eligible property.

(b) "Authority" means a brownfield redevelopment authority created under this act.

(c) "Baseline environmental assessment" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(d) "Baseline environmental assessment activities" means those response activities identified as part of a brownfield plan that are necessary to complete a baseline environmental assessment for an eligible property in the brownfield plan.

(e) "Blighted" means property that meets any of the following criteria as determined by the governing body:

(i) Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

(ii) Is an attractive nuisance to children because of physical condition, use, or occupancy.

(iii) Is a fire hazard or is otherwise dangerous to the safety of persons or property.

(iv) Has had the utilities, plumbing, heating, or sewerage permanently disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.

(v) Is tax reverted property owned by a qualified local governmental unit, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or this state after the property's inclusion in a brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.

(vi) Is property owned or under the control of a land bank fast track authority under the land bank fast track act, whether or not located within a qualified local governmental unit. Property included within a brownfield plan prior to the date it meets the requirements of this subdivision to be eligible property shall be considered to become eligible property as of the date the property is determined to have been or becomes qualified as, or is combined with, other eligible property. The sale, lease, or transfer of the property by a land bank fast track authority after the property's inclusion in a brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.

(vii) Has substantial subsurface demolition debris buried on site so that the property is unfit for its intended use.

(f) "Board" means the governing body of an authority.

(g) "Brownfield plan" means a plan that meets the requirements of section 13 and is adopted under section 14.

(h) "Captured taxable value" means the amount in 1 year by which the current taxable value of an eligible property subject to a brownfield plan, including the taxable value or assessed value, as appropriate, of the property for which specific taxes are paid in lieu of property taxes, exceeds the initial taxable value of that eligible property. The state tax commission shall prescribe the method for calculating captured taxable value.

(i) "Chief executive officer" means the mayor of a city, the village manager of a village, the township supervisor of a township, or the county executive of a county or, if the county does not have an elected county

executive, the chairperson of the county board of commissioners.

(j) "Department" means the department of environmental quality.

(k) "Due care activities" means those response activities identified as part of a brownfield plan that are necessary to allow the owner or operator of an eligible property in the plan to comply with the requirements of section 20107a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a.

(l) "Economic opportunity zone" means 1 or more parcels of property that meet all of the following:

(i) That together are 40 or more acres in size.

(ii) That contain a manufacturing facility that consists of 500,000 or more square feet.

(iii) That are located in a municipality that has a population of 30,000 or less and that is contiguous to a qualified local governmental unit.

(m) "Eligible activities" or "eligible activity" means 1 or more of the following:

(i) Baseline environmental assessment activities.

(ii) Due care activities.

(iii) Additional response activities.

(iv) For eligible activities on eligible property that was used or is currently used for commercial, industrial, or residential purposes that is in a qualified local governmental unit, that is owned or under the control of a land bank fast track authority, or that is located in an economic opportunity zone, and is a facility, functionally obsolete, or blighted, and except for purposes of former section 38d of the single business tax act, 1975 PA 228, the following additional activities:

(A) Infrastructure improvements that directly benefit eligible property.

(B) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(C) Lead or asbestos abatement.

(D) Site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(E) Assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a land bank fast track authority or the acquisition of property by the land bank fast track authority if the acquisition of the property is for economic development purposes.

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

(vi) For eligible activities on eligible property that is a qualified facility that is not located in a qualified local governmental unit and that is a facility, functionally obsolete, or blighted, the following additional activities:

(A) Infrastructure improvements that directly benefit eligible property.

(B) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(C) Lead or asbestos abatement.

(D) Site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(vii) For eligible activities on eligible property that is not located in a qualified local governmental unit and that is a facility, functionally obsolete, or blighted, the following additional activities:

(A) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(B) Lead or asbestos abatement.

(viii) Reasonable costs of developing and preparing brownfield plans and work plans.

(ix) For property that is not located in a qualified local governmental unit and that is a facility, functionally obsolete, or blighted, that is a former mill that has not been used for industrial purposes for the immediately preceding 2 years, that is located along a river that is a federal superfund site listed under the comprehensive environmental response, compensation, and liability act of 1980, 42 USC 9601 to 9675, and that is located in a city with a population of less than 10,000 persons, the following additional activities:

(A) Infrastructure improvements that directly benefit the property.

(B) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(C) Lead or asbestos abatement.

(D) Site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(x) For eligible activities on eligible property that is located north of the 45th parallel, that is a facility, functionally obsolete, or blighted, and the owner or operator of which makes new capital investment of

\$250,000,000.00 or more in this state, the following additional activities:

(A) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(B) Lead or asbestos abatement.

(xi) Reasonable costs of environmental insurance.

(n) Except as otherwise provided in this subdivision, "eligible property" means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes, including personal property located on the property, to the extent included in the brownfield plan, and that is 1 or more of the following:

(i) Is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

(ii) Is not in a qualified local governmental unit and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

(iii) Is tax reverted property owned or under the control of a land bank fast track authority.

(iv) Is not in a qualified local governmental unit, is a qualified facility, and is a facility, functionally obsolete, or blighted, if the eligible activities on the property are limited to the eligible activities identified in subdivision (m)(vi).

(v) Is not in a qualified local governmental unit and is a facility, functionally obsolete, or blighted, if the eligible activities on the property are limited to the eligible activities identified in subdivision (m)(vii).

(vi) Is not in a qualified local governmental unit and is a facility, functionally obsolete, or blighted, if the eligible activities on the property are limited to the eligible activities identified in subdivision (m)(ix).

(vii) Is located north of the 45th parallel, is a facility, functionally obsolete, or blighted, and the owner or operator makes new capital investment of \$250,000,000.00 or more in this state. Eligible property does not include qualified agricultural property exempt under section 7ee of the general property tax act, 1893 PA 206, MCL 211.7ee, from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

(o) "Environmental insurance" means liability insurance for environmental contamination and cleanup that is not otherwise required by state or federal law.

(p) "Facility" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(q) "Fiscal year" means the fiscal year of the authority.

(r) "Functionally obsolete" means that the property is unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself or the property's relationship with other surrounding property.

(s) "Governing body" means the elected body having legislative powers of a municipality creating an authority under this act.

(t) "Infrastructure improvements" means a street, road, sidewalk, parking facility, pedestrian mall, alley, bridge, sewer, sewage treatment plant, property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination, drainage system, waterway, waterline, water storage facility, rail line, utility line or pipeline, or other similar or related structure or improvement, together with necessary easements for the structure or improvement, owned or used by a public agency or functionally connected to similar or supporting property owned or used by a public agency, or designed and dedicated to use by, for the benefit of, or for the protection of the health, welfare, or safety of the public generally, whether or not used by a single business entity, provided that any road, street, or bridge shall be continuously open to public access and that other property shall be located in public easements or rights-of-way and sized to accommodate reasonably foreseeable development of eligible property in adjoining areas.

(u) "Initial taxable value" means the taxable value of an eligible property identified in and subject to a brownfield plan at the time the resolution adding that eligible property in the brownfield plan is adopted, as shown either by the most recent assessment roll for which equalization has been completed at the time the resolution is adopted or, if provided by the brownfield plan, by the next assessment roll for which equalization will be completed following the date the resolution adding that eligible property in the brownfield plan is adopted. Property exempt from taxation at the time the initial taxable value is determined shall be included with the initial taxable value of zero. Property for which a specific tax is paid in lieu of property tax shall not be considered exempt from taxation. The state tax commission shall prescribe the method for calculating the initial taxable value of property for which a specific tax was paid in lieu of property tax.

(v) "Land bank fast track authority" means an authority created under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774.

(w) "Local taxes" means all taxes levied other than taxes levied for school operating purposes.

(x) "Municipality" means all of the following:

(i) A city.

(ii) A village.

(iii) A township in those areas of the township that are outside of a village.

(iv) A township in those areas of the township that are in a village upon the concurrence by resolution of the village in which the zone would be located.

(v) A county.

(y) "Owned or under the control of" means that a land bank fast track authority has 1 or more of the following:

(i) An ownership interest in the property.

(ii) A tax lien on the property.

(iii) A tax deed to the property.

(iv) A contract with this state or a political subdivision of this state to enforce a lien on the property.

(v) A right to collect delinquent taxes, penalties, or interest on the property.

(vi) The ability to exercise its authority over the property.

(z) "Qualified facility" means a landfill facility area of 140 or more contiguous acres that is located in a city and that contains a landfill, a material recycling facility, and an asphalt plant that are no longer in operation.

(aa) "Qualified local governmental unit" means that term as defined in the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.

(bb) "Qualified taxpayer" means that term as defined in former sections 38d and 38g of the single business tax act, 1975 PA 228, or section 437 of the Michigan business tax act, 2007 PA 36, MCL 208.1437.

(cc) "Response activity" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(dd) "Specific taxes" means a tax levied under 1974 PA 198, MCL 207.551 to 207.572; the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668; the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123; 1953 PA 189, MCL 211.181 to 211.182; the technology park development act, 1984 PA 385, MCL 207.701 to 207.718; the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797; the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786; the commercial rehabilitation act, 2005 PA 210, MCL 207.841 to 207.856; or that portion of the tax levied under the tax reverted clean title act, 2003 PA 260, MCL 211.1021 to 211.1026, that is not required to be distributed to a land bank fast track authority.

(ee) "Tax increment revenues" means the amount of ad valorem property taxes and specific taxes attributable to the application of the levy of all taxing jurisdictions upon the captured taxable value of each parcel of eligible property subject to a brownfield plan and personal property located on that property. Tax increment revenues exclude ad valorem property taxes specifically levied 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 governmental unit, and specific taxes attributable to those ad valorem property taxes. Tax increment revenues attributable to eligible property also exclude the amount of ad valorem property taxes or specific taxes captured by a downtown development authority, tax increment finance authority, or local development finance authority if those taxes were captured by these other authorities on the date that eligible property became subject to a brownfield plan under this act.

(ff) "Taxable value" means the value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(gg) "Taxes levied for school operating purposes" means all of the following:

(i) The taxes levied by a local school district for operating purposes.

(ii) The taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

(iii) That portion of specific taxes attributable to taxes described under subparagraphs (i) and (ii).

(hh) "Work plan" means a plan that describes each individual activity to be conducted to complete eligible activities and the associated costs of each individual activity.

(ii) "Zone" means, for an authority established before June 6, 2000, a brownfield redevelopment zone designated under this act.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2002, Act 254, Imd. Eff. May 1, 2002;—Am. 2003, Act 259, Imd. Eff. Jan. 5, 2004;—Am. 2003, Act 277, Imd. Eff. Jan. 8, 2004;—Am. 2005, Act 101, Imd. Eff. July 22,

**125.2653 Brownfield redevelopment authority; establishment; exercise of powers; alteration or amendment of boundaries; authority as public body corporate; written agreement with county.**

Sec. 3. (1) A municipality may establish 1 or more authorities. Except as provided in subsection (4), an authority with zones established before the effective date of the amendatory act that added subsection (2) shall exercise its powers within its designated zones. Except as provided in subsection (4), an authority established after the effective date of the amendatory act that added subsection (2) shall exercise its powers over any eligible property located in the municipality.

(2) An authority with zones established before the effective date of the amendatory act that added this subsection may alter or amend the boundaries of those zones if the authority holds a public hearing on the alteration or amendment using the procedures under section 4(2), (3), and (4).

(3) The authority shall be a public body corporate that may sue and be sued in a court of competent jurisdiction. The authority possesses all the powers necessary to carry out the purpose of its incorporation. The enumeration of a power in this act is not a limitation upon the general powers of the authority. The powers granted in this act to an authority may be exercised whether or not bonds are issued by the authority.

(4) An authority established by a county shall exercise its powers with respect to eligible property within a city, village, or township within the county only if that city, village, or township has concurred with the provisions of a brownfield plan that apply to that eligible property within the city, village, or township.

(5) A city, village, or township including a city, village, or township that is a qualified local governmental unit may enter into a written agreement with the county in which that city, village, or township is located to exercise the powers granted to that specific city, village, or township under this act.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

**125.2654 Resolution by governing body; adoption; notice; public hearing; proceedings establishing authority; presumption of validity; exercise as essential governmental function; implementation or modification of plan.**

Sec. 4. (1) A governing body may declare by resolution adopted by a majority of its members elected and serving its intention to create and provide for the operation of an authority.

