

Act No. 203
Public Acts of 2018
Approved by the Governor
June 19, 2018
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June 20, 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Rep. Frederick

ENROLLED HOUSE BILL No. 5283

AN ACT to amend 1996 PA 381, entitled “An act to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans; to create brownfield redevelopment zones; to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, tax reverted, blighted, or functionally obsolete property; to prescribe the powers and duties of brownfield redevelopment authorities; to permit the issuance of bonds and other evidences of indebtedness by an authority; to authorize the acquisition and disposal of certain property; to authorize certain funds; to prescribe certain powers and duties of certain state officers and agencies; and to authorize and permit the use of certain tax increment financing,” by amending section 2 (MCL 125.2652), as amended by 2017 PA 46.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

- (a) “Authority” means a brownfield redevelopment authority created under this act.
- (b) “Baseline environmental assessment” means that term as defined in part 201 or 213.
- (c) “Blighted” means property that meets any of the following criteria as determined by the governing body:
 - (i) Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.
 - (ii) Is an attractive nuisance to children because of physical condition, use, or occupancy.
 - (iii) Is a fire hazard or is otherwise dangerous to the safety of persons or property.
 - (iv) Has had the utilities, plumbing, heating, or sewerage permanently disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
 - (v) Is tax reverted property owned by a qualified local governmental unit, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or this state after the property’s inclusion in a brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.
 - (vi) Is property owned by or under the control of a land bank fast track authority, whether or not located within a qualified local governmental unit. Property included within a brownfield plan prior to the date it meets the requirements of this subdivision to be eligible property shall be considered to become eligible property as of the date the property is determined to have been or becomes qualified as, or is combined with, other eligible property. The sale, lease, or transfer of the property by a land bank fast track authority after the property’s inclusion in a brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.
 - (vii) Has substantial buried subsurface demolition debris present so that the property is unfit for its intended use.
- (d) “Board” means the governing body of an authority.

(e) “Brownfield plan” means a plan that meets the requirements of section 13 and section 13b and is adopted under section 14.

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

(g) “Chief executive officer” means the mayor of a city, the village manager of a village, the township supervisor of a township, or the county executive of a county or, if the county does not have an elected county executive, the chairperson of the county board of commissioners.

(h) “Combined brownfield plan” means a brownfield plan that also includes the information necessary to submit the plan to the department or Michigan strategic fund under section 15(20).

(i) “Construction period tax capture revenues” means funds equal to the amount of income tax levied and imposed in a calendar year upon wages paid to individuals physically present and working within the eligible property for the construction, renovation, or other improvement of eligible property that is an eligible activity within a transformational brownfield plan. As used in this subdivision, “wages” means that term as defined in section 3401 of the internal revenue code of 1986, 26 USC 3401. To calculate the amount of construction period tax capture revenues for a calendar year under a transformational brownfield plan, the state treasurer shall do all of the following:

(i) Require the owner or developer of the eligible property to report the total taxable wages paid to individuals for the construction, renovation, or other improvement of eligible property that is an eligible activity within the transformational brownfield plan. The wages reported under this subparagraph shall exclude any wages paid to employees of the owner or developer.

(ii) Multiply the amount under subparagraph (i) by the effective rate as determined by the state treasurer at which the income tax is levied on an individual in this state. The state treasurer shall estimate the effective rate by taking into account the effect of any exemptions, additions, subtractions, and credits allowable under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. The state treasurer may require the owner or developer to submit any information necessary for the calculation under this subparagraph.

(iii) The wage information and other information required under this subdivision shall be provided to the department of treasury by the owner or developer in a manner prescribed by the state treasurer. The state treasurer may require the owner or developer to provide a review or reconciliation of the wages by an independent auditing firm.

(j) “Corrective action” means that term as defined in part 111 or part 213.

(k) “Department” means the department of environmental quality.

