

BROWNFIELD REDEVELOPMENT FINANCING ACT (EXCERPT)
Act 381 of 1996

***** 125.2663 THIS SECTION IS AMENDED EFFECTIVE APRIL 5, 2017: See 125.2663.amended *****

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(ii), 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 beginning date and duration of capture of tax increment revenues for each eligible property as determined under subsection (22).

(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, combined brownfield plan, or a work plan for the eligible property. 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 combined brownfield plan or work plan. 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(n)(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 strategic fund 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.

(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 combined brownfield plan or a work plan by the department under section 15(1)(a) and the Michigan strategic fund, 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 combined brownfield plan or a work plan by the Michigan strategic fund 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 strategic fund. 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 apply except as follows:

(a) The limitations of section 15(1) upon use of tax increment revenues by an authority shall not apply to the following costs and expenses:

(i) 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:

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

(B) 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.

(ii) Reasonable costs of preparing a work plan for which tax increment revenues may be used under section 13(3).

(b) The limitations of section 15(1)(a), (b), and (c) upon the use of taxes levied for school operating purposes by an authority shall not apply to the costs of 1 or more of the following incurred by a person other than the authority:

(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.

(c) The limitations of section 15(1)(b) upon use of tax increment revenues by an authority shall not apply to the following costs and expenses:

(i) For tax increment revenues attributable to taxes levied for school operating purposes, eligible activities associated with unanticipated response activities conducted on eligible property if that eligible property has been included in a brownfield plan, if the department is consulted on the unanticipated response activities before they are conducted and the costs of those activities are subsequently included in a brownfield plan approved by the authority and a combined brownfield plan or a work plan approved by the department.

(ii) For tax increment revenues attributable to local taxes, any eligible activities conducted on eligible property or prospective eligible properties prior to approval of the brownfield plan, if those costs and the eligible property are subsequently included in a brownfield plan approved by the authority.

(iii) For tax increment revenues attributable to taxes levied for school operating purposes, eligible activities described in section 13(15) and conducted on eligible property or prospective eligible properties prior to approval of the brownfield plan, if those costs and the eligible property are subsequently included in a brownfield plan approved by the authority and a combined brownfield plan or work plan approved by the Michigan strategic fund.

(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 combined brownfield plan or 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 combined brownfield plan or a work plan approved by the Michigan strategic fund, the authority may capture taxes levied for school operating purposes and local taxes for the payment of that interest provided that the Michigan strategic fund 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 combined brownfield plan or a work plan by the Michigan strategic fund in the manner required under section 15(14) to (16) or (25) 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(n)(iv)(E) for 1 or more parcels of eligible property. The combined brownfield plan or work plan to be submitted to the Michigan strategic fund under this subsection shall be in a form prescribed by the Michigan strategic fund. The eligible activities to be conducted and described in this subsection shall be consistent with the combined brownfield plan or work plan submitted by the authority to the Michigan strategic fund. 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 but fewer than 31 active projects, \$300,000.00.
- (g) For authorities that have 31 or more active projects, \$500,000.00.

(20) As used in subsection (19), "active project" means a project in which the authority is currently capturing taxes under this act. The amounts of tax increment revenues attributable to local taxes listed in subsection (19) that an authority can use for the purposes described in subsection (16)(a) may be increased by 2% for each written agreement entered into by an authority in either of the following situations up to a total maximum increase of 10%:

(a) The authority is an authority established by a county and that authority enters into a written agreement with 1 or more municipalities within that county to serve as the only authority for those other municipalities.

(b) The authority enters into a written agreement with 1 or more other authorities to administer 1 or more administrative operations of those other authorities.

(21) Notwithstanding anything to the contrary in this act, for a brownfield plan that includes the capture of taxes levied for school operating purposes from eligible property included in a brownfield plan after January 1, 2013, an authority shall pay to the department of treasury at least once annually an amount equal to 3 mills of the taxes levied under the state education tax, 1993 PA 331, MCL 211.901 to 211.906, that are captured under the brownfield plan for up to the first 25 years of the duration of capture of tax increment revenues for each eligible property included in the brownfield plan. The department of treasury shall deposit these amounts into the state brownfield redevelopment fund. If an authority pays an amount equal to 3 mills of the taxes levied under the state education tax, 1993 PA 331, MCL 211.901 to 211.906, on a parcel of eligible property to the department of treasury under this subsection, the percentage of local taxes levied on that parcel and used to reimburse eligible activities for a project under a brownfield plan shall not exceed the percentage of local taxes levied on that parcel that would have been used to reimburse eligible activities for the project under a brownfield plan if the 3 mills of the taxes levied under the state education tax, 1993 PA 331, MCL 211.901 to 211.906, on that parcel were not paid to the department of treasury under this subsection. If, due to an appeal of any tax assessment, an authority is required to reimburse a taxpayer for any portion of the 3 mills that are paid to the department of treasury under this subsection, the department of treasury shall reimburse that amount to the authority within 30 days after receiving a request from the authority for reimbursement.

(22) The duration of capture of tax increment revenues under a brownfield plan for a particular eligible property 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 for that eligible property. The beginning date of capture of tax increment revenues for an eligible property shall not be later than 5 years following the date of the resolution including the eligible property in the brownfield plan. The authority may amend the beginning date of capture of tax increment revenues for a particular eligible property to a date not later than 5 years following the date of the resolution including the eligible property in the brownfield plan. The authority may not amend the beginning date of capture of tax increment revenues for a particular eligible property if the authority has begun to reimburse eligible activities from the capture of tax increment revenues from that eligible property. Any tax increment revenues captured from an eligible property before the beginning date of capture of tax increment revenues for that eligible property shall revert proportionately to the respective tax bodies. If an authority amends the beginning date for capture of tax increment revenues that includes the capture of tax increment revenues for school operating purposes, then the authority shall notify the department or the Michigan strategic fund, as applicable, within 30 days after amending the beginning date.

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;—Am. 2010, Act 246, Imd. Eff. Dec. 14, 2010;—Am. 2010, Act 288, Imd. Eff. Dec. 16, 2010;—Am. 2012, Act 502, Imd. Eff. Dec. 28, 2012.

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