

# HOUSE BILL No. 5781

February 21, 2008, Introduced by Reps. Meisner, Miller, LeBlanc, Constan, McDowell, Byrum, Byrnes, Wojno, Lemmons, Scott, Ebli, Donigan, Vagnozzi, Young, Simpson, Hopgood, Spade, Gonzales, Sheltroun, Brown, Espinoza, Bennett, Mayes, Valentine, Polidori, Hammon, Dean, Cheeks, Alma Smith, Hammel, Melton, Coulouris, Meadows, Bauer, Griffin, Kathleen Law and Angerer and referred to the Committee on Labor.

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

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2       (a) For eligible activities not described in section 13(15),  
3 use taxes levied for school operating purposes captured from  
4 eligible property unless the eligible activities to be conducted on  
5 the eligible property are eligible activities under part 201 of the  
6 natural resources and environmental protection act, 1994 PA 451,  
7 MCL 324.20101 to 324.20142, consistent with a work plan approved by  
8 the department after July 24, 1996 and before January 1, 2013.  
9 However, except as provided in subdivision (e), an authority may

1 use taxes levied for school operating purposes captured from  
2 eligible property without the approval of a work plan by the  
3 department for the reasonable costs of 1 or more of the following:

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

8 (ii) Completing a baseline environmental assessment report.

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

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

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

27 (d) Use taxes captured from eligible property to pay for

1 eligible activities conducted before approval of the brownfield  
2 plan except for costs described in section 13(16).

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

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

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

19 (a) A copy of the brownfield plan.

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

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

1 and environmental protection act, 1994 PA 451, MCL 324.20101.

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

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

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

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

14 (a) An unconditional approval.

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

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

26 (d) A denial if the property is not an eligible property under  
27 this act, if the work plan contemplates the use of taxes levied for

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

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

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

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

1 review of a work plan that includes activities that are more  
2 protective of the public health, safety, and welfare and the  
3 environment, the department's considerations may include, but are  
4 not limited to, all of the following:

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

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

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

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

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

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

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

1 protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

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

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

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

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

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

25 (10) The department's approval or denial of a work plan  
26 submitted under this section constitutes a final decision in regard  
27 to the use of taxes levied for school operating purposes but does



1 not restrict an authority's use of tax increment revenues  
2 attributable to local taxes to pay for eligible activities under a  
3 brownfield plan. If a person is aggrieved by the final decision,  
4 the person may appeal under section 631 of the revised judicature  
5 act of 1961, 1961 PA 236, MCL 600.631.

6 (11) The authority shall reimburse the department for the  
7 actual cost incurred by the department or a contractor of the  
8 department to review a work plan under subsection (1)(a) or (b)  
9 under this section. Funds paid to the department under this  
10 subsection shall be deposited in the cost recovery subaccount of  
11 the cleanup and redevelopment fund created under section 20108 of  
12 the natural resources and environmental protection act, 1994 PA  
13 451, MCL 324.20108.

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

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

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

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

26 (a) A copy of the brownfield plan.

27 (b) Current ownership information for each eligible property

1 and a summary of available information on proposed future  
2 ownership, including the amount of any delinquent taxes, interest,  
3 and penalties that may be due.

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

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

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

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

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

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

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

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

1 (c) A denial and a letter stating with specificity the reason  
2 for the denial. If a work plan is denied under this subsection, the  
3 work plan may be subsequently resubmitted.

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

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

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

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

15 (d) The overall benefit to the public.

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

18 (f) Creation of jobs.

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

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

23 (i) The level of private sector contribution.

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

27 (k) If the developer or projected occupant of the new

1 development is moving from another location in this state, whether  
2 the move will create a brownfield.

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

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

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

13 (16) If the Michigan economic growth authority fails to  
14 provide a written response under subsection (14) within 65 days  
15 after receipt of a request for approval of a work plan, the  
16 eligible activities shall be considered approved and the authority  
17 may proceed with the eligible activities described in section  
18 13(15) as outlined in the work plan as submitted for approval.

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

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

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

1 (a) A compilation and summary of all the information submitted  
2 under subsection (13).

