BROWNFIELD REDEVELOPMENT CONTINUOUS PROGRAM IMPROVEMENT REPORT

Executive Summary

This document presents the recommendations of the Brownfield Redevelopment Continuous Program Improvement Workgroup. This Workgroup, convened by the Remediation and Redevelopment Division of the MDEQ, consists of knowledgeable practitioners who work with a broad spectrum of organizations involved in redeveloping Michigan brownfields. The Workgroup's effort follows that of the Department's 2012 Collaborative Stakeholders Initiative recommendations, as well as the transformational reinvention of the Parts 201 and 213 Programs. . As such, these recommendations include rule rescissions, policy changes, and legislative amendments.

The Workgroup's recommendations seek to integrate best practices, update DEQ policies consistent with the 201 and 213 program reinvention, eliminate unnecessary rules, consolidate and integrate enabling legislation, and streamline all aspects of program administration.

These recommendations address:

- Site reclamation rules
- Demolition, lead and asbestos abatement, dredging, and soil excavation
- Liability issues
- Core Communities and Placemaking
- Program implementation issues
- Legislation (Parts 195 & 196, Part 201, and Act 381).

The recommendations are accompanied by proposed text for statute and rule changes as needed for their implementation.

Background

Michigan's first brownfield redevelopment program was established with the passage of the 1988 Environmental Protection Bond and the Site Reclamation Program Rules that followed in 1991. Subsequent legislation in 1992, 1995, 1996, 1998, and 2000 created additional protections and incentives, but also a program governed by five different statutes.

In addition, the 2012 Collaborative Stakeholders Initiative (CSI) Report made over 25 recommendations to enhance Michigan's Brownfield Redevelopment programs. While many of these recommendations have already been implemented, there remain important issues that should be considered. Given the significant changes enacted in the Part 201 and 213 programs over the past 2 years, designed to adopt best practices and sound risk management, the Michigan Department of Environmental Quality ("MDEQ") convened a work group in early 2014 to evaluate Michigan's brownfield redevelopment programs.

The group considered potential program updates, evaluated pending CSI recommendations, and reviewed draft policies related to the MDEQ Grant and Loan program (Parts 195 and 196) and the Brownfield tax increment financing (TIF) program (Act 381).

The MDEQ invited representatives from over 20 organizations, including representatives of state and local government, economic development organizations, professional associations, business associations and others. The stakeholder organizations were selected to provide a diverse representation of those involved in the Brownfield Redevelopment Program. A list of the organizations represented in the Stakeholder Group is attached as Exhibit A. The Stakeholder Group met monthly from February through June, 2014, and held a final meeting in October to finalize its report and recommendations. The MDEQ asked the Michigan Chapter of the National Brownfield Association (now known as the Association for Redevelopment Initiatives) to help manage the process and to prepare the initial draft of the report.

The Stakeholder Group formed six committees to evaluate many issues associated with the brownfield redevelopment program. A description of the areas of focus for each committee is provided in Exhibit B and a listing of the committees is as follows:

- Site Reclamation Rules and Part 195;
- Demolition, Lead/Asbestos Abatement, Dredging, and Soil Excavation;
- Liability Issues;
- Core Communities and Placemaking;
- Program Implementation Issues; and
- Legislative Review.

Each committee met separately during the process to address their specific area of focus and developed draft recommendations that were then brought to the Stakeholder Group. After input from the Stakeholder Group, each of the committees formalized their recommendations and submitted them back to the stakeholder group for finalization. The Stakeholder Group reviewed and finalized the recommendations and they are attached as Exhibit C. These recommendations include the issue, pros and cons of implementing the recommendations and, where appropriate, legislative language.

This report includes a summary of the recommendations and provides draft legislative language to implement many of the recommendations.

Summary of Recommendations

I. **Site Reclamation Rules and NREPA Parts 195 and 196**.

The Administrative Rules for the Site Reclamation program (Site Rec Rules) were promulgated in 1991 and remain in effect today. Because Administrative Rules were not developed for the CMI brownfield grant and loan program, the Site Rec Rules were also utilized, at least in part, for the CMI program. These rules have become relatively dated

following a number of program changes. Upon evaluation of their relevance, the Stakeholder Group recommends that the Site Rec Rules be rescinded, and the few portions of the rules that remain relevant be added into Part 196. The detailed analysis in Exhibit C captures the portions of the Site Reclamation rules that should be added to Part 196 and makes specific recommendations for proposed amendments to Part 196.

In addition, it is recommended that the MDEQ Grant and Loan program be combined into a single statute so that the requirements and provisions are consistent for all funding sources. Specifically, we recommend:

1. Relevant portions of Part 195 that are associated with the Site Reclamation Grant program, refer to the grant requirements provided in Part 196.

2. Relevant portions of Part 201 that are associated with the Revitalization Revolving Loan program, refer to the loan requirements provided in Part 196.

II. **Demolition, Lead and Asbestos Abatement, Dredging, and Soil Excavation**.

A. **Demolition**. Grant and loan funds can be used for demolition (including pre-demolition assessments) in addition to environmental expenses. The MDEQ receives more requests for demolition than there are available funds from the Grant and Loan program. The Stakeholder Group focused on the use of grant and loan funds for demolition in an effort to establish a consistent policy that also meets the objectives of the MDEQ's mission to utilize such funds for environmental activities. We recommend that grant and loan funds used to fund demolition for a project should be no greater than the amount of grant and loan funds allocated to environmental activities for that project. It should be noted that Act 381 TIF can also be used to reimburse the cost of demolition.

B. **Lead and Asbestos Abatement**. Because of a provision in the site reclamation rules, grant and loan funds have not been used to **fund** asbestos abatement; only asbestos surveys have been funded. We recommend that the prohibition on the use of grant and loan funds for asbestos abatement be eliminated, and that both lead and asbestos abatement be eligible for grant and loan funds. When the asbestos and lead do not present an immediate threat to public health, these expenses would be treated like demolition expenses, with the limitation noted above. In the event that either the presence of asbestos or lead presents an immediate threat to public health, such expenses would be eligible for grant and loan funds, even if there was not another environmental component to the project.

The cost of pre-demolition assessments and lead and asbestos surveys should be eligible for Act 381 TIF reimbursement prior to approval of a brownfield plan. Consistent with environmental due diligence expenses

(Phase I, Phase II to evaluate due care, and BEA), the local unit of government ("LUG") should be able to approve school TIF retroactively for lead and asbestos surveys. These expenses should also be eligible for grant and loan funds.

C. **Dredging**. Many brownfield redevelopment projects located on waterfront properties incorporate dredging activities to enhance waterfront access. In many instances, the sediments to be dredged are contaminated. Currently, it is questionable whether dredging is an eligible activity under the Brownfield programs. In connection with a specific economic development project, dredging and the disposal of dredged spoils should be considered an eligible activity for grants, loans and Act 381 TIF. This would **apply** in instances where either the adjacent upland is contaminated or the sediments to be dredged are contaminated based on the application of soil criteria.

D. **Soil Excavation**. Several projects have requested MDEQ brownfield funding for soil excavation, particularly in non-core communities. Sometimes soils are contaminated, but in many instances the material is uncontaminated fill. Often, such fill is not suitable for an economic development project. If soil is contaminated based on Part 201 cleanup criteria, then the cost to address such contaminated soil for due care or other purposes should generally be eligible for grant, loan and Act 381 funding. Additionally, in some instances, the cost of specialized foundations or additional fill should also be eligible for brownfield funding (loan funds and Act 381 TIF, but not grant funds) if a cost/benefit analysis demonstrates that such foundation or fill is less expensive than transportation and disposal of contaminated soils that would be needed to address due care requirements.

III. **Liability**.

Currently, there are limitations on the use of grant, loan and Act 381 TIF funds when there is an existing liable party. There also have been instances when a party acquired the property for development and the party was technically liable because of a faulty BEA or failure to submit the BEA on a timely basis. Finally, there are other instances when an owner is technically liable because of strict liability, such as RCRA corrective action sites under Part 111 and PCB contamination under TSCA. We believe it makes good policy sense to encourage development on those parcels when the property owner was not responsible for the activity resulting in the contamination. This also aligns with the substance of the Part 201 liability scheme. Accordingly, we recommend that grant, loan and Act 381 funds be available to benefit a party that is not responsible for the activity causing the contamination, regardless of their statutory liability for remediation under CERCLA, Parts 111, 201 or 213, RCRA, or TSCA.

There are some variations in how funds should be made available when a liable party exists that is responsible for an activity causing a release. If the developer is responsible

for an activity causing a release, then funding would not be available under these programs. If the seller is responsible for an activity causing a release, due diligence and due care activities of the purchaser/developer would be eligible for grant, loan and Act 381 funding, but additional response activities that would be the obligation of the liable party would not be eligible. If a viable party exists that is responsible for the activities causing the release, but that party is neither the seller nor the developer, due diligence and due care activities would be eligible for grant/loan/381 funds, and additional response activities would be eligible for loan and Act 381 funds, but not grant funds.

IV. **Core Communities/Placemaking**.

A. **Placemaking**. Placemaking is a catalyst that provides a way of not only utilizing the natural assets that exist within every community, but also strengthening partnerships between communities and government. Placemaking may be an effective way to re-create our economies and communities for this century. For this reason, we recommend that the MDEQ establish a policy that would incentivize developers to include placemaking concepts into their brownfield redevelopment projects. Specifically, the MDEQ should consider using the Sense of Place Council Charter ("Principles of Placement Elements") to help define a placemaking project. The detailed description in Exhibit C includes a summary of the elements. It would be incumbent on the MDEQ to determine on a project-by-project basis how many elements of these principles would result in a placemaking project. We recommend that the MDEQ establish the following policies to encourage placemaking when these brownfield funds are utilized: (i) projects in which placemaking would be appropriate but do not utilize placemaking elements may only be eligible for Act 381 TIF funds; and (ii) projects that do utilize placemaking elements may be eligible for a larger portion of grant funds or may have the ability to access funding for activities typically not considered eligible, such as removal of unstable soil.

B. **Core Communities**. As noted above, Michigan currently has 135 "Qualified Local Governmental Units (commonly referred to as "core communities") that receive certain special benefits, including Act 381 TIF funds for site preparation and infrastructure. The Stakeholder Group evaluated whether there should be any modification of the Core Community list. The impact of expanding the list of core communities gave rise to many significant issues in other State program areas, many of which are well beyond the scope of Michigan's Brownfield program. As a result, the Stakeholder Group does not recommend any expansion of the "core communities" list at this time.

V. **Program Implementation**.

A. **Administrative Costs**. Current MDEQ policy in the Brownfield program allows 3% to 10% of grant/loan amounts to be used by LUG's to cover

administrative and oversight costs. We are recommending some clarity in this area. The LUG's administrative fees for non-technical oversight should be capped at 3% of the grant or loan amount. An additional 5% should be available to pay for oversight by an environmental professional in instances where the MDEQ requests or the LUG chooses to retain a technical professional to oversee the activities of the developer's consultant. The total of 8% could all be allocated to such oversight costs.

B. **MDEQ Staffing for Review of Grant/Loan/Act 381 Work Plans**. Evaluation of work plans under the Grant/Loan/Act 381 programs is not always consistent between districts and individual staff who review such work plans, particularly under Act 381. In order to streamline reviews of grants/loans/381 work plans, we encourage the MDEQ to dedicate a single staff person in each district and in Lansing headquarters to expedite and ensure consistent reviews. Should dedicated staff not be feasible within the districts, one or more individuals should be identified as the "brownfield grant/loan/381 work plan" expert(s) in Lansing and should be given decision making authority. The brownfield expert(s) in Lansing will certainly want to seek technical input from the district, but should be given relatively broad authority in evaluating and approving work plans.

C. **Use of Grant and Loan Funds When LUG is a Liable Party**. LUGs are prohibited from receiving grant or loan funds under Part 196 if the LUG is responsible for the release. We believe that Part 196 should be changed to allow a liable LUG to use loan dollars (but not grant dollars) for response activities. The LUGs are still required to reimburse the loans, but this allows a funding mechanism for financially strapped LUGs. If a loan is provided to a liable LUG, the LUG must provide a 50% match.

D. **Multiple Grant/Loan Awards for the Same Project**. Brownfield grant and loan packages have typically been limited to a maximum of a $1 million grant and a $1 million loan. The statute limits grants and loans to one per year to a LUG, at a maximum of $1 million per grant and $1 million per loan. Some projects, however, have significant environmental contamination that cannot be addressed for $2 million and/or they are transformational projects and often encompass hundreds of acres. We are recommending that Part 196 be modified to allow projects to receive multiple grants or loans in a single fiscal year. We believe that project-specific benchmarks should be established to be eligible for multiple grants or loans.

E. **Loan Guarantees and Repayment**. We believe that more flexibility is needed in how loans are guaranteed and repaid by LUGs. While a LUG is no longer required to pledge its full faith and credit under CMI, it still needs financial security to ensure that it is able to repay the loan. There are two separate issues associated with this topic. The first is the requirements of the State of Michigan for securing the brownfield loan.

Currently, legislation requires the use of local revenue sharing to accomplish this goal. It is recommended that other means to secure these loans be allowed, such as escrow accounts, etc.

The second issue associated with loan guarantees is that a LUG generally requires financial security from a developer, often in the form of a letter of credit or similar costly financial security instrument. These securities often must remain in place until the TIF is fully reimbursed, which can be very costly for the developer if the TIF capture extends for a significant number of years. If there is sufficient TIF revenue from a project, we believe that the loan repayment can be converted to a TIF loan when the project is completed and there is sufficient TIF revenue projected to reimburse the loan. If the repayment obligation is limited to TIF revenue, this will help facilitate many projects.

F. **Timing and Approval of Grants**. Much of the time required for approval of a grant can be spent waiting for approval by the State Administrative Board ("Ad Board"). The Ad Board's approval is required for all grants over $250,000. Ad Board approval is not required for loans. Grant program procedure has been to wait until a completed application has been submitted before submitting a project to the Ad Board. We are recommending that if a LUG requests expedited review of a grant, and staff is confident that the project is feasible based upon a project proposal, staff should have the ability to request Ad Board approval prior to submittal of a full application.

G. **Sustainable Funding Sources**. The Stakeholder Group believes that the MDEQ should create a process for further consideration of sustainable funding. Specifically, a stakeholder group should be appointed to evaluate and make funding recommendations. This group should include local/regional environmental organizations such as NMEAC, WMEAC, FLOW, etc., who could build local support for any recommendations. There should be a group from each Prosperity Region where possible.

H. **Capturing School TIF on MSF Funded Eligible Activities for the Local Site Remediation Revolving Funds (LSRRFs)**. Currently, LUGs can capture school TIF for the LUG's LSRRF, but only to the extent of school TIF that has been used to reimburse MDEQ eligible activities. LUGs cannot capture school TIF for LSRRFs for MSF eligible activities. We recommend that LUGs be allowed to capture school TIF for MSF eligible activities for LSRRFs in the same manner that school TIF can be captured for MDEQ eligible activities.

VI. **Legislation**.

The legislative committee drafted changes to Part 195, Part 196, Part 201 and Act 381 to implement the recommendations from all the committees, with input and assistance from

all those committees. In addition, the legislative committee evaluated Act 381 for consistency and streamlining to make Act 381 simpler. Accordingly, the draft legislation includes some changes in addition to those contained in the committee recommendations.

A copy of the proposed legislative amendments is included in Exhibit D.

EXHIBIT A

Brownfield Redevelopment Continuous Program Improvement Workgroup	
Local Units of Government:	
	City of Grand Rapids Brownfield Redevelopment Authority
	Grand Traverse County Brownfield Redevelopment Authority
	Marquette County Brownfield Redevelopment Authority
	Detroit Economic Growth Corporation
	Lansing Economic Area Partnership
Representative Organizations and Associations:	
	Association of Brownfield Redevelopment Authorities (ABRA)
	Michigan Municipal League (MML)
	National Brownfield Association (NBA) - Michigan Chapter
Finance/ Banking Representatives:	
	Michigan Banker's Association
Redevelopment Professionals:	
	Michigan Association of Environmental Professionals (MAEP)
	Air & Waste Management Association (AWMA) - East Michigan Chapter
Developers/ Real Estate Professionals:	
	Michigan Economic Developers Association (MEDA)
	International Council of Shopping Centers (ICSC)
	Association of General Contractors
Attorneys:	
	State Bar of Michigan - Environmental Law Section
Manufacturing Representatives:	
	Michigan Manufacturers Association (MMA)
	Michigan Chemistry Council
Small and Large Business Representatives:	
	Michigan Chamber
Petroleum Industry Representatives:	
	Michigan Petroleum Association (MPA)
State Agency Partners:	
	Michigan Economic Development Corporation (MEDC)
	Michigan State Housing Development Authority (MSHDA)

EXHIBIT B

Brownfield Continuous Program Improvement Work Group Committees

1. **Site Reclamation Rule and Part 195**. This Committee evaluated whether the site reclamation rules are still relevant, and made recommendations to consolidate and streamline the Grant and Loan programs into a single statute.

2. **Demolition, Lead and Asbestos Abatement, and Dredging, and Soil Excavation**. This Committee evaluated the policies and inconsistencies among the programs relating to the use of funding for all these items.

3. **Liability**. This Committee evaluated the policies relating to use of Brownfield programs when a liable party is involved and made recommendations to establish consistency among the programs relating to this issue.

4. **Core Communities and Placemaking**. This Committee evaluated the concept of "qualified local units of government" (also known as "core communities") and placemaking when evaluating the use of brownfield redevelopment tools.

5. **Program Implementation Issues**. This Committee evaluated many program implementation issues, including administrative expenses, MDEQ oversight, limitation on grant and loan funds for large projects, loan guarantees and repayment, timing of review, sustainable funding and other issues.

6. **Legislative Review**. This Committee was charged with evaluating consistency among the statutes, identifying the needs for legislative fixes, and drafting legislation.

EXHIBIT C

Committee Recommendations

Committee: Site Reclamation Rules and Part 196

Issue Statement # 1: Eliminate Site Reclamation Program Rules

The administrative rules for the Site Reclamation Program were created and approved by the Joint Committee on Administrative Rules in 1991. When Part 196, the Clean Michigan Initiative (CMI) was passed in 1998, it did not require new rules to be created and so the Site Reclamation Rules were applied to the CMI program. As a result of statutory changes, agency reorganizations, and new technologies and approaches, many of these rules are no longer relevant.

An evaluation of the Site Reclamation Rules is needed to determine what remains relevant and how this information should be retained: in rule, statute, or policy.

Specific Action to be Taken:

☒Statutory ☒Rule ☐Policy ☐Governance (Process)

Recommendations:

1. Rescind Site Reclamation Rules.

2. Incorporate into Part 196 definitions for "eligible property", "measurable economic benefit", "measureable environmental benefit", and "project" as provided in legislative language section below.

3. Currently Part 196 only provides specific detail on the CMI brownfield loan program, while the grant program details reside within the Site Reclamation Rules. With the elimination of the rules, specifics regarding grant requirements need to be incorporated into Part 196. Specific language has been provided in the Draft Legislative Language section below to address addition of the grant requirements.

4. Grant applicants (local units of government) are required to submit a resolution in support of a project with their grant applications. The committee agreed that while it is important to assure that the project has local support, a letter from the Chief Executive or their appointee would be sufficient. Recommended language is provided below.

5. The committee determined that it was important to allow the MDEQ the ability to not only revoke but also to suspend a grant or loan if a grantee or borrower is not in compliance with the contract, permits, and so on. This would allow for MDEQ to withhold payment until compliance is reached, without having to resort to revoking the funding. Section 19612(2) should be modified to reflect this issue.

6. The Site Reclamation rules allow grants and loans for up to $2 million each per year, per community. The CMI limits grants and loans to $1 million per year, per community. Although this issue was referred to the Program Implementation Committee, we support the concept that under certain circumstances, such as transformational projects, there should exist an ability to exceed the $1million per year per community limit. Because of the limited availability of funding, this flexibility should be allowed only in exceptional circumstances

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7. The rules state that funds can't be used to relieve a potentially liable party of their responsibility for response activities, and that liable parties cannot benefit or profit from the investment of public funds. With elimination of the rules, this issue will need to be addressed within Part 196. This issue was referred to the Liability Committee, who will provide the appropriate language. We want to reinforce our view that clarification is required on when and whether grant and loan funds can be used when there is a potentially liable party associated with an eligible property. The final wording should be clear so that the meaning of terms like "profit" and "relieve a potentially liable party from responsibility" are consistently interpreted.

Supporting Arguments:

I. Pros

- Obsolete or irrelevant rules will be eliminated.

- Good policies that benefit the state and the program should be retained, clarified, and codified.

II. Cons

Draft Legislative Language:

1. Definitions: The following definitions should be added to Section 19601:

   i. "Eligible property" means property that is known or suspected to be a facility and that was used or is currently being used for commercial, industrial, public, or residential purposes.

   ii. "Measurable economic benefit" means the permanent jobs that are created or retained, the capital invested, and/or the increased tax base to the county, city, village, or township where the project is located."

   iii. "Measurable environmental benefit" means the requirements of Part 201 and/or Part 213 are advanced at an eligible property where environmental conditions inhibit redevelopment or reuse.

iv. "Project" means the entire project to be undertaken, including the actual site remediation and resulting economic development.

2. 19608a(2) should be made to apply to grants as well as loans.

3. Add the following to Section 19608a(4): "A letter of support from the Chief Executive or highest ranking elected official of the applicant or their appointee, including provisions that if funding is awarded, the project will be undertaken and that the proposed development is consistent with local development or redevelopment plans, zoning ordinances and/or master plans."

4. Add the following underlined language to 19608a(4)(k): "<u>For loans</u>, a resolution from the governing body of the applicant committing to repayment.

5. Add the following to Section 19608a(6): "Grant funds will be disbursed on a reimbursement basis upon receipt of appropriate documentation. Loan funds will be disbursed in draws based on an approved work plan. Supporting documentation will be submitted after loan expenses are incurred. Documentation requirements will be specified by the department on a form prescribed for requesting reimbursement."

6. Add the following underlined language to Section 19612(2): "the department may revoke <u>or suspend</u> a grant or loan…"

Recommended Follow up Actions:

Committee: Demolition, Lead/Asbestos Abatement, Dredging, and Soil Excavation

Issue Statement # 1: Demolition

Existing structures are often impediments to the redevelopment of brownfield properties. Costs associated with the demolition of these structures can be significant, and thus there is demand for financial incentives to assist with these costs. Demolition is already an MEDC eligible activity for projects that meet the MEDC program goals.

