

# SENATE BILL No. 538

May 24, 2007, Introduced by Senators GILBERT, RICHARDVILLE, PATTERSON, SANBORN, PAPPAGEORGE, JANSEN, BIRKHOLZ, ALLEN, BROWN, GARCIA, THOMAS, JACOBS and HUNTER and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1996 PA 381, entitled  
"Brownfield redevelopment financing act,"  
by amending section 15 (MCL 125.2665), as amended by 2006 PA 32.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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 or remedial  
action plan approved by the department after July 24, 1996 and  
before January 1, ~~2008~~2012.

(b) For eligible activities not described in section 13(15),

1 use funds from a local site remediation revolving fund that are  
2 derived from taxes levied for school operating purposes unless the  
3 eligible activities to be conducted are eligible activities under  
4 part 201 of the natural resources and environmental protection act,  
5 1994 PA 451, MCL 324.20101 to 324.20142, consistent with a work  
6 plan or remedial action plan that has been approved by the  
7 department after July 24, 1996.

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

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

17 (e) Use taxes levied for school operating purposes captured  
18 from eligible property for response activities that benefit a party  
19 liable under section 20126 of the natural resources and  
20 environmental protection act, 1994 PA 451, MCL 324.20126, except  
21 that a municipality that established the authority, for taxes  
22 levied after 2004, may use taxes levied for school operating  
23 purposes captured from eligible property for response activities  
24 associated with a landfill.

25 (f) Use taxes captured from eligible property to pay for  
26 administrative and operating activities of the authority or the  
27 municipality on behalf of the authority except for costs described

1 in section 13(16) and for the reasonable costs for preparing a work  
2 plan or remedial action plan for the eligible property, including  
3 the actual cost of the review of the work plan or remedial action  
4 plan under this section.

5 (2) To seek department approval of a work plan under  
6 subsection (1)(a) or (b) or remedial action plan, the authority  
7 shall submit all of the following for each eligible property:

8 (a) A copy of the brownfield plan.

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

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

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

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

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

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

1 both, or a portion of a work plan or remedial action plan that  
2 pertains to only baseline environmental assessment activities or  
3 due care activities, or both, the department shall provide 1 of the  
4 following written responses to the requesting authority within 60  
5 days:

6 (a) An unconditional approval.

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

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

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

18 (a) Whether the individual activities included in the work  
19 plan or remedial action plan are sufficient to complete the  
20 eligible activity.

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

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

26 **(D) WHETHER THE WORK PLAN OR REMEDIAL ACTION PLAN IS CLEAR**  
27 **THAT THE DEPARTMENT APPROVAL OF THE WORK PLAN DOES NOT**

1 AUTOMATICALLY AUTHORIZE REIMBURSEMENT FOR AN ELIGIBLE ACTIVITY.

2 (E) WHETHER THE WORK PLAN OR REMEDIAL ACTION PLAN IS CLEAR  
3 THAT THE FINANCIAL RISK ON WHETHER AN EXPENSE IS AN ELIGIBLE  
4 ACTIVITY IS ON THE DEVELOPER.

5 (F) WHETHER THE WORK PLAN OR REMEDIAL ACTION PLAN PROPOSES  
6 ELIGIBLE ACTIVITIES THAT EXCEED THE STANDARDS DEVELOPED BY THE  
7 DEPARTMENT AND, IF IT DOES, THEN THE DEPARTMENT SHALL APPROVE THOSE  
8 ELIGIBLE ACTIVITIES IF THEY ARE REASONABLE AND PROVIDE MEANINGFUL  
9 ENVIRONMENTAL OR PUBLIC HEALTH BENEFITS AS DETERMINED BY THE  
10 DEPARTMENT.

11 (5) If the department fails to provide a written response  
12 under subsection (3) within 60 days after receipt of a request for  
13 approval of a work plan or remedial action plan that pertains to  
14 baseline environmental assessment activities or due care  
15 activities, or both, the authority may proceed with the baseline  
16 environmental assessment activities or due care activities, or  
17 both, as outlined in the work plan or remedial action plan as  
18 submitted for approval. Except as provided in subsection (6),  
19 baseline environmental assessment activities or due care  
20 activities, or both, conducted pursuant to a work plan or remedial  
21 action plan that was submitted to the department for approval but  
22 for which the department failed to provide a written response under  
23 subsection (3) shall be considered approved for the purposes of  
24 subsection (1).

25 (6) The department may issue a written response to a work plan  
26 or remedial action plan that pertains to baseline environmental  
27 assessment activities or due care activities, or both, more than 60

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

24 (7) If the department issues a written response under  
25 subsection (6) to a work plan or remedial action plan that pertains  
26 to baseline environmental assessment activities or due care  
27 activities, or both, and if the department's written response

1 modifies an individual activity proposed by the work plan or  
2 remedial action plan of the authority in a manner that reduces or  
3 eliminates a proposed response activity, the authority must  
4 complete those individual activities included in the baseline  
5 environmental assessment or due care activities, or both, in  
6 accordance with the department's response in order for that portion  
7 of the work plan or remedial action plan to be considered approved  
8 for purposes of subsection (1), unless 1 or more of the following  
9 conditions apply:

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

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

17 (8) It shall be in the sole discretion of an authority to  
18 propose to undertake additional response activities at an eligible  
19 property under a brownfield plan. The department shall not require  
20 a work plan or remedial action plan for either baseline  
21 environmental assessment activities or due care activities, or  
22 both, to include additional response activities.

23 (9) The department may reject the portion of a work plan or  
24 remedial action plan that includes additional response activities  
25 and may consider the level of risk reduction that will be  
26 accomplished by the additional response activities in determining  
27 whether to approve or reject the work plan or remedial action plan

1 or a portion of a plan.

2 (10) The department's approval or rejection of a work plan  
3 under subsection (1)(a) or (b) or remedial action plan for  
4 additional response activities is final.

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

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

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

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

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

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

27 (a) A copy of the brownfield plan.



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

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

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

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

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

13 (g) A copy of the development agreement required under section  
14 13(15), which shall include, but is not limited to, a detailed  
15 summary of any and all ownership interests, monetary  
16 considerations, fees, revenue and cost sharing, charges, or other  
17 financial arrangements or other consideration 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 financial statements of the developer,  
4 landowner, or corporate entity indicate that the developer,  
5 landowner, or corporate entity is financially sound and that the  
6 project of the developer, landowner, or corporate entity that is  
7 included in the work plan is economically sound.

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

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

15 (16) If the Michigan economic growth authority fails to  
16 provide a written response under subsection (14) within 65 days  
17 after receipt of a request for approval of a work plan, the  
18 eligible activities shall be considered approved and the authority  
19 may proceed with the eligible activities described in section  
20 13(15) as outlined in the work plan as submitted for approval.

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

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

27 (19) The Michigan economic growth authority shall submit a

1 report each year on or before March 1 to each member of the  
2 legislature that contains all of the following:

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

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

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

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

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