

HOUSE BILL No. 4698

May 2, 2001, Introduced by Rep. Allen and referred to the Committee on Commerce.

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending section 15 (MCL 125.2665), as amended by 2000
PA 145.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) For eligible activities not described in section 13(15),
4 use taxes levied for school operating purposes captured from eli-
5 gible property unless the eligible activities to be conducted on
6 the eligible property are eligible activities under part 201 of
7 the natural resources and environmental protection act, 1994
8 PA 451, MCL 324.20101 to 324.20142, consistent with a work plan
9 or remedial action plan approved by the department after July 24,
10 1996 and before January 1, 2003.

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

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

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

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

22 (f) Use taxes captured from eligible property to pay for
23 administrative and operating activities of the authority or the
24 municipality on behalf of the authority except for costs
25 described in section 13(16) and for the reasonable costs for pre-
26 paring a work plan or remedial action plan for the eligible

1 property, including the actual cost of the review of the work
2 plan or remedial action plan under this section.

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

6 (a) A copy of the brownfield plan.

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

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

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

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

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

24 (3) Upon receipt of a request for approval of a work plan or
25 remedial action plan under subsection (2) that pertains to base-
26 line environmental assessment activities or due care activities,
27 or both, or a portion of a work plan or remedial action plan that

1 pertains to only baseline environmental assessment activities or
2 due care activities, or both, the department shall provide 1 of
3 the following written responses to the requesting authority
4 within 60 days:

5 (a) An unconditional approval.

6 (b) A conditional approval that delineates specific neces-
7 sary modifications to the work plan or remedial action plan,
8 including, but not limited to, individual activities to be added
9 or deleted from the work plan or remedial action plan and revi-
10 sion of costs.

11 (c) If the work plan or remedial action plan lacks suffi-
12 cient information for the department to respond under
13 subdivision (a) or (b), a letter stating with specificity the
14 necessary additions or changes to the work plan or remedial
15 action plan to be submitted before a plan will be considered by
16 the department.

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

19 (a) Whether the individual activities included in the work
20 plan or remedial action plan are sufficient to complete the eli-
21 gible activity.

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

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

1 (5) If the department fails to provide a written response
2 under subsection (3) within 60 days after receipt of a request
3 for approval of a work plan or remedial action plan that pertains
4 to baseline environmental assessment activities or due care
5 activities, or both, the authority may proceed with the baseline
6 environmental assessment activities or due care activities, or
7 both, as outlined in the work plan or remedial action plan as
8 submitted for approval. Except as provided in subsection (6),
9 baseline environmental assessment activities or due care activi-
10 ties, or both, conducted pursuant to a work plan or remedial
11 action plan that was submitted to the department for approval but
12 for which the department failed to provide a written response
13 under subsection (3) shall be considered approved for the pur-
14 poses of subsection (1).

15 (6) The department may issue a written response to a work
16 plan or remedial action plan that pertains to baseline environ-
17 mental assessment activities or due care activities, or both,
18 more than 60 days but less than 6 months after receipt of a
19 request for approval. If the department issues a written
20 response under this subsection, the authority is not required to
21 conduct individual activities that are in addition to the indi-
22 vidual activities included in the work plan or remedial action
23 plan as it was submitted for approval and failure to conduct
24 these additional activities shall not affect the authority's
25 ability to capture taxes under subsection (1) for the eligible
26 activities described in the work plan or remedial action plan
27 initially submitted under subsection (5). In addition, at the

1 option of the authority, these additional individual activities
2 shall be considered part of the work plan or remedial action plan
3 of the authority and approved for purposes of subsection (1).
4 However, any response by the department under this subsection
5 that identifies additional individual activities that must be
6 carried out to satisfy the baseline environmental assessment or
7 due care requirements, or both, of part 201 of the natural
8 resources and environmental protection act, 1994 PA 451,
9 MCL 324.20101 to 324.20142, must be satisfactorily completed for
10 the baseline environmental assessment or due care activities, or
11 both, to be considered acceptable for the purposes of compliance
12 with part 201 of the natural resources and environmental protec-
13 tion act, 1994 PA 451, MCL 324.20101 to 324.20142.

14 (7) If the department issues a written response under
15 subsection (6) to a work plan or remedial action plan that per-
16 tains to baseline environmental assessment activities or due care
17 activities, or both, and if the department's written response
18 modifies an individual activity proposed by the work plan or
19 remedial action plan of the authority in a manner that reduces or
20 eliminates a proposed response activity, the authority must com-
21 plete those individual activities included in the baseline envi-
22 ronmental assessment or due care activities, or both, in accord-
23 ance with the department's response in order for that portion of
24 the work plan or remedial action plan to be considered approved
25 for purposes of subsection (1), unless 1 or more of the following
26 conditions apply:

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

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

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

14 (9) The department may reject the portion of a work plan or
15 remedial action plan that includes additional response activities
16 and may consider the level of risk reduction that will be accom-
17 plished by the additional response activities in determining
18 whether to approve or reject the work plan or remedial action
19 plan or a portion of a plan.

20 (10) The department's approval or rejection of a work plan
21 under subsection (1)(a) or (b) or remedial action plan for addi-
22 tional response activities is final.

23 (11) The authority shall reimburse the department for the
24 actual cost incurred by the department or a contractor of the
25 department to review a work plan under subsection (1)(a) or (b)
26 or remedial action plan under this section. Funds paid to the
27 department under this subsection shall be deposited in the cost

1 recovery subaccount of the cleanup and redevelopment fund created
2 under section 20108 of the natural resources and environmental
3 protection act, 1994 PA 451, MCL 324.20108.