(l) “Department specific activities” means baseline environmental assessments, due care activities, response activities, and other environmentally related actions that are eligible activities and are identified as a part of a brownfield plan that are in addition to the minimum due care activities required by part 201, including, but not limited to:

(i) Response activities that are more protective of the public health, safety, and welfare and the environment than required by section 20107a, 20114, or 21304c of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a, 324.20114, and 324.21304c.

(ii) Removal and closure of underground storage tanks pursuant to part 211 or 213.

(iii) Disposal of solid waste, as defined in part 115 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11501 to 324.11554, from the eligible property, provided it was not generated or accumulated by the authority or the developer.

(iv) Dust control related to construction activities.

(v) Removal and disposal of lake or river sediments exceeding part 201 criteria from, at, or related to an economic development project where the upland property is either a facility or would become a facility as a result of the deposition of dredged spoils.

(vi) Industrial cleaning.

(vii) Sheet piling and shoring necessary for the removal of materials exceeding part 201 criteria at projects requiring a permit pursuant to part 301, 303, or 325 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30101 to 324.30113, MCL 324.30301 to 324.30328, or MCL 324.32501 to 324.32515a.

(viii) Lead, mold, or asbestos abatement when lead, mold, or asbestos pose an imminent and significant threat to human health.

(m) “Due care activities” means those response activities identified as part of a brownfield plan that are necessary to allow the owner or operator of an eligible property in the plan to comply with the requirements of section 20107a or 21304c of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a and 324.21304c.

(n) “Economic opportunity zone” means 1 or more parcels of property that meet all of the following:

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

(ii) That contain or contained a manufacturing operation that consists or consisted of 500,000 or more square feet.

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

(o) “Eligible activities” or “eligible activity” means 1 or more of the following:

(i) For all eligible properties, eligible activities include all of the following:

(A) Department specific activities.

(B) Relocation of public buildings or operations for economic development purposes.

(C) Reasonable costs of environmental insurance.

(D) Reasonable costs incurred to develop and prepare brownfield plans, combined brownfield plans, or work plans for the eligible property, including legal and consulting fees that are not in the ordinary course of acquiring and developing real estate.

(E) Reasonable costs of brownfield plan and work plan implementation, including, but not limited to, tracking and reporting of data and plan compliance and the reasonable costs incurred to estimate and determine actual costs incurred, whether those costs are incurred by a municipality, authority, or private developer.

(F) Demolition of structures that is not a response activity, including removal of manufactured debris comprised of discarded, unused, or unusable manufactured by-products left on the site by a previous owner. The removal of the manufactured by-products left on the site described in this sub-subparagraph is not eligible for interest reimbursement under sub-subparagraph (H).

(G) Lead, asbestos, or mold abatement.

(H) Except as otherwise provided in sub-subparagraph (F), the repayment of principal of and interest on any obligation issued by an authority to pay the costs of eligible activities attributable to an eligible property.

(ii) For eligible properties located in a qualified local unit of government, or an economic opportunity zone, or that is a former mill, eligible activities include:

(A) The activities described in subparagraph (i).

(B) Infrastructure improvements that directly benefit eligible property.

(C) Site preparation that is not a response activity.

(iii) For eligible properties that are owned by or under the control of a land bank fast track authority, or a qualified local unit of government or authority, eligible activities include:

(A) The eligible activities described in subparagraphs (i) and (ii).

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

(C) Assistance to a qualified local governmental unit or authority in clearing or quieting title to, or selling or otherwise conveying, property owned by or under the control of a qualified local governmental unit or authority or the acquisition of property by a qualified local governmental unit or authority if the acquisition of the property is for economic development purposes.

(iv) For eligible activities on eligible property that is included in a transformational brownfield plan, any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property.

(p) “Eligible property” means, except as otherwise provided in this subdivision, property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes, including personal property located on the property, to the extent included in the brownfield plan, and that is 1 or more of the following:

(i) Is in a qualified local governmental unit and is a facility or a site or property as those terms are defined in part 213, historic resource, functionally obsolete, or blighted and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

(ii) Is not in a qualified local governmental unit and is a facility, historic resource, functionally obsolete, blighted, or a site or property as those terms are defined in part 213, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

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

(iv) Is a transit-oriented development or transit-oriented property.