The MDEQ Brownfield Redevelopment Program currently considers demolition eligible for projects that also have a significant environmental component. MDEQ sometimes receives requests to participate in redevelopment projects that have a large demolition component, but a small or non-existent environmental component. Under this circumstance, demolition would not currently be considered eligible for funding.

MDEQ receives many more requests for demolition than there are available funds. To ensure that these resources are not entirely consumed by non-environmental activities, a basis for decision should be established that defines when demolition activities are eligible for MDEQ funding.

Specific Action to be Taken:

☐Statutory ☐Rule ☒Policy ☐Governance (Process)

Recommendations:

DEQ funding can be used to support demolition per the following conditions:

1. Grant funding – In order to qualify for demolition funding, there must be an identified redevelopment; there must be a clear environmental component to the project and the total cost for eligible environmental activities (regardless of funding source of the work) should equal or exceed those for demolition costs.

2. Loan Funding and Act 381 –The preference is there is an identified redevelopment component, however if communities are willing and able to take on a loan to prepare the site for a future development, the MDEQ is willing to provide loan support. For loan funding similar to grants, there must be a clear environmental component to the project and the total cost for eligible environmental activities (regardless of funding source of the work) should equal or exceed those for demolition costs.

Supporting Arguments:

I. Pros:

- This recommendation provides some clear delineation for what would and would not be eligible for MDEQ support through the Brownfield programs. It also reinforces an important concept that MDEQ incentives should be focused on environmental conditions that lead to positive environmental outcomes.

- It is recognized that structures needing to be demolished can impede the redevelopment of a site and the ability to provide funding to address this assuming there is a significant environmental component, is a good compromise.

II. Cons:

- Demolition activities create significant expenses for redevelopment projects, and there remains a large, unmet need for financial support for building demolition on brownfield properties.

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Committee: Demolition, Lead/Asbestos Abatement, Dredging, and Soil Excavation

Issue Statement #2: Lead and Asbestos Abatement

The presence of lead and asbestos associated with existing structures requires special handling which often serves as an impediment to the redevelopment of brownfield properties. Assessment and abatement of these materials can be expensive and, as a result, there is demand for financial incentives to assist with these costs. Lead and asbestos assessment and abatement are already MEDC Act 381 eligible activities for projects that meet the MEDC program goals.

The Site Reclamation Rules, which govern the Brownfield Redevelopment Grant and Loan Program, specifically prohibit support for asbestos abatement. The MDEQ has extended this prohibition to lead abatement as a matter of policy. MDEQ currently considers lead and asbestos assessment as an eligible activity for grants and loans.

Clarification is needed to define when lead and asbestos related activities are eligible for MDEQ grant and loan funding.

Specific Action to be Taken:

☐Statutory ☒Rule ☒Policy ☐Governance (Process)

Recommendations:

Background: Lead and asbestos can present a threat to public health, but were not part of the activities explicitly contemplated under Part 196. Asbestos abatement is specifically excluded from eligibility under the Site Reclamation Rules, but this prohibition may be removed with the proposed elimination of those rules. Upon elimination of those rules, the removal of lead or asbestos should be deemed a response activity when the current state of the lead or asbestos presents an immediate risk to human health. Abatement includes removal, disposal, or encapsulation of asbestos containing materials (ACM) or materials containing lead.

Recommendation #1: Eliminate the Site Reclamation rules prohibiting asbestos abatement.

Recommendation #2: Asbestos or lead abatement can be covered by Brownfield grants/loans as a response activity when it presents an immediate threat to public health regardless of the environmental component of the project.

Recommendation #3: Consistent with the recommended policy on demolition, when abatement is not needed to address an immediate threat to public health, there must be a clear environmental component to the project, and the cost for eligible environmental

activities (regardless of funding source for that work) should equal or exceed those for the abatement costs, in order for abatement activities to qualify for grants or loans.

Recommendation #4: Hazardous building material surveys should be made eligible for school tax increment financing under Act 381 prior to approval of a brownfield plan or work plan. Similar to environmental due diligence activities (Phase I, BEA and Phase II to evaluate due care), the local unit of government should be able to approve school TIF for such abatement surveys. Pre-demolition surveys should be eligible for all funding sources if the associated demolition work is covered by MDEQ funding.

Supporting Arguments:

I. Pros

- Characterizing abatement necessary to address an immediate threat to public health as a response activity is consistent with MDEQ's mission.

- This recommendation provides some clear delineation for what would and would not be eligible for MDEQ support through the Brownfield programs. It also reinforces an important concept that MDEQ incentives should be focused on environmental conditions that lead to positive environmental outcomes.

- It is recognized that the presence of lead and asbestos can impede the redevelopment of the site and the ability to provide funding to address this, assuming there is a significant environmental component, is a good compromise.

II. Cons:

- The presence of asbestos and/or lead, and the necessary abatement of these materials, can create significant expenses for redevelopment projects, and there remains a large, unmet need for financial support for abatement on brownfield properties.

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Committee: Demolition, Lead/Asbestos Abatement, Dredging, and Soil Excavation

Issue Statement # 3: Dredging

Many brownfield redevelopment projects located on waterfront properties incorporate dredging activities to enhance waterfront access. In many situations, the sediments to be dredged are contaminated and depending on contaminant levels, addressing sediments associated with dredging may qualify as a response activity. Currently, dredging is not an eligible activity under the MDEQ Act 381 and grant and loan programs. Clarification is needed on what, if any, aspects of dredging would be considered eligible for MDEQ Brownfield funding.

Specific Action to be Taken:

☒Statutory ☐Rule ☒Policy ☐Governance (Process)

Recommendations:

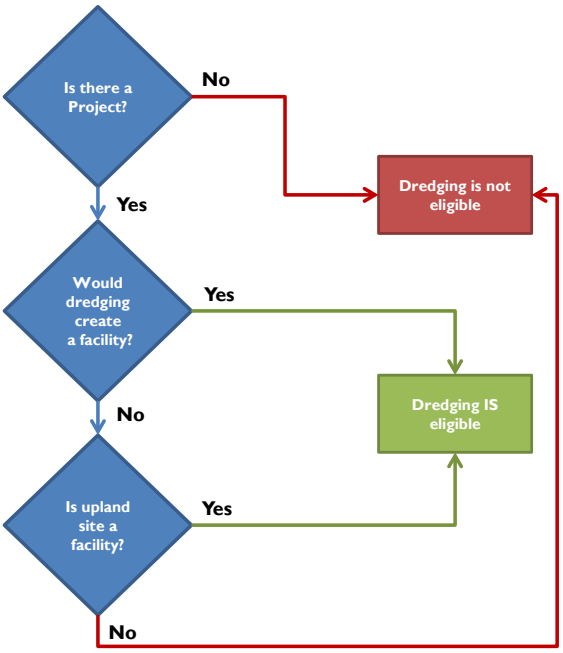
1. Dredging (as defined by the group as both the act of dredging and the disposal of materials from dredging operations) should be considered an eligible activity for MDEQ Brownfield-related programs when the following conditions are met:

    a. If either the adjacent upland property is a facility, or if the soils and sediment to be dredged meet the standards of a facility applying soil cleanup criteria (and would create or exacerbate a facility by dredging and then depositing those materials on the upland site).

    b. Dredging activities are tied to a specific economic development project.

    c. The following flow chart summarizes the recommendation.

Criteria for Support of Dredging Activity under MDEQ Brownfield Programs



2. It was also recommended that grant funds not be used as a primary source for support of dredging. It was suggested that these funds might be more appropriately focused on supporting the environment investigations necessary to determine if a site is eligible, after which loans and/or TIF could be deployed in support of the dredging work itself.

3. Current Michigan law requires that Clean Michigan Initiative (CMI) funds "shall not be used to develop a municipal or commercial marina." (MCL 324.19608 (4)) The group recommended that this prohibition creates a conflict with support for dredging activities, and as a result, should be stricken.

Supporting Arguments:

I. Pros:

1. There is an unmet funding need for projects that require dredging.

2. Dredging (both the dredging operation and the removal and disposal of resulting materials) for projects that meet the eligibility criteria, can be viewed as either preventing exacerbation or exercising due care.

3. It was also noted that the MEDC could continue to provide support for dredging activities on projects in core communities that meet its own eligibility criteria, and such work could be categorized as site preparation or development of public infrastructure.

4. Many areas in which support for dredging may be needed are not located in core communities, and thus have limited access to program support. This will allow some funding for dredging in those communities.

II. Cons:

1. The demand for funding may exceed the supply of funds if dredging is added as an eligible activity.

Draft Legislative Language (if appropriate):

The following language contained in MCL 324.19608 (4) should be stricken:

Clean Michigan Initiative (CMI) funds “shall not be used to develop a municipal or commercial marina.”

Recommended Follow up Actions (if appropriate):

Committee: Demolition, Lead/Asbestos Abatement, Dredging, and Soil Excavation

Issue Statement #4: Soil Excavation, Transport and Disposal

A number of projects have requested the Department of Environmental Quality (DEQ) to fund soil excavation. Sometimes the soils are heavily contaminated; sometimes they are lightly contaminated and other times they are uncontaminated, non-indigenous (i.e. fill) and/or unstable to build upon. Clarification is needed regarding how the MDEQ Brownfield Redevelopment Program will address the excavation, transportation and disposal of soils.

Specific Action to be Taken:

☐Statutory ☐Rule ☒Policy ☐Governance (Process)

Recommendations:

1. Soils excavated for due care and source removal are eligible for excavation, transportation and disposal costs under Act 381 and brownfield redevelopment grants and loans. The presence of contamination is the driving force behind the need to excavate the soils, rather than their instability as a building material.

2. Soils that are excavated for construction reasons (i.e. building foundations, parking lots, etc.), are eligible for transportation and disposal costs for grants and loans, and Act 381 TIF as long as the soil exceeds Part 201 criteria.

3. Soils that are non-indigenous fill material and/or unstable for building are eligible for transportation and disposal costs for grants and loans, and Act 381 TIF as long as the fill or unstable soil exceeds Part 201 criteria.

4. The incremental brownfield cost of a specialized foundation would be eligible for MDEQ funding (see 4.b below) if a cost/benefit analysis demonstrates that the specialized foundation is less expensive than transportation and disposal of contaminated soils that would need to be excavated to install a typical foundation. This is in addition to a cost/benefit analysis.

To determine the eligibility of specialized foundations for MDEQ brownfield incentives:

a) A letter from a licensed engineer would be required that demonstrates that the additional incremental cost of the specialized foundation is

less expensive than the trucking and disposal costs of the soil that would be excavated for a typical foundation.

b) Act 381 would be the primary recommended source of funding for specialized foundations, loans would be the secondary recommended source of funding and grants would not be recommended for funding.

Supporting Arguments:

I. Pros

1. This recommendation provides some clear delineation for what would and would not be eligible for MDEQ support through the Brownfield programs. It also reinforces an important concept that MDEQ incentives should be focused on environmental conditions that lead to positive environmental outcomes.

2. It was also noted that Michigan Economic Development Corporation (MEDC) could continue to provide support for soil activities on projects in core communities that meet its eligibility criteria, and such work could be categorized as site preparation.

3. For projects that meet the eligibility criteria, funding a specialized foundation in contaminated soil reduces the amount of soil that has to be removed and thus reduces the property owners due care obligations and costs. Therefore, in this instance, specialized foundations could be classified as “due care”.

II. Cons

1. Dealing with contaminated soils can create significant expenses for redevelopment projects, and there remains a large need for financial support for soil excavation, transportation and disposal on brownfield properties.

2. Many areas in which support for soil activities may be needed are not located in core communities, and thus have limited access to MEDC brownfield program support.

3. If the MDEQ doesn’t fund the incremental costs of specialized foundations, then the MDEQ would be incenting a higher cost due care alternative.

Committee: Liability Issues

Issue Statement # 1:

Whether to use grant, loan and Act 381 funds to benefit a party that was not responsible for an activity causing a release, but may be technically liable under Part 201.

Specific Action to be Taken:

☒Statutory ☐Rule ☒Policy ☐Governance (Process)

Recommendations:

Allow the use of grant, loan and Act 381 funds to benefit a party that is not responsible for a release.

Supporting Arguments:

I. Pros

There have been instances when a party acquired property for development and the party was technically liable because of a faulty BEA or failure to submit the BEA on a timely basis. There are other instances when an owner is technically liable because of strict liability, such as RCRA Corrective Action sites under Part 111 and PCB contamination under TSCA. It makes good policy sense to encourage development on those parcels when the property owner was not responsible for the activity resulting in the contamination. This also aligns with the substance of the Part 201 liability scheme.

This recommendation does not absolve a party of liability; it merely enables the funding of redevelopment activities at the property.

II. Cons

To the extent there are limited funds available (particularly for grants and loans), some funds may be used that would benefit a technically liable party and such funds would be unavailable to benefit a non-liable party.

Draft Legislative Language (if appropriate):

Change Section 15(1)(c) to state as follows:

"Use taxes levied for school operating purposes captured from eligible property for response activities that benefit a party that is responsible for an activity causing a release at the eligible property, except that a municipality that established the authority may use

taxes levied for school operating purposes captured from eligible property for response activities associated with a landfill."

Draft similar change to Part 196 as needed.

Recommended Follow up Actions (if appropriate):

Train MDEQ staff that implement these programs.

Committee: Liability Issues

Issue Statement # 2:

What funding should occur under these programs if a viable liable party exists?

Specific Action to be Taken:

☒Statutory ☐Rule ☒Policy ☒Governance (Process)

Recommendations:

1. If the developer is responsible for an activity causing a release, no funding would be available under these programs.

2. If the seller is responsible for an activity causing a release, due diligence and due care activities would be eligible for grant, loan and/or Act 381 funds, but additional response activities that would be the obligation of the liable party would not be eligible.

3. If a viable party exists that is responsible for the activities causing release, but is neither the seller nor the developer, due diligence and due care activities would be eligible for grant/loan/381 funds, and additional response activities would be eligible for loan and Act 381 funds (if approved by the MDEQ), but not grant funds.

Supporting Arguments:

I. Pros

If the developer is responsible for activities causing a release, it should not receive any funds, even if the proposed development is desired. On the other hand, if the developer is not responsible for an activity causing a release, funds from these programs should be made available for due care activities, since due care activities often go beyond activities required of a liable party. But such funds should not be available for all additional response activities, since those activities are more likely to overlap with the responsibility of the liable party. When neither the seller nor the developer is liable (i.e., responsible for an activity causing a release), but there is a viable liable party, it may be appropriate in some instances to allow certain additional response activities, such as source removal, to both facilitate the development as well as provide significant environmental benefit.

II. Cons

There may be limited funds, particularly under the grant and loan programs.

Draft Legislative Language (if appropriate):

A revision will be needed to Part 196 to provide that grant and loan funds can be used for additional response activities, as defined in Act 381.

Recommended Follow up Actions (if appropriate):

Draft appropriate policy.

Committee: Core Communities / Placemaking

Issue Statement #1: Providing Incentives for Placemaking Projects

Placemaking is a catalyst that provides a way of playing off the natural assets that exist within every community and strengthening partnerships between communities and government. It could be the best way to re-create our economies and communities for the 21st century. As a result, Governor Snyder has asked that State and Local Authorities in Michigan Prioritize Placemaking.

Providing incentives for the use of placemaking concepts in brownfield redevelopment projects would further encourage the use of these principles. Currently, MEDC has the ability to provide incentives for placemaking activities within core communities, but MDEQ does not have a means to encourage placemaking projects.

Specific Action to be Taken:

☐Statutory ☐Rule ☒Policy ☐Governance (Process)

Recommendations:

1. MDEQ should establish a policy that would encourage developers to include placemaking concepts into their brownfield redevelopment projects.

2. MDEQ should consider using the Sense of Place Council Charter, "Principles of Placemaking Elements" to help define a placemaking project. The Charter's elements for a quality "place" include:

   authentic;
   human-scaled;
   complete street design;
   mixed-use;
   targeted toward existing communities;
   safe;
   green, sustainable;
   offering a range of housing options;
   diverse and equitable;
   broadband enabled;
   friendly to small businesses, entrepreneurship, immigrant entrepreneurs, and innovation;
   supportive of recreation, arts, cultural identity, and heritage;
   respectful of historic buildings and public spaces; and
   driven by strong civic engagement.

It should be noted that a project should not have to include ALL of the elements identified. It would be up to the agency to determine on a project by project basis how many elements would result in a placemaking project.

3. In addition to the elements identified in the Sense of Place Council Charter, it is recommended that waterfront components also be considered as an element of a placemaking project.

4. MDEQ should establish a policy that ties the proportion of grant, loan, and TIF funds that a project is eligible for, to the placemaking elements incorporated into a brownfield redevelopment project.

    a. Projects in which placemaking would be appropriate but do NOT utilize placemaking elements may only be eligible for brownfield TIF funding.

    b. Projects that DO utilize placemaking elements may be eligible for a larger portion of grant funds OR may have the ability to access funding for activities typically not considered eligible, such as removal of unstable soil.

Supporting Arguments:

I. Pros

- Placemaking has been shown to result in successful redevelopment
- Incentivizing placemaking elements in brownfield redevelopment projects helps to assure their success.
- Focused and thoughtful redevelopment builds stronger communities

II. Cons

- Projects that do not include placemaking elements may see reduced funding

Draft Legislative Language (if appropriate):
N/A

Recommended Follow up Actions (if appropriate):
N/A

Committee: Core Communities / Placemaking

Issue Statement #2: Qualified LUG Definition

In June of 2000, the State of Michigan initiated an effort to spur private development in its urban communities and traditional centers of commerce by offering additional brownfield incentives ("eligible activities") specific to communities with a designation as a "Qualified Local Governmental Unit", as defined in the Obsolete Property Rehabilitation Act, PA 146 of 2000. These additional incentives included demolition, lead and asbestos abatement, site preparation, and public infrastructure to be considered as "eligible activities" for brownfield tax increment financing.

To help further the development of projects that are considered "Placemaking", the concept of expanding those additional "eligible activities" to communities that do not meet the definition of "Qualified Local Governmental Unit" was considered when those communities proposed a Placemaking project. In other words, this would be an effort to provide incentives to Placemaking projects not located in Qualified LUG's.

Specific Action to be Taken:

☐Statutory ☐Rule ☐Policy ☐Governance (Process)

Recommendations:
The impact of expanding the additional eligible activities to communities that don't meet the definition of Qualified LUG gave rise to many significant issues, many of which are well beyond the scope of Michigan's Brownfield Program. As a result, this Committee does not recommend any expansion of the Qualified LUG criteria at this time.

Supporting Arguments/ Background:

- Reviewed history of State actions in targeting development programs to locations.
- Affirmed that change(s) to community eligibility in Act 381 require change(s) in Act 146 (Obsolete Property Rehabilitation Act).
- Analyzed feasibility of addressing Core Community criteria in Act 146 within scope of the CSI charge and process. Considerations included outcomes, stakeholders, and process.

Draft Legislative Language (if appropriate):
N/A

Recommended Follow up Actions (if appropriate):
N/A

Committee: Core Communities / Placemaking

Issue Statement #3: Use of Local TIF for Site Prep, Infrastructure, and Property Acquisition in a non-Core Community

In June of 2000, the State of Michigan initiated an effort to spur private development in its urban communities and traditional centers of commerce by offering additional brownfield incentives ("eligible activities") specific to communities with a designation as a "Qualified Local Governmental Unit", as defined in the Obsolete Property Rehabilitation Act, PA 146 of 2000. These additional incentives included demolition, lead and asbestos abatement, site preparation, and infrastructure improvements to be considered as "eligible activities" for brownfield tax increment financing.

In 2008 an amendment to Act 381 made demolition and lead & asbestos abatement eligible expenses for all properties, whether in a Qualified Local Governmental Unit (otherwise known as a Core Community), or not. There is considerable interest in extending the eligibility of the remaining Core only activities, namely site preparation, infrastructure improvements, and property acquisition, to non-core communities, which is the subject of much debate.

In an effort to address the concern regarding use of state school taxes to support these activities outside of a core community, a proposal was brought forward to consider allowing the use of only "Local-Only" Tax Increment Financing (Local-Only TIF) for these activities in non-core communities.

Specific Action to be Taken:

☐Statutory ☐Rule ☐Policy ☐Governance (Process)

Recommendations:

The impact of expanding the additional eligible activities to communities that don't meet the definition of Qualified LUG gave rise to many significant issues and concerns, even with the use of Local-Only TIF. The issues are complex and require a much more detailed discussion than could be afforded with this group.

It is recognized that this is a longstanding issue that impacts the brownfield program and an issue that needs to be addressed. It is the recommendation of the group that this issue be fully evaluated by a stakeholder group as soon as practicable.

Supporting Arguments/ Background:

During the course of our discussions, there were basically two schools of thought on this issue; The first in support of the local communities being able to decide for themselves how to commit their local dollars. The second showing concern over both expansion of the brownfield TIF program and use of brownfield TIF to incent urban sprawl.

There was a strong belief among many in the group that since we were only discussing the use of local TIF, this issue should be left to the local communities to decide how best to use their TIF.

There were alternate concerns that the desire to broaden the use of local TIFs will draw the Brownfield program into the legislative debate surrounding TIFs. The Brownfield program is not currently part of these discussions and the concern was that when many are pushing for the elimination of TIFs, we should not be pushing to broaden the Brownfield program to fund everything. This is why the other programs are facing serious threats and by making these modifications and requests, we are jeopardizing the brownfield program.

A proposal for an "interim" step was discussed. This proposal would allow non-core communities to capture "Local-Only" TIRs for acquisition and site preparation, but not for infrastructure, which is often associated with urban sprawl. This approach would at least allow non-core communities the ability to use some of these tools as they see fit in their community as it relates to facilitating the redevelopment of qualified Brownfield sites.

A consensus on the interim step could not be achieved within the limited time frame available for discussion.

Draft Legislative Language (if appropriate):
N/A

Recommended Follow up Actions (if appropriate):
N/A

Committee: Program Implementation Issues

Issue Statement #1: Administrative Costs

The Brownfield program allows 3% to 10% of grant/loan amounts to be used by local governments to cover grant/loan administrative oversight costs. The administrative budget can be used by either the grantee/borrower or by its consultant for meetings, progress reports, and other non-technical administrative time.