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

7 (a) A compilation and summary of all the information submit-
8 ted under subsection (2).

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

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

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

20 (a) A copy of the brownfield plan.

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

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

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

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

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

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

13 (14) Upon receipt of a request for approval of a work plan,
14 the Michigan economic growth authority shall provide 1 of the
15 following written responses to the requesting authority within
16 ~~60~~ 90 days:

17 (a) An unconditional approval.

18 (b) A conditional approval that delineates specific neces-
19 sary modifications to the work plan, including, but not limited
20 to, individual activities to be added or deleted from the work
21 plan and revision of costs.

22 ~~(c) If the work plan lacks sufficient information for the~~
23 ~~Michigan economic growth authority to respond under~~
24 ~~subdivision (a) or (b), a letter stating with specificity the~~
25 ~~necessary additions or changes to the work plan to be submitted~~
26 ~~before a plan will be considered by the Michigan economic growth~~
27 ~~authority. A DENIAL.~~

1 (15) In its review of a work plan under subsection (1)(c) or
2 section 13(15), the Michigan economic growth authority shall con-
3 sider ~~all of~~ the following CRITERIA TO THE EXTENT REASONABLY
4 APPLICABLE TO THE TYPE OF ACTIVITIES PROPOSED AS PART OF THAT
5 WORK PLAN WHEN APPROVING OR DENYING A WORK PLAN:

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

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

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

12 (D) THE OVERALL BENEFIT TO THE PUBLIC.

13 (E) THE EXTENT OF REUSE OF VACANT BUILDINGS AND REDEVELOP-
14 MENT OF BLIGHTED PROPERTY.

15 (F) CREATION OF JOBS.

16 (G) WHETHER THE ELIGIBLE PROPERTY IS IN AN AREA OF HIGH
17 UNEMPLOYMENT.

18 (H) THE LEVEL AND EXTENT OF CONTAMINATION ALLEVIATED BY OR
19 IN CONNECTION WITH THE ELIGIBLE ACTIVITIES.

20 (I) THE LEVEL OF PRIVATE SECTOR CONTRIBUTION.

21 (J) THE COST GAP THAT EXISTS BETWEEN THE SITE AND A SIMILAR
22 GREENFIELD SITE AS DETERMINED BY THE MICHIGAN ECONOMIC GROWTH
23 AUTHORITY.

24 (K) IF THE DEVELOPER OR PROJECTED OCCUPANT OF THE NEW DEVEL-
25 OPMENT IS MOVING FROM ANOTHER LOCATION IN THIS STATE, WHETHER THE
26 MOVE WILL CREATE A BROWNFIELD.

1 (1) WHETHER THE FINANCIAL STATEMENTS OF THE DEVELOPER,
2 LANDOWNER, OR CORPORATE ENTITY INDICATE THAT THE DEVELOPER,
3 LANDOWNER, OR CORPORATE ENTITY IS FINANCIALLY SOUND AND THAT THE
4 PROJECT OF THE DEVELOPER, LANDOWNER, OR CORPORATE ENTITY THAT IS
5 INCLUDED IN THE WORKPLAN IS ECONOMICALLY SOUND.

6 (M) OTHER STATE AND LOCAL INCENTIVES AVAILABLE TO THE DEVEL-
7 OPER, LANDOWNER, OR CORPORATE ENTITY FOR THE PROJECT OF THE
8 DEVELOPER, LANDOWNER, OR CORPORATE ENTITY THAT IS INCLUDED IN THE
9 WORKPLAN.

10 (N) ANY OTHER CRITERIA THAT THE MICHIGAN ECONOMIC GROWTH
11 AUTHORITY CONSIDERS APPROPRIATE FOR THE DETERMINATION OF
12 ELIGIBILITY.

13 (16) If the Michigan economic growth authority fails to pro-
14 vide a written response under subsection (14) within 90 days
15 after receipt of a request for approval of a work plan, the eli-
16 gible activities shall be considered approved and the authority
17 may proceed with the eligible activities described in
18 section 13(15) as outlined in the work plan as submitted for
19 approval.

20 (17) The Michigan economic growth authority's approval OR
21 DENIAL of a work plan under section 13(15) is final. IF A WORK
22 PLAN IS DENIED UNDER SUBSECTION (14), THE WORK PLAN MAY BE
23 RESUBMITTED.

24 (18) The authority shall reimburse the Michigan economic
25 growth authority for the actual cost incurred by the Michigan
26 economic growth authority or a contractor of the Michigan

1 economic growth authority to review a work plan under this
2 section.

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

6 (a) A compilation and summary of all the information submit-
7 ted under subsection (13).

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

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

15 (20) All taxes levied for school operating purposes that are
16 not used for eligible activities consistent with a work plan
17 approved by the department or the Michigan economic growth
18 authority and that are not deposited in a local site remediation
19 revolving fund shall be distributed proportionately between the
20 local school district and the school aid fund. THE MICHIGAN ECO-
21 NOMIC GROWTH AUTHORITY SHALL NOT APPROVE A TOTAL OF MORE THAN 25
22 WORK PLANS PER YEAR UNDER THIS SECTION.

23 (21) FOR ELIGIBLE ACTIVITIES DESCRIBED IN SECTION 13(15)
24 CONDUCTED AFTER DECEMBER 31, 2000 AND BEFORE APPROVAL OF A WORK-
25 PLAN, AN AUTHORITY MAY USE TAXES LEVIED FOR SCHOOL OPERATING PUR-
26 POSES CAPTURED FROM ELIGIBLE PROPERTY IF THE WORKPLAN WAS
27 APPROVED BEFORE JULY 1, 2001.