

BROWNFIELD REDEVELOPMENT FINANCING ACT (EXCERPT)
Act 381 of 1996

125.2664a Transformational brownfield plan; approval and review by governing body and Michigan strategic fund; use of funds.

Sec. 14a.

(1) The governing body and Michigan strategic fund shall determine whether to approve a transformational brownfield plan in accordance with this section.

(2) The governing body shall make an initial determination as to whether the transformational brownfield plan constitutes a public purpose in accordance with section 14(5). If the governing body determines the transformational brownfield plan does not constitute a public purpose, it shall reject the transformational brownfield plan.

(3) If the governing body determines that the transformational brownfield plan constitutes a public purpose, the governing body may then approve or reject the transformational brownfield plan, or approve it with modification, by resolution based on all of the following considerations:

(a) Whether the transformational brownfield plan meets the requirements of section 2(hhh), which must include a determination that the transformational brownfield plan is calculated to, and has the reasonable likelihood to, 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 transformational brownfield plan.

(b) Whether the transformational brownfield plan meets the requirements of sections 13, 13b, and 13c.

(c) Whether the costs of eligible activities proposed are reasonable and necessary to carry out the purposes of this act.

(d) Whether the amount of captured taxable value, construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, and sales and use tax capture revenues estimated to result from adoption of the transformational brownfield plan are reasonable.

(e) Whether the transformational brownfield plan takes into account the criteria described in section 90b(4) of the Michigan strategic fund act, 1984 PA 270, MCL 125.2090b.

(f) Whether subject to subsection (22)(d), the transformational brownfield plan includes provisions for affordable housing.

(4) Within 90 days of the completion of an administratively complete application and the analysis required under subsection (5), the Michigan strategic fund shall approve or reject the transformational brownfield plan, or approve it with modification, by resolution based on the criteria in subsection (3).

(5) In determining whether to approve a transformational brownfield plan under subsection (3)(c) and (d), the Michigan strategic fund shall conduct a financial and underwriting analysis of the developments included in the plan. The analysis must consider both projected rental rates at the time of project delivery and potential increases in rental rates over time. The Michigan strategic fund shall not approve the use of construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, and sales and use tax capture revenues beyond the amount determined to be necessary for the project to be economically viable. The Michigan strategic fund shall develop standardized underwriting criteria for determining economic viability. The Michigan strategic fund shall take into account the impact of the sales and use tax exemptions under section 4d(n) of the general sales tax act, 1933 PA 167, MCL 205.54d, and section 4dd of the use tax act, 1937 PA 94, MCL 205.94dd, in determining the amount of construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, and sales and use tax capture revenues required for the project to be economically viable. The Michigan strategic fund shall ensure that each transformational brownfield plan includes a significant equity contribution from the owner or developer as determined by the fund.

(6) The Michigan strategic fund shall require an independent, third-party underwriting analysis under subsection (3)(d) for any plan that proposes to use more than \$10,000,000.00 in any year in withholding tax capture revenues, income tax capture revenues, and sales and use tax capture revenues, as determined by the first full year of tax capture under the plan. The cost of the independent, third-party underwriting analysis must be paid by the owner or developer of the eligible property. In addition to the independent, third-party underwriting analysis, the Michigan strategic fund shall require an independent, third-party analysis of the sales and use tax capture revenue estimates for any plan that includes sales and use tax capture revenues. The cost of the independent, third-party analysis must be paid by the owner or developer of the eligible property. The Michigan strategic fund shall consult with the state treasurer before approving any transformational brownfield plan subject to this subsection. This subsection does not limit the ability of the Michigan strategic fund to utilize independent, third-party analyses on plans not subject to this subsection.

(7) Except as otherwise provided in this subsection, the Michigan strategic fund may not approve a

transformational brownfield plan that proposes to use more than 50% of the withholding tax capture revenues or 50% of the income tax capture revenues. The Michigan strategic fund may modify the amount of withholding tax capture revenues and income tax capture revenues before approving a transformational brownfield plan to bring the transformational brownfield plan into compliance with subsection (5). The Michigan strategic fund may approve a transformational brownfield plan that proposes to use more than 50% of the income tax capture revenues if 1 of the following applies:

(a) The income tax capture revenues are attributable to the election under section 13c(13).

(b) The applicable eligible properties within the transformational brownfield plan are subject to a written, binding affordable housing agreement with the local governmental unit, which agreement must be provided to the Michigan strategic fund, in which case the Michigan strategic fund may approve a transformational brownfield plan that proposes to use up to 100% of the income tax capture revenues, subject to the underwriting and financial analysis required under subsection (5).