Local auditors have questioned what constitutes an eligible activity for a local government vs. for a consultant. Eligible activities need to be clarified.

a. *Administrative and Consulting Costs*

- Administrative costs should be capped to ensure that response activities are the priority.
- Can LUGs charge for the costs of their staff to administer the grant/loan?
- Determine acceptable cap, if necessary, and incorporate into grant and loan contract.

Specific Action to be Taken:

☐Statutory ☐Rule ☒Policy ☐Governance (Process)

Recommendations:

1. The local unit of government's or environmental consultant's administrative fees for non-technical oversight such as preparing invoices, attending meetings, and so on should be capped at 3% of the grant or loan amount.

2. An additional 5% should be available to pay for oversight by an environmental professional in cases where the developer's consultant will perform response activities and the grantee/borrower wishes or is requested by the MDEQ to retain an additional technical professional to represent them.

3. In cases where oversight is expected to be extensive, the local government may contribute its 3% for administration to the cost for technical oversight. The maximum allowed would still be 8% of the grant/loan amount, but the entire amount would be for technical oversight and the grantee/borrower would bear the administrative costs.

4. Activities eligible for reimbursement should be clarified for both non-technical and technical project administration and specified in contract boilerplate or individual Appendix A documents included with contracts.

Supporting Arguments:

I. Pros

- Provides clarification of eligible activities for local audit.

- While the MDEQ or grantees / borrowers occasionally use technical oversight professionals, and there is a provision in the program's existing Conflict of Interest policy for an oversight consultant, there has not been any standard amount or limit to what the oversight should cost.

II. Cons

- Local governments are not required to provide a match for brownfield grants or loans, and paying their own administrative costs could be considered the grantee's or borrower's "match".

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Committee: Program Implementation Issues

Issue Statement #2: Brownfield Grant/Loan/Act 381 Work Plan Reviews and Oversight

Interpretation of required response activities, MDEQ policy, and statutes is not always consistent between districts and individual staff who review Act 381 work plans. This results in confusion and frustration of those trying to redevelop brownfield properties.

Specific Action to be Taken:

☐Statutory ☐Rule ☒Policy ☐Governance (Process)

Recommendations:

In order to streamline and provide more consistent review of grant, loan, and Act 381 work plans, the Program Implementation Issues Committee recommends dedicated brownfield technical staff be provided in each of the MDEQ districts and headquarters. Should dedicated staff not be feasible, one individual should be identified as the "Brownfield Grant/Loan/Act 381 Work Plan" expert in Lansing, who should be given decision making authority. The brownfield expert should seek technical assistance from district staff, but should be given relatively broad authority when evaluating work plans.

Supporting Arguments:

I. Pros

Act 381 work plan reviews would be more consistent with fewer people doing the reviews

One point of contact for Brownfield Redevelopment Authorities

Designated staff would develop expertise in the brownfield program

Cross training opportunities

II. Cons

District staff's local knowledge enters into grant, loan, and Act 381 work plan reviews. If a single staff person is assigned to cover a whole district's brownfield work plan reviews, that person will not have local knowledge of the whole district, only of the counties assigned to him/her. This can be offset by involving the district person assigned to the project area and maintaining good communication between staff, but requires much more communication between MDEQ employees and could be viewed as a disadvantage.

The one point of contact for Brownfield Authorities may not be the same point of contact as for other cleanup projects.

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Committee: Program Implementation Issues

Issue Statement #3: Grant and loan awards when there is a liable party

Another committee has been charged with liability issues and we do not wish to duplicate the considerable time and effort that group has spent on this issue. However, we do want to state an opinion about liability from the program implementation perspective.

The MDEQ is statutorily prohibited from making grants and some loans if a liable party is associated with a release of contamination at the project site. However, the statutes are inconsistent. Some do not specifically prohibit grants or loans but allow for cost recovery, an expensive and arduous process that is a strong disincentive to awarding grants where there may be a liable party. It is not clear whether the MDEQ can fund projects where there is a liable party who is without responsibility for any further response activities, for example when redevelopment costs fall under the non-liable developer's due care responsibilities. Local governments are also specifically prohibited in Part 196 from receiving a grant or loan if the local government is responsible for the release.

Specific Action to be Taken:

☒Statutory ☐Rule ☐Policy ☐Governance (Process)

Recommendations:

The committee believes there are circumstances under which some funding should be available for projects with potentially liable parties, particularly for liable local governments.

1. Part 19608 should be changed to allow a liable local unit of government to use loan funds (but not grant funds) for response activities. Local governments are struggling financially and do not have the resources to clean up their historically contaminated sites, including some with high redevelopment potential. A loan would provide up-front funding for response activities that could be repaid from TIF. Any loan provided is required to have a 50% match from the local governmental unit.

Supporting Arguments:

I. Pros

The proposed change would eliminate inconsistencies in the law and clarify the state's expectations of liable parties

More cleanups and redevelopment projects could result from broader funding availability

Local governments would have access to financial assistance to address the environmental conditions on their properties, which would pave the way for the redevelopment of these properties.

II. Cons

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Change the following statutory provisions consistent with this recommendation:

Clean Michigan Initiative (CMI), Section 19608 (1)(a)(iv): "…Grants or loans provided for in this subparagraph shall not be made to a local unit of government or a brownfield redevelopment authority that is responsible for causing a release or threat of release under Part 201 at the site proposed for grant or loan funding."

CMI, Section 19614: "The department and the department of the attorney general may recover costs expended pursuant to section 19608(1)(a)(i) to (iv) for corrective actions, response activities, site assessments, and all other recoverable costs under part 201 from persons who are liable under part 201. Actions to recover costs shall be taken in the manner provided in part 201."

Delete the following provisions in Part 195 and the Site Reclamation rule:

Environmental Protection Bond (EPB), Section 19508 (3): "If money that is expended pursuant to subsection (1)(a)(ii) is recovered by an eligible community from a person who may be liable under part 201, through proceeds from the sale of the property, or through any other mechanism, and additional funds for environmental response activities on the property are not necessary, the eligible community may retain those funds for expenditure on projects that the department determines are eligible to receive funding under subsection (1)(a)(ii)."

EPB Administrative Rule 299.5053 (n): "That the funds requested do no relieve potentially responsible parties from their obligation or responsibility for response activities and do not permit potentially responsible parties to profit from the investment of public funds."

Committee: Program Implementation Issues

Issue Statement #4: Multiple grant/loan awards for the same project

Brownfield grant and loan packages have typically been limited to a maximum of $2 million. This is in part due to the statute, which limits grants and loans to one per year at a maximum of $1 million each, and in part by policy to preserve the capital of the grant and loan program so that the money may be more broadly distributed throughout the state.

Some projects, however, have significant environmental contamination that can't be addressed for $2 million, or they are transformational projects, or there is inadequate tax increment income to repay a $1 million loan. In a limited number of instances, funding assistance in excess of $2 million, or a grant or loan of more than $1 million, may be justified.

The statute allows the MDEQ to award more funding than $2 million, but awards would need to be made over multiple years. (For example, a project funded with a grant in 2014 would theoretically also be eligible for another grant in 2015.) The MDEQ cannot fully commit to funding projects over multiple years because of uncertainty about fund balances, but the MDEQ's policy could allow grants or loans over multiple years for the same project provided that the project is a priority for the agency and funding is available.

Specific Action to be Taken:

☒Statutory ☐Rule ☒Policy ☐Governance (Process)

Recommendations:

Project can receive multiple grants or loans in a fiscal year.

Establish project-specific benchmarks for multiple grants or loans. Environmental contamination / cleanup results (not just due care), must still meet criteria that development value must be more than grant/loan amount

Suggestion to commit dollars for multiple years and agree to hold dollars to project, so there is a level of certainty for grantees/borrowers. For multiple grants and loans, more emphasis (weighted) must be provided on environmental impact then community (placemaking) impact.

Supporting Arguments:

I. Pros

Would allow the MDEQ to fund high priority projects with major environmental cleanup component

II. Cons

Could deplete funding more quickly

Uncertainty about availability of funding makes it difficult to commit to additional funds a year or two ahead

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Committee: Program Implementation Issues

Issue Statement #5: Loan guarantees and repayment

More flexibility is needed in how loans are guaranteed and repaid. Many Local Units of Government are reluctant to pursue an MDEQ loan for several reasons, including impact on the LUG's bonding authority, general cash flow limitations, and other reasons. Although the requirement to pledge full faith and credit was eliminated from Part 196, it is still required for Revitalization Loans under Part 201 (this inconsistency should be changed). Even though the full faith and credit was removed, the LUGs are still reticent to pursue because of the repayment obligation. Among other things, the Department of Treasury can deduct loan payments from revenue sharing if the LUG defaults on a loan. Additionally, it is common for a LUG to require the Developer to provide appropriate financial security to ensure there will be sufficient funds to repay the loan. The financial security documents, such as a Letter of Credit, are often expensive and have a material negative impact on the benefit of the low interest loan. There needs to be flexibility on loan terms and other options available for loan repayment. For example, if there is sufficient TIF from a project, there should be an opportunity to limit the obligation to repay the loan to TIF revenue at a point when the project generating sufficient TIF to reimburse the loan.

Specific Action to be Taken:

☒Statutory ☐Rule ☒Policy ☐Governance (Process)

Recommendations:

Allow other methods than full faith and credit / revenue sharing to guarantee loan – escrow account; more flexibility in loan payments; ability to negotiate loan terms. Use language in subsection 7 of SB 719 "Revenue sharing, escrow account, or other acceptable mechanism negotiated with MDEQ."

Supporting Arguments:

I. Pros

Provides greater flexibility to LUGs to avoid loan default or financial problems if projects are not completed (and therefore no TIF to repay the loan)

Allows communities to work with Developer to share the "risk" component for redevelopment projects without risking communities general funding components.

II. Cons

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Allow the loan to convert to a TIF loan after a project is completed and there is enough TIF to reimburse the loan. We recommend that the MDEQ allow a loan to be converted to a TIF loan (where the repayment obligation is solely limited to TIF revenue from the project) at the point in time when the TIF revenue being generated is equal to or greater than 125% of the loan reimbursement payment.

Committee: Program Implementation Issues

Issue Statement #6: Grant and loan approval timing; State Administrative Board approval

Up to half the time required for approval of a grant may be spent waiting for approval by the State Administrative Board (Ad Board). The Ad Board's approval is required for all grants over $250,000. Ad Board approval is not required for loans. Projects on the fast track for redevelopment could otherwise be approved in a few weeks but may be delayed while waiting for Ad Board approval.

Grant / loan program procedure has been to wait until a completed application has been submitted before submitting a project to the Ad Board's agenda. This is not a requirement imposed by Ad Board; they have no guidance on when projects may be placed on the Ad Board agenda for approval. There are no consequences from the Ad Board for requesting approval of a project that is not implemented.

Part 19608a (3) of 1994 PA 451, as amended, requires final decisions to be made on loan applications within 90 days, but there is no such limit for grants. Program policy is to make decisions on both grants and loans within 90 days.

Specific Action to be Taken:

☐Statutory ☐Rule ☒Policy ☒Governance (Process)

Recommendations:

If a local unit of government requests expedited review of a grant and staff are confident that the project is feasible based on a project proposal, staff should have the ability to request Ad Board approval prior to submittal of a full application. The MDEQ should be required to make final decisions on both grants and loans within 90 days for consistency.

Supporting Arguments:

I. Pros

Allows faster turnaround of priority projects and greater responsiveness to communities and developers.

Makes statutes consistent for grants and loans.

II. Cons

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Committee: Program Implementation Issues

Issue Statement #7: Sustainable funding sources; capture of 3 mills from Act 381 work plans

The MDEQ receives half of three mills captured from Act 381 TIF projects added to brownfield plans after December 31, 2012. Loan repayments also provide funds for the grant and loan program. Those amounts are helpful, but certainly not enough to sustain the grant/loan program. There is a need for a sustainable funding source for these brownfield programs.

Specific Action to be Taken:

☐Statutory ☐Rule ☐Policy ☐Governance (Process)

Recommendations:

The Committee recommends creation of a process for further consideration of funding. Our thought is to have a stakeholder group specifically dedicated to making funding recommendations. This group should include local / regional environmental organizations such as NMEAC, WMEAC, FLOW, etc. who, with their board members, could build local support for whatever is the recommended funding source. There should be a group from each Prosperity Region when possible.
Potential funding sources include: gas tax; business tax; one-time fee on development projects, bond; deposit on water bottles

Supporting Arguments:

I. Pros

This issue is big enough that it deserves more thoughtful consideration that the Program Implementation Committee has been able to commit to it.

II. Cons

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Committee: Program Implementation Issues

Issue Statement #8: Capturing TIF on MSF-funded eligible activities for Local Revolving Funds

The Committee is in favor of amending Act 381 to allow for capture of taxes levied for school operating purposes for MSF eligible activities into the Local Site Remediation Revolving Loan Fund. This opportunity would assist local communities to help identify gaps locally and become less reliant on limited State resources.

Specific Action to be Taken:

☒Statutory ☐Rule ☐Policy ☐Governance (Process)

Recommendations:

The Committee recommends that Local Units of Government (LUGs) be allowed to capture school TIF in connection with MSF funded activities for the LSRRLF in the same manner that school TIF can be captured in connection with MDEQ funded eligible activities. The Committee recommends that the LUGs be required to provide annual reports on the use of LSRRLF funds when school TIF is captured in connection with MSF funded activities for the LSRRLF.

Although MEDC was not represented on this committee, this issue was referred to the legislative committee to further craft the idea. MEDC staff participated in that discussion and helped to craft a workable solution.

Supporting Arguments:

I. Pros: Allows LUG to build LSRRLF to help fund gaps in financing instead of relying on state limited resources. Capture would be limited to eligible activities and capture of 5 years.

II. Cons: MSF eligible activities are significantly higher than MDEQ eligible activities and could be substantial in capture.

Draft Legislative Language (if appropriate):

Recommended Follow up Actions (if appropriate):

Committee: Legislative

Issue Statement # 1: Combining DEQ Brownfield Loan Programs

The Revitalization Revolving Loan (RRL) program was established under section 324.20118a of Part 201. Section 324.20108b of Part 201 spells out specific requirements for eligible activities, pledging of full faith and credit, and the application process for the RRL program.

The Brownfield Redevelopment Loan (BRL) program was established under Section 324.19608a of Part 196, otherwise known as the Clean Michigan Initiative (CMI). Section 324.20109 through 324.19612 of Part 196 spells out specific requirements for eligible activities and the application process for the BRL program.

The purpose and intent of both of these programs are the same and although the programs are similar, there are slight differences in eligible activities, requirements regarding full faith and credit, etc. which often leads to confusion on what is required for the loan process.

Specific Action to be Taken:

☒Statutory ☐Rule ☐Policy ☐Governance (Process)

Recommendations:

1. To provide consistency, the requirements for the RRL and BRL programs should reside in one place. It is recommended that this be accomplished by amending Part 201 to refer to Part 196/CMI regarding requirements and administration of the RRL program. Specifically:
   a. Retain 324.20108, which establishes loan program
   b. Delete from Part 201, section 324.20108a subsections (2) through (11), (13) and (14) and refer to Part 196, sections 324.19608a through 324.19613.

Supporting Arguments/ Background:

- Programs have different eligible activities and requirements, which can cause confusion.
- Makes sense to have requirements all in one place. If an amendment is needed to address a program issue, it can be done via Part 196 and apply to both programs. There have been instances in the past where an amendment intended for both programs was only addressed in one of the Parts of legislation, adding to rather than eliminating the differences in the programs.

Draft Legislative Language (if appropriate):

See attachment #1a in Exhibit D for example of draft changes to Part 201.

Recommended Follow up Actions (if appropriate):

N/A

Committee: Legislative

Issue Statement #2: Amendments to Act 381

The Brownfield Redevelopment Financing Act (Act 381) provides for tax increment financing (TIF) of certain eligible activities on eligible properties. The use of Act 381 TIF is a crucial tool in brownfield development. The legislation is complex and in need of both clarification and reorganization.

Specific Action to be Taken:

☒Statutory ☐Rule ☐Policy ☐Governance (Process)

Recommendations:

1. A number of changes to Act 381 were recommended as a result of the CPI Stakeholder process. These changes are summarized in Attachment #2a in Exhibit D

2. Reorganization of information is recommended to provide clarity and ease of interpretation. A draft of the proposed changes is provided in Attachment #2b

Supporting Arguments/ Background:

- Many circular references exist in the current version of Act 381, reorganization is long overdue to provide clarity and eliminate confusion.
- Clarity on a number of issues was addressed in various sub committees and the proposed changes were incorporated into the draft version.

Draft Legislative Language (if appropriate):

See attached example of draft changes to Part 381 in Attachment #2b of Exhibit D. Attached to this Issue Statement is also a summary of key issues in the draft legislation.

Recommended Follow up Actions (if appropriate):

N/A

Act	Section	Key issues Addressed in Legislative Committee
381	2	reorganized eligible activities definition
381	2	added a number of eligible activities including: UST related removal and corrective actions, disposal of nonhazardous waste, dust control, mold abatement, dredging, industrial, cleaning, costs for implementing and tracking brownfield plan/work plan, legal and consulting costs for developing and preparing brownfield plans/work plans.
381	2	reorganized eligible properties definition
381	2	deleted qualified facility
381	2	deleted carve out for property north of the 45th parallel
381	2	added clarification that eligible property does not include qualified agricultural property
381	2	definition of contiguous should be added
381	2	definition of incremental cost should be added or concept clearly discussed somewhere
381	8	Change name of local revolving fund from LSRRF to LBRF
381	8	Added ability to capture MSF activities into LSRRF with annual reporting requirements
381	13	Reorganized for clarification
381	13	Clarification regarding 3 mills BRF capture during LSRRF capture period
381	13	Added ability to adjust initial assessed value in event of economic downturn. (Mirrored language from corridor Improvement)
381	13b	Modified cost recovery actions to "a party responsible for an activity causing a release"
381	13b	Added clarification that administrative limitations do not apply to use of local funds for eligible activities.
381	13b	Add predemolition surveys and asbestos and lead surveys and abatement to approved predevelopment activities
381	13b	clarified for unanticipated costs that "consulted" should be followed up in writing.
381	14	added beginning date of capture shall be set in BF plan.?
381	14	Changed ability to terminate a BF plan from 5yrs to 2yrs providing proper notice is given to developer.
381	15	Clarification added that DEQ can't make conditional approval on modification to the local only portion of the project.
381	15	Delete cost gap determination by MEDC
381	15	Increase eligible activities from $500,000 to $1,000,000 before needing MSF board approval to be consistent with CRP.
381	multiple	changed review dates throughout to 60 days for consistency purposes

Committee: Legislative

Issue Statement # 3: Amendments to Part 196

The Clean Michigan Initiative (CMI) Brownfield Redevelopment Grants (BRG) and Brownfield Redevelopment Loans (BRL) were established under section 324.19608 of Part 196.

Part 196 provides a detailed discussion regarding loans, however, grant requirements are left to the Site Reclamation Rules. With the recommendation to rescind the Site Reclamation Rules, the grant requirements need to be incorporated into Part 196. The requirements should be evaluated for relevancy, as the rules were written in 1991 and many parts of them are no longer relevant.

In addition, clarification is needed on various eligible activities and grantee requirements.

Specific Action to be Taken:

☒Statutory ☐Rule ☐Policy ☐Governance (Process)

Recommendations:

1. Reorganize sections to provide better flow and clarity of requirements.

2. Incorporate various recommendations from other sub committees (see Attachment #3a in Exhibit D) including:
   a. Adding various definitions
   b. Addressing ability to fund 213 sites.
   c. Addressing ability to provide loan funding with source of security other than local revenue sharing.
   d. Incorporating relevant requirements for administering grants in sections 324.19609 through 324.19610a.

Supporting Arguments/ Background:

- Grant requirements need to move to legislation if rules are rescinded.
- Clarification of funding requirements and eligible activities was needed.
- Issues not intended in the legislation were able to be corrected (such as the 213 site issue)

Draft Legislative Language (if appropriate):

See Attachment #3b in Exhibit D for an example of draft changes to Part 196. Attached to this Issue Statement is also a summary of key issues in the draft legislation.

Recommended Follow up Actions (if appropriate):

N/A

Part	Section	Key issues Addressed in Legislative Committee
196	1	Added definitions for: BEA, Chief Executive Officer, Due Care Activities, Eligible Activities, Eligible Property, Measurable Economic Benefit, Measureable Environmental Benefit, Project
196	1	Provided ability to fund Pb and As in accordance with dept policy
196	8	Made EDAs eligible to receive funding
196	8	Added ability to perform site assessments and response activities as well as due care.
196	8	Liable LUGS are eligible for funding with a 50% local match
196	8	Marina exemption removed
196	9	Add Emergency Manager Exemption 19609(1)(d)
196	9a	Ability for LUG to receive more than 1 grant / year.
196	9a	Clarification on use of funds when liable parties are associated with property
196	10	Added grant program requirements as only loan requirements were previously in legislation.
196	10	Need for LUG to provide board resolution with application was changed to letter of support from CEO of LUG
196	11	Provided means other than revenue sharing to secure loans
196	various	Reorganized sections to provide better flow

Committee Name: Legislative

Issue Statement #4: Amendments to Part 195

Site Reclamation Grants (SRG) were established under section 324.19508 of Part 195 as a result of the Environmental Protection Bond of 1988. Many of the requirements associated with this grant program and the accompanying Site Reclamation Rules that were approved in 1991 are now out of date and are not consistent with the Brownfield Redevelopment Grant (BRG) program established under Part 196, the 1998 Clean Michigan Initiative (CMI).

The purpose and intent of both of these programs are the same and although the programs are similar, there are slight differences in eligible activities and grantee requirements, which often leads to confusion on what is required for the grant process.

Specific Action to be Taken:

☒Statutory ☐Rule ☐Policy ☐Governance (Process)

Recommendations:

1. To provide consistency, the requirements for the SRG and BRG programs should reside in one place. It is recommended that this be accomplished by amending Part 195 to defer to Part 196/ CMI regarding requirements and administration of the SRG program. Specifically:
    a. Retain current requirements for grants that are ongoing and awarded prior to the date of the amendment.
    b. Add reference to Part 196 for all grants awarded after the date of the amendment in sections 324.19508 through 324.19512.
2. Remove mandate for rules in section 324.19513 and provide statement that rules will not be enforced after date of the amendment.