(v) Is located in a qualified local governmental unit and contains a targeted redevelopment area.

(vi) Is undeveloped property that was eligible property in a previously approved brownfield plan abolished under section 14(8).

(vii) Eligible property does not include qualified agricultural property exempt under section 7ee of the general property tax act, 1893 PA 206, MCL 211.7ee, from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

(q) "Environmental insurance" means liability insurance for environmental contamination and cleanup that is not otherwise required by state or federal law.

(r) "Facility" means that term as defined in part 201.

(s) "Fiscal year" means the fiscal year of the authority.

(t) "Former mill" means a former mill that has not been used for industrial purposes for the immediately preceding 2 years, that is not located in a qualified local governmental unit, that is a facility or is a site or a property as those terms are defined in part 213, functionally obsolete, or blighted, and that is located within 15 miles of a river that is a federal superfund site listed under the comprehensive environmental response, compensation and liability act of 1980, 42 USC 9601 to 9675, and that is located in a municipality with a population of less than 10,000.

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

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

(w) "Historic resource" means that term as defined in section 90a of the Michigan strategic fund act, 1984 PA 270, MCL 125.2090a.

(x) "Income tax" means the tax levied and imposed under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

(y) "Income tax capture revenues" means funds equal to the amount for each tax year by which the aggregate income tax from individuals domiciled within the eligible property subject to a transformational brownfield plan exceeds the initial income tax value. The state treasurer shall calculate annually the income tax capture revenues associated with each transformational brownfield plan. In calculating income tax capture revenues, the state treasurer shall subtract from the aggregate amount of income tax credits under sections 255, 265, 266, and chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.255, 206.265, 206.266, and 206.501 to 206.532. The state treasurer shall require the owner or developer of the eligible property to provide to the department of treasury all of the following information at the end of each calendar year, including the year in which the resolution adding that eligible property in the transformational brownfield plan is adopted:

(i) A list of individuals domiciled within the eligible property.

(ii) The addresses of those individuals identified in subparagraph (i).

(iii) Any other information that may be necessary to calculate the income tax capture revenues. The information required under this subdivision shall be provided in a manner prescribed by the state treasurer.

(z) "Industrial cleaning" means cleaning or removal of contaminants from within a structure necessary to achieve the intended use of the property.

(aa) "Infrastructure improvements" means a street, road, sidewalk, parking facility, pedestrian mall, alley, bridge, sewer, sewage treatment plant, property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination, drainage system, waterway, waterline, water storage facility, rail line, utility line or pipeline, transit-oriented development, transit-oriented property, or other similar or related structure or improvement, together with necessary easements for the structure or improvement, owned or used by a public agency or functionally connected to similar or supporting property owned or used by a public agency, or designed and dedicated to use by, for the benefit of, or for the protection of the health, welfare, or safety of the public generally, whether or not used by a single business entity, provided that any road, street, or bridge shall be continuously open to public access and that other property shall be located in public easements or rights-of-way and sized to accommodate reasonably foreseeable development of eligible property in adjoining areas. Infrastructure improvements also include 1 or more of the following whether publicly or privately owned or operated or located on public or private property:

(i) Underground parking.

(ii) Multilevel parking structures.

(iii) Urban stormwater management systems.

(bb) "Initial income tax value" means the aggregate amount of income tax less credits under sections 255, 265, 266, and chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.255, 206.265, 206.266, and 206.501 to 206.532, from

individuals domiciled within the eligible property subject to a transformational brownfield plan for the tax year in which the resolution adding that eligible property in the transformational brownfield plan is adopted.

