

LEGAL ALERT

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Brownfield Redevelopment in Michigan

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In 1996, the State of Michigan enacted Public Acts 381 and 382 which empowered local units of government to establish Brownfield Redevelopment Authorities as a means of financing the investigation and remediation of contaminated properties. A Brownfield Redevelopment Authority gives to a local municipality the ability to capture state and local property taxes. Recaptured revenues are then used to conduct authorized environmental activities at contaminated sites within its jurisdiction, and to contain environmental contamination. The Authority may also create credits against the Single Business Tax for private investment at these contaminated sites.

The process authorized by the Brownfield Redevelopment Financing Act can generally be described by the following steps:

- A municipality sets up a Brownfield Redevelopment Authority ("*Authority*") pursuant to regulations created under the Brownfield Redevelopment Financing Act of 1996. Each Authority then develops and

implements Brownfield Redevelopment Financing Plans for contaminated properties within specific zones established within its jurisdiction.

- The Authority then approves a Brownfield Redevelopment Financing Plan, which identifies those contaminated properties within its "*zone*" that will be eligible for cleanup activities, and from which *taxes will be captured* as part of a tax increment financing district.
- The Authority can also *issue revenue and tax increment financing bonds* to finance authorized activities, and then capture the taxes from the enhanced properties to pay the bonds.
- The Authority can also establish a *local site remediation revolving fund* and place any excess captured taxes into its local fund. Excess captured taxes come from the properties upon which eligible activities were conducted.
- The Authority may also use the local site remediation revolving fund revenues to conduct eligible activities at other properties in any other zone also established by that municipality.

Brownfield Redevelopment Financing can only be used for sites meeting the Michigan Department of Environmental Quality's definition of a "*facility*". In general terms, real property meets the definition of a *facility* when it suffers a release of contamination at levels which rise above benchmarks established by the MDEQ for residential safety. When a site is determined to meet the definition of a "*facility*" as established by the MDEQ, a property owner is then eligible to request financial assistance from the Brownfield Redevelopment Authority for redevelopment. Once a remediation plan for that site is in place, some identified environmental activities will be eligible for financial assistance. Eligible activities include those response activities necessary to complete a Baseline Environmental Assessment (BEA) as defined by Part 201 of Public Act 451 of 1995. Eligible activities also include response activities necessary for a property owner or an *operator* to comply with the due care requirements imposed in Part 201, and those additional response activities that incorporate a

remediation program as defined by Part 201.

The local Authority determines the level of financial assistance to be provided for specific activities conducted at an eligible property. The application of tax increment financing within the Authority requires the preparation of a site plan to identify land uses proposed for development and the cost of the environmental remediation activities proposed. The plan also estimates the amount of real property taxes which new development will create. The difference between the total property taxes created under new development and the taxes currently paid by the existing property may be captured by the Authority for payment of the eligible activities including: investigations, remediation responses, and related environmental remediation programs. The Authority determines which eligible activities will be funded. However, a local Authority cannot capture school taxes to conduct any of the eligible activities unless the activities are consistent with work plans or remediation action plans approved by the MDEQ prior to January 1,

2001. Eligible activities can be paid for by revenue bonds and tax increment financing bonds issued by the local Authority, and the bonds can be repaid over a thirty (30) year term. And finally, the local Authority can capture state and local property taxes from an eligible property in excess of what is needed to pay for eligible activities identified in that specific site's plan. The excess tax captured can continue for up to five (5) years after the eligible activity costs have been completed. Those excess taxes captured must then be placed into a local site remediation fund to be used only for similar eligible activities at other properties located within the same zone as defined by that jurisdiction's Authority.

In addition to the obvious benefit of allowing tax increment financing to assist in reimbursement of remediation payments, property owners are also eligible for a single business tax credit of 10% of the eligible investment cost incurred to redevelop an eligible property within a given tax year. There is a \$1 million limit on total credits a taxpayer may claim and, if the amount of credit exceeds a

taxpayer's liability in any given tax year, that portion which exceeds liability can be carried forward for up to ten (10) subsequent tax years. These credits were enacted as a part of Brownfield Redevelopment incentives under Public Act 382 of 1996.

Although many jurisdictions have established Brownfield Redevelopment Authorities, determining whether a specific project can be eligible typically requires assistance of several professions, including lawyers, environmental consultants, architects, and land use planners. If you have a property which you think could benefit from consideration of Brownfield Redevelopment assistance, contact the Business and Property Law Department of Smith Haughey Rice & Roegge with your questions. We will be pleased to assist.

*If you would like further information regarding this topic, please contact **Charles B. Judson**, or any member of our Business & Property Law Department listed below.*

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