Supporting Arguments/ Background:

- Programs have different eligible activities and requirements, which can cause confusion.
- Makes sense to have requirements all in one place. If an amendment is needed to address a program issue, it can be done via Part 196 and apply to both programs. There have been instances in the past where an amendment intended for both programs was only addressed in one of the Parts of legislation, adding to rather than eliminating the differences in the programs.

Draft Legislative Language (if appropriate):

See Attachment #4a for example of draft changes to Part 195.

Recommended Follow up Actions (if appropriate):

N/A

EXHIBIT D

Legislative Changes

Attachment #1a

From Part 201:

324.20108a Revitalization revolving loan fund; creation; deposit of assets into fund; investment; interest and earnings; carrying forward unexpended balance; lump-sum appropriation; expenditure.

Sec. 20108a. (1) The revitalization revolving loan fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the revitalization revolving loan fund. The state treasurer shall direct the investment of the revitalization revolving loan fund. The state treasurer shall credit to the revitalization revolving loan fund interest and earnings from revitalization revolving loan fund investments.

(3) An unexpended balance within the revitalization revolving loan fund at the close of the fiscal year shall be carried forward to the following fiscal year.

(4) The department shall annually submit to the governor a request for a lump-sum appropriation from the revitalization revolving loan fund for loans pursuant to the revitalization revolving loan program under section 20108b.

(5) The department shall expend money from the revitalization revolving loan fund, upon appropriation, only for the revitalization loan program created in section 20108b.

324.20108b Revitalization revolving loan program.

Sec. 20108b. (1) The department shall create a revitalization revolving loan program for the purpose of making loans to certain local units of government to provide for eligible activities at certain properties in order to promote economic redevelopment.

(2) Loan funds from the revitalization revolving loan program shall be used in accordance with the provisions provided in sections 324.19608a through 324.19613 of NREPA.

(3) Loan payments and interest shall be deposited back into the revitalization revolving loan fund created in section 20108a.

Attachment #2a

Summary of Act 381 Modifications

1. Definitions: (Section 125.2652)
    a. "Additional response activities" – deleted this and incorporated these activities into response activities definition.
    b. "Corrective Action" – added this definition to provide clarity.
    c. "Economic opportunity zone"- some question on retaining this carve out. It was decided to keep as it would likely apply to RACER sites.
    d. "Eligible activities" modified as follows: (Section 2 (n))
        i. Deleted additional response activities n
        ii. Added ability to remove USTS and perform corrective action and closures under 211/213.
        iii. Added response activities as defined in 201
        iv. Added disposal of accumulated nonhazardous waste
        v. Added dust control
        vi. Added removal and disposal of contaminated lake or river
        vii. Added industrial cleaning
        viii. Added sheeting & shoring needed to remove contaminated materials in areas near or adjacent to water bodies.
        ix. Added legal and consulting fees not in the ordinary course of acquiring & developing real estate. (NOTE: $30,000 Cap provided in Section 13b (7)(b)(i))
        x. Added reasonable costs of implementing brownfield /work plans including tracking and reporting data and plan compliance. (NOTE: $30,000 Cap provided in Section 13b (7)(b)(ii))
        xi. Deleted "qualified facility"
        xii. Added mold abatement
        xiii. Reorganized to simplify
    e. "Eligible property" modified as follows: (Section 2 (p))
        i. Entire section reorganized to simplify
        ii. Added "site" to enable UST 211/213 sites.
        iii. Deleted carve out for "northern property" since all properties now have access to demo, Pb & As
        iv. Moved definition of targeted redevelopment area to be its own definition
        v. Added clarification that agricultural property is not considered eligible property
    f. Deleted "qualified facility"
    g. Added definition of "Targeted redevelopment area"

h. Made “Former Mill” a stand alone definition
i. “Response activity” definition was added
j. Added ability to make an adjustment of initial assessed value due to economic downturn within the “Initial taxable value” definition. (Sec2(y))

2. Local Revolving Fund
    a. Changed name from LSRRF to LBRF (Sec7(1)(c))
    b. Added MSF activities to LBRF (Sec8(1)(b))
    c. Added wording to assure amount captured into LBRF would not exceed total amount approved in BF Plan.(Sec8(1)(b)(iii))
    d. Added condition to annually report on LBRF if MSF increment is captured into the LBRF. (Sec 8(6))

3. Brownfield Redevelopment Fund
    a. Changed date from 65 to 60 to keep consistent throughout the act (Sec8a(3)(c)(iii))
    b. Provided clarification regarding whether 3 mills for BRF should be captured during 5 year LBRF(LSRRF) period. (Sec 13b(12).

4. Section 13 – Brownfield Plan
    a. Because section was very large, it was reorganized section into 3 sections; 13, 13a and 13b as follows:
        i. Sec 13: BF Plan contents and provisions
        ii. Sec 13a Recovery of Funds
        iii. Sec 13b: Use of funds permitted and prohibited
        iv. Sections regarding BF Plan approval were moved to Sec 14
    b. Section 13 – BF Plan Contents:
        i. LBRF(LSRRF) information was moved to the LBRF specific section (Sec 8)
        ii. Wording was revised in several subsections to provide greater clarification
    c. Section 13a – Recovery of funds:
        i. Modified cost recovery from liable party to cost recovery from a party that is responsible for an activity causing a release. (Sec 13a)
        ii. Reduced notice time for cost recovery action from 120 to 60 days.
    d. Section 13b – Use of funds
        i. Reorganized section for better flow. Moved some items from Sec15(1) into this section
        ii. DEQ eligible activities – changed to “response activities” (typ)

iii. Addition of wording to clarify that admin limitations in Sec13b(7) shall not limit amount of LBRF expended. (Sec13b(7)(d))
iv. Added pre demo surveys, building hazardous materials surveys, and Lead and Asbestos Abatement to predevelopment costs. (13b(8)(d-e)
v. Added that consultation of unanticipated response activities shall be in writing (13b(9)(a))
vi. Changed liable party to party responsible for an activity causing a release Sec13b(10)
vii. Clarification provided regarding whether 3 mills for BRF should be captured during 5 year LBRF(LSRRF) period. (Sec 13b(12).
viii. Added "the beginning date of capture to BF Plan" (Sec 13b(13)

5. Section 14
    a. Moved all text associated with approval of BF Plan to section 14(1-4) from Section 13(9-13)
    b. Moved text associated with terminating and abolish BF Plan to Sec14(8) (from Sec 16(8)
    c. Modified years to terminate a plan from 5 to 2 with some added conditions associated with providing notice to developer before termination.(14(8)(b))

6. Section 15
    a. Moved text associated with ineligible activities to section 13b(5) and 13b(9) from Sec 15(1)(a-d)
    b. Added text to clarify that DEQ cannot make conditional approval on modifications to local only portion of project. (Sec15(2)(b))
    c. Deleted Sec 15(11) which related to DEQ charging for review of work plans, as it is no longer relevant
    d. Changed review timeframe from 65 to 60 days (Sec15(12) & Sect15(14)& Sec15(22)(d&h))
    e. Deleted requirement for cost gap determination (Sec12(j))
    f. Deleted Sec15(18) which related to MSF charging for review of work plans, as it is no longer relevant.
    g. Added text to eliminate need for fund board to meet for projects of $1M or less (Sec15(19)) NOTE: MEDC would like this to be consistent with CRP, which is going in for an amendment to increase it to $1.5M

Attachment #2b

BROWNFIELD REDEVELOPMENT FINANCING ACT Act 381 of 1996

125.2651 Short title.

Sec. 1. This act shall be known and may be cited as the "brownfield redevelopment financing act".

125.2652 Definitions.

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. (c) "Baseline environmental assessment activities" means those response activities necessary to complete a baseline environmental assessment for an eligible property.

(d) "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.

(e) "Board" means the governing body of an authority.

(f) "Brownfield plan" means a plan that meets the requirements of sections 13 and 13b and is adopted under section 14.

(g) "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.

(h) "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.

(i) "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(21).

(j) "Corrective action"means that term as defined in Part 213 or Part 111 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21301 et seq. or MCL 324.11101 et seq.

Comment [CLG1]: Added to address 213 and RCRA sites.

(k) "Department" means the department of environmental quality.

(*l*) "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 of Part 201, MCL 324.20107a.

(m) "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 facility 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.

(n) "Eligible activities" or "eligible activity" means 1 or more of the following:

(*i*) For all eligible properties, eligible activities include the following"

(A) Baseline environmental assessment activities.

(B) Due care activities.

(C) Response activities

(D) Removal, corrective action and closure of underground storage tanks pursuant to Parts 211 and 213 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.21101 et seq. and MCL 324.21301 et seq.

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

(F) Dust control

(G) Removal and disposal of contaminated lake or river sediments 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

(H) Industrial cleaning.

(I) Sheeting and shoring necessary for the removal of contaminated materials at projects requiring a permit pursuant to parts 301, 303, or 325 of the natural resources and environmental protection act, 1994 PA 451, 324.30101 et seq., 324.30301 et seq., and 324.32501 et seq.

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

(K) Reasonable costs of environmental insurance.

(L) Reasonable costs incurred to develop and prepare brownfield plans, combined brownfield plans, and/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.

(M) The 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 a private developer

(N) Demolition of structures that is not response activity.

(O) Lead, asbestos, or mold abatement.

(P) 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 Section 2(n)(i),

(B) Infrastructure improvements that directly benefit eligible property, or

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

(iii) For eligible properties that are owned 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 activities described in Section 2(n)(i) and Section 2(n)(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.

(o) "Eligible property", except as otherwise provided in this subdivision, means property for which eligible activities are identified under a brownfield plan that was used or is currently used for

Comment [CLG2]: Reorganized

Comment [CLG3]: Reorganized into activities eligible for all eligible properties, additional QLUG activities, and then additional Land bank activities. This section is for all eligible properties.

Comment [CLG4]: Replaces additional response activity.

Comment [CLG5]: New activities proposed

Comment [CLG6]: This portion is new which adds the ability for attorney and consultant fees. Limits are provided in Section 125.2663b(7)(c)(i).

Comment [CLG7]: New activity, limits provided in Section 125.2663b(7)(c)(ii).

Comment [CLG8]: New activity

Comment [CLG9]: Eligible Activities for QLUGS

Comment [CLG10]: Eligible Activities for land banks or QLUG owned properties.

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 a site, a 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 or a site, 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 facility .

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

(*vi*) 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

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

(q) "Facility" means that term as defined in Part 201.

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

(s) "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, functionally obsolete, or blighted, and that is located along 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 city with a population of less than 10,000 persons.

(t) "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.

(u) "Governing body" means the elected body having legislative powers of a municipality creating an authority under this act.(v) "Historic resource" means that term as defined in section 90a of the Michigan strategic fund act, 1984PA 270, MCL 125.2090a.

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

(x) "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 facility, 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 storm water management systems.

(y) "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

Comment [CLG11]: Added site to allow for UST sites under Part 213 (typical).

Comment [CLG12]: New text to clarify that agricultural land is not considered eligible property.

Comment [CLG13]: Moved definition from eligible activities.

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 downward 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 three consecutive years due to declines in assessed value.

(z) "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.

(aa) "Local taxes" means all taxes levied other than taxes levied for school operating purposes.

(bb) "Michigan strategic fund" means the Michigan strategic fund created under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(cc) "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.

(dd) "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.

~~(dd) "Northern Property" which means eligible property located north of the 45th parallel, is a facility, functionally obsolete, or blighted, and the owner or operator makes new capital investment of $250,000,000.00 or more in this state~~

(ee) "Part 201" means part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142

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

(gg) "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.

(hh)"Release" means that term as defined in Part 201.

(ii) "Response activity" means:

(*i*) Response activity as that term is defined in Part 201, or

(*ii*) Corrective action.

(jj) "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.

(kk) "State brownfield redevelopment fund" means the state brownfield redevelopment fund created in section 8a.

(ll) "Targeted redevelopment area" means not less 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

Comment [CLG14]: Allows for adjustment of initial assessed value due to economic downturn

Comment [CLG15]: Added QLUG , as it applies to both

Comment [CLG16]: No longer necessary as ALL properties are now eligible for demo, Pb, and As., 1

Comment [CLG17]: Definition moved from definition of eligible property. Section 1(x)

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.

(mm) "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, tax increment finance authority, or local development finance authority 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.

(nn) "Taxable value" means the value determined under section 27a of the general property tax act, 1893 PA206, MCL 211.27a.

(oo) "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*).

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

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

(rr) "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.

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

125.2653 Brownfield redevelopment authority; establishment; exercise of powers; alteration or amendment of boundaries; authority as public body corporate; written agreement with county.

Sec. 3. (1) A municipality may establish 1 or more authorities. Except as provided in subsection (4), an authority with zones established before June 6, 2000, shall exercise its powers within its designated zones. Except as provided in subsection (4), an authority established after June 6, 2000, shall exercise its powers over any eligible property located in the municipality.

(2) An authority with zones established before the effective date of the amendatory act that added this subsection may alter or amend the boundaries of those zones if the authority holds a public hearing on the alteration or amendment using the procedures under section 4(2), (3), and (4).

(3) The authority shall be a public body corporate that may sue and be sued in a court of competent jurisdiction. The authority possesses all the powers necessary to carry out the purpose of its incorporation. The enumeration of a power in this act is not a limitation upon the general powers of the authority. The powers granted in this act to an authority may be exercised whether or not bonds are issued by the authority.

(4) An authority established by a county shall exercise its powers with respect to eligible property within a city, village, or township within the county only if that city, village, or township has concurred with the provisions of a brownfield plan that apply to that eligible property within the city, village, or township.

(5) A city, village, or township including a city, village, or township that is a qualified local governmental unit may enter into a written agreement with the county in which that city, village, or township is located to exercise the powers granted to that specific city, village, or township under this act.

125.2654 Resolution by governing body; adoption; notice; public hearing; proceedings establishing authority; presumption of validity; exercise as essential governmental function; implementation or modification of plan.

Sec. 4. (1) A governing body may declare by resolution adopted by a majority of its members elected and
serving its intention to create and provide for the operation of an authority.

(2) In the resolution of intent, the governing body shall set a date for holding a public hearing on the adoption of a proposed resolution creating the authority. The notice of the public hearing shall state the date, time, and place of the hearing. At that hearing, a citizen, taxpayer, official from a taxing jurisdiction whose millage may be subject to capture under a brownfield plan, or property owner of the municipality has the right to be heard in regard to the establishment of the authority.

(3) Not more than 30 days after the public hearing, if the governing body intends to proceed with the establishment of the authority, the governing body shall adopt, by majority vote of its members elected and serving, a resolution establishing the authority. The adoption of the resolution is subject to all applicable statutory or charter provisions with respect to the approval or disapproval by the chief executive or other officer of the municipality and the adoption of a resolution over his or her veto. This resolution shall be filed with the secretary of state promptly after its adoption.

(4) The proceedings establishing an authority shall be presumptively valid unless contested in a court of competent jurisdiction within 60 days after the filing of the resolution with the secretary of state.

(5) The exercise by an authority of the powers conferred by this act shall be considered to be an essential governmental function and benefit to, and a legitimate public purpose of, the state, the authority, and the municipality or units.

125.2655 Designation of board by governing body; membership; trustees; applicability of subsection (2); election of chairperson, vice-chairperson, and other officers; oath; procedural rules; meetings; special meetings; removal of member; records open to public; quorum.

Sec. 5. (1) Each authority shall be under the supervision and control of a board chosen by the governingbody. Subject to subsection (2), the governing body may by majority vote designate 1 of the following to constitute the board:

(a) The board of directors of the economic development corporation of the municipality established under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636.

(b) The trustees of the board of a downtown development authority established under 1975 PA 197, MCL 125.1651 to 125.1681.

(c) The trustees of the board of a tax increment financing authority established under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830.

(d) The trustees of the board of a local development financing authority established under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174.

(e) Not less than 5 nor more than 9 persons appointed by the chief executive officer of the municipality subject to the approval of the governing body. Of the initial members appointed, an equal number, as near as practicable, shall be appointed for 1 year, 2 years, and 3 years. A member shall hold office until the member's successor is appointed and qualified. Thereafter, each member shall serve for a term of 3 years. An appointment to fill a vacancy shall be made by the chief executive officer of the municipality for the unexpired term only. Members of the board shall serve without compensation, but shall be reimbursed for reasonable actual and necessary expenses.

(2) The governing body of a municipality in which a board described in subsection (1)(b), (c), or (d) has been established shall designate the trustees of 1 of those boards to constitute the board. This subsection shall only apply in the event a board described in subsection (1)(b), (c), or (d) is authorized under subsection (1) to serve as the board of the authority.

(3) The members shall elect 1 of their membership as chairperson and another as vice-chairperson. The members may designate and elect other officers of the board as they consider necessary.

(4) Before assuming the duties of office, a member shall qualify by taking and subscribing to the oath of office provided in section 1 of article XI of the state constitution of 1963.

(5) The board shall adopt rules governing its procedure and the holding of regular meetings, subject to the approval of the governing body. Special meetings may be held when called in the manner provided in the rules of the board. Meetings of the board shall be open to the public, in accordance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(6) After notice and an opportunity to be heard, a member of the board appointed under subsection (1)(e) may be removed before the expiration of his or her term for cause by the governing body. Removal of a member is subject to review by the circuit court.

(7) All financial records of an authority shall be open to the public under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(8) A majority of the members of the board appointed and serving shall constitute a quorum. Action may be taken by the board at a meeting upon a vote of the majority of the members present.

125.2656 Appointment or employment of director, treasurer, secretary, personnel, and consultants; assistance provided by municipality; retirement and insurance programs.

Sec. 6. (1) The board may employ and fix the compensation of a director of the authority, subject to the approval of the governing body creating the authority. The director shall serve at the pleasure of the board. A member of the board is not eligible to hold the position of director. Before entering upon the duties of the office, the director shall take and subscribe to the oath of office provided in section 1 of article XI of the state constitution of 1963 and shall furnish bond by posting a bond in the sum specified in the resolution establishing the authority. The bond shall be payable to the authority for the use and benefit of the authority, approved by the board, and filed with the clerk of the municipality. The premium on the bond shall be considered an operating expense of the authority, payable from funds available to the authority for expenses of operation. The director shall be the chief officer of the authority. Subject to the approval of the board, the director shall supervise and be responsible for the preparation of plans and the performance of the functions of the authority in the manner authorized by this act. The director shall attend the meetings of the board and shall render to the board and to the governing body a regular report covering the activities and financial condition of the authority. If the director is absent or disabled, the board may designate a qualified person as acting director to perform the duties of the office. Before entering upon the duties of the office, the acting director shall take and subscribe to the oath of office referenced in this subsection and furnish bond as required of the director. The director shall furnish the board with information or reports governing the operation of the authority, as the board requires.

(2) The board may appoint or employ and fix the compensation of a treasurer who shall keep the financial records of the authority and who, together with the director, if a director is appointed, shall approve all vouchers for the expenditure of funds of the authority. The treasurer shall perform other duties as may be delegated by the board and shall furnish bond in an amount as prescribed by the board.

(3) The board may appoint or employ and fix the compensation of a secretary who shall maintain custody of the official seal and of records, books, documents, or other papers not required to be maintained by the treasurer. The secretary shall attend meetings of the board and keep a record of its proceedings and shall perform other duties as may be delegated by the board.

(4) The board may employ and retain personnel and consultants as considered necessary by the board, including legal counsel to advise the board in the proper performance of its duties and to represent the authority in actions brought by or against the authority.

(5) Upon request of the authority, the municipality may provide assistance to the authority in the performance of its powers and duties.

(6) The employees of an authority may be eligible to participate in municipal retirement and insurance programs of the municipality as if they were civil service employees on the same basis as civil service employees.

125.2657 Powers of authority; determining captured taxable value; transfer of municipality funds to authority.

Sec. 7. (1) An authority may do 1 or more of the following:

(a) Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.

(b) Incur and expend funds to pay or reimburse a public or private person for costs of eligible activities attributable to an eligible property.

(c) As approved by the authority, incur costs and expend funds from the local brownfield revolving fund created under section 8 for purposes authorized in that section.

Comment [CLG18]: Change name of LSRRF to LBRF (typical)

(d) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties, including, but not limited to, lease purchase agreements, land contracts, installment sales agreements, and loan agreements.

(e) On terms and conditions and in a manner and for consideration the authority considers proper or for no monetary consideration, own, mortgage, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in the property, that the authority

determines are reasonably necessary to achieve the purposes of this act, and grant or acquire licenses, easements, and options with respect to the property.

(f) Acquire, maintain, repair, or operate all devices necessary to ensure continued eligible activities on eligible property.

(g) Accept grants and donations of property, labor, or other things of value from a public or private source.

(h) Incur costs in connection with the performance of its authorized functions, including, but not limited to administrative costs and architect, engineer, legal, or accounting fees.

(i) Study, develop, and prepare the reports or plans the authority considers necessary to assist it in the exercise of its powers under this act and to monitor and evaluate the progress under this act.

(j) Procure insurance against loss in connection with the authority's property, assets, or activities.

(k) Invest the money of the authority at the authority's discretion in obligations determined proper by the authority, and name and use depositories for its money.

(*l*) Make loans, participate in the making of loans, undertake commitments to make loans and mortgages, buy and sell loans and mortgages at public or private sale, rewrite loans and mortgages, discharge loans and mortgages, foreclose on a mortgage, commence an action to protect or enforce a right conferred upon the authority by a law, mortgage, loan, contract, or other agreement, bid for and purchase property that was the subject of the mortgage at a foreclosure or other sale, acquire and take possession of the property and in that event compute, administer, pay the principal and interest on obligations incurred in connection with that property, and dispose of and otherwise deal with the property, in a manner necessary or desirable to protect the interests of the authority.

(m) Borrow money and issue its bonds and notes under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, in anticipation of collection of tax increment revenues.

(n) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this act, or other laws that relate to the purposes and responsibilities of the authority.

(2) The authority shall determine the captured taxable value of each parcel of eligible property. The captured taxable value of a parcel shall not be less than zero.

(3) A municipality may transfer the funds of the municipality to an authority or to another person on behalf of the authority in anticipation of repayment by the authority.

125.2658 Local brownfield revolving fund.

Sec. 8. (1) An authority may establish a local brownfield revolving fund that shall consist of funds deposited from the following sources:

(a) Money appropriated or otherwise made available from public or private sources.