(2) In the resolution of intent, the governing body shall set a date for holding a public hearing on the adoption of a proposed resolution creating the authority. Notice of the public hearing shall be published twice in a newspaper of general circulation in the municipality, not less than 20 nor more than 40 days before the date of the hearing. The notice shall state the date, time, and place of the hearing. At that hearing, a citizen, taxpayer, official from a taxing jurisdiction whose millage may be subject to capture under a brownfield plan, or property owner of the municipality has the right to be heard in regard to the establishment of the authority.

(3) Not more than 30 days after the public hearing, if the governing body intends to proceed with the establishment of the authority, the governing body shall adopt, by majority vote of its members elected and serving, a resolution establishing the authority. The adoption of the resolution is subject to all applicable statutory or charter provisions with respect to the approval or disapproval by the chief executive or other officer of the municipality and the adoption of a resolution over his or her veto. This resolution shall be filed with the secretary of state promptly after its adoption.

(4) The proceedings establishing an authority shall be presumptively valid unless contested in a court of competent jurisdiction within 60 days after the filing of the resolution with the secretary of state.

(5) The exercise by an authority of the powers conferred by this act shall be considered to be an essential governmental function and benefit to, and a legitimate public purpose of, the state, the authority, and the municipality or units.

(6) If the board implements or modifies a brownfield plan that contains a qualified facility, the governing body shall mail notice of that implementation or modification to each taxing jurisdiction that levies ad valorem property taxes in the municipality. Not more than 60 days after receipt of that notice, the governing body of a taxing jurisdiction levying ad valorem property taxes that would otherwise be subject to capture may exempt its taxes from capture by adopting a resolution to that effect and filing a copy with the clerk of the municipality in which the qualified facility is located. The resolution takes effect when filed with that clerk and remains effective until a copy of a resolution rescinding that resolution is filed with that clerk.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2005, Act 101, Imd. Eff. July 22, 2005.

**125.2655 Designation of board by governing body; membership; trustees; applicability of**

**subsection (2); election of chairperson, vice-chairperson, and other officers; oath; procedural rules; meetings; special meetings; removal of member; records open to public; quorum.**

Sec. 5. (1) Each authority shall be under the supervision and control of a board chosen by the governing body. Subject to subsection (2), the governing body may by majority vote designate 1 of the following to constitute the board:

(a) The board of directors of the economic development corporation of the municipality established under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636.

(b) The trustees of the board of a downtown development authority established under 1975 PA 197, MCL 125.1651 to 125.1681.

(c) The trustees of the board of a tax increment financing authority established under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830.

(d) The trustees of the board of a local development financing authority established under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174.

(e) Not less than 5 nor more than 9 persons appointed by the chief executive officer of the municipality subject to the approval of the governing body. Of the initial members appointed, an equal number, as near as practicable, shall be appointed for 1 year, 2 years, and 3 years. A member shall hold office until the member's successor is appointed and qualified. Thereafter, each member shall serve for a term of 3 years. An appointment to fill a vacancy shall be made by the chief executive officer of the municipality for the unexpired term only. Members of the board shall serve without compensation, but shall be reimbursed for reasonable actual and necessary expenses.

(2) The governing body of a municipality in which a board described in subsection (1)(b), (c), or (d) has been established shall designate the trustees of 1 of those boards to constitute the board. This subsection shall only apply in the event a board described in subsection (1)(b), (c), or (d) is authorized under subsection (1) to serve as the board of the authority.

(3) The members shall elect 1 of their membership as chairperson and another as vice-chairperson. The members may designate and elect other officers of the board as they consider necessary.

(4) Before assuming the duties of office, a member shall qualify by taking and subscribing to the oath of office provided in section 1 of article XI of the state constitution of 1963.

(5) The board shall adopt rules governing its procedure and the holding of regular meetings, subject to the approval of the governing body. Special meetings may be held when called in the manner provided in the rules of the board. Meetings of the board shall be open to the public, in accordance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(6) After notice and an opportunity to be heard, a member of the board appointed under subsection (1)(e) may be removed before the expiration of his or her term for cause by the governing body. Removal of a member is subject to review by the circuit court.

(7) All financial records of an authority shall be open to the public under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(8) A majority of the members of the board appointed and serving shall constitute a quorum. Action may be taken by the board at a meeting upon a vote of the majority of the members present.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

**125.2656 Appointment or employment of director, treasurer, secretary, personnel, and consultants; assistance provided by municipality; retirement and insurance programs.**

Sec. 6. (1) The board may employ and fix the compensation of a director of the authority, subject to the approval of the governing body creating the authority. The director shall serve at the pleasure of the board. A member of the board is not eligible to hold the position of director. Before entering upon the duties of the office, the director shall take and subscribe to the oath of office provided in section 1 of article XI of the state constitution of 1963 and shall furnish bond by posting a bond in the sum specified in the resolution establishing the authority. The bond shall be payable to the authority for the use and benefit of the authority, approved by the board, and filed with the clerk of the municipality. The premium on the bond shall be considered an operating expense of the authority, payable from funds available to the authority for expenses of operation. The director shall be the chief officer of the authority. Subject to the approval of the board, the director shall supervise and be responsible for the preparation of plans and the performance of the functions of the authority in the manner authorized by this act. The director shall attend the meetings of the board and shall render to the board and to the governing body a regular report covering the activities and financial condition of the authority. If the director is absent or disabled, the board may designate a qualified person as acting

director to perform the duties of the office. Before entering upon the duties of the office, the acting director shall take and subscribe to the oath of office referenced in this subsection and furnish bond as required of the director. The director shall furnish the board with information or reports governing the operation of the authority, as the board requires.

(2) The board may appoint or employ and fix the compensation of a treasurer who shall keep the financial records of the authority and who, together with the director, if a director is appointed, shall approve all vouchers for the expenditure of funds of the authority. The treasurer shall perform other duties as may be delegated by the board and shall furnish bond in an amount as prescribed by the board.

(3) The board may appoint or employ and fix the compensation of a secretary who shall maintain custody of the official seal and of records, books, documents, or other papers not required to be maintained by the treasurer. The secretary shall attend meetings of the board and keep a record of its proceedings and shall perform other duties as may be delegated by the board.

(4) The board may employ and retain personnel and consultants as considered necessary by the board, including legal counsel to advise the board in the proper performance of its duties and to represent the authority in actions brought by or against the authority.

(5) Upon request of the authority, the municipality may provide assistance to the authority in the performance of its powers and duties.