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

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

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

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

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

26 **(24) BEGINNING JULY 1, 2008, THE AUTHORITY SHALL NOT USE TAX**  
27 **INCREMENT REVENUES TO PAY OR REIMBURSE A BUSINESS ENTITY FOR**

1 ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES UNLESS THE BUSINESS  
2 ENTITY STATES, IN WRITING, THAT THE BUSINESS ENTITY WILL NOT HIRE  
3 OR CONTRACT WITH ANY BUSINESS ENTITY THAT HIRES AN INDIVIDUAL WHO  
4 IS NOT AUTHORIZED UNDER FEDERAL LAW TO WORK IN THE UNITED STATES  
5 AND THAT THE ELIGIBLE BUSINESS WILL COMPLY IN GOOD FAITH WITH THE  
6 VERIFICATION REQUIREMENTS IN 8 USC 1324A TO ENSURE THAT ALL  
7 EMPLOYEES HIRED BY THE ELIGIBLE BUSINESS OR EMPLOYEES OF ANY  
8 CONTRACTORS HIRED BY THE ELIGIBLE BUSINESS ARE AUTHORIZED TO WORK  
9 IN THE UNITED STATES.

10 (25) BEGINNING JULY 1, 2008, THE AUTHORITY SHALL NOT USE TAX  
11 INCREMENT REVENUES TO PAY OR REIMBURSE A BUSINESS ENTITY FOR  
12 ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES UNLESS THE BUSINESS  
13 ENTITY STATES, IN WRITING, THAT THE BUSINESS ENTITY WILL DO ALL OF  
14 THE FOLLOWING:

15 (A) HIRE ONLY RESIDENTS OF THIS STATE TO PERFORM ELIGIBLE  
16 ACTIVITIES ON ELIGIBLE PROPERTIES UNDER THIS ACT UNLESS THE  
17 AUTHORITY DETERMINES THAT THE ELIGIBLE ACTIVITIES CANNOT BE  
18 PERFORMED BY USING ONLY RESIDENTS OF THIS STATE.

19 (B) CONTRACT WITH BUSINESSES THAT AGREE TO HIRE ONLY RESIDENTS  
20 OF THIS STATE TO PERFORM ELIGIBLE ACTIVITIES ON ELIGIBLE PROPERTIES  
21 UNDER THIS ACT UNLESS THE AUTHORITY DETERMINES THAT THE ELIGIBLE  
22 ACTIVITIES CANNOT BE PERFORMED BY USING ONLY RESIDENTS OF THIS  
23 STATE.

24 (26) BEGINNING JULY 1, 2008, THE WRITTEN AGREEMENT DESCRIBED  
25 IN SUBSECTIONS (24) AND (25) SHALL ALSO CONTAIN A REMEDY PROVISION  
26 THAT PROVIDES FOR ALL OF, BUT NOT LIMITED TO, A REQUIREMENT THAT  
27 THE BUSINESS ENTITY MAY BE REQUIRED TO REPAY SOME OR ALL OF THE

1 PAYMENTS OR REIMBURSEMENTS RECEIVED UNDER THIS ACT IF THE ELIGIBLE  
2 BUSINESS IS DETERMINED TO BE IN VIOLATION OF THE PROVISIONS OF  
3 SUBSECTION (25) OR (26), AS DETERMINED BY THE AUTHORITY.

4 (27) EACH AUTHORITY SHALL REPORT TO THE BOARD OF THE MICHIGAN  
5 STRATEGIC FUND AND ON OCTOBER 1 ON THE ACTIVITIES OF THE AUTHORITY.  
6 THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE  
7 FOLLOWING:

8 (A) THE NUMBER OF MICHIGAN RESIDENTS EMPLOYED IN NEW JOBS IN  
9 THE IMMEDIATELY PRECEDING YEAR IN WHICH SUBSECTIONS (24) AND (25)  
10 APPLY.

11 (B) THE TOTAL NUMBER OF NEW JOBS CREATED IN ALL JOBS IN THE  
12 IMMEDIATELY PRECEDING YEAR IN WHICH SUBSECTIONS (24) AND (25)  
13 APPLY.

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