(b) Additional local tax and school operating tax increment revenue captured under an approved brownfield plan from an eligible property in excess of the amount authorized for eligible expenses under subsection 13(4) and 13b(4) only when the following conditions are met:

(i) the excess capture occurs during the time of capture for the purpose of paying the costs permitted under section 13(4) and 13b(4),, or

(ii) The excess capture occurs for not more than 5 years after the time that capture is required for the purpose of paying the costs permitted under subsection 13(4) and 13b(4)

(iii) The excess capture shall not exceed the total of the cost of eligible activities approved in the brownfield plan.

(2When the excess capture occurs after the time that capture is required for the purpose of paying the costs permitted under subsection 13(4) and 13b(4) as described in subsection (b)(*ii*), it remains subject to the 3 mill capture specified in Section 13b(12).

(3) The tax increment revenues from eligible property for deposit in the local brownfield revolving fund 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 pursuant to subsection 13(4) and 13b(4).

(4) The local brownfield revolving fund may be used only to pay the costs of eligible activities on eligible property that is located within the municipality.

(5) An authority or a municipality on behalf of an authority may incur an obligation for the purpose of funding a local brownfield revolving fund.

(6) When excess capture occurs for costs permitted under subsection 13b(4), an annual report of the amounts of these captured funds received and disbursed in the prior year and held by the local brownfield revolving fund shall be submitted to the Michigan Strategic Fund.

Comment [CLG19]: Name change

Comment [CLG20]: 13b(3) added to text because MSF activities added to LBRF

Comment [CLG21]: Added to make it clear that the excess is not in excess of amount approved in BF Plan.

Comment [CLG22]:

Comment [CLG23]:

Comment [CLG24]: MEDC requested if MSF funds were to be used for the LSRRF/ LBRF

125.2658a Brownfield redevelopment fund.

Sec. 8a. (1) The state brownfield redevelopment fund is created as a revolving fund within the department of treasury to be administered as provided in this section. The state treasurer shall direct the investment of the state brownfield redevelopment fund. Money in the state brownfield redevelopment fund at the close of the fiscal year shall remain in the state brownfield redevelopment fund and shall not lapse to the general fund.

(2) The state treasurer shall credit to the fund money from the following sources:

(a) All amounts deposited into the state brownfield redevelopment fund under section 13b(12).

(b) The proceeds from repayment of a loan, including interest on those repayments, under subsection (3)(c)(*vi*).

(c) Interest on funds deposited into the state brownfield redevelopment fund. (d) Money obtained from any other source authorized by law.

(3) The state brownfield redevelopment fund may be used only for the following purposes:

(a) Up to 15% of the amounts deposited annually into the state brownfield redevelopment fund may be used to pay administrative costs of all of the following:

(*i*) The Michigan strategic fund to implement this act.

(*ii*) The department to implement this act.

(*iii*) The department to implement part 196 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19601 to 324.19616.

(b) To make deposits into the clean Michigan initiative bond fund under section 19606(2)(d) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19606, for use in providing grants and loans under part 196 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19601 to 324.19616.

(c) To fund a grant and loan program created and operated by the Michigan strategic fund for the costs of eligible activities described in section 13b(4) on eligible .properties The grant and loan program shall provide for all of the following:

(*i*). The Michigan strategic fund shall develop and use a detailed application, approval, and compliance process adopted by resolution of the board of the Michigan strategic fund. This process shall be published and available on the Michigan strategic fund website. Program standards, guidelines, templates, or any other forms to implement the grant and loan program shall be approved by the board of the Michigan strategic fund. The Michigan strategic fund may delegate its approval authority under this subsection to a designee.

(*ii*) A person may apply to the Michigan strategic fund for approval of a grant or loan to fund eligible activities described in section 13b(3) on eligible property.

(*iii*) The Michigan strategic fund shall approve or deny an application not more than 60 days after receipt of an administratively complete application. If the application is neither approved nor denied within 60 days, it shall be considered by the board of the Michigan strategic fund, or its designee if delegated, for action at, or by, the next regularly scheduled board meeting. The Michigan strategic fund may delegate the approval or denial of an application to the chairperson of the Michigan strategic fund or other designees determined by the board.

(*iv*) When an application is approved under this subsection, the Michigan strategic fund shall enter into a written agreement with the applicant. The written agreement shall provide all the conditions imposed on the applicant and the terms of the grant or loan. The written agreement shall also provide for penalties if the applicant fails to comply with the provisions of the written agreement.

(*v*) After the Michigan strategic fund and the applicant have entered into a written agreement under subdivision (*iv*), the Michigan strategic fund shall distribute the proceeds to the applicant according to the terms of the written agreement.

(*vi*) Any proceeds from repayment of a loan, including interest on those repayments, under this subsection shall be paid into the state brownfield redevelopment fund.

125.2659 Authority as instrumentality of political subdivision.

Sec. 9. The authority shall be considered an instrumentality of a political subdivision for purposes of Act No. 227 of the Public Acts of 1972, being sections 213.321 to 213.332 of the Michigan Compiled Laws.

Comment [CLG25]: Moved from subsection 4 below

Comment [CLG26]: Moved from former 3(b) above

Comment [CLG27]: Delete redundant w/ 3(c) above.

Comment [CLG28]: Change to maintain consistency (typ)

125.2660 Taking, transfer, and use of private property.

Sec. 10. A municipality may transfer private property taken under the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws, to the authority for use as authorized in the brownfield plan, on terms and conditions it considers appropriate. The taking, transfer, and use shall be considered necessary for public purposes and for the benefit of the public.

125.2661 Financing sources of authority activities.

Sec. 11. The activities of the authority shall be financed from 1 or more of the following sources:

(a) Contributions, contractual payments, or appropriations to the authority for the performance of its functions or to pay the costs of a brownfield plan of the authority.

(b) Revenues from a property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to the limitations imposed upon the authority by trusts or other agreements.

(c) Subject to the limitations imposed under sections 8, 13, 13b, and 15, 1 or both of the following:

(*i*) Tax increment revenues received under a brownfield plan established under sections 13 and 14. (*ii*) Proceeds of tax increment bonds and notes issued under section 17.

(d) Proceeds of revenue bonds and notes issued under section 12.

(e) Revenue available in the local brownfield revolving fund for the costs described in section 8.

(f) Money obtained from all other sources approved by the governing body of the municipality or otherwise authorized by law for use by the authority or the municipality to finance activities authorized under this act.

125.2662 Bonds and notes of authority.

Sec. 12. (1) The authority may borrow money and issue its negotiable revenue bonds or notes to finance all or part of the costs of eligible activities or of another activity of the authority under this act. Revenue bonds and notes issued under this section are subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140. The costs that may be financed by the issuance of revenue bonds or notes may include the costs of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with an activity authorized under this act; engineering, architectural, legal, accounting, or financial expenses; the costs necessary or incidental to the borrowing of money; interest on the bonds or notes during the period of construction; a reserve for payment of principal and interest on the bonds or notes; and a reserve for operation and maintenance until sufficient revenues have developed. The authority may secure the bonds and notes by mortgage, assignment, or pledge of the property and all money, revenues, or income received in connection with the property.

(2) A pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property pledged by the authority immediately shall be subject to the lien of the pledge without a physical delivery, filing, or further act. The lien of a pledge shall be valid and binding as against parties having claims in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice of the lien. Filing of the resolution, the trust agreement, or another instrument by which a pledge is created is not required.

(3) Bonds or notes issued under this section shall be exempt from all taxation in this state except estate and transfer taxes, and the interest on the bonds or notes shall be exempt from all taxation in this state, notwithstanding that the interest may be subject to federal income tax.

(4) Unless otherwise provided by a majority vote of the members of its governing body, the municipality shall not be liable on bonds or notes of the authority issued under this section and the bonds or notes shall not be a debt of the municipality.

(5) The bonds and notes of the authority may be invested in by the state treasurer and all other public officers, state agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for all purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is supplemental and in addition to all other authority granted by law.

125.2663 Brownfield plan; contents; provisions.

Sec. 13. (1) The board shall adopt a brownfield plan subject to the notice and approval provisions of section 14.

Comment [CLG29]: Moved from Sec 14(9)

(2) 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 by, 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 brownfield 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(mm), 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 proposed beginning date and duration of capture of tax increment revenues for each eligible property as determined under section 13b(13).

(g) An estimate of the future tax revenues of all taxing jurisdictions in which the eligible property is located to be generated during the term of the plan.

(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 the Relocation Assistance Act,1972 PA 227, MCL 213.321 to 213.332.

(m) Other material that the authority or governing body considers pertinent to the brownfield plan.

(3) When taxes levied for school operating purposes are subject to capture under section 15, 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 shall not be greater than the plans' percentage capture and use

of all local taxes levied under the brownfield plan 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.

(4) Except as provided in this subsection, subsection (6), and sections 8, 13b(4), 13b(6), tax increment revenues related to a brownfield plan shall be used only for:

(a) costs of eligible activities attributable to the eligible property which produces the tax increment revenues, or,

(b) eligible activities attributable to any eligible property owned by, or under the control of, the land bank fast track authority or qualified local unit of government.

(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, except that a brownfield plan may authorize the capture of additional local and school operating tax increment revenue from an eligible property either:

(a) during the time of capture specified in this subsection (5) for the purpose of paying the costs permitted under subsection (4) or Section 13b(4); or

(b) for not more than 5 years after the date specified in subsection (5)(a) for payment to the local brownfield revolving loan fund pursuant to section 8.

125.2663a Recovery of funds

Sec. 13a. Costs of a response activity paid with tax increment revenues that are captured pursuant to section 13(4) may be recovered from a party that is responsible for an activity causing a release. 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 60 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 brownfield revolving fund created pursuant to section 8, if such a fund has been established by the authority. If a local brownfield revolving 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 part 201, 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.

125.2663b Use of funds; permitted and prohibited conduct

Sec 13b. (1) An authority shall not expend tax increment revenues to acquire or prepare eligible property, unless the acquisition or preparation is an eligible activity.

(2) An authority shall not enter into agreements with the taxing jurisdictions and the governing body of the municipality to share a portion of the taxes captured from an eligible property under this Act. 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.

(3) 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 to assist a land bank authority with clearing or quieting title, acquiring, selling, or conveying property, except as provided in subsection (4).

(4) If a brownfield plan includes the use of taxes levied for school operating purposes captured from an eligible property for eligible activities that are not response activities

(a) A combined brownfield plan or a work plan must be approved by the Michigan strategic fund and a development agreement or reimbursement agreement between the municipality or authority and an owner or developer of eligible property is required before such tax increment may be used for

Comment [CLG30]: Clarification of liable party issue.

Comment [CLG31]: Reduced notice time from 120 to 60 days.

Comment [CLG32]: Moved from former (6) below

Comment [CLG33]: Moved from former (14) below

Comment [CLG34]: Moved from former section 13(3) and merged with former 13(6)

Comment [CLG35]: Moved to (2) above

Comment [CLG36]: Text added for clarification

Comment [CLG37]: Tweaked wording based on section 13(18)

infrastructure improvements that directly benefit eligible property, demolition of structures that is not response activity, lead, mold, or asbestos abatement, site preparation that is not response activity, 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, or

(b) approval of a combined brownfield plan or a work plan by the Michigan strategic fund in the manner required under section 15(12) to (14) or (21) is required in order to use such tax increment revenues to assist a land bank authority or qualified local governmental unit with clearing or quieting title, acquiring, selling, or conveying property.

(c) 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.

(d) 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.

(e) The department's approval is not required for the capture of taxes levied for school operating purposes for eligible activities described in this section.

(5) If a brownfield plan includes the use of taxes levied for school operating purposes captured from eligible property for response activities a combined brownfield plan or a work plan must be approved by the department with the exception of those activities identified in section 13b(8)-(9).

(6) An authority shall not do any of the following:

(a) Use taxes captured from eligible property to pay for eligible activities conducted before approval of the brownfield plan; or

(b) Use taxes captured from eligible property to pay for administrative and operating activities of the authority or the municipality on behalf of the authority for activities, other than those identified in subsection 7.

(c) For eligible activities not described in section 13b(4), an authority shall not use taxes levied for school operating purposes captured from eligible property unless the eligible activities to be conducted on the eligible property are eligible response activities, consistent with a combined brownfield plan or a work plan approved by the department after July 24, 1996.

(7) An authority may use taxes captured from eligible property to pay for the administrative and operating costs under the following conditions:

(a) Local taxes captured may be used for the following administrative and operating purposes:

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

(*ii*) 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.

(*iii*) Reasonable costs of developing and preparing brownfield plans, combined plans, or work plans for which tax increment revenues may be used under section 13(4) including but not limited to legal and consulting fees that are not in the ordinary course of acquiring and developing real estate

(b) Taxes levied for school operating purposes may be used for the following administrative and operating purposes:

(i) Reasonable costs of developing and preparing brownfield plans, combined brownfield plans, or work plans for which tax increment revenues may be used under section 13(4) including but not limited to legal and consulting fees that are not in the ordinary course of acquiring and developing real estate, not to exceed $30,000.

(ii) Reasonable costs of brownfield plan or work plan implementation including, but not limited to tracking and reporting of data and plan compliance, not to exceed $30,000.

(c) 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 (6) shall be determined as follows:

(*i*) For authorities that have 5 or fewer active projects, $100,000.00.
(*ii*) For authorities that have 6 or more but fewer than 11 active projects, $125,000.00.
(*iii*) For authorities that have 11 or more but fewer than 16 active projects, $150,000.00.
(*iv*) For authorities that have 16 or more but fewer than 21 active projects, $175,000.00.
(*v*) For authorities that have 21 or more but fewer than 26 active projects, $200,000.00.
(*vi*) For authorities that have 26 or more but fewer than 31 active projects, $300,000.00.
(*vii*) For authorities that have 31 or more active projects, $500,000.00.

Comment [CLG38]: Moved from former section 13(18)

Comment [CLG39]: Reworded to make consistent with section 13b (3)

Comment [CLG40]: Moved from 15(1)(b)

Comment [CLG41]: Moved from 15(1)(d)

Comment [CLG42]: Moved from 15(1)(a)

Comment [CLG43]: Added for clarification

Comment [CLG44]: Moved up. Wording the same.

Comment [CLG45]: New activities

Comment [CLG46]: moved from section 13(19)

(d) Nothing contained in this subsection shall limit the amount of funds that may be granted, loaned or expended by a local brownfield revolving fund hereunder for eligible activities.

(e) As used in this subsection, "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 this subsection that an authority can use for the purposes described in this subsection 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%:

(i) 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.

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

(8) The limitations of subsections (3), (5), and(6) upon the use of taxes levied for school operating purposes shall not apply to the costs of 1 or more of the following incurred by a person other than the authority:

(*a*) Site investigation activities required to conduct a baseline environmental assessment and to evaluate compliance with section 20107a part 201, MCL 324.20107a.

(*b*) Completing a baseline environmental assessment report.

(c) Preparing a plan for compliance with section 20107apart 201, MCL 324.20107a.

(d) Performing pre-demolition and building hazardous materials surveys.

(e) Asbestos, mold, and lead surveys and abatement

(9) The limitations of subsections (3), (5), and (6) upon the use of taxes levied for school operating purposes shall not apply to the following costs and expenses:

(a) 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 in writing on the unanticipated response activities before they are conducted and the costs of those activities are subsequently included in a brownfield plan , combined brownfield plan or a work plan or amendment approved by the authority and approved by the department.

(b) 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.

(c) For tax increment revenues attributable to taxes levied for school operating purposes, eligible activities described in subsection (4) 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.

(10) Use taxes levied for school operating purposes captured from eligible property for response activities that benefit a party responsible for an activity causing a release under section 20126 of part 201, MCL 324.20126, except that a municipality that established the authority may use taxes levied for school operating purposes captured from eligible property for response activities associated with a landfill. (11) 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.

(a) 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.

(b) 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.

Comment [CLG47]: New addition. Admin limits do not apply to using local for eligible activities

Comment [CLG48]: moved from 13(20)

Comment [CLG49]: Activities recommended to be added to predevelopment costs.

Comment [CLG50]: Has been an issue in past as to what "consulted" meant or proof that it actually happened.

Comment [CLG51]: Moved from former section 15(1)(c)

Comment [CLG52]: Changed this wording regarding liability. Formerly this was "a liable party"

(c) 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 13 or the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. (12) (a)Notwithstanding anything to the contrary in this act, for a brownfield plan that includes the capture of taxes levied for school operating purposes from each 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 until the expiration of the ealier of the following:

(*i*) 25 years of capture of tax increment revenues from such eligible property included in the brownfield plan, or

(*ii*) the later of: (A) the date of repayment of all eligible expenses relative to such eligible property or (B) the date excess capture is terminated under Section 8.

(b) The department of treasury shall deposit these amounts into the state brownfield redevelopment fund.

(c) If an authority makes such payment as required under subsection 12(a) to the department of treasury the local taxes levied on that parcel and used to reimburse eligible activities under a brownfield plan shall notbe increased or decreased thereby. .

(d) 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.

(13) The duration of capture of tax increment revenues under a brownfield plan for a particular eligible property shall not exceed the earlier of the period authorized under sections 8 and 13(5) or 30 years from the beginning date of the capture of tax increment revenues for that eligible property The brownfield plan shall include a proposed beginning date of capture. The beginning date of capture of tax increment revenues shall be the earlier of: (i) the year following the date development work is completed at the eligible property 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.

125.2664 Approval of a brownfield plan; brownfield plan as public purpose; determination; amendments to plan; validity of procedure, notice, and findings; presumption; brownfield plan termination.

Sec. 14. (1) 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.

(2) 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.

(3) At the time set for the hearing on the brownfield plan required under subsection (1), 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.

Comment [CLG53]:

Comment [CLG54]: Edited to provide Clarification that LBRF includes 3 mil capture.

Comment [CLG55]: Brownfield Plan to include beginning date of capture

(4) 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 13b(6)(c) 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 13b(4).

(5) Not less than 10 days after notice of the proposed brownfield plan is provided to the taxing jurisdictions, the governing body shall determine whether the plan constitutes a public purpose. If the governing body determines that the plan does not constitute a public purpose, the governing body shall reject the plan. If the governing body determines that the plan constitutes a public purpose, the governing body may then approve or reject the plan, or approve it with modification, by resolution, based on the following considerations:

(a) Whether the plan meets the requirements of section 13 and 13b.

(b) Whether the proposed method of financing the costs of eligible activities is feasible and the authority has the ability to arrange the financing.

(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 estimated to result from adoption of the plan is reasonable.

(6) Except as provided in this subsection, amendments to an approved brownfield plan must be submitted by the authority to the governing body for approval or rejection following the same notice necessary for approval or rejection of the original plan. Notice is not required for revisions in the estimates of captured taxable value or tax increment revenues.

(7) The procedure, adequacy of notice, and findings with respect to purpose and captured taxable value shall be presumptively valid unless contested in a court of competent jurisdiction within 60 days after adoption of the resolution adopting the brownfield plan. An amendment, adopted by resolution, to a conclusive plan shall likewise be conclusive unless contested within 60 days after adoption of the resolution adopting the amendment. If a resolution adopting an amendment to the plan is contested, the original resolution adopting the plan is not therefore open to contest.

(8) A brownfield plan or plan amendment may be abolished or terminated according to this subsection subject to all of the following:

(a) The governing body may abolish a brownfield plan when it finds that the purposes for which the plan was established are accomplished.

(b) The governing body may terminate a brownfield plan or plan amendment for an eligible property if the project for which eligible activities were identified in the brownfield plan or plan amendment fails to occur with respect to the eligible property for at least 2 years following the date of the resolution approving the brownfield plan or plan amendment, provided that the governing body first:

(*i*) gives 30 days prior written notice to the developer at its last known address by certified mail or other method that documents proof of delivery attempted, and

(*ii*) provides the developer an opportunity to be heard at a public meeting.

(c) If a brownfield plan or plan amendment is terminated under subdivision (b), the governing body may approve a new brownfield plan or plan amendment for the eligible property under which tax increment revenues may be captured for up to 30 years as provided in section 13b(13).

(d) Notwithstanding anything in this subsection to the contrary, a brownfield plan or plan amendment shall not be abolished or terminated until the principal and interest on bonds issued under section 17 and all other obligations to which the tax increment revenues are pledged have been paid or funds sufficient to make the payment have been identified or segregated.

Comment [CLG56]: Changed from 5 to 2 years

Comment [CLG57]: This is new wording added to provide protection to developer from LUG changing mind.

Comment [CLG58]: Moved from section 16(8)

125.2665 Work plan; documents to be submitted for approval; written response; time limitation; additional response activities; review by department; approval or denial of work plan as final decision; appeal; reimbursement of costs; report; review by Michigan strategic fund; duties; distribution of remaining funds; extension of review period; approval of combined brownfield plan.

Sec. 15. (1) To seek department approval of a work plan under section 13b(5)(c), the authority shall submit all of the following for each eligible property:

(a) A copy of the brownfield plan.

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

(c) A summary of available information on the historical and current use of each eligible property, including a brief summary of site conditions and what is known about environmental contamination as that term is defined in section 20101 of part 201, MCL 324.20101.

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

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

(2) Upon receipt of a request for approval of a work plan under subsection (1) or a portion of a work plan that pertains to only baseline environmental assessment activities, due care activities, or response activities , the department shall review the work plan according to subsection (3) and provide 1 of the following written responses to the requesting authority within 60 days:

(a) An unconditional approval.

(b) A conditional approval that delineates specific necessary modifications to the work plan to meet the criteria of subsection (3), including, but not limited to, individual activities to be modified, added or deleted from the work plan and revision of costs. The department may not condition its approval on deletions from or modifications of the work plan relating to activities to be funded solely by tax increment revenues not attributable to taxes levied for school operating purposes.

Comment [CLG59]: Added to clarify that DEQ can't make conditional approval on modifications to local only portion of project.

(c) If the work plan lacks sufficient information for the department to respond under subdivision (a), (b), or (d) for any specific activity, a letter stating with specificity the necessary additions or changes to the work plan to be submitted before that activity will be considered by the department. The department shall respond under subdivision (a), (b), or (d) according to this section for the other activities in the work plan.

(d) A denial if the property is not an eligible property under this act, if the work plan contemplates the use of taxes levied for school operating purposes prohibited by section 13b(9), or for any specific activity if the activity is prohibited by section 13b(6)(a). The department may also deny any activity in a work plan that does not meet the conditions in subsection (3) only if the department cannot respond under subsections (2)(b) or (c). The department shall accompany the denial with a letter that states with specificity the reason for the denial. The department shall respond under subsections 2(a), (b), or (c) for any activities in the work plan that are not denied under this subsection (d). If the department denies all or a portion of a work plan under this subsection (d), the authority may subsequently resubmit the work plan.