(8) The Michigan strategic fund shall require the owner or developer of the eligible property to certify the actual capital investment, as determined in accordance with section 2(o)(v) and (hhh), on the completion of construction and before the commencement of reimbursement from withholding tax capture revenues, income tax capture revenues, sales and use tax capture revenues, or tax increment revenues, for the plan or the distinct phase or project within the plan for which reimbursement will be provided. If the actual capital investment is less than the amount included in the plan, the Michigan strategic fund shall review the determination under subsection (5) and may modify the amount of reimbursement if, and to the extent, such a modification is necessary to maintain compliance with subsection (5). The transformational brownfield plan, work plan, and development and reimbursement agreement must include provisions to enforce the requirements and remedies under this subsection. If the actual level of capital investment does not meet the applicable minimum investment requirement under section 2(hhh) and is outside of the safe harbor under subsection (15), the Michigan strategic fund may take 1 of the following remedial actions:

(a) For a plan that consists of a single development, reduce the amount of reimbursement under the plan.

(b) For a plan that consists of distinct phases or projects, if the failure to meet the minimum investment threshold is the result of failure to undertake additional distinct phases or projects as provided for in the plan, 1 or more of the following:

(i) Permanently rescind the authorization to use tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, and sales and use tax capture revenues for the additional distinct phases or projects in the plan.

(ii) If the Michigan strategic fund determines that the applicable owner or developer acted in bad faith, reduce the amount of reimbursement for completed phases of the plan.

(9) On approval by the Michigan strategic fund, the minimum investment requirements in section 2(hhh) and limitation under subsection (22)(a) and (b) may be waived if the transformational brownfield plan meets 1 of the following criteria:

(a) Is for eligible property in an area approved by the Michigan state housing development authority as eligible for blight elimination program funding under the housing finance agency innovation fund for the hardest hit housing markets authorized pursuant to the emergency economic stabilization act of 2008, division A of Public Law 110-343, 12 USC 5201 to 5261. For purposes of this subdivision, an area approved as eligible for blight elimination program funding means that specific portion or portions of a municipality where the Michigan state housing development authority approved the expenditure of blight elimination program funds pursuant to an application identifying the target areas.

(b) Is for eligible property in a municipality that was subject to a state of emergency under the emergency management act, 1976 PA 390, MCL 30.401 to 30.421, issued for drinking water contamination.

(c) Is for eligible property that is a historic resource if the Michigan strategic fund determines the redevelopment is not economically feasible absent the transformational brownfield plan.

(d) Is for eligible property that is located in a city, village, or township with a population of less than 25,000 or that is otherwise eligible for the corresponding population tier in section 2(hhh)(vi), as determined in accordance with subsection (15), if the Michigan strategic fund determines that the redevelopment is not economically feasible absent the transformational brownfield plan.

(10) In determining whether a plan under subsection (9) has a transformational impact for purposes of section 2(hhh) and subsection (3)(a), the governing body and Michigan strategic fund shall consider the impact of the transformational brownfield plan in relation to existing investment and development conditions in the project area and whether the transformational brownfield plan will act as a catalyst for additional revitalization of the area in which it is located.

(11) The Michigan strategic fund may not approve more than 5 transformational brownfield plans under subsection (9) in a calendar year, except that if the Michigan strategic fund approves fewer than 5 plans in a calendar year under subsection (9), the unused approval authority carries forward into future calendar years and remains available until December 31, 2027. The Michigan strategic fund also shall not approve more than 5 transformational brownfield plans under subsection (9) in any individual city, village, or township before December

31, 2022.

(12) Except as otherwise provided in this subsection, amendments to an approved transformational brownfield plan must be submitted by the authority to the governing body and to the Michigan strategic fund for approval or rejection following the same notice necessary for approval or rejection of the original transformational brownfield plan. Notice is not required for revisions in the estimates of tax increment revenues, construction period tax capture revenues, withholding tax capture revenues, income tax capture revenues, or sales and use tax capture revenues.

(13) Except as provided in this subsection, an amendment to an approved transformational brownfield plan under section 13c(1) is not considered a new plan approval subject to the limitation in subsection (22)(a). The Michigan strategic fund may consider an amendment as a new plan approval only if the amendment adds eligible property and the Michigan strategic fund determines that approving the addition as an amendment would be inconsistent with the purposes of this act.

(14) The procedure, adequacy of notice, and findings under this section are presumptively valid unless contested in a court of competent jurisdiction within 60 days after approval of the transformational brownfield plan by the Michigan strategic fund. An approved amendment to a conclusive transformational brownfield plan is likewise conclusive unless contested within 60 days after approval of the amendment by the Michigan strategic fund. If a resolution adopting an amendment to the transformational brownfield plan is contested, the original resolution adopting the transformational brownfield plan is not open to contest.

(15) The determination as to whether a transformational brownfield plan complies with the minimum investment requirements in section 2(hhh) must be made with reference to the most recent decennial census data available at the time of approval by the authority. A plan in a municipality that exceeds a population tier under section 2(hhh) by not more than 10% of the maximum population for that tier is, on election of the authority, subject to the investment requirement for that tier. A transformational brownfield plan that is expected to result in, or does result in, a total capital investment that is within 10% of the applicable minimum investment requirement is considered to satisfy the applicable requirement under section 2(hhh).