(6) The employees of an authority may be eligible to participate in municipal retirement and insurance programs of the municipality as if they were civil service employees on the same basis as civil service employees.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2657 Powers of authority; determining captured taxable value; transfer of municipality funds to authority.**

Sec. 7. (1) An authority may do 1 or more of the following:

(a) Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.

(b) Incur and expend funds to pay or reimburse a public or private person for costs of eligible activities attributable to an eligible property.

(c) As approved by the municipality, incur costs and expend funds from the local site remediation revolving fund created under section 8 for purposes authorized in that section.

(d) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties, including, but not limited to, lease purchase agreements, land contracts, installment sales agreements, and loan agreements.

(e) On terms and conditions and in a manner and for consideration the authority considers proper or for no monetary consideration, own, mortgage, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in the property, that the authority determines are reasonably necessary to achieve the purposes of this act, and grant or acquire licenses, easements, and options with respect to the property.

(f) Acquire, maintain, repair, or operate all devices necessary to ensure continued eligible activities on eligible property.

(g) Accept grants and donations of property, labor, or other things of value from a public or private source.

(h) Incur costs in connection with the performance of its authorized functions, including, but not limited to, administrative costs and architect, engineer, legal, or accounting fees.

(i) Study, develop, and prepare the reports or plans the authority considers necessary to assist it in the exercise of its powers under this act and to monitor and evaluate the progress under this act.

(j) Procure insurance against loss in connection with the authority's property, assets, or activities.

(k) Invest the money of the authority at the authority's discretion in obligations determined proper by the authority, and name and use depositories for its money.

(l) Make loans, participate in the making of loans, undertake commitments to make loans and mortgages, buy and sell loans and mortgages at public or private sale, rewrite loans and mortgages, discharge loans and mortgages, foreclose on a mortgage, commence an action to protect or enforce a right conferred upon the authority by a law, mortgage, loan, contract, or other agreement, bid for and purchase property that was the subject of the mortgage at a foreclosure or other sale, acquire and take possession of the property and in that event compute, administer, pay the principal and interest on obligations incurred in connection with that property, and dispose of and otherwise deal with the property, in a manner necessary or desirable to protect the interests of the authority.

(m) Borrow money and issue its bonds and notes under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, in anticipation of collection of tax increment revenues.

(n) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this act, or other laws that relate to the purposes and responsibilities of the authority.

(2) The authority shall determine the captured taxable value of each parcel of eligible property. The captured taxable value of a parcel shall not be less than zero.

(3) A municipality may transfer the funds of the municipality to an authority or to another person on behalf of the authority in anticipation of repayment by the authority.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2002, Act 413, Imd. Eff. June 3, 2002.

#### **125.2658 Local site remediation revolving fund.**

Sec. 8. (1) An authority may establish a local site remediation revolving fund. A local site remediation revolving fund shall consist of money available under section 13(5) and may also consist of money appropriated or otherwise made available from public or private sources. An authority shall separately account for money deposited to the fund that is directly derived from tax increment revenues levied for school operating purposes.

(2) The local site remediation revolving fund may be used only to pay the costs of eligible activities on eligible property that is located within the municipality.

(3) An authority or a municipality on behalf of an authority may incur an obligation for the purpose of funding a local site remediation revolving fund.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

#### **125.2659 Authority as instrumentality of political subdivision.**

Sec. 9. The authority shall be considered an instrumentality of a political subdivision for purposes of Act No. 227 of the Public Acts of 1972, being sections 213.321 to 213.332 of the Michigan Compiled Laws.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

#### **125.2660 Taking, transfer, and use of private property.**

Sec. 10. A municipality may transfer private property taken under the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws, to the authority for use as authorized in the brownfield plan, on terms and conditions it considers appropriate. The taking, transfer, and use shall be considered necessary for public purposes and for the benefit of the public.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

#### **125.2661 Financing sources of authority activities.**

Sec. 11. The activities of the authority shall be financed from 1 or more of the following sources:

(a) Contributions, contractual payments, or appropriations to the authority for the performance of its functions or to pay the costs of a brownfield plan of the authority.

(b) Revenues from a property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to the limitations imposed upon the authority by trusts or other agreements.

(c) Subject to the limitations imposed under sections 8, 13, and 15, 1 or both of the following:

(i) Tax increment revenues received under a brownfield plan established under sections 13 and 14.

(ii) Proceeds of tax increment bonds and notes issued under section 17.

(d) Proceeds of revenue bonds and notes issued under section 12.

(e) Revenue available in the local site remediation revolving fund for the costs described in section 8.

(f) Money obtained from all other sources approved by the governing body of the municipality or otherwise authorized by law for use by the authority or the municipality to finance activities authorized under this act.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

#### **125.2662 Bonds and notes of authority.**

Sec. 12. (1) The authority may borrow money and issue its negotiable revenue bonds or notes to finance all or part of the costs of eligible activities or of another activity of the authority under this act. Revenue bonds and notes issued under this section are subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140. The costs that may be financed by the issuance of revenue bonds or notes may include the costs of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with an activity authorized under this act; engineering, architectural, legal, accounting, or financial expenses; the costs necessary or incidental to the borrowing of money; interest on the bonds or notes during the period of construction; a reserve for payment of principal and interest on the bonds or notes; and a reserve for operation

and maintenance until sufficient revenues have developed. The authority may secure the bonds and notes by mortgage, assignment, or pledge of the property and all money, revenues, or income received in connection with the property.

(2) A pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property pledged by the authority immediately shall be subject to the lien of the pledge without a physical delivery, filing, or further act. The lien of a pledge shall be valid and binding as against parties having claims in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice of the lien. Filing of the resolution, the trust agreement, or another instrument by which a pledge is created is not required.

(3) Bonds or notes issued under this section shall be exempt from all taxation in this state except estate and transfer taxes, and the interest on the bonds or notes shall be exempt from all taxation in this state, notwithstanding that the interest may be subject to federal income tax.

(4) Unless otherwise provided by a majority vote of the members of its governing body, the municipality shall not be liable on bonds or notes of the authority issued under this section and the bonds or notes shall not be a debt of the municipality.

(5) The bonds and notes of the authority may be invested in by the state treasurer and all other public officers, state agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for all purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is supplemental and in addition to all other authority granted by law.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2002, Act 413, Imd. Eff. June 3, 2002.