(3) The department may approve a work plan if the following conditions have been met:

(a) Whether some or all of the activities constitute due care activities or response activities other than activities that are exempt from the work plan approval process under section 13b(6)(c).

(b) The due care activities and response activities, other than the activities that are exempt from the work plan approval process under section13b(6)(c), are protective of the public health, safety, and welfare and the environment. The department may approve response activities that are more protective of the public health, safety, and welfare and the environment than required by section 20107a of part 201, MCL 324.20107a, if those activities provide public health or environmental benefit. In review of a work plan that includes activities that are more protective of the public health, safety, and welfare and the environment, the department's considerations may include, but are not limited to, all of the following:

(*i*) Proposed new land use and reliability of restrictions to prevent exposure to contamination.

(*ii*) Cost of implementation activities minimally necessary to achieve due care compliance, the incremental cost of response activities relative to the cost of activities minimally necessary to achieve due care compliance, and the total cost of all response activities.

(*iii*) Long-term obligations associated with leaving contamination in place and the value of reducing or eliminating these obligations.

(c) The estimated costs for the activities as a whole are reasonable for the stated purpose. Except as provided in subsection (3)(b), the department shall make the determination in this subdivision only after the department determines that the conditions in subsections 3(a) and (b) have been met.

(4) If the department fails to provide a written response under subsection (2) within 60 days after receipt of a request for approval of a work plan, the authority may proceed with the activities as outlined in the work plan as submitted for approval. Except as provided in subsection (5), activities

conducted pursuant to a work plan that was submitted to the department for approval but for which the department failed to provide a written response under subsection (2) shall be considered approved for the purposes of subsection (1). Within 45 days after receiving additional information requested from the authority under subsection (2)(c), the department shall review the additional information according to subsection (3) and provide 1 of the responses described in subsection (2) to the requesting authority for the specific activity. If the department does not provide a response to the requesting authority within 45 days after receiving the additional information requested under subsection (2)(c), the activity is approved under section13b.

(5) The department may issue a written response to a work plan more than 60 days but less than 6 months after receipt of a request for approval. If the department issues a written response under this subsection, the authority is not required to conduct individual activities that are in addition to the individual activities included in the work plan as it was submitted for approval and failure to conduct these additional activities shall not affect the authority's ability to capture taxes under section 13b for the eligible activities described in the work plan initially submitted under subsection (4). In addition, at the option of the authority, these additional individual activities shall be considered part of the work plan of the authority and approved for purposes of section 13b. However, any response by the department under this subsection that identifies additional individual activities that must be carried out to satisfy part 201 must be satisfactorily completed for the activities to be considered acceptable for the purposes of compliance with part201.(6) If the department issues a written response under subsection (5) to a work plan and if the department's written response modifies an individual activity proposed by the work plan of the authority in a manner that reduces or eliminates a proposed response activity, the authority must complete those individual activities in accordance with the department's response in order for that portion of the work plan to be considered approved for purposes of section 13b unless 1 or more of the following conditions apply:

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

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

(7) It shall be in the sole discretion of an authority to propose to undertake additional response activities at an eligible property under a brownfield plan. The department shall not require a work plan to include additional response activities.

(8) The department shall review the portion of a work plan that includes additional response activities in accordance with subsection (3).

(9) The department's approval or denial of a work plan submitted under this section constitutes a final decision in regard to the use of taxes levied for school operating purposes but does not restrict an authority's use of tax increment revenues attributable to local taxes to pay for eligible activities under a brownfield plan. If a person is aggrieved by the final decision, the person may appeal under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(10) To seek Michigan strategic fund approval of a work plan under section13b(4), the authority shall submit all of the following for each eligible property:

(a) A copy of the brownfield plan.

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

(c) A summary of available information on the historical and current use of each eligible property. (d) Existing and proposed future zoning for each eligible property.

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

(f) A separate work plan, or part of a work plan, for each eligible activity described in section 13b(4) to be undertaken.

(g) A copy of the development agreement or reimbursement agreement required under section13b(4), which shall include, but is not limited to, a detailed summary of any and all ownership interests, monetary considerations, fees, revenue and cost sharing, charges, or other financial arrangements or other consideration between the parties.

(11) Upon receipt of a request for approval of a work plan, the Michigan strategic fund shall provide 1 of the following written responses to the requesting authority within 60 days:

(a) An unconditional approval that includes an enumeration of eligible activities and a maximum allowable capture amount.

Comment [CLG60]: change to make consistent throughout

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

(c) A denial and a letter stating with specificity the reason for the denial. If a work plan is denied under this subsection, the work plan may be subsequently resubmitted.

(12) In its review of a work plan under section13b(4), the Michigan strategic fund shall consider the following criteria to the extent reasonably applicable to the type of activities proposed as part of that work plan when approving or denying a work plan:

(a) Whether the individual activities included in the work plan are sufficient to complete the eligible activity.

(b) Whether each individual activity included in the work plan is required to complete the eligible activity. (c) Whether the cost for each individual activity is reasonable.

(d) The overall benefit to the public.

(e) The extent of reuse of vacant buildings and redevelopment of blighted property.

(f) Creation of jobs.

(g) Whether the eligible property is in an area of high unemployment.

(h) The level and extent of contamination alleviated by or in connection with the eligible activities. (i) The level of private sector contribution.

(j) If the developer or projected occupant of the new development is moving from another location in this state, whether the move will create a brownfield.

(k) Whether the project of the developer, landowner, or corporate entity that is included in the work plan is financially and economically sound.

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

(m) Any other criteria that the Michigan strategic fund considers appropriate for the determination of eligibility or for approval of the work plan.

(13) If the Michigan strategic fund fails to provide a written response under subsection (12) within 60 days after receipt of a request for approval of a work plan, the eligible activities shall be considered approved and the authority may proceed with the eligible activities described in section 13b(4) as outlined in the work plan as submitted for approval.

(14) The Michigan strategic fund approval of a work plan under section 13b(4) is final.

(15) The Michigan strategic fund shall submit a report each year to each member of the legislature as provided in section 16(4).

Comment [CLG61]: no longer doing this. can be deleted.

(16) All taxes levied for school operating purposes that are not used for eligible activities consistent with a combined brownfield plan or a work plan approved by the department or the Michigan strategic fund or for the payment of interest under sections 13 and 13b that are not deposited in a local brownfield revolving fund shall be distributed proportionately between the local school district and the school aid fund..

(17) The department's approval of a work plan under subsection (2)(a) or (b) does not imply an entitlement to reimbursement of the costs of the eligible activities if the work plan is not implemented as approved.

(18) The applicant and the department can, by mutual agreement, extend the time period for any review described in this section. An agreement described in this subsection shall be documented in writing.

(19) If a brownfield plan includes the capture of taxes levied for school operating purposes, the chairperson of the Michigan strategic fund may approve, without a meeting of the fund board, combined brownfield plans and work plans that address eligible activities described in section 13b(4) totaling an amount of $1,000,000.00 or less according to subsections (11), (12), (13), (14), and 15), .

Comment [CLG62]: New add to eliminate need for MSF board to meet for projects of $1M or less. MEDC requests this amount be consistent with whatever CRP is.

(20) In lieu of seeking approval of a work plan under section 13b(4) or 13b(6)(c), an authority may seek approval of a combined brownfield plan from the department or Michigan strategic fund under this subsection as follows:

(a) To seek approval of a combined brownfield plan under this subsection, the authority shall, at least 30 days before the hearing on the combined brownfield plan to allow for consultation between the authority and the department or the Michigan strategic fund, provide notice that the authority will be seeking approval of a combined brownfield plan in lieu of a work plan to 1 or more of the following:

(*i*) The department, if the combined brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities that require approval by the department under section 13b(6)(c).

(*ii*) The Michigan strategic fund, if the combined brownfield plan involves the use of taxes levied for school operating purposes to pay for eligible activities subject to subsection (13).

(b) After the governing body approves a combined brownfield plan, the authority shall submit the combined brownfield plan to the department under the circumstances described in subdivision (a)(*i*) or Michigan strategic fund under the circumstances described in subdivision (a)(*ii*).

(c) The department shall review a combined brownfield plan according to subdivision (e). The Michigan strategic fund shall review a combined brownfield plan according to subdivision (f).

(d) Upon receipt of a combined brownfield plan under subdivision (b), the department or Michigan strategic fund shall provide 1 of the following written responses to the requesting authority within 60 days:

(*i*) An unconditional approval that includes an enumeration of eligible activities and a maximum allowable capture amount.

(*ii*) A conditional approval that delineates specific necessary modifications to the combined brownfield plan, including, but not limited to, individual activities to be added to or deleted from the combined brownfield plan and revision of costs.

(*iii*) A denial and a letter stating with specificity the reason for the denial. If a combined brownfield plan is denied under this subdivision, the combined brownfield plan may be subsequently resubmitted.

(e) The department may approve a combined brownfield plan if the authority submits the information identified in subsection (1)(b) to (e) and if the conditions identified in subsection (3) are met.

(f) The Michigan strategic fund shall consider the criteria identified in subsection (13)(a) to (m) to the extent reasonably applicable to the type of activities proposed as part of a combined brownfield plan when approving or denying the combined brownfield plan.

(g) If the department or Michigan strategic fund issues a written response to a requesting authority under subdivision (d)(*i*) or (*ii*), the governing body or its designee may administratively approve any modifications to a combined brownfield plan required by the written response without the need to follow the notice and approval process required by section 14(6) unless the modifications add 1 or more parcels of eligible property or increase the maximum amount of tax increment revenues approved for the project.

(h) If the department or Michigan strategic fund fails to provide a written response under subdivision (d) within 60 days after receipt of a combined brownfield plan, the eligible activities shall be considered approved as submitted.

(i) The approval of a combined brownfield plan by the department or Michigan strategic fund under this subsection is final.

Comment [CLG63]: changed number of days to make consistent

Comment [CLG64]: changed from 65 to 60 days

125.2665a Retention and payment of taxes levied under state education tax act; conditions; use; application for approval by authority; information to be included; approval, modification, or denial of application by department of treasury; appropriation and distribution of amount; aggregate amount; lien; obligations; copy of application; calculations; legislative intent; definitions.

Sec. 15a. (1) If the amount of tax increment revenues lost as a result of the personal property tax exemptions provided by section 1211(4) of the revised school code, 1976 PA 451, MCL 380.1211, section 3 of the state education tax act, 1993 PA 331, MCL 211.903, section 14(4) of 1974 PA 198, MCL 207.564, and section 9k of the general property tax act, 1893 PA 206, MCL 211.9k, will reduce the allowable school tax capture received in a fiscal year, then, notwithstanding any other provision of this act, the authority, with approval of the department of treasury under subsection (3), may request the local tax collecting treasurer to retain and pay to the authority taxes levied within the municipality under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, to be used for the following:

(a) To repay an advance made prior to June 5, 2008 .

(b) To repay an obligation issued or incurred prior to June 5, 2008.

(c) To pay or reimburse a developer or owner of eligible property or a municipality that created the authority for eligible activities pursuant to a development and reimbursement agreement entered into prior to June 5, 2008.

(d) To pay for eligible activities identified in a brownfield plan, or an amendment to that plan approved by board of the authority prior to September 3, 2008 if the plan contains all of the following and the work plan for the capture of school taxes has been approved by June 5, 2009:

(*i*) A detailed description of the project.

(*ii*) A statement of the estimated cost of the project.

(*iii*) The specific location of the project.

(*iv*) The name of any developer of the project.

(2) Not later than June 15 of each year, an authority eligible under subsection (1) to have taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, retained and paid to the authority under this section, shall apply for approval with the department of treasury. The application for approval shall include the following information:

(a) The property tax millage rates expected to be levied by local school districts within the jurisdictional area of the authority for school operating purposes for that fiscal year.

(b) The tax increment revenues estimated to be received by the authority for that fiscal year based upon actual property tax levies of all taxing jurisdictions within the jurisdictional area of the authority.

(c) The tax increment revenues the authority estimates it would have received for that fiscal year if the personal property tax exemptions described in subsection (1) were not in effect.

(d) A list of advances, obligations, development and reimbursement agreements, and projects included in brownfield plans described in subsection (1), and shall separately identify the payments due on each of those advances, obligations, development agreements, and eligible activities in that fiscal year, and the total amount of all the payments due on all of those in that fiscal year.

(e) The amount of money, other than tax increment revenues, estimated to be received in that fiscal year by the authority that is primarily pledged to, or would be used for, the repayment of an advance, the payment of an obligation, the payment of eligible activities pursuant to a development and reimbursement agreement, or the payment of eligible activities identified in a brownfield plan described in subsection (1). That amount shall not include excess tax increment revenues of the authority that are permitted by law to be retained by the authority for purposes that further the development program. However, that amount shall include money to be obtained from sources authorized by law, which law is enacted on or after December 1, 1993, for use by the municipality or authority to finance a development plan.

(f) The amount of a distribution received pursuant to this act for a fiscal year in excess of or less than the distribution that would have been required if calculated upon actual tax increment revenues received for that fiscal year.

(3) Not later than August 15 of each year, based on the calculations under subsection (5), the department of treasury shall approve, modify, or deny an application for approval to have taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, retained and paid to the authority under this section. If the application for approval contains the information required under subsection (2)(a) through (f) and appears to be in substantial compliance with the provisions of this section, then the department of treasury shall approve the application. If the application is denied by the department of treasury, then the department of treasury shall provide the opportunity for a representative of the authority to discuss the denial within 21 days after the denial occurs and shall sustain or modify its decision within 30 days after receiving information from the authority. If the application for approval is approved or modified by the department of treasury, the local tax collecting treasurer shall retain and pay to the authority the amount described in subsection (5) as approved by the department of treasury. If the department of treasury denies the authority's application for approval, the local tax collecting treasurer shall not retain or pay to the authority the taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906. An approval by the department does not prohibit a subsequent audit of taxes retained in accordance with the procedures currently authorized by law.

(4) Each year the legislature shall appropriate and distribute an amount sufficient to pay each authority the following:

(a) If the amount to be retained and paid under subsection (3) is less than the amount calculated under subsection (5), the difference between those amounts.

(b) If the application for approval is denied by the department of treasury, an amount verified by the department equal to the amount calculated under subsection (5).

(5) Subject to subsection (6), the aggregate amount under this section shall be the sum of the amounts determined under subdivisions (a) and (b) minus the amount determined under subdivision (c), as follows:

(a) The amount by which the tax increment revenues the authority would have received and retained for the fiscal year, excluding taxes exempt under section 7ff of the general property tax act, 1893 PA 206, MCL
211.7ff, if the personal property tax exemptions described in subsection (1) were not in effect, exceed the tax increment revenues the authority actually received for the fiscal year.

(b) A shortfall required to be reported under subsection (2)(f) that had not previously increased a distribution.

(c) An excess amount required to be reported under subsection (2)(f) that had not previously decreased a distribution.

(6) A distribution or taxes retained under this section replacing tax increment revenues pledged by an authority or a municipality are subject to any lien of the pledge described in subsection (1), whether or not there has been physical delivery of the distribution.

(7) Obligations for which distributions are made under this section are not a debt or liability of this state;

do not create or constitute an indebtedness, liability, or obligation of this state; and are not and do not constitute a pledge of the faith and credit of this state.

(8) Not later than September 15 of each year, the authority shall provide a copy of the application for approval approved by the department of treasury to the local tax collecting treasurer and provide the amount of the taxes retained and paid to the authority under subsection (5).

(9) Calculations of amounts retained and paid and appropriations to be distributed under this section shall be made on the basis of each development area of the authority.

(10) The state tax commission may provide that the calculations under this section and the calculation of allowable capture of school taxes shall be made for each calendar year's tax increment revenues using a

12-month debt payment period used by the authority and approved by the state tax commission.

(11) It is the intent of the legislature that, to the extent that the total amount of taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, that are allowed to be retained under this section and section 11b of the local development financing act, 1986 PA 281, MCL 125.2161b, section 12b of the tax increment finance authority act, 1980 PA 450, MCL 125.1812b, and section 13c of 1975 PA 197, MCL 125.1663c, exceeds the difference of the total school aid fund revenue for the tax year minus the estimated amount of revenue the school aid fund would have received for the tax year had the tax exemptions described in subsection (1) and the earmark created by section 515 of the Michigan business tax act, 2007 PA 36, MCL

208.1515, not taken effect, the general fund shall reimburse the school aid fund the difference.

(12) As used in this section:

(a) "Advance" means that term as defined in section 1 of 1975 PA 197, MCL 125.1651.

(b) "Obligation" means that term as defined in section 1 of 1975 PA 197, MCL 125.1651.

125.2666 Tax increment revenues; transmission to authority; expenditure; reversion of surplus funds; financial status report; collection and compilation of financial reports by department and Michigan strategic fund; reporting obligations; performance postaudit report by auditor general; report by owner or developer for active project within brownfield plan; abolishment or termination of brownfield plan or amendment.

Sec. 16. (1) The municipal and county treasurers shall transmit tax increment revenues to the authority not more than 30 days after tax increment revenues are collected.

(2) The authority shall expend the tax increment revenues received only in accordance with the brownfield plan. All surplus funds not deposited in the local brownfield revolving fund of the authority under section 8 shall revert proportionately to the respective taxing bodies, except as provided in section 15(17).

(3) The authority shall submit annually to the governing body, the department, and the Michigan strategic fund a financial report on the status of the activities of the authority for each calendar year. The report shall include all of the following:

(a) The amount and source of tax increment revenues received.

(b) The amount and purpose of expenditures of tax increment revenues.

(c) The amount of principal and interest on all outstanding indebtedness.

(d) The initial taxable value of all eligible property subject to the brownfield plan.

(e) The captured taxable value realized by the authority for each eligible property subject to the brownfield plan.

(f) The amount of actual capital investment made for each project.

(g) The amount of tax increment revenues attributable to taxes levied for school operating purposes used for activities described in section 13b(5)(c) and section 2(n)(xiv) and (xv).

(h) The number of residential units constructed or rehabilitated for each project.

(i) The amount, by square foot, of new or rehabilitated residential, retail, commercial, or industrial space for each project.

(j) The number of new jobs created at the project.

(k) All additional information that the governing body, the department, or the Michigan strategic fund considers necessary.

(4) The department and the Michigan strategic fund shall collect the financial reports submitted under subsection (3), compile a combined report, which includes the use of local taxes, taxes levied for school operating purposes, and the state brownfield redevelopment fund, based on the information contained in those reports and any additional information considered necessary, and submit annually to each member of the legislature a report based on that information to each member of the legislature.

Comment [CLG65]: Adding this allows for deletion of section 15(10)

(5) Beginning on January 1, 2013, all of the following reporting obligations apply:

(a) The department shall on a quarterly basis post on its website the name, location, and amount of tax increment revenues, including taxes levied for school operating purposes, for each project approved by the department under this act during the immediately preceding quarter.

(b) The Michigan strategic fund shall on a quarterly basis post on its website the name, location, and amount of tax increment revenues, including taxes levied for school operating purposes, for each project approved by the Michigan strategic fund under this act during the immediately preceding quarter.

(6) In addition to any other requirements under this act, not less than once every 3 years beginning not later than June 30, 2008, the auditor general shall conduct and report a performance postaudit on the effectiveness of the program established under this act. As part of the performance postaudit, the auditor general shall assess the extent to which the implementation of the program by the department and the Michigan strategic fund facilitate and affect the redevelopment or reuse of eligible property and identify any factors that inhibit the program's effectiveness. The performance postaudit shall also assess the extent to which the interpretation of statutory language, the development of guidance or administrative rules, and the implementation of the program by the department and the Michigan strategic fund is consistent with the fundamental objective of facilitating and supporting timely and efficient brownfield redevelopment of eligible properties.

(7) The owner or developer for an active project included within a brownfield plan must annually submit to the authority a report on the status of the project. The report shall be in a form developed by the authority and must contain information necessary for the authority to report under subsection (3)(f), (h), (i), (j), and (k). The authority may waive the requirement to submit a report under this subsection. As used in this subsection, "active project" means a project for which the authority is currently capturing taxes under this act.

125.2667 Authorization, issuance, and sale of tax increment bonds and notes.

Sec. 17. (1) By resolution of its board, the authority may authorize, issue, and sell its tax increment bonds and notes, subject to the limitations set forth in this section, to finance the purposes of a brownfield plan. The bonds or notes shall be payable in the manner and upon the terms and conditions determined, or within the parameters specified, by the authority in the resolution authorizing issuance of the bonds or notes. The resolution authorizing the bonds shall create a lien on the tax increment revenues and other revenues pledged by the resolution that shall be a statutory lien and shall be a first lien subject only to liens previously created. The resolution may provide the terms upon which additional bonds or notes may be issued of equal standing and parity of lien as to the tax increment revenues and other revenues pledged under the resolution.

(2) The municipality, by majority vote of the members of its governing body, may make a limited tax pledge to support the authority's tax increment bonds or notes or, if authorized by the voters of the municipality, may pledge its unlimited tax full faith and credit for the payment of the principal of and interest on the authority's tax increment bonds or notes.

(3) The bonds or notes issued under this section shall be secured by 1 or more sources of revenue identified in section 7 as sources of financing of activities of the authority, as provided by resolution of the authority.

(4) The bonds and notes of the authority may be invested in by the state treasurer and all other public officers, state agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for 1 or more of the purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is supplemental and in addition to all other authority granted by law.

(5) The bonds and notes issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, except section 503 of the revised municipal finance act, 2001 PA 34, MCL 141.2503.

(6) For bonds issued under this act, the first principal amount maturity date or mandatory redemption date shall be not later than 5 years after the date of issuance and some principal amount shall mature or be subject to mandatory redemption in each subsequent year of the term of the bond.

125.2668 Operating budget.

Sec. 18. (1) The authority shall prepare and approve a budget for the operation of the authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. Funds of a municipality shall not be included in the budget of the authority except those funds authorized in this act or by the governing body of the municipality.

(2) The governing body of a municipality may assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds of the authority, other than those committed for designated purposes, which cost shall be paid annually by the authority under an appropriate item in its budget.

125.2669 Dissolution of authority; distribution of tax revenues and interest.

Sec. 19. (1) An authority that completes the purposes for which it was organized shall be dissolved by resolution of the governing body. Except as provided in subsection (2), the property and assets of the authority remaining after the satisfaction of the obligations of the authority shall belong to the municipality or to an agency or instrumentality designated by resolution of the municipality.

