



# ***Adopