

ELIGIBLE ACTIVITIES UNDER BROWNFIELD REDEVELOPMENT FINANCING ACT

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Senate Bill 562 (H-1) as reported from House committee
Sponsor: Sen. Roger Victory
House Committee: Local Government and Municipal Finance
Senate Committee: Economic and Small Business Development
Complete to 1-31-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 562 would amend the Brownfield Redevelopment Financing Act to provide that, for specified kinds of landfill facilities, eligible activities under the act can additionally include certain infrastructure improvements and site preparation activities.

The act allows municipalities to create brownfield redevelopment authorities to develop and implement brownfield projects. Brownfields are defined by the Environmental Protection Agency as properties whose expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.¹

The act enumerates *eligible activities* that a brownfield redevelopment authority may spend funds on. Some of these activities are specific to certain properties, such as property owned by a land bank or property that is included in a transformational brownfield plan under the act. For all eligible properties under the act, the following are eligible activities:

- Activities specific to the Department of Environment, Great Lakes, and Energy.
- The relocation of public buildings or operations for economic development purposes.
- The reasonable costs of environmental insurance.
- The reasonable costs incurred to develop and prepare brownfield plans, combined brownfield plans, or work plans, including legal and consulting fees that are not in the ordinary course of acquiring and developing real estate.
- The reasonable costs of brownfield plan and work plan implementation, including tracking and reporting of data and plan compliance and the reasonable costs incurred to estimate and determine actual costs incurred. Except as otherwise provided in this provision, eligible activities include 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.
- The demolition of structures that is not evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare or natural resources or the environment and that is not a corrective action.
- Lead, asbestos, or mold abatement.

The bill would provide that, for a landfill facility area of 15 or more contiguous acres that is located in a city that is not economically distressed using specified measures and that contains, contained, or is adjacent to a landfill, a material recycling facility, or an asphalt plant that is no longer in operation, *eligible activities* additionally include infrastructure improvements that

¹ <https://www.epa.gov/brownfields/overview-epas-brownfields-program>

directly benefit property subject to the activities and site preparation that is not an environmental corrective action or response activity.

More specifically, under the bill, *eligible activities* would include all of the following additional activities on *eligible property* that is a *qualified facility* that is not located in a *qualified local governmental unit* and that is a *facility*, *functionally obsolete*, or *blighted*:

- *Infrastructure improvements* that directly benefit eligible property.
- Site preparation that is not a *response activity*.

Qualified facility would mean a landfill facility area of 15 or more contiguous acres that is located in a city and that contains, contained, or is adjacent to a landfill, a material recycling facility, or an asphalt plant that is no longer in operation.

Eligible property means property for which eligible activities are identified under a brownfield plan, that was or is used for commercial, industrial, public, or residential purposes, and to which one or more of the following apply:

- It is in a qualified local governmental unit and is a facility,² site or property as defined in Part 213 (Leaking Underground Storage Tanks) of the Natural Resources and Environmental Protection Act (NREPA),³ 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.
- It is not in a qualified local governmental unit and is a facility, historic resource, functionally obsolete, blighted, or a site or property as defined in Part 213 of NREPA 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.
- It is tax reverted property owned by or under the control of a land bank authority.
- It is a transit-oriented development or transit-oriented property.
- It is located in a qualified local governmental unit and contains a targeted redevelopment area.
- It is undeveloped property that was eligible property in a previously approved brownfield plan abolished under specific provisions of the act.

Eligible property does not include qualified agricultural property exempt from local school operating taxes under the General Property Tax Act and Revised School Code.

Qualified local governmental unit means that term as defined in the Obsolete Property Rehabilitation Act.⁴ (Generally speaking, that act provides tax incentives for the redevelopment of contaminated, blighted, and functionally obsolete buildings in local governmental units meeting certain specified criteria such as a having a median family income that is 150% or less of the statewide median; being contiguous to a city with a

² *Facility* is defined in section 20101 of NREPA. In general terms, it means a site with too much of a hazardous substance. See <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-324-20101.pdf>

³ See <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-324-21303.pdf>

⁴ See section 2(k): <http://legislature.mi.gov/doc.aspx?mcl-125-2782> These provisions also reference section 11(u) of the State Housing Development Authority Act, available here: <http://legislature.mi.gov/doc.aspx?mcl-125-1411>

population of 500,000 or more; containing eligible distressed areas as defined in the State Housing Development Authority Act, etc. As of October 2020, there were 148 cities, villages, and townships that met these criteria.⁵⁾

Functionally obsolete means that the property cannot be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from such things 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.

Blighted means property that meets any of the following criteria as determined by the governing body of the municipality creating the brownfield redevelopment authority:

- It has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.
- It is an attractive nuisance to children because of physical condition, use, or occupancy.
- It is a fire hazard or is otherwise dangerous to the safety of persons or property.
- It 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.
- It is tax-reverted property owned by a qualified local governmental unit, by a county, or by this state.
- With some conditions, it is property owned by or under the control of a land bank authority, whether or not located within a qualified local governmental unit.
- It has substantial buried subsurface demolition debris present so that the property is unfit for its intended use.

Response activity means evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare or the environment or natural resources, or a corrective action.⁶

Infrastructure improvements means any of the following structures or improvements, with necessary easements, that are owned or used by a public agency or functionally connected to similar or supporting property owned or used by a public agency, or are that 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, as long as any road, street, or bridge is continuously open to public access and other property is located in public easements or rights-of-way and sized to accommodate reasonably foreseeable development of eligible property in adjoining areas:

- A street or road.

⁵ See https://www.miplace.org/4abfc3/globalassets/documents/fact-sheets/core_communities.pdf

⁶ **Evaluation, interim response activity, and remedial action** are technical terms defined in section 20101 of NREPA: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-324-20101.pdf> **Corrective action** is defined in sections 11102 and 21302 of NREPA: <https://www.legislature.mi.govdocuments/mcl/pdf/mcl-324-11102.pdf> and <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-324-21302.pdf>

- A sidewalk.
- A parking facility.
- A pedestrian mall.
- An alley.
- A bridge.
- A sewer or sewage treatment plant.
- Property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination.
- A drainage system.
- A waterway.
- A waterline or water storage facility.
- A rail line.
- A utility line or pipeline.
- Transit-oriented development or property.
- Another similar or related structure or improvement.

Infrastructure improvements also include underground parking, multilevel parking structures, and urban stormwater management systems, regardless of whether publicly or privately owned or operated or located on public or private property.

MCL 125.2652

HOUSE COMMITTEE ACTION:

The House Committee on Local Government and Municipal Finance adopted and reported an H-1 “conflict substitute” for the bill that makes no substantive changes but updates the section of the Brownfield Redevelopment Financing Act being amended to include changes made to that section by a recent amendatory act (2021 PA 138). Generally speaking, conflict substitutes resolve potential conflicts between different bills that amend the same section of law. Without a substitute that takes both bills into account, the last bill signed into law would overwrite and undo the changes made by the earlier bill.

FISCAL IMPACT:

To the extent that a brownfield redevelopment authority increases its tax capture to pay for the newly authorized activities under the provisions of the bill, an affected local unit of government would realize reduced revenues. If the brownfield redevelopment authority captured a portion of the State Education Tax (SET), the School Aid Fund would realize reduced revenues. In addition, any expanded use of tax increment financing to pay for the additional activities authorized under the provisions of the bill could lead to increased expenditures from the School Aid Fund due to the capture of additional 18-mill nonhomestead local school operating millages. The extent to which these newly expanded activities would be included in brownfield plans cannot currently be estimated.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.