### **125.2663 Brownfield plan; provisions.**

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. Except as otherwise authorized by this act, if more than 1 eligible property is included within the plan, the tax increment revenues under the plan shall be determined individually for each 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 or, for a plan for eligible properties qualified on the basis that the property is owned or under the control of a land bank fast track authority, a listing of all eligible activities that may be conducted for 1 or more of the eligible properties subject to the plan.

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

(c) An estimate of the captured taxable value and tax increment revenues for each year of the plan from the eligible property. 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(dd), 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 for eligible activities on eligible property which shall not exceed 35 years following the date of the resolution approving the plan amendment related to a particular eligible property. Each plan amendment shall also contain the duration of capture of tax increment revenues including the beginning date of the capture of tax increment revenues, which beginning date shall be identified in the brownfield plan and which beginning date shall not be later than 5 years following the date of the resolution approving the plan amendment related to a particular eligible property and which duration shall not exceed the lesser of the period authorized under subsections (4) and (5) or 30 years from the beginning date of the capture of tax increment revenues. The date for the beginning of capture of tax increment revenues may be amended by the authority but not to a date later than 5 years after the date of the resolution adopting the plan. The authority may not amend the date for the beginning of capture of tax increment revenues if the authority

has begun to reimburse eligible activities from the capture of tax increment revenues. The authority may not amend the date for the beginning of capture if that amendment would lead to the duration of capture of tax increment revenues being longer than 30 years or the period authorized under subsections (4) and (5). If the date for the beginning of capture of tax increment revenues is amended by the authority and that plan includes the capture of tax increment revenues for school operating purposes, then the authority that amended that plan shall notify the department and the Michigan economic growth authority within 30 days of the approval of the amendment.

(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 the 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.

(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 this subsection and 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 brownfield plan or a work plan for the eligible property, including the actual cost of the review of the work plan under section 15. For property owned or under the control of a land bank fast track authority, tax increment revenues related to a brownfield plan may be used for eligible activities attributable to any eligible property owned or under the control of the land bank fast track authority, the cost of principal of and interest on any obligation issued by the authority to pay the costs of eligible activities, the reasonable costs of preparing a work plan, and the actual cost of the review of the work plan under section 15. Except as provided in subsection (18), tax increment revenues captured from taxes levied by this state under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, or taxes levied by a local school district shall not be used for eligible activities described in section 2(m)(iv)(E).

(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 permitted to be funded with tax increment revenues under this act.

(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 permitted under subsection (3), or for not more than 5 years after the time that capture is required for the purpose of paying the costs permitted 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 attributable to taxes 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 attributable to taxes 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 tax increment 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. By resolution, the governing body may delegate the public hearing process to the authority or to a subcommittee of the governing body subject to final approval by the governing body. 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, not less than 10 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 section.

(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 ensure that interested persons have an opportunity to be heard and that written communications with reference to the brownfield plan are received and considered. The governing body shall ensure that a record of the public hearing is made and preserved, including all data presented at the hearing.

(13) Not less than 10 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. Not less than 10 days before the hearing on the brownfield plan, the governing body shall provide notice of the hearing to the department if the brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities that require the approval of a work plan by the department under section 15(1)(a) and the Michigan economic growth authority, or its designee, if the brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities subject to subsection (15) or (18).

(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) Except as provided by subsection (18), if a brownfield plan includes the capture of taxes levied for school operating purposes approval of a work plan by the Michigan economic growth authority before January 1, 2013 to use taxes levied for school operating purposes and a development agreement or reimbursement agreement between the municipality or authority and an owner or developer of eligible property are required if the taxes levied for school operating purposes 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, site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101, relocation of public buildings or operations for economic development purposes, or acquisition of property by a land bank fast track authority if acquisition of the property is for economic development purposes. 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) The limitations of section 15(1) upon use of tax increment revenues by an authority shall not apply to the following costs and expenses:

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

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

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

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

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

(17) A brownfield authority may reimburse advances, with or without interest, made by a municipality under section 7(3), a land bank fast track authority, or any other person or entity for costs of eligible activities with any source of revenue available for use of the brownfield authority under this act. If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of eligible activities and interest thereon, the authority may capture local taxes for the payment of that interest. If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of baseline environmental assessments, due care, and additional response activities and interest thereon included in a work plan approved by the department, the authority may capture taxes levied for school operating purposes and local taxes for the payment of that interest. If an authority reimburses a person or entity under this section for an advance for the payment or reimbursement of the cost of eligible activities that are not baseline environmental assessments, due care, and additional response activities and interest thereon included in a work plan approved by the Michigan economic growth authority, the authority may capture taxes levied for school operating purposes and local taxes for the payment of that interest provided that the Michigan economic growth authority grants an approval for the capture of taxes

levied for school operating purposes to pay such interest. An authority may enter into agreements related to these reimbursements and payments. A reimbursement agreement for these purposes and the obligations under that reimbursement agreement shall not be subject to section 12 or the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

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

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

- (a) For authorities that have 5 or fewer active projects, \$100,000.00.
- (b) For authorities that have 6 or more but fewer than 11 active projects, \$125,000.00.
- (c) For authorities that have 11 or more but fewer than 16 active projects, \$150,000.00.
- (d) For authorities that have 16 or more but fewer than 21 active projects, \$175,000.00.
- (e) For authorities that have 21 or more but fewer than 26 active projects, \$200,000.00.
- (f) For authorities that have 26 or more active projects, \$300,000.00.

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

**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 259, Imd. Eff. Jan. 5, 2004;—Am. 2005, Act 101, Imd. Eff. July 22, 2005;—Am. 2006, Act 32, Imd. Eff. Feb. 23, 2006;—Am. 2006, Act 467, Imd. Eff. Dec. 20, 2006;—Am. 2007, Act 202, Imd. Eff. Dec. 27, 2007.

#### **125.2664 Brownfield plan as public purpose; determination; amendments to plan; validity of procedure, notice, and findings; presumption.**

Sec. 14. (1) Not less than 10 days after notice of the proposed brownfield plan is provided to the taxing jurisdictions, the governing body shall determine whether the plan constitutes a public purpose. If the governing body determines that the plan does not constitute a public purpose, the governing body shall reject the plan. If the governing body determines that the plan constitutes a public purpose, the governing body may then approve or reject the plan, or approve it with modification, by resolution, based on the following considerations:

- (a) Whether the plan meets the requirements of section 13.
- (b) Whether the proposed method of financing the costs of eligible activities is feasible and the authority has the ability to arrange the financing.
- (c) Whether the costs of eligible activities proposed are reasonable and necessary to carry out the purposes of this act.
- (d) Whether the amount of captured taxable value estimated to result from adoption of the plan is reasonable.