(cc) “Initial taxable value” means the taxable value of an eligible property identified in and subject to a brownfield plan at the time the resolution adding that eligible property in the brownfield plan is adopted, as shown either by the most recent assessment roll for which equalization has been completed at the time the resolution is adopted or, if provided by the brownfield plan, by the next assessment roll for which equalization will be completed following the date the resolution adding that eligible property in the brownfield plan is adopted. Property exempt from taxation at the time the initial taxable value is determined shall be included with the initial taxable value of zero. Property for which a specific tax is paid in lieu of property tax shall not be considered exempt from taxation. The state tax commission shall prescribe the method for calculating the initial taxable value of property for which a specific tax was paid in lieu of property tax. The initial assessed value may be modified by lowering the initial assessed value once during the term of the brownfield plan through an amendment as provided in section 14 after the tax increment financing plan fails to generate captured assessed value for 3 consecutive years due to declines in assessed value.

(dd) “Initial withholding tax value” means the amount of income tax withheld under part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, from individuals employed within the eligible property subject to a transformational brownfield plan for the calendar year in which the resolution adding the eligible property to the plan is adopted. For purposes of this act, an individual is employed within the eligible property if the eligible property is the individual’s principal place of employment. The initial withholding tax value shall not include construction period tax capture revenues.

(ee) “Land bank fast track authority” means an authority created under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774.

(ff) “Local taxes” means all taxes levied other than taxes levied for school operating purposes.

(gg) “Michigan strategic fund” means the Michigan strategic fund created under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(hh) “Mixed-use” means a real estate project with planned integration of some combination of retail, office, residential, or hotel uses.

(ii) “Municipality” means all of the following:

(i) A city.

(ii) A village.

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

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

(v) A county.

(jj) “Owned by or under the control of” means that a land bank fast track authority or a qualified local unit of government has 1 or more of the following:

(i) An ownership interest in the property.

(ii) A tax lien on the property.

(iii) A tax deed to the property.

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

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

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

(kk) “Part 111”, “part 201”, “part 211”, or “part 213” means that part as described as follows:

(i) Part 111 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11153.

(ii) Part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142.

(iii) Part 211 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21101 to 324.21113.

(iv) Part 213 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21301a to 324.21334.

(ll) “Qualified local governmental unit” means that term as defined in the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.

(mm) “Qualified taxpayer” means that term as defined in sections 38d and 38g of former 1975 PA 228, or section 437 of the Michigan business tax act, 2007 PA 36, MCL 208.1437, or a recipient of a community revitalization incentive as described in section 90a of the Michigan strategic fund act, 1984 PA 270, MCL 125.2090a.

(nn) “Release” means that term as defined in part 201 or part 213.

(oo) “Response activity” means either of the following:

- (i) Response activity as that term is defined in part 201.
- (ii) Corrective action.

(pp) “Specific taxes” means a tax levied under 1974 PA 198, MCL 207.551 to 207.572; the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668; the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123; 1953 PA 189, MCL 211.181 to 211.182; the technology park development act, 1984 PA 385, MCL 207.701 to 207.718; the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797; the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786; the commercial rehabilitation act, 2005 PA 210, MCL 207.841 to 207.856; or that portion of the tax levied under the tax reverted clean title act, 2003 PA 260, MCL 211.1021 to 211.1025a, that is not required to be distributed to a land bank fast track authority.

(qq) “State brownfield redevelopment fund” means the state brownfield redevelopment fund created in section 8a.

(rr) “Targeted redevelopment area” means not fewer than 40 and not more than 500 contiguous parcels of real property located in a qualified local governmental unit and designated as a targeted redevelopment area by resolution of the governing body and approved by the Michigan strategic fund. A qualified local governmental unit is limited to designating no more than 2 targeted redevelopment areas for the purposes of this section in a calendar year. The Michigan strategic fund may approve no more than 5 targeted redevelopment areas for the purposes of this section in a calendar year.

(ss) “Tax increment revenues” means the amount of ad valorem property taxes and specific taxes attributable to the application of the levy of all taxing jurisdictions upon the captured taxable value of each parcel of eligible property subject to a brownfield plan and personal property located on that property, regardless of whether those taxes began to be levied after the brownfield plan was adopted. Tax increment revenues do not include any of the following:

(i) Ad valorem property taxes specifically levied 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 governmental unit, and specific taxes attributable to those ad valorem property taxes.

