

HOUSE BILL No. 5338

September 10, 2009, Introduced by Reps. McMillin, Haines, Kowall, DeShazor, Tyler and Meltzer and referred to the Committee on Appropriations.

A bill to amend 1996 PA 381, entitled
"Brownfield redevelopment financing act,"
by amending section 2 (MCL 125.2652), as amended by 2007 PA 204.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

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

8 (c) "Baseline environmental assessment" means that term as
9 defined in section 20101 of the natural resources and environmental

1 protection act, 1994 PA 451, MCL 324.20101.

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

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

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

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

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

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

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

25 (vi) Is property owned or under the control of a land bank fast
26 track authority under the land bank fast track act, whether or not
27 located within a qualified local governmental unit. Property

1 included within a brownfield plan prior to the date it meets the
2 requirements of this subdivision to be eligible property shall be
3 considered to become eligible property as of the date the property
4 is determined to have been or becomes qualified as, or is combined
5 with, other eligible property. The sale, lease, or transfer of the
6 property by a land bank fast track authority after the property's
7 inclusion in a brownfield plan shall not result in the loss to the
8 property of the status as blighted property for purposes of this
9 act.

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

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

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

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

22 (i) "Chief executive officer" means the mayor of a city, the
23 village manager of a village, the township supervisor of a
24 township, or the county executive of a county or, if the county
25 does not have an elected county executive, the chairperson of the
26 county board of commissioners.

27 (j) "Department" means the department of ~~environmental quality~~

1 **NATURAL RESOURCES.**

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

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

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

10 (ii) That contain a manufacturing facility that consists of
11 500,000 or more square feet.

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

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

17 (i) Baseline environmental assessment activities.

18 (ii) Due care activities.

19 (iii) Additional response activities.

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

1 (A) Infrastructure improvements that directly benefit eligible
2 property.

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

6 (C) Lead or asbestos abatement.

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

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

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

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

22 (A) Infrastructure improvements that directly benefit eligible
23 property.

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

27 (C) Lead or asbestos abatement.

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

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

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

11 (B) Lead or asbestos abatement.

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

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

23 (A) Infrastructure improvements that directly benefit the
24 property.

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

1 (C) Lead or asbestos abatement.

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

5 (x) For eligible activities on eligible property that is
6 located north of the 45th parallel, that is a facility,
7 functionally obsolete, or blighted, and the owner or operator of
8 which makes new capital investment of \$250,000,000.00 or more in
9 this state, the following additional activities:

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

13 (B) Lead or asbestos abatement.

14 (xi) Reasonable costs of environmental insurance.

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

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

27 (ii) Is not in a qualified local governmental unit and is a

1 facility, and includes parcels that are adjacent or contiguous to
2 that property if the development of the adjacent and contiguous
3 parcels is estimated to increase the captured taxable value of that
4 property.

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

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

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

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

19 (vii) Is located north of the 45th parallel, is a facility,
20 functionally obsolete, or blighted, and the owner or operator makes
21 new capital investment of \$250,000,000.00 or more in this state.
22 Eligible property does not include qualified agricultural property
23 exempt under section 7ee of the general property tax act, 1893 PA
24 206, MCL 211.7ee, from the tax levied by a local school district
25 for school operating purposes to the extent provided under section
26 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

27 (o) "Environmental insurance" means liability insurance for

1 environmental contamination and cleanup that is not otherwise
2 required by state or federal law.

3 (p) "Facility" means that term as defined in section 20101 of
4 the natural resources and environmental protection act, 1994 PA
5 451, MCL 324.20101.

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

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

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

16 (t) "Infrastructure improvements" means a street, road,
17 sidewalk, parking facility, pedestrian mall, alley, bridge, sewer,
18 sewage treatment plant, property designed to reduce, eliminate, or
19 prevent the spread of identified soil or groundwater contamination,
20 drainage system, waterway, waterline, water storage facility, rail
21 line, utility line or pipeline, or other similar or related
22 structure or improvement, together with necessary easements for the
23 structure or improvement, owned or used by a public agency or
24 functionally connected to similar or supporting property owned or
25 used by a public agency, or designed and dedicated to use by, for
26 the benefit of, or for the protection of the health, welfare, or
27 safety of the public generally, whether or not used by a single

1 business entity, provided that any road, street, or bridge shall be
2 continuously open to public access and that other property shall be
3 located in public easements or rights-of-way and sized to
4 accommodate reasonably foreseeable development of eligible property
5 in adjoining areas.

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

21 (v) "Land bank fast track authority" means an authority
22 created under the land bank fast track act, 2003 PA 258, MCL
23 124.751 to 124.774.

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

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

27 (i) A city.

1 (ii) A village.

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

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

7 (v) A county.

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

10 (i) An ownership interest in the property.

11 (ii) A tax lien on the property.

12 (iii) A tax deed to the property.

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

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

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

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

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

25 (bb) "Qualified taxpayer" means that term as defined in ~~former~~
26 sections 38d and 38g of the **FORMER** single business tax act, 1975 PA
27 228, or section 437 of the Michigan business tax act, 2007 PA 36,

1 MCL 208.1437.

2 (cc) "Response activity" means that term as defined in section
3 20101 of the natural resources and environmental protection act,
4 1994 PA 451, MCL 324.20101.

5 (dd) "Specific taxes" means a tax levied under 1974 PA 198,
6 MCL 207.551 to 207.572; the commercial redevelopment act, 1978 PA
7 255, MCL 207.651 to 207.668; the enterprise zone act, 1985 PA 224,
8 MCL 125.2101 to 125.2123; 1953 PA 189, MCL 211.181 to 211.182; the
9 technology park development act, 1984 PA 385, MCL 207.701 to
10 207.718; the obsolete property rehabilitation act, 2000 PA 146, MCL
11 125.2781 to 125.2797; the neighborhood enterprise zone act, 1992 PA
12 147, MCL 207.771 to 207.786; the commercial rehabilitation act,
13 2005 PA 210, MCL 207.841 to 207.856; or that portion of the tax
14 levied under the tax reverted clean title act, 2003 PA 260, MCL
15 211.1021 to 211.1026, that is not required to be distributed to a
16 land bank fast track authority.

17 (ee) "Tax increment revenues" means the amount of ad valorem
18 property taxes and specific taxes attributable to the application
19 of the levy of all taxing jurisdictions upon the captured taxable
20 value of each parcel of eligible property subject to a brownfield
21 plan and personal property located on that property. Tax increment
22 revenues exclude ad valorem property taxes specifically levied for
23 the payment of principal of and interest on either obligations
24 approved by the electors or obligations pledging the unlimited
25 taxing power of the local governmental unit, and specific taxes
26 attributable to those ad valorem property taxes. Tax increment
27 revenues attributable to eligible property also exclude the amount

1 of ad valorem property taxes or specific taxes captured by a
2 downtown development authority, tax increment finance authority, or
3 local development finance authority if those taxes were captured by
4 these other authorities on the date that eligible property became
5 subject to a brownfield plan under this act.

6 (ff) "Taxable value" means the value determined under section
7 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

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

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

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

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

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

19 (ii) "Zone" means, for an authority established before June 6,
20 2000, a brownfield redevelopment zone designated under this act.

21 Enacting section 1. This amendatory act does not take effect
22 unless Senate Bill No. 807 or House Bill No. ____ (request no.
23 04046'09) of the 95th Legislature is enacted into law.