(2) Except as provided in this subsection, amendments to an approved brownfield plan must be submitted by the authority to the governing body for approval or rejection following the same notice necessary for approval or rejection of the original plan. Notice is not required for revisions in the estimates of captured taxable value or tax increment revenues.

(3) The procedure, adequacy of notice, and findings with respect to purpose and captured taxable value shall be presumptively valid unless contested in a court of competent jurisdiction within 60 days after adoption of the resolution adopting the brownfield plan. An amendment, adopted by resolution, to a conclusive plan shall likewise be conclusive unless contested within 60 days after adoption of the resolution adopting the amendment. If a resolution adopting an amendment to the plan is contested, the original resolution adopting the plan is not therefore open to contest.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

#### **125.2665 Prohibited conduct; work plan; documents to be submitted for approval; written request pertaining to baseline environmental assessment activities or due care activities; additional response activities; denial of work plan as final decision; appeal; reimbursement of costs to review work plan; report; distribution of remaining funds; use**

**of school operating taxes; extension of review period.**

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 approved by the department after July 24, 1996 and before January 1, 2013. However, except as provided in subdivision (e), an authority may use taxes levied for school operating purposes captured from eligible property without the approval of a work plan by the department for the reasonable costs of 1 or more of the following:

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

(ii) Completing a baseline environmental assessment report.

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

(b) For eligible activities not described in section 13(15), other than activities that are exempt from the work plan approval process under subsection (1)(a), 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 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, except that a municipality that established the authority may use taxes levied for school operating purposes captured from eligible property for response activities associated with a landfill.

(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 for the eligible property, including the actual cost of the review of the work plan under this section.

(2) To seek department approval of a work plan under subsection (1)(a) or (b), 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 part of a work plan, for each eligible activity to be undertaken.

(3) Upon receipt of a request for approval of a work plan under subsection (2) or a portion of a work plan that pertains to only baseline environmental assessment activities or due care activities, or both, the department shall review the work plan according to subsection (4) 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 (4), including, but not limited to, individual activities to be added or deleted from the work plan and revision of costs.

(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 subsection (1)(e), or for any specific activity if the activity is prohibited by subsection (1)(d). The department may also deny any activity in a work plan that does not meet the conditions in subsection (4) only if the department cannot respond under subdivision (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 subdivision (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.

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

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

(b) The due care activities and response activities, other than the activities that are exempt from the work plan approval process under subsection (1)(a), are protective of the public health, safety, and welfare and the environment. The department may approve additional response 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 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) Cost of implementation activities minimally necessary to achieve due care compliance, the incremental cost of all additional response activities relative to the cost of all response activities, and the total cost of all response activities.

(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.

(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, the authority may proceed with the activities as outlined in the work plan as submitted for approval. Except as provided in subsection (6), 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 (3) shall be considered approved for the purposes of subsection (1). Within 45 days after receiving additional information requested from the authority under subsection (3)(c), the department shall review the additional information according to subsection (4) and provide 1 of the responses described in subsection (3) 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 (3)(c), the activity is approved under subsection (1).

(6) 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 subsection (1) for the eligible activities described in the work 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 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 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 activities 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 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 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 to include additional response activities.

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

(10) 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.

(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) 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 tax increment revenues approved by the department in the immediately preceding calendar year, including taxes levied for school operating purposes, to conduct eligible activities.

(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 or reimbursement 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 project of the developer, landowner, or corporate entity that is included in the work plan is financially and 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 tax increment revenues approved by the Michigan economic growth authority in the immediately preceding calendar year, including taxes levied for school operating purposes, to conduct eligible activities.
- (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 or for the payment of interest under section 13 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.
- (21) An authority shall not use taxes levied for school operating purposes captured from eligible property for eligible activities for a qualified facility or for eligible activities for property located in an economic opportunity zone.
- (22) The department's approval of a work plan under subsection (3)(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.
- (23) The applicant 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.

**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.

**125.2665a Retention and payment of taxes levied under state education tax act; conditions; application for approval by authority; information to be included; approval, modification, or denial of application by department of treasury; appropriation and distribution of amount; calculation of aggregate amount; lien; reimbursement calculations; legislative intent; definitions.**

Sec. 15a. (1) If the amount of tax increment revenues lost as a result of the personal property tax exemptions provided by section 1211(4) of the revised school code, 1976 PA 451, MCL 380.1211, section 3 of the state education tax act, 1993 PA 331, MCL 211.903, section 14(4) of 1974 PA 198, MCL 207.564, and section 9k of the general property tax act, 1893 PA 206, MCL 211.9k, will reduce the allowable school tax capture received in a fiscal year, then, notwithstanding any other provision of this act, the authority, with approval of the department of treasury under subsection (3), may request the local tax collecting treasurer to retain and pay to the authority taxes levied within the municipality under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, to be used for the following:

- (a) To repay an advance made not later than 1 year after the effective date of the amendatory act that added this section.
- (b) To repay an obligation issued or incurred not later than 1 year after the effective date of the amendatory act that added this section.

(c) To pay or reimburse a developer or owner of eligible property or a municipality that created the authority for eligible activities pursuant to a development and reimbursement agreement entered into not later than 1 year after the effective date of the amendatory act that added this section.

(d) To pay for eligible activities identified in a brownfield plan, or an amendment to that plan approved by board of the authority not later than 90 days after the effective date of the amendatory act that added this section if the plan contains all of the following and the work plan for the capture of school taxes has been approved within 1 year after the effective date of the amendatory act that added this section:

- (i) A detailed description of the project.
- (ii) A statement of the estimated cost of the project.
- (iii) The specific location of the project.
- (iv) The name of any developer of the project.

(2) Not later than June 15 of 2008 and not later than June 1 of each subsequent year, an authority eligible under subsection (1) to have taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, retained and paid to the authority under this section, shall apply for approval with the department of treasury. The application for approval shall include the following information:

(a) The property tax millage rates expected to be levied by local school districts within the jurisdictional area of the authority for school operating purposes for that fiscal year.

(b) The tax increment revenues estimated to be received by the authority for that fiscal year based upon actual property tax levies of all taxing jurisdictions within the jurisdictional area of the authority.