(ii) For tax increment revenues attributable to eligible property also exclude the amount of ad valorem property taxes or specific taxes captured by a downtown development authority under 1975 PA 197, MCL 125.1651 to 125.1681, tax increment finance authority under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, corridor improvement authority, under the corridor improvement authority act, 2005 PA 280, MCL 125.2871 to 125.2899, or local development finance authority under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174, if those taxes were captured by these other authorities on the date that eligible property became subject to a brownfield plan under this act.

(iii) Ad valorem property taxes levied under 1 or more of the following or specific taxes attributable to those ad valorem property taxes:

(A) The zoological authorities act, 2008 PA 49, MCL 123.1161 to 123.1183.

(B) The art institute authorities act, 2010 PA 296, MCL 123.1201 to 123.1229.

(tt) “Taxable value” means the value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(uu) “Taxes levied for school operating purposes” means all of the following:

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

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

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

(vv) “Transformational brownfield plan” means a brownfield plan that meets the requirements of section 13c and is adopted under section 14a and, as designated by resolution of the governing body and approved by the Michigan strategic fund, will have a transformational impact on local economic development and community revitalization based on the extent of brownfield redevelopment and growth in population, commercial activity, and employment that will result from the plan. To be designated a transformational brownfield plan, a transformational brownfield plan under this subdivision shall be for mixed-use development and shall be expected to result in the following levels of capital investment:

(i) In a municipality that is not a county and that has a population of at least 600,000, \$500,000,000.00.

(ii) In a municipality that is not a county and that has a population of at least 150,000 and not more than 599,999, \$100,000,000.00.

(iii) In a municipality that is not a county and that has a population of at least 100,000 and not more than 149,999, \$75,000,000.00.

(iv) In a municipality that is not a county and that has a population of at least 50,000 and not more than 99,999, \$50,000,000.00.

(v) In a municipality that is not a county and that has a population of at least 25,000 and not more than 49,999, \$25,000,000.00.

(vi) In a municipality that is not a county and that has a population of less than 25,000, \$15,000,000.00.

(ww) "Transit-oriented development" means infrastructure improvements that are located within 1/2 mile of a transit station or transit-oriented property that promotes transit ridership or passenger rail use as determined by the board and approved by the municipality in which it is located.

(xx) "Transit-oriented property" means property that houses a transit station in a manner that promotes transit ridership or passenger rail use.

(yy) "Withholding tax capture revenues" means the amount for each calendar year by which the income tax withheld under part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, from individuals employed within the eligible property subject to a transformational brownfield plan exceeds the initial withholding tax value. Withholding tax capture revenues shall not include income tax from individuals domiciled within the eligible property or construction period tax capture revenues. To calculate withholding tax capture revenues for a calendar year under a transformational brownfield plan, the state treasurer or the Michigan strategic fund shall do all of the following:

(i) The state treasurer shall require the owner or developer of the eligible property to provide the department of treasury with notice not more than 10 days from the date an employer commences or terminates occupancy within the eligible property. As used in this subdivision, "employer" means that term as defined in section 8 of the income tax act of 1967, 1967 PA 281, MCL 206.8.

(ii) The state treasurer shall develop methods and processes that are necessary for each employer occupying the eligible property to report the amount of withholding under part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, from individuals employed within the eligible property.

(iii) The Michigan strategic fund shall include the following provisions in the development or reimbursement agreement for any transformational brownfield plan that utilizes withholding tax capture revenues:

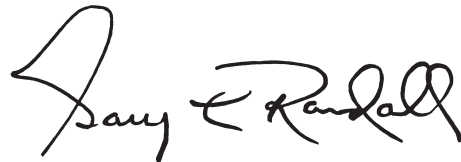
(A) That the owner or developer of the eligible property shall require each employer occupying the eligible property to comply with the reporting requirements under this section through a contract requirement, lease requirement, or other such means.

(B) That reimbursement of withholding tax capture revenues is limited to amounts that are reported in accordance with part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, and this state has no obligation with respect to withholding tax capture revenues that are not reported or paid.

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

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

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved

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Governor