(2) Tax increment revenues and the interest earned on tax increment revenues shall be distributed as provided under section 16(2).

125.2670 Enforcement proceedings.

Sec. 20. The state tax commission may institute proceedings to compel enforcement of the requirements of this act.

Attachment #3a

Summary of Part 196 Modifications

1. Add following definitions: (Section 19601)
    a. BEA – Used 381 as a base for this definition
    b. Chief executive Officer - – Used 381 definition
    c. Due Care Activities – Used 381 as a basis for this definition
    d. Eligible Activities – Used 381 as a basis for this definition. Added:
        i. ability to do response activities in excess of due care
        ii. Ability to perform site assessments
        iii. Disposal of non-haz wastes
        iv. Lead and Asbestos
        v. Mold Abatement
        vi. Dredging
    e. Lead paint, asbestos and mold abatement, disposal of non-hazardous wastes, and dredging activities are eligible with limitations similar to those of the demolition policy to assure project funding would not be primarily for these tasks. (Section 19601(g)(*v*))
    f. Eligible Property – Added for clarification- 381 definition was too complicated so did not use as basis for definition. Provided for 213 sites to also be considered eligible. Currently only 201 facilities are specified as eligible.
    g. Measureable economic benefit – This definition was taken from Site Rec rules which are being eliminated, but concept should be retained.
    h. Measureable environmental benefit – This concept was taken from Site Rec rules, which are being eliminated. The definition was modified to be consistent with Part 201.
    i. Project – This definition was taken from Site Rec rules which are being eliminated, but concept should be retained.

2. Add ability for economic development corporations to also receive grant and loan funding. Currently, LUGS and BRAs are the only entities identified. Definition of LUG now includes (Section 19601(l))

3. Provide ability for LUGS that are liable for contamination at a property to access state grant funds if they provide 50% match for the project. – Concept was modeled after landfill exemption in Act 381. (Section19608(1)(iv) and 19609a(5)(e))

4. Remove restriction on providing funding for projects with municipal or commercial marinas. (Delete Section 19608(4))

5. In a case where grant funds are used for site assessment only, the project must demonstrate:

a. Economic development potential AND
b. As part of the investigation, an estimate of the response activity costs and future limitations of the property must be provided.

This concept was taken from Part 195, where the previous Site Assessment Grants were defined. (Section 19608a(2)).

6. Eliminate concept of additional response activities. This should just be included as part of the definition of response activities. (19608a(6c))

7. Add details on grant program. Currently only loan program is discussed in 196 and information regarding grant program was provided in the Site Rec rules. With the elimination of the site rec rules, this information needs to be captured in 196 and some gaps in what was provided regarding loans needs to be filled. (Sections 19609, 19609a, 19610, 19610a, 19610b).

8. Add emergency manager exemption under 19609(2)(d)

9. Allowance for more than I grant/loan **per project** over consecutive years if project is exceptional. (19609a(1)(c))

10. Allowance for more than 1 grant/loan **per year per community** if a community has multiple exceptional projects. (19609a(1)(d))

11. Added ability to fund response activities that are more protective than due care. Wording taken from Act 381 (19609a(4))

12. Clarify use of grant and loan funds when liable parties are associated with the property, as follows: (Section 19609a(5)
    a. Parties responsible for causing a release cannot benefit from funding.
    b. Exception for LUGS: Loans available if they provide 50% match.
    c. If developer did not cause release, due care can be funded with grant and/or loan
    d. If party responsible for causing release is not involved in the property transaction, loan can be used for redevelopment appropriate response activities.
    e. If no liable party, grant funds can be used for redevelopment appropriate response activities.

13. Provide statutory requirement to make application decision within 90 days of submittal of complete application. Currently only provided for loans. (section 19610(3)

14. Add requirement for applicant to submit letter of support for the project from CEO of LUG. Previously, Site Rec Rules required a resolution from the board. (Section 19610(4)(l))

15. Add means to secure loans other than strictly using local revenue sharing. (19610b(1)(e))

16. Add ability to suspend the grant or loan until recipient comes into compliance, if recipient fails to comply with terms and conditions of the agreement. Currently, DEQ only has the ability to revoke the grant or loan. (Section 19612(2))

17. Modify loan terms to be consistent with RRL provided in 201 by having repayment begin 5 years after "first draw of the loan". (Section 19612(7c))

Legislative Recommendation 3 - 196
Attachment #3b

Draft Revised
Part 196 Legislation

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART
196
CLEAN MICHIGAN INITIATIVE
IMPLEMENTATION

324.19601
Definitions.

Sec. 19601. As used in this part:

(a) "Baseline environmental assessment" means that term as it is defined in MCL 324.20101.

(b) "Bonds" means the bonds authorized under the clean Michigan initiative act.

(c) "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.

(d) "Corrective action" means that term as it is defined in part 213.

(e) "Department" means the department of environmental quality.

(f) "Due care activities" means those activities conducted under MCL 324.20107a.

(g) "Eligible activities" means:

(i) baseline environmental assessment activities,

(ii) investigations,

(iii) due care activities,

~~and~~ (iv) response activities,

(v) the following activities, provided that the total cost of such activities does not exceed the total cost of project related activities identified in items (i) through (iv) above:

(A) disposal of non-hazardous waste, provided it was not accumulated by the applicant for the grant or loan or the developer of the project or

(B) lead, asbestos or mold abatement, demolition of structures that is not response activity.

(C) removal and disposal of contaminated sediments from, at, or related to an economic development project where the upland property is a facility or will become a facility as a result of deposition of dredged spoils.

(h) "Eligible Property" means property that is known or suspected to be a facility under Part 201 or a site under Part 213 and that was used or is currently being used for commercial, industrial, public, or residential purposes.

(i) "Facility" means that term as it is defined in part 201.

(j) "Fund" means the clean Michigan initiative bond fund created in section 19606.

(k) "Gaming facility" means a gaming facility regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226.

(l) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; or an authority or other public body created by or pursuant to state law, including, but not limited to brownfield redevelopment authorities or economic redevelopment corporations.

Comment [CLG66]: Added BRAs and EDCs to definition of LUG

(m) "Measureable economic benefit" means the permanent jobs that are created or retained, the capital invested, and/or the increased tax base to the county, city, village, or township where the project is located.

(n) "Measureable environmental benefit" means the requirements of Part 201 and/or 213 are advanced at a project where environmental conditions inhibit its redevelopment or reuse.

(o) "Project" means the entire project to be undertaken, including the actual site remediation and its resulting economic development.

(p) "Response activity" means that term as it is defined in MCL 324.20101.

(q) "Site" means that term as it is defined in part 213

324.19602 Findings and declaration.

Sec. 19602. The legislature finds and declares that the environmental and natural resources protection programs implemented under this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

324.19603 Bonds; issuance; refund; security; authority of state treasurer; bonds not subject to revised municipal finance act; sale; issuance subject to agency financing reporting act; interest rate agreement.

Sec. 19603. (1) The bonds shall be issued in 1 or more series, each series to be in a principal amount, to be

dated, to have the maturities that may be either serial, term, or both, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax exempt status of the bonds. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued under this section shall not be counted against the limitation on principal amount provided in the clean Michigan initiative act, 1998 PA

284, MCL 324.95101 to 324.95108. Further, refunding bonds issued under this section are not subject to the restrictions of section 19607.

(3) The state administrative board may approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part.

(4) The state administrative board may authorize the state treasurer, but only within limitations contained in the authorizing resolution of the board, to do 1 or more of the following:

(a) Sell and deliver and receive payment for the bonds.

(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds. (d) Buy issued bonds at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to

141.2821.

(6) The bonds or any series of the bonds shall be sold at a price as determined by the state administrative board.

(7) The bonds shall be sold in accordance with a schedule established by the state administrative board.

(8) The issuance of bonds under this section is subject to the agency financing reporting act.

(9) For the purpose of more effectively managing its debt service, the state administrative board may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the state administrative board.

324.19604 Bonds as negotiable and exempt from taxation.

Sec. 19604. The bonds shall be fully negotiable under the uniform commercial code, 1962 PA 174, MCL

440.1101 to 440.11102. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

324.19605 Bonds as securities; investment of funds.

Sec. 19605. The bonds are securities in which banks, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

324.19606 Clean Michigan initiative bond fund; creation; composition; establishment of restricted subaccounts.

Sec. 19606. (1) The clean Michigan initiative bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of the bonds and any premium and accrued interest received on the delivery of the bonds.

(b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any repayment of principal and interest made under a loan program authorized in this part. (d) Any federal or other funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

324.19607 Disposition and allocation of fund; investment; loan repayments; expenditures;

unencumbered balance not to revert to general fund; annual accounting.

Sec. 19607. (1) The total proceeds of all bonds shall be deposited into the fund and allocated as follows:

(a) Not more than $335,000,000.00 shall be used for response activities at facilities.

(b) Not more than $50,000,000.00 shall be used for waterfront improvements.

(c) Not more than $25,000,000.00 shall be used for remediation of contaminated lake and river sediments. (d) Not more than $50,000,000.00 shall be used for nonpoint source pollution prevention and control

projects or wellhead protection
projects.

(e) Not more than $90,000,000.00 shall be used for water quality monitoring and water resources protection and pollution control activities.

(f) Not more than $20,000,000.00 shall be used for pollution prevention programs. (g) Not more than $5,000,000.00 shall be used to abate lead hazards.

(h) Not more than $50,000,000.00 shall be used for state park infrastructure improvements. (i) Not more than $50,000,000.00 shall be used for local recreation projects.

(2) The state treasurer shall direct the investment of the fund. Except as may be required to maintain the exclusion from gross income of the interest paid on the bonds or to comply otherwise with state or federal law, interest and earnings from investment of the proceeds of any bond issue shall be allocated in the same proportion as earned on the investment of the proceeds of the bond issue.

(3) Except as may be required to maintain the exclusion from gross income of the interest paid on the bonds or to comply otherwise with state or federal law, all repayments of principal and interest earned under a loan program authorized by this part shall be credited to the appropriate restricted subaccount of the fund and used for the purposes authorized for that subaccount or to pay debt service on any obligation issued which pledges the loan repayments and the proceeds of which are deposited in that subaccount.

(4) The bond proceeds shall be expended in an appropriate manner that maintains the tax exempt status of the bonds.

(5) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(6) The department shall provide an annual accounting of bond proceeds spending on a cash basis to the department of treasury in order for the state to comply with requirements set forth for issuing tax exempt bonds, including arbitrage rebate calculations. This accounting shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate.

324.19608 Use of money allocated under MCL 324.19607; purposes; notice to public advisory council; use of fund to develop municipal or commercial marina prohibited; payment of costs; grant prohibited; submission of eligible project list; carrying over appropriations until project completion; submission of list of financed projects.

Sec. 19608. (1) Money in the fund that is allocated under section 19607 shall be used for the following

purp
oses
:

(a) Money allocated under section 19607(1)(a) shall be used by the department to fund all of the following: (*i*) Corrective actions undertaken by the department to address releases from leaking underground storage

tanks pursuant to part
213.

(*ii*) Response activities undertaken by the department at facilities pursuant to part 201 to address public health and environmental problems or to promote redevelopment.

(*iii*) Assessment activities undertaken by the department to determine whether a property is a facility.

(*iv*) $75,000,000.00 shall be used to provide grants and loans to local units of government and brownfield redevelopment authorities for eligible activities at eligible properties with redevelopment potential. Of the money provided for in this subparagraph, not more than $50,000,000.00 shall be used to provide grants and not more than $25,000,000.00 shall be used to provide loans pursuant to the clean Michigan initiative revolving loan program created in section 19608a. However, grants or loans provided for in this subparagraph shall not be made to a local unit of government that is responsible for causing a release or threat of release under part 201 at the site proposed for grant or loan funding, except as provided in Section 19609a(5)(e).

(b) Money allocated under section 19607(1)(b) shall be used for waterfront redevelopment grants pursuant to part 795.

(c) Money allocated under section 19607(1)(c) shall be used for response activities for the remediation of contaminated lake and river sediments pursuant to part 201.

(d) Money allocated under section 19607(1)(d) shall be used for nonpoint source pollution prevention and control grants or wellhead protection grants pursuant to part 88.

(e) Money allocated under section 19607(1)(e) shall be deposited into the clean water fund created in section 8807.

(f) Money allocated under section 19607(1)(f) shall be expended as follows:

(*i*) $10,000,000.00 shall be deposited into the retired engineers technical assistance program fund created in section 14512.

(*ii*) $5,000,000.00 shall be deposited into the small business pollution prevention assistance revolving loan fund created in section 14513.

(*iii*) $5,000,000.00 shall be used by the department to implement pollution prevention activities other than those funded under subparagraphs (*i*) and (*ii*).

(g) Money that is allocated under section 19607(1)(g) shall be used by the department of community health for remediation and physical improvements to structures to abate or minimize exposure of persons to lead hazards.

(h) Money allocated under section 19607(1)(h) shall be used for infrastructure improvements at Michigan state parks as determined by the department of natural resources. The installation or upgrade of drinking water systems or rest room facilities shall be the first priority.

(i) Money allocated under section 19607(1)(i) shall be used to provide grants to local units of government for local recreation projects pursuant to part 716.

(2) Of the money allocated under section 19607(1)(a), $93,000,000.00 shall be used for facilities that pose an imminent or substantial endangerment to the public health, safety, or welfare, or to the environment. For purposes of this subsection, facilities that pose an imminent or substantial endangerment shall include, but are not limited to, those where public access poses hazards because of potential exposure to chemicals or safety risks and where drinking water supplies are threatened by contamination.

(3) Before expending any funds allocated under subsection (1)(c) at an area of concern as designated by the parties to the Great Lakes water quality agreement, the department shall notify the public advisory council established to oversee that area of concern regarding the development, implementation, and evaluation of response activities to be conducted with money in the fund at that area of concern.

(4) Money provided in the fund may be used by the department of treasury to pay for the cost of issuing bonds and by the department and the department of natural resources to pay department costs as provided in this subsection. Not more than 3% of the total amount specified in section 19607(1)(a) to (f) shall be available for appropriation to the department to pay its costs directly associated with the

completion of a project authorized by section 19607(1)(a) to (f). Not more than 3% of the total amount specified in section 19607(1)(h) and (i) shall be available for appropriation to the department of natural resources to pay its costs directly associated with the completion of a project authorized by section 19607(1)(h) and (i). It is the intent of the legislature that general fund appropriations to the department and to the department of natural resources shall not be reduced as a result of costs funded pursuant to this subsection.

(5) A grant shall not be provided under this part for a project that is located at any of the following:

(a) Land sited for use as a gaming facility or as a stadium or arena for use by a professional sports team.

(b) Land or other facilities owned or operated by a gaming facility or by a stadium or arena for use by a professional sports team.

(c) Land within a project area described in a project plan pursuant to the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, for a gaming facility.

(6) The department, the department of natural resources, and the department of community health shall each submit annually a list of all projects that will be undertaken by that department that are recommended to be funded under this part. The list shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. The list shall be submitted to the legislative committees not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. For each eligible project, the list shall include the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the administering state department. A project that is funded by a grant or loan with money from the fund does not need to be included on the list submitted under this subsection. However, money in the fund that is appropriated for grants and loans shall not be encumbered or expended until the administering state department has reported those projects that have been approved for a grant or a loan to the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment and to the appropriations subcommittees in the house of representatives and the senate on natural resources and environmental quality. The department shall publish and disseminate the criteria it will use in evaluating and recommending these projects for funding.

(7) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed.

(8) Not later than December 31 of each year, the department, the department of natural resources, and the department of community health shall each submit a list of the projects financed under this part by that department to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the subcommittees of the house of representatives and the senate on appropriations on natural resources and environmental quality. Each list shall include the name, address, and telephone number of the recipient or participant, if appropriate; the name and location of the project; the nature of the project; the amount of money allocated to the project; the county in which the project is located; a brief summary of what has been accomplished by the project; and other information considered pertinent by the administering state department.

324.19608a Clean Michigan initiative grant and revolving loan; establish program.

Sec. 19608a. (1) The department shall create a clean Michigan initiative grant and revolving loan program for the purpose of making grants and loans to local units of government for eligible activities at eligible properties with redevelopment potential: and

(2) Grants used solely to determine whether a property is a site or a facility and, if so, to characterize the nature and extent of the contamination by means of an assessment or investigation, shall only be issued under this subparagraph if all of the following conditions are met:

(a) The characterization of the nature and extent of contamination includes an estimate of response activity costs in relation to the value of the property in an uncontaminated state and identifies future potential limitations on the use of the property based upon current environmental conditions.

(b) The property has demonstrable economic development potential. This provision does not require a

specific development proposal to be identified.

Comment [CLG67]: Added ability to fund site assessments. Language taken from Act 195.

324.19609 Grant or loan applicant; conditions.

Sec. 19609 (1) Eligible applicants for grants and loans shall be local units of government, brownfield redevelopment authorities, and economic development corporations.

(2) The department shall not make a grant or a loan with money from the fund unless all of the following conditions are met:

(a) The applicant demonstrates that the proposed project is in compliance with all applicable state laws and rules or will result in, or advance, compliance with state laws and rules.

(b) The applicant demonstrates to the department the capability to carry out the proposed project.

(c) The applicant demonstrates to the department that there is an identifiable source of funds for the future maintenance and operation of the remedy provided thorough the eligible activities, if appropriate.

(d) Within the last 24 months, the applicant has successfully undergone an audit pursuant to 1968 PA 2 MCL 141.421 et seq. or an emergency manager has been appointed for the applicant pursuant to the local financial stability and choice act, 2012 PA 436, MCL 141.1541 et seq.

Comment [CLG68]: Added emergency manager exemption

(e) Within the last 24 months, the applicant has not had a grant from the department revoked or terminated or had the administering state department determine that the applicant demonstrated an inability to manage a grant.

Comment [CLG69]: Moved from former section 19610

324.19609a Grant and loan awards; conditions.

Sec. 19609a. Of the funds to be used to provide grants and loans under section 19608(1)(a)(*iv*), all of the following conditions apply:

(1) Except as provided in subsections (c) and (d), a recipient shall receive not more than:

(a) 1 grant per year not to exceed $1,000,000.00 per grant

(b) 1 loan per year not to exceed $1,000,000.00 per loan.

Comment [CLG70]: Moved from former 19613

(c) Projects that have significant economic and environmental benefit may be considered for more than 1 grant or loan over consecutive years, provided that the loan or grant agreement includes project-specific benchmarks for response activities and failure to satisfy a benchmark would terminate the project's eligibility for additional grant or loan funding, as applicable..

Comment [CLG71]: Allows for more than 1 grant/ loan per project over consecutive years.

(d) A Local unit of government may be considered for more than one grant or loan in a single fiscal year relating to multiple unrelated projects provided that the projects are deemed to have significant environmental or economic benefits to the recipient's municipality or region.

Comment [CLG72]: Allows for more than 1 grant project per LUG/year.

(2) Except as provided in subsection 19608a(2), a grant may be awarded only if the department determines that both of the following apply:

(a) The property is an eligible property, as defined in Section19601(h).

(b) The proposed development of the property is expected to result in measurable economic benefit in excess of the grant amount requested by the applicant.

(3) A loan may be awarded only if the department determines that both of the following apply:

(a) The property is known or suspected to be an eligible property, as defined in Section19601(h).

(b) The property has economic development potential based on the applicant's planned use of the property.

Comment [CLG73]: Moved from former 19613(c) and (d)

(4) The department may approve response activities that are more protective of the public health, safety, and welfare and the environment than required by section 20107a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20107a, if those activities provide public health or environmental benefit. In review of a work plan that includes activities that are more protective of the public health, safety, and welfare and the environment, the department's considerations may include, but are not limited to, all of the following:

Comment [CLG74]:

(a) Proposed new land use and reliability of restrictions to prevent exposure to contamination.

(b) Cost of implementation activities minimally necessary to achieve due care compliance, the incremental cost of response activities relative to the cost of activities minimally necessary to achieve due care compliance, and the total cost of all response activities.

(c) Long-term obligations associated with leaving contamination in place and the value of reducing or eliminating these obligations.

(5) When liable parties are associated with the eligible property, all of the following conditions apply:

(a) A grant or loan shall not be used to fund response activities that benefit a party that is responsible for an activity causing a release at the eligible property, except as provided in Section 19609a(5)(e).

(b) A grant or loan may be used to fund due care activities necessary to facilitate redevelopment if the party responsible for an activity causing a release is not the developer of proposed redevelopment.

(c) A loan may be used to fund response activities if both of the following are met:

(i) the recipient can show that response activities are appropriate in relation to the redevelopment

(ii) a party responsible for an activity causing a release is neither the seller nor the developer of the property to receive funding.

(d) A grant may be used to fund response activities if both of the following are met:

(*i*) The recipient can show that response activities are appropriate in relation to the redevelopment

(*ii*) There are no liable parties associated with the property

(e) A loan may be used to fund appropriate response activities related to redevelopment and due care activities necessary to facilitate redevelopment of the property if the party that is responsible for an activity causing a release at the eligible property meets all of the following:

(*i*) Is a local unit of government.

(*ii*) Has a proposed redevelopment for the property with measureable economic benefit

(*iii*) Provides a minimum 50% local matching funds for the project.

Comment [CLG75]: Wording taken from Act 381, Section 125.2665 (4)(b)

Comment [CLG76]: New text regarding liability and funding.

324.19610 Grant or loan application; form or format; contents

Sec. 19610. (1)An application for a grant or a loan from the fund shall be made on a form or in a format prescribed by the administering state department.

(2) The department shall accept, and consider for approval, applications for grants and loans throughout the year.

(3) Final application decisions shall be made by the department within 90 days of submittal of a complete grant and/or loan application.

(4) A complete application shall consist of the following:

(a) A description of the proposed eligible activities and the reasons they should be funded.

(b) An itemized budget for the proposed eligible activities.

(c) A schedule for the completion of the proposed eligible activities.

(d) The location of the property.

(e) The current ownership and ownership history of the property.

(f) The relevant history of the use of the property.

(g) The current use of the property.

(h) The existing and proposed future zoning of the property.

(i) If the property is not owned by the applicant, a draft of an enforceable agreement between the property owner and the applicant that commits the property owner to cooperate with the applicant, including a commitment to allow access to the property to complete, at a minimum, the proposed eligible activities.

(j) A description of the property's economic redevelopment potential.

(k) For loans, a resolution from the governing body of the applicant committing to repayment of the loan.