(c) The tax increment revenues the authority estimates it would have received for that fiscal year if the personal property tax exemptions described in subsection (1) were not in effect.

(d) A list of advances, obligations, development and reimbursement agreements, and projects included in brownfield plans described in subsection (1), and shall separately identify the payments due on each of those advances, obligations, development agreements, and eligible activities in that fiscal year, and the total amount of all the payments due on all of those in that fiscal year.

(e) The amount of money, other than tax increment revenues, estimated to be received in that fiscal year by the authority that is primarily pledged to, or would be used for, the repayment of an advance, the payment of an obligation, the payment of eligible activities pursuant to a development and reimbursement agreement, or the payment of eligible activities identified in a brownfield plan described in subsection (1). That amount shall not include excess tax increment revenues of the authority that are permitted by law to be retained by the authority for purposes that further the development program. However, that amount shall include money to be obtained from sources authorized by law, which law is enacted on or after December 1, 1993, for use by the municipality or authority to finance a development plan.

(f) The amount of a distribution received pursuant to this act for a fiscal year in excess of or less than the distribution that would have been required if calculated upon actual tax increment revenues received for that fiscal year.

(3) Not later than August 15, based on the calculations under subsection (5), the department of treasury shall approve, modify, or deny the application for approval to have taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, retained and paid to the authority under this section. If the application for approval contains the information required under subsection (2)(a) through (f) and appears to be in substantial compliance with the provisions of this section, then the department of treasury shall approve the application. If the application is denied by the department of treasury, then the department of treasury shall provide the opportunity for a representative of the authority to discuss the denial within 21 days after the denial occurs and shall sustain or modify its decision within 30 days after receiving information from the authority. If the application for approval is approved or modified by the department of treasury, the local tax collecting treasurer shall retain and pay to the authority the amount described in subsection (5) as approved by the department of treasury. If the department of treasury denies the authority's application for approval, the local tax collecting treasurer shall not retain or pay to the authority the taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906. An approval by the department does not prohibit a subsequent audit of taxes retained in accordance with the procedures currently authorized by law.

(4) Each year the legislature shall appropriate and distribute an amount sufficient to pay each authority the following:

(a) If the amount to be retained and paid under subsection (3) is less than the amount calculated under subsection (5), the difference between those amounts.

(b) If the application for approval is denied by the department of treasury, an amount verified by the department equal to the amount calculated under subsection (5).

(5) Subject to subsection (6), the aggregate amount under this section shall be the sum of the amounts determined under subdivisions (a) and (b) minus the amount determined under subdivision (c), as follows:

(a) The amount by which the tax increment revenues the authority would have received and retained for the fiscal year, excluding taxes exempt under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff, if the personal property tax exemptions described in subsection (1) were not in effect, exceed the tax increment revenues the authority actually received for the fiscal year.

(b) A shortfall required to be reported under subsection (2)(f) that had not previously increased a distribution.

(c) An excess amount required to be reported under subsection (2)(f) that had not previously decreased a distribution.

(6) A distribution or taxes retained under this section replacing tax increment revenues pledged by an authority or a municipality are subject to any lien of the pledge described in subsection (1), whether or not there has been physical delivery of the distribution.

(7) Obligations for which distributions are made under this section are not a debt or liability of this state; do not create or constitute an indebtedness, liability, or obligation of this state; and are not and do not constitute a pledge of the faith and credit of this state.

(8) Not later than September 15 of each year, the authority shall provide a copy of the application for approval approved by the department of treasury to the local tax collecting treasurer and provide the amount of the taxes retained and paid to the authority under subsection (5).

(9) Calculations of amounts retained and paid and appropriations to be distributed under this section shall be made on the basis of each development area of the authority.

(10) The state tax commission may provide that the calculations under this section and the calculation of allowable capture of school taxes shall be made for each calendar year's tax increment revenues using a 12-month debt payment period used by the authority and approved by the state tax commission.

(11) It is the intent of the legislature that, to the extent that the total amount of taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, that are allowed to be retained under this section and section 11b of the local development financing act, 1986 PA 281, MCL 125.2161b, section 12b of the tax increment financing act, 1980 PA 450, MCL 125.1812b, and section 13c of 1975 PA 197, MCL 125.1663c, exceeds the difference of the total school aid fund revenue for the tax year minus the estimated amount of revenue the school aid fund would have received for the tax year had the tax exemptions described in subsection (1) and the earmark created by section 515 of the Michigan business tax act, 2007 PA 36, MCL 208.1515, not taken effect, the general fund shall reimburse the school aid fund the difference.

(12) As used in this section:

(a) "Advance" means that term as defined in section 1 of 1975 PA 197, MCL 125.1651.

(b) "Obligation" means that term as defined in section 1 of 1975 PA 197, MCL 125.1651.

**History:** Add. 2008, Act 154, Imd. Eff. June 5, 2008.

**125.2666 Tax increment revenues; transmission to authority; expenditure; reversion of surplus funds; abolishment of plan; financial status report; collection of financial reports by state tax commission; performance postaudit report by auditor general.**

Sec. 16. (1) The municipal and county treasurers shall transmit tax increment revenues to the authority not more than 30 days after tax increment revenues are collected.

(2) The authority shall expend the tax increment revenues received only in accordance with the brownfield plan. All surplus funds not deposited in the local site remediation revolving fund of the authority under section 13(5) shall revert proportionately to the respective taxing bodies, except as provided in section 15(20). The governing body may abolish the plan when it finds that the purposes for which the plan was established are accomplished. However, the plan shall not be abolished until the principal and interest on bonds issued under section 17 and all other obligations to which the tax increment revenues are pledged have been paid or funds sufficient to make the payment have been segregated.

(3) The authority shall submit annually to the governing body and the state tax commission a financial report on the status of the activities of the authority. The report shall include all of the following:

(a) The amount and source of tax increment revenues received.

(b) The amount and purpose of expenditures of tax increment revenues.

(c) The amount of principal and interest on all outstanding indebtedness.

(d) The initial taxable value of all eligible property subject to the brownfield plan.

(e) The captured taxable value realized by the authority.

(f) Information concerning any transfer of ownership of or interest in each eligible property.

(g) The amount of tax increment revenues attributable to taxes levied for school operating purposes used for activities described in section 15(1)(a) and section 2(m)(vii).

