

Part 201 Brownfields Work Group Final Recommendations

Purpose of the Brownfield Redevelopment Program(s)

The work group has adopted the following purpose statement to guide the development of their recommendations.

To promote and facilitate the revitalization, redevelopment, and reuse of certain property that is contaminated (real or perceived), blighted, or functionally obsolete.

Public Act 381 and Brownfield Tax Credits

The Brownfield Redevelopment Financing Act (P.A. 381 of 1996) and other state brownfield programs have been found to be useful tools for encouraging redevelopment of brownfield and contaminated sites in Michigan. These programs provide incentives to invest in property that has been used for industrial, commercial or residential purposes and to keep that property in productive use or return it to a productive use. The brownfield programs reduce urban sprawl and effectively encourage the continued use and investment in the existing infrastructure in our cities. The programs also serve as additional economic development tools that have resulted in investments in companies in Michigan that would not have occurred otherwise.

With key provisions of P.A. 381 and P.A. 382 (the Single Business Tax credit) expiring at the end of 2007, there is a need to continue tax incentives and the ability to fund projects through school tax capture and tax credits to promote redevelopment in our urbanized areas. The work group has also identified opportunities for expanding or allowing additional activities that would be eligible for brownfield funding, and legislative changes that would both streamline the process and make brownfield sites more attractive for redevelopment. Recommendations are as follows:

1. The state should secure the ongoing operation of the section of the Brownfield Redevelopment Financing Act related to the approval of work plans by eliminating the **sunset provision** (December 31, 2007) on the approval of work plans for school tax capture. (amends P.A. 381, Section 15 (1)(a)).

Amendments are needed to improve operation of the Brownfield Redevelopment Financing Act. Among such amendments are the following:

2. **All reasonable costs for preparation and administration of brownfield plans** and work plans should be considered eligible activity costs or otherwise eligible for reimbursement under a brownfield plan, whether performed by environmental consulting firms, law firms, or others.
3. Allow demolition and asbestos/lead abatement as eligible activities for facilities and blighted or functionally obsolete properties in **non-core communities** (amends P.A. 381, Section 2(m)).
4. Raise the local dollar limit for brownfield redevelopment authority's (BRA) **annual administrative costs** to allow more flexibility. The local limit on the

- BRAs has unduly burdened some communities that have a large number of brownfield sites (amends P.A. 381, Section 13(16)(a)).
5. Allow for the **relocation of public buildings** or operations for economic development purposes without the need for prior approval of the Michigan Economic Growth Authority (MEGA) if the project is not requesting school tax capture for that specific activity (amends P.A. 381, Section 2 (m)(v)).
 6. Clarify and streamline the approval of brownfield plans that includes more than one parcel allowing incorporation of **adjacent and contiguous properties**. Delete the requirement that MEGA approve of local tax capture for adjacent and contiguous properties. (amends P.A. 381, Section 13 (15))
 7. Allow the discretionary use of local tax capture for the **reimbursement of site investigation, Baseline Environmental Assessment (BEA), and due care activities that have occurred before the adoption** of the brownfield plan.
 8. Upon approval of a brownfield plan, **allow the use of school tax capture without P.A. 381 work plan approval for site investigation activities necessary to conduct a BEA** (or new process for establishing liability protection under Part 201), evaluation of due care, and preparation of BEA report, and due care plan. This does not include construction/implementation of BEA/due care measures (amends P.A. 381, Section 13(16)(b)).
 9. **Reduce the public notification requirement** to one notice in a newspaper of general circulation designated by the municipality, which is not less than 10 days before the date set for the hearing. (amends P.A. 381 Section 13(10))
 10. **Expand the notification requirements** of the BRA to include MDEQ when the brownfield plan includes capture of taxes levied for school operating purposes to use for BEA, due care, or additional response activities and/or MEDC when the brownfield plan includes activities that must be approved by MEGA. (amends P.A. 381, Section 13 (13)).

Work Plan Approval Process

Current MDEQ administration of work plan approvals under P.A. 381 and Brownfield Redevelopment Grant and Loan Program projects have been identified as being too cumbersome, resulting in extensive time delays and additional costs in order to obtain MDEQ approval. This dynamic adds further complexity and cost to redevelopment of a brownfield site. Also, work plan approvals are often phased into smaller tasks, thereby increasing administration and transaction costs for MDEQ's administration of the program. In order to achieve timely financing and implementation of brownfield projects and improve MDEQ administrative efficiencies, the following recommendations are offered:

11. Amend P.A. 381 Section 15 (4) to convey the following principles:
 - a. Modify language in Section 15(4) that requires MDEQ to consider the sufficiency, necessity, and reasonableness of cost for *individual* activities. Instead, **clarify that the MDEQ's responsibility for work plan review is to ensure the proposed response activities are protective of the public health, safety, welfare, and the environment.** If a work plan proposes

response activity that goes beyond the minimum necessary to comply with Part 201 and 213 requirements that apply to the proponent of the plan, the MDEQ should determine whether those costs provide meaningful environmental or public health benefit at a reasonable cost (including reducing long-term obligations), and **those costs may be approved as eligible activities to be paid for with captured school operating taxes.**

- b. Express clarity that the financial risk contained in ensuring that the work performed is an eligible activity is on the person seeking reimbursement for “eligible activities”, so that the **MDEQ’s approval of a work plan does not imply an entitlement to reimbursement for eligible activities.**

12. In light of this body of recommendations, serious consideration should be given to amending P.A. 381 Section 15(3) to **reduce the 60-day timeframe for review of work plans.**

These same principles should be applied to the MDEQ’s Brownfield Redevelopment Grant and Loan Program.