(16) For purposes of a transformational brownfield plan, determination as to whether property is functionally obsolete may include considerations of economic obsolescence as determined in accordance with the Michigan state tax commission's assessor's manual.

(17) Any positive or negative determination by the Michigan strategic fund under this section must be supported by objective analysis and documented in the record of its proceedings.

(18) The Michigan strategic fund shall charge and collect a reasonable application fee as necessary to cover the costs associated with the review and approval of a transformational brownfield plan.

(19) The Michigan strategic fund shall not commit, and the department of treasury shall not disburse, more than \$80,000,000.00 in total annual tax capture. As used in this subsection, "total annual tax capture" means the total annual amount of income tax capture revenues, withholding tax capture revenues, and sales and use tax capture revenues that may be reimbursed each calendar year under all transformational brownfield plans. In addition to the \$80,000,000.00 annual limit, both of the following provisions apply:

(a) With respect to the availability of uncommitted amounts, if an amount authorized to be committed for a calendar year has not been committed, the uncommitted amount for that calendar year remains available to be committed and disbursed in a subsequent calendar year and is in addition to the annual limits otherwise applicable. However, not more than \$30,000,000.00 may be committed or disbursed in any calendar year above the \$80,000,000.00 annual limit as a result of the operation of this subdivision, and all commitments and disbursements under this subdivision remain subject to the overall limitation in subsection (20).

(b) With respect to the availability of committed but undisbursed amounts, if an amount has been committed under an approved transformational brownfield plan for a calendar year but has not been disbursed, the undisbursed amount for that year is available to be disbursed in a subsequent calendar year and is in addition to the annual limit otherwise applicable.

(20) The Michigan strategic fund shall not commit, and the department of treasury shall not disburse, a total amount of income tax capture revenues, withholding tax capture revenues, and sales and use tax capture revenues that exceeds \$1,600,000,000.00.

(21) The Michigan strategic fund shall not approve more than a total of \$200,000,000.00 in construction period tax capture revenues. The Michigan strategic fund shall project the value of the sales and use tax exemptions under each transformational brownfield plan at the time of plan approval and shall require such information from the owner or developer as is necessary to perform this calculation. The Michigan strategic fund also shall require the owner or developer of the eligible property to report the actual value of the sales and use tax exemptions each tax year of the construction period and at the end of the construction period.

(22) The Michigan strategic fund shall comply with all of the following:

(a) Not approve more than 5 transformational brownfield plans in a calendar year, except that if the Michigan strategic fund approves fewer than 5 plans in a calendar year, the unused approval authority carries forward into future calendar years and remains available until December 31, 2027.

(b) Not approve more than 5 transformational brownfield plans in any individual city, village, or township before December 31, 2022.

(c) Ensure an equitable geographic distribution of plans approved under this subsection, which must achieve a balance between the needs of municipalities of differing sizes and differing geographic areas of the state. Subject to the receipt of qualified transformational brownfield plans meeting the criteria under this section and section 13c, the Michigan strategic fund shall ensure that both of the following requirements are met:

(i) Not less than 33% and not more than 38% of the total transformational brownfield plans approved under this act before December 31, 2027 will be located in cities, villages, and townships with a population of less than 100,000.

(ii) Not less than 33% and not more than 38% of the total transformational brownfield plans approved under this act before December 31, 2027 will be located in cities, villages, and townships with a population of not less than 100,000 and not more than 225,000.

(d) In coordination with the governing body, shall determine the appropriate provisions regarding affordable housing on a plan-by-plan basis.

(23) In the event of a proposed change in ownership of eligible property subject to a transformational brownfield plan for which reimbursement will continue, the approval of the Michigan strategic fund is required before the assignment or transfer of the development and reimbursement agreement.

(24) If the Michigan strategic fund approves a transformational brownfield plan and work plan, and subsequent to that approval, amendments are made to this act, the Michigan strategic fund may amend those plans to make conforming and consistent changes to the approved transformational brownfield plan and work plan on an administrative basis, if those changes do not result in any increase in the aggregate total amount of reimbursement authorized under the initial transformational brownfield plan. The authority of the Michigan strategic fund to administratively amend transformational brownfield plans and work plans under this subsection also applies to transformational brownfield plans and work plans entered into before December 27, 2021.

(25) The Michigan strategic fund shall not approve any new transformational brownfield plans after December 31, 2027. A transformational brownfield plan approved before December 31, 2022 remains in effect and may be amended in accordance with this act.

(26) On approval by the Michigan strategic fund, the mixed-use requirement in section 2(hhh) may be waived for a brownfield plan that otherwise meets the location, population, and minimum investment requirement under section 2(hhh)(vi).

History: Add. 2017, Act 46, Eff. July 24, 2017 ;-- Am. 2021, Act 138, Imd. Eff. Dec. 27, 2021 ;-- Am. 2023, Act 89, Imd. Eff. July 19, 2023 ;-- Am. 2023, Act 90, Imd. Eff. July 19, 2023