(h) All additional information that the governing body or the state tax commission considers necessary.

(4) The state tax commission shall collect the financial reports submitted under subsection (3), compile and analyze the information contained in those reports, and submit annually a report based on that information to all of the following standing committees of the legislature:

(a) In the house of representatives, the committees responsible for natural resource management, conservation, environmental protection, commerce, economic development, and taxation.

(b) In the senate, the committees responsible for natural resource management, conservation, environmental protection, economic development, and taxation.

(5) In addition to any other requirements under this act, not less than once every 3 years beginning not later than June 30, 2008, the auditor general shall conduct and report a performance postaudit on the effectiveness, efficiency, and economy of the program established under this act. As part of the performance postaudit, the auditor general shall assess the extent to which the implementation of the program by the department and the Michigan economic growth authority facilitate and affect the redevelopment or reuse of eligible property and identify any factors that inhibit the program's effectiveness. The performance postaudit shall also assess the extent to which the interpretation of statutory language, the development of guidance or administrative rules, and the implementation of the program by the department and the Michigan economic growth authority is consistent with the fundamental objective of facilitating and supporting timely and efficient brownfield redevelopment of eligible properties. Copies of the performance postaudits shall be provided to the governor, the clerk of the house of representatives, the secretary of the senate, and the chairpersons of the senate and house of representatives standing committees on commerce and economic development.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000;—Am. 2007, Act 203, Imd. Eff. Dec. 27, 2007.

### **125.2667 Authorization, issuance, and sale of tax increment bonds and notes.**

Sec. 17. (1) By resolution of its board, the authority may authorize, issue, and sell its tax increment bonds and notes, subject to the limitations set forth in this section, to finance the purposes of a brownfield plan. The bonds or notes shall be payable in the manner and upon the terms and conditions determined, or within the parameters specified, by the authority in the resolution authorizing issuance of the bonds or notes. The resolution authorizing the bonds shall create a lien on the tax increment revenues and other revenues pledged by the resolution that shall be a statutory lien and shall be a first lien subject only to liens previously created. The resolution may provide the terms upon which additional bonds or notes may be issued of equal standing and parity of lien as to the tax increment revenues and other revenues pledged under the resolution.

(2) The municipality, by majority vote of the members of its governing body, may make a limited tax pledge to support the authority's tax increment bonds or notes or, if authorized by the voters of the municipality, may pledge its unlimited tax full faith and credit for the payment of the principal of and interest on the authority's tax increment bonds or notes.

(3) The bonds or notes issued under this section shall be secured by 1 or more sources of revenue identified in section 7 as sources of financing of activities of the authority, as provided by resolution of the authority.

(4) The bonds and notes of the authority may be invested in by the state treasurer and all other public officers, state agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for 1 or more of the purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is supplemental and in addition to all other authority granted by law.

(5) The bonds and notes issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, except section 503 of the revised municipal finance act, 2001 PA 34, MCL 141.2503.

(6) For bonds issued under this act, the first principal amount maturity date or mandatory redemption date shall be not later than 5 years after the date of issuance and some principal amount shall mature or be subject to mandatory redemption in each subsequent year of the term of the bond.

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2002, Act 413, Imd. Eff. June 3, 2002.

**Compiler's note:** The following communication was received:

“September 12, 1999

The Honorable John Engler

Capitol Building

Lansing, Michigan

Subject: PA 381 of 1996

Dear Governor Engler:

A review of the Senate and House Journals has revealed an error in Enrolled Senate Bill 923, which was filed with the Secretary of State on July 24, 1996, and assigned Public Act No. 381 of 1996. The bill presented to the Governor on July 17, 1996, did not accurately

reflect what was agreed to by both houses of the Legislature. Specifically, Section 17, subsection (1), the third sentence incorrectly stated:  
'The terms of the municipal finance act, Act No. 202 of the Public Acts of 1943, apply to bonds issued under this section.'

The sentence agreed to by both houses is:

'Except for the requirement of the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, that the authority receive the approval or an exception from approval from the department of treasury prior to the issuance of bonds under this subsection, the terms of Act No. 202 of the Public Acts of 1943 shall not apply to bonds issued under this section.'

Therefore, we are presenting a correct Enrolled Senate Bill 923 for your signature and filing with the Secretary of State. Upon filing, the defective Enrolled Senate Bill 923 will be replaced with the correct Enrolled Senate Bill 923 and assigned the same public act number. The effective date of the Public Act No. 381 of 1996 will be the date the correct bill is filed.

This procedure ensures the integrity of the process while providing notification to the public. We apologize for any inconvenience this may have caused you or the citizens of the state of Michigan. If you have any questions, please feel free to contact us.

Sincerely,

Carol Morey Viventi Melvin J. DeStigter  
Secretary of the Senate Clerk of the House of Representatives  
cc: Candice S. Miller, Secretary of State"

### **125.2668 Operating budget.**

Sec. 18. (1) The authority shall prepare and approve a budget for the operation of the authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. Funds of a municipality shall not be included in the budget of the authority except those funds authorized in this act or by the governing body of the municipality.

(2) The governing body of a municipality may assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds of the authority, other than those committed for designated purposes, which cost shall be paid annually by the authority under an appropriate item in its budget.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2669 Dissolution of authority; distribution of tax revenues and interest.**

Sec. 19. (1) An authority that completes the purposes for which it was organized shall be dissolved by resolution of the governing body. Except as provided in subsection (2), the property and assets of the authority remaining after the satisfaction of the obligations of the authority shall belong to the municipality or to an agency or instrumentality designated by resolution of the municipality.

(2) Tax increment revenues and the interest earned on tax increment revenues shall be distributed as provided under section 16(2).

**History:** 1996, Act 381, Eff. Sept. 16, 1996;—Am. 2000, Act 145, Imd. Eff. June 6, 2000.

### **125.2670 Enforcement proceedings.**

Sec. 20. The state tax commission may institute proceedings to compel enforcement of the requirements of this act.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2671 Taxes levied before December 31, 1996.**

Sec. 21. An authority shall not capture tax increment revenues from taxes levied before December 31, 1996.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.

### **125.2672 Conditional effective date.**

Sec. 22. This act shall not take effect unless Senate Bill No. 919 of the 88th Legislature is enacted into law.

**History:** 1996, Act 381, Eff. Sept. 16, 1996.



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