(l) A letter from the Chief executive officer or highest ranking appointed official indicating that the local unit of government is in support of the project and that the project is in accordance with all local zoning and planning ordinances.

Comment [CLG77]: Text unchanged, moved from sec 19608a

Comment [CLG78]: Concept taken from Site Rec rules but modified so a letter of support can come from CEO rather than a resolution of board, to show support for project.

324.19610a Grant or loan application; review by department; issuance

Sec 19610a. (1) Upon receipt of a grant or loan application under section 19610, the department shall review the application based on the following considerations:

(a) Whether the project proposed to be funded is authorized by this part.

(b) Whether the project is consistent with the local planning and zoning for the area in which the project is located.

(c) Whether the project provides significant environmental benefit.

(d) Whether the project will significantly contribute to the local unit of government's economic and community redevelopment or the revitalization of adjacent neighborhoods.

(e) The viability of the redevelopment plan.

(f) The level of public and private commitment and other resources available for the project.

(g) How the project relates to a broader economic and community development plan for the local unit of government as a whole.

(h) Other criteria that the department consider relevant.

(2) The department shall issue grants under this part for projects that the department determines meet the requirements of this part and will contribute to the revitalization of underutilized properties.

324.19610b Grant or loan agreement; reimbursement, documentation

Sec. 19610b. (1) To receive grant and/or loan funds, approved applicants must enter into a grant and/or loan agreement with the department. At a minimum, the grant and/or loan agreement shall contain all of the following:

(a) The approved eligible activities to be undertaken with grant and/or loan funds

(b) An implementation schedule for the approved eligible activities. (c) Reporting requirements, including, at a minimum, the following:

(*i*) The grant/loan recipient shall submit progress status reports to the department during the implementation of the project that includes documentation of project costs and expenditures, at a frequency determined by the department.

(*ii*) The grant/loan recipient shall provide a final report upon completion of the grant/loan-funded activities within a timeframe determined by the department.

(d) If the property is not owned by the grant/loan recipient, an executed agreement that has been approved by the department and that meets the requirements of Section 19610 (4)(i).

(e) for loans, financial assurance of repayment of the loan including pledges of revenue sharing, escrow account, letter of credit, or other acceptable mechanism negotiated with the department. Use of real property as a means to secure a loan is not considered an acceptable mechanism. The department is authorized to include in the loan agreement a provision that permits the release of such financial assurance in favor of a pledge of the right of first refusal of the tax increment revenue to the department under 1996 Public Act 381, MCL 125.2651 et seq., where the project has been substantially completed and the annual tax increment being captured relative to the project is equal to, or greater than 125% of the annual loan reimbursement payment

(f) Other provisions as considered appropriate by the department.

(2) All eligible activities must be consistent with an approved grant and/or loan work plan.

(3) Unless otherwise approved by the director, only activities carried out and costs incurred after execution of a grant/loan agreement are eligible.

(4) Grant funds will be disbursed on a reimbursement basis upon receipt of appropriate documentation.

(5) Loan funds will be disbursed in draws based on an approved work plan and supporting documentation will be submitted after expenses are incurred.

(6) Documentation requirements for grants and loans will be specified by the department on a form prescribed for requesting reimbursement or draws.

Comment [CLG79]: From Site Rec Rules R299.5057(h)

Comment [CLG80]: From R299.5053(l)

Comment [CLG81]: From R299.5053(k)

Comment [CLG82]: From R299.5054(a)

Comment [CLG83]: From R 299.5054(h).

Comment [CLG84]: From R299.5054(d)

Comment [CLG85]: Moved from 19608a(5)

Comment [CLG86]: Added to provide clarification. Exact wording may need to be adjusted.

Comment [CLG87]: Added to provide means to secure loans other than local revenue sharing.

Comment [CLG88]: Moved from 19608a(6)(c)

Comment [CLG89]: From 299.5061(2)(a)

Comment [CLG90]: Frome 299.5061(2)(a)

324.19611 Grant or loan funding; considerations in making a grant or loan

Sec. 19611. (1) Prior to making a grant or loan with money from the fund, the administering state department shall consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the state.

(2) In determining whether a grant or a loan is appropriate, the department shall consider whether the project is likely to be undertaken without state assistance; the availability of state funds from other sources; the degree of private sector participation in the type of project under consideration; and such other factors considered important by the department.

Comment [CLG91]: Taken from 324.19509(2)

324.19612 Duties of grant or loan recipient; revoking grant or withholding payment; cancellation of grant or loan offer; loan terms; disposition of loan payments and interest; default.

Sec. 19612. (1) A recipient of a grant or a loan made with money from the fund shall do both of the

following:

(a) Keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting shall be subject to a postaudit.

(b) Obtain authorization from the administering state department before implementing a change that significantly alters the proposed project.

(2) The administering state department may revoke or suspend a grant or a loan made with money from the fund or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan agreement or with the requirements of this part or the rules promulgated under this part, or with other applicable law or rules. If a grant or loan is revoked, the administering state department may recover all funds awarded.

Comment [CLG92]: Added ability to suspend rather than to just revoke funding.

(3) The administering state department may withhold a grant or a loan until the administering state department determines that the recipient is able to proceed with the proposed project.

(4) To assure timely completion of a project, the administering state department may withhold 10% of the grant or loan amount until the project is complete.

(5) If an approved applicant fails to sign a grant or loan agreement within 90 days after receipt of a written grant or loan offer by the administering state department, the administering state department may cancel the grant or loan offer. The applicant may not appeal or contest a cancellation pursuant to this subsection.

(6) The administering state department may terminate a grant or loan agreement and require immediate repayment of the grant or loan if the recipient uses grant or loan funds for any purpose other than for the approved activities specified in the grant or loan agreement. The administering state department shall provide the recipient written notice of the termination 30 days prior to the termination.

(7) A loan made with money in the fund shall have the following terms:

(a) A loan recipient shall enter into a loan agreement with the administering state department.

(b) A loan interest rate of not more than 50% of the prime rate as determined by the administering state department as of the date of approval of the loan.

(c) Loan recipients shall repay loans in equal annual installments of principal and interest beginning not later than 5 years after the first draw of the loan and concluding not later than 15 years after execution of a loan agreement.

(8) Loan payments and interest shall be deposited in the fund.

(9) Upon default of a loan, as determined by the administering state department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold from the loan recipient state payments or collect upon another form of financial assurance provided by the borrower as part of the loan agreement in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The department of treasury shall deposit these withheld funds into the fund until the loan is repaid.

Comment [CLG93]: Added To allow for securing of loan without revenue sharing.

324.19613 Recovery of costs.

Sec. 19613. The department and the department of the attorney general may recover costs expended pursuant to section 19608(1)(a)(*i*) to (*iv*) for corrective actions, response activities, site assessments, and all other recoverable costs under part 201 or 213 from persons who are liable under part 201 or 213. Actions to recover costs shall be undertaken in the manner provided in part 201.

324.19614 Performance audit.

Sec. 19614. Every 2 years that state programs funded with money from the fund continue to be administered, the auditor general shall conduct a performance audit of these programs. Upon completion of a performance audit under this section, the auditor general shall submit a copy of the performance audit to the audited department and to the legislature.

324.19615 Rules.

Sec. 19615. The department may promulgate rules as are necessary to implement this part.

Legislative Recommendation 4 - 195
Attachment #4a

Draft Revised
Act 195 Legislation

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT) Act 451 of 1994

PART
195
ENVIRONMENTAL PROTECTION BOND
IMPLEMENTATION

324.19501 Definitions.

Sec. 19501. As used in this part:

(a) "Bonds" means the bonds issued under part 193 or former Act No. 326 of the Public Acts of 1988. (b) "Fund" means the environmental protection bond fund created in section 19506.

(c) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; an authority or any other public body created by or pursuant to state law; or this state or an agency or department of this state.

(d) "Private entity" means an individual, trust, firm, partnership, corporation, or association, whether profit or nonprofit, that is not a local unit of government.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19502 Legislative finding and declaration.

Sec. 19502. The legislature finds and declares that the environmental protection programs implemented under former Act No. 328 of the Public Acts of 1988 or this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19503 Bonds; requirements generally.

Sec. 19503. (1) The bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities which may be either serial, term, or term and serial, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to insure the marketability, insurability, or tax exempt status. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any

other purpose provided by this part. The principal amount of any refunding bonds issued pursuant to this section shall not be counted against the limitation on principal amount imposed by the vote of the people on November 8, 1988. Further, refunding bonds issued pursuant to this section shall not be subject to the restrictions of section 19507.

(3) The state administrative board may authorize and approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part.

(4) The state administrative board may authorize the state treasurer, but only within limitations that are contained in the authorizing resolution of the board, to do 1 or more of the following:

(a) Sell and deliver and receive payment for the bonds.

(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds. (d) Buy bonds so issued at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds shall be approved by the department of treasury before their issuance but are not otherwise subject to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws.

(6) The bonds or any series of the bonds shall be sold at such price and at a publicly advertised sale or a competitively negotiated sale as determined by the state administrative board. If bonds are issued at a competitively negotiated sale, the state administrative board shall use its best efforts to include firms based in this state in the sale of the bonds.

(7) Except as provided in subsection (8), the bonds shall be sold in accordance with the following schedule, beginning during the first year after December 1, 1988:

(a) Not more than 34% shall be sold during the first year.

(b) Not more than 33% shall be sold during the second year. (c) Not more than 33% shall be sold during the third year.

(d) After the third year, any remaining bonds may be sold at the discretion of the state administrative board.

(8) The state administrative board may alter the schedule for issuance of the bonds provided in subsection

(7) if either or both of the following occur:

(a) Amendments to the internal revenue code of 1986 would impair the tax-exempt status of the bonds.

(b) The legislature concurs in the declaration of a toxic substance emergency made by the governor pursuant to law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995; Am. 1995, Act 73, Imd. Eff. June 6, 1995.

Popular name: Act 451

Popular name: NREPA

324.19504 Bonds negotiable; tax exemption.

Sec. 19504. Bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 shall be fully negotiable under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections

440.1101 to 440.11102 of the Michigan Compiled Laws. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivisions of the state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19505 Bonds as securities.

Sec. 19505. Bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 are made securities in which banks, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19506 Environmental protection bond fund; creation; composition; restricted subaccounts.

Sec. 19506. (1) The environmental protection bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of general obligation bonds issued pursuant to former Act No. 326 of the Public

Acts of 1988 or part 193 and any premium and accrued interest received on the delivery of the bonds. (b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any repayment of principal and interest made under a loan program authorized in this part. (d) Any federal funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19507 Disposition and allocation of bond proceeds; investment of fund; allocation and disposition of interest and earnings; transfer of repayments of principal and interest; disposition of unencumbered balance.

Sec. 19507. (1) The total proceeds of all bonds issued under former Act No. 326 of the Public Acts of 1988

or part 193 shall be deposited into the fund and allocated as follows:

(a) Except as provided in section 19508(1)(a)(*ii*) and as otherwise provided in this act, not more than

$425,000,000.00 shall be used to clean up sites of toxic and other environmental contamination.

(b) Not more than $150,000,000.00 shall be used for solid waste projects including, but not limited to, reducing, recycling, and properly disposing of solid waste. Money that is available under this subdivision but not appropriated and money that is appropriated under this subdivision that reverts to the fund shall be transferred to the cleanup and redevelopment fund created in section 20108.

(c) Not more than $60,000,000.00 shall be used to capitalize the state water pollution control revolving fund established pursuant to section 16a of the shared credit rating act, Act No. 227 of the Public Acts of

1985, being section 141.1066a of the Michigan Compiled Laws.

(d) Not more than $25,000,000.00 shall be used to fund this state's participation in a regional Great Lakes protection fund.

(2) The state treasurer shall direct the investment of the fund. Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, interest and earnings from investment of the proceeds of any bond issue shall be transferred to the cleanup and redevelopment fund created in section

20108, except for the fiscal years 1992-93 and 1993-94, when any such interest and earnings accrued in those, or prior fiscal years, shall be deposited in the state water pollution control revolving fund established pursuant to section 16a of Act No. 227 of the Public Acts of 1985.

(3) Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, all repayments of principal and interest earned under a loan program created with money under subsection (1)(b) shall be transferred to the cleanup and redevelopment fund created in section 20108.

(4) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995; Am. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: NREPA

324.19508 Use of money in fund allocated under MCL 324.19507; expenditures; recovery and retention of funds by eligible community; contents and submission of list of projects; appropriations; prioritizing and approving projects; report; "eligible community" defined. Sec. 19508. (1) Except as provided in subsection (3), money in the fund that is allocated under section

19507 shall be used for the following purposes:

(a) Money in the fund that is allocated under section 19507(1)(a) shall be used for sites identified through part 201, to be expended and recovered by the state in the same manner as provided in that part. Of the funds allocated under section 19507(1)(a), the following apply:

(*i*) Not more than $35,000,000.00 shall be used to clean up sites of environmental contamination that have been identified under former Act No. 307 of the Public Acts of 1982 or part 201 that

(A) Will not be funded in the next fiscal year; and that have been approved by the department as having measurable economic benefit..

(B) For projects considered for funding after XX (the effective date of the act amending this act) the department shall consider the criteria provided in Sections 324.19608 through 324.19614 of Part196 of NREPA and subsection (A) hereof shall not apply.

(*ii*) Not more than $10,000,000.00 may be used to provide grants to eligible communities to investigate and determine whether property within an eligible community is a site of environmental contamination and, if so, to characterize the nature and extent of the contamination. A grant shall only be issued under this subparagraph if all of the following conditions are met:

(A) The characterization of the nature and extent of contamination includes an estimate of response activity costs in relation to the value of the property in an uncontaminated state and identifies future potential limitations on the use of the property based upon current environmental conditions.

(B) The property has demonstrable economic development potential. This provision does not require a specific development proposal to be identified.

(C) The property is located within an eligible community that has received less than $1,000,000.00 in total grants under this subparagraph. However, a grant that has resulted in measurable economic benefits shall not be included in the calculation of the $1,000,000.00.

(b) Money in the fund that is allocated for solid waste projects including, but not limited to, reducing, recycling, and properly disposing of solid waste shall be used to fund state projects, to provide grants and loans to local units of government, and to provide grants and loans to private entities for any of the programs identified in part 191, in the amounts appropriated pursuant to subsection (5). Not less than $17,500,000.00 of the money for solid waste projects shall be used to fund the following:

(*i*) To promote and expand markets for recycled materials.

(*ii*) To assist in the recycling of solid wastes, including, but not limited to, plastics, metals, tires, wood, and paper.

(*iii*) To promote research on resource recovery.

(*iv*) To study marketing options for products that use recycled materials.

(c) Money in the fund that is allocated to capitalize the state water pollution control revolving fund created in section 16a of the shared credit rating act, Act No. 227 of the Public Acts of 1985, being section 141.1066a of the Michigan Compiled Laws, shall be used as provided in part 53.

(d) Money in the fund that is allocated to fund this state's participation in a regional Great Lakes protection fund pursuant to part 331.

(2) If, by June 28, 1995, the department determines that money allocated under subsection (1)(a)(*ii*) is unlikely to be expended pursuant to that subparagraph, $5,000,000.00 of the money allocated pursuant to that subparagraph shall be expended pursuant to subsection (1)(a)(*i*).

(3) If money that is expended pursuant to subsection (1)(a)(*ii*) is recovered by an eligible community from a person who may be liable under part 201, through proceeds from the sale of the property, or through any other mechanism, and additional funds for environmental response activities on the property are not necessary, the eligible community may retain those funds for expenditure on projects that the department determines are eligible to receive funding under subsection (1)(a)(*ii*). An accounting of the recovered funds must be provided to the department within 30 days of receipt, and approval and expenditure of the recovered funds shall be in the same manner as funds awarded pursuant to subsection (1)(a)(*ii*). If funds are recovered and not spent on other projects pursuant to this subparagraph within 2 years after they are recovered by the eligible community, the eligible community shall forward the money collected to the state treasurer for deposit into the fund to be used pursuant to subsection (1)(a)(*ii*). When accounting for the use of recovered funds, eligible communities may itemize deductions for site preparation and other costs directly related to the reuse of a site funded under this section.

(4) Money provided in the fund may be used by the department of treasury to pay for the cost of issuing bonds under former Act No. 326 of the Public Acts of 1988 or part 193 and by the department to pay department costs as provided in this subsection. Not more than 6% of the total amount specified in section

19507(1)(a), (b), and (d) shall be available for appropriation to the department to pay department costs directly associated with the completion of a project described in section 19507(1)(a), (b), or (d), for which bonds are issued as provided under this part. Any department costs associated with a project described in section 19507(1)(c) for which bonds are issued under this part shall be paid as provided in the state statute implementing the state water pollution control revolving fund. Bond proceeds shall not be available to pay indirect, administrative overhead costs incurred by any organizational unit of the department not directly responsible for the completion of a project. It is the intent of the legislature that general fund appropriations to the department shall not be reduced as a result of department costs funded pursuant to this subsection.

(5) Except as provided in subsection (3), the department shall annually submit a list of all projects that are recommended to be funded under this part to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. This list shall be submitted to the legislature not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. The list shall include the name, address, and telephone number of the eligible recipient or participant; the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the department.

(6) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed. Environmental cleanup projects that are eligible for funding under subsection (1)(a), but not including subsection (1)(a)(*i*) and (*ii*), shall be prioritized and approved pursuant to the procedures outlined in part 201. Projects to which loans are provided from the state water pollution control revolving fund shall be approved pursuant to state law implementing that fund. The capitalization of the regional Great Lakes protection fund shall be a 1-time appropriation.

(7) Not later than December 31 of each year, the department shall submit a list of the projects financed under this part to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the committees of the house of representatives and the senate on appropriations for the department. The list shall include the name, address, and telephone number of the recipient or participant; the nature of the project; the amount of money received; the county in which the project is located; and other information considered pertinent by the department.

(8) As used in this section, "eligible community" means any of the following:

(a) A city, village, or township, or a county on behalf of a city, village, or township, that on May 1, 1993 meets the applicable criteria of section 2(d)(*i*) or (*ii*) of the neighborhood enterprise zone act, Act No. 147 of the Public Acts of 1992, being section 207.772 of the Michigan Compiled Laws.

(b) A city that meets any of the following descriptions:

(*i*) Has a population of greater than 10,000 and is located within a county that has a population density of less than 39 residents per square mile.

(*ii*) Has a population of greater than 2,500 and is located within a county that has a population density of less than 39 residents per square mile.

(*iii*) Had an average unemployment rate of 11.5% or more during the most recent calendar year for which data is available from the Michigan employment security commission and meets the criteria of section 2(d)(*i*

)(A), (D), and (E) of Act No. 147 of the Public Acts of
1992.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19509 Grant and loan programs;;; considerations in making grant a loan;; applicability.

Sec. 19509. (1) The department shall promulgate rules necessary to implement grant and loan programs provided in this part.

(2) The department shall assure maximum participation by local units of government and by private entities by promulgating rules that provide for a grant or loan program, where appropriate. In determining whether a grant or a loan program is appropriate, the department shall consider whether the project is likely to be undertaken without state assistance; the availability of state funds from other sources; the degree of private sector participation in the type of project under consideration; the extent of the need for the project as a demonstration project; and such other factors considered important by the department.

(3) Prior to making a grant or loan authorized by this part, the department shall consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the state.

(4) The department shall provide in rules promulgated under this part that loans, where authorized, that are issued by the department to private entities shall include an interest charge of not less than 5% per year.

(5) For projects considered for funding after XX (the effective date of the act amending this act) subsections (1) through (4) above shall not apply and prior to making a grant, the department shall consider the provisions provided in Section 324.19611 of Part196 of NREPA

(6) Neither this section nor section 19510 shall apply to loans from the state water pollution control revolving fund.

324.19510 Application for grant or loan; form; contents.

Sec. 19510. (1)An application for a grant or a loan authorized under this part shall be made on a form prescribed by the department. The department may require the applicant to provide any information reasonably necessary to allow the department to make a determination required by this part.

(2) Applications for funding after XX (the effective date of the act amending this act) shall be subject to the requirements of 324.19609 of Part 196 of NREPA and subsection (1) hereof shall not apply.

324.19511 Conditions to making grant or loan.

Sec. 19511. The department shall not make a grant or a loan under section 19508(1)(a) or (b) unless all of the following conditions are met:

(a) The applicant demonstrates that the proposed project is in compliance with all applicable state laws and rules, or the proposed project will result in compliance with state laws and rules.

(b) The applicant demonstrates to the department the capability to carry out the proposed project.

(c) The applicant provides the department with evidence that a licensed professional engineer has approved the plans and specifications for the project, if appropriate.

(d) The applicant demonstrates to the department that there is an identifiable source of funds for the future maintenance and operation of the proposed project.

(e) For projects approved for funding after XX (the effective date of the act amending this act) subsections (a) through (e) above shall not apply and the conditions for making a grant or loan shall be in accordance with 324.19610 of Part 196 of NREPA.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19512 Recipient of grant or loan; conditions; noncompliance; recovery of grant;

withholding grant or loan.

Sec. 19512. (1) A recipient of a grant or a loan made under section 19508(1)(a) or (b) shall be subject to all of the following:

(a) A recipient shall keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting shall be subject to a postaudit.

(b) A recipient shall obtain authorization from the department before implementing a change that significantly alters the proposed project or facility.

(2) The department may revoke a grant or a loan made by it under this part or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan or with the requirements of this part or the rules promulgated under this part.

(3) The department may recover a grant if the project for which the grant was made never operates.

(4) The department may withhold a grant or a loan until the department determines that the recipient is able to proceed with the proposed project or facility.

(5) To assure timely completion of a project, the department may withhold 10% of the grant or loan amount until the project is complete.(6) For projects approved for funding after XX (the effective date of the act amending this act) subsections (1) through (5) above shall not apply and the recipient of a grant or loan made under section 19508(1)(a) or (b) shall be subject to the provisions provided in 324.19612 of Part 196 of NREPA

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19513 Rules generally.

Sec. 19513. (1) The department may promulgate rules as are necessary or required to implement this part.

(2) For projects funded after the effective date of the 2014 amendatory act that amended this part, the department shall not implement or enforce R299.5051 through R299.5061 to any grant or loan

authorized or approved after the effective date of the act amending this act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.5101 et seq. and R 299.51001 et seq. of the Michigan Administrative Code.

Comment [CLG94]: LSB question. How do we capture this properly to leave in place rules for open projects and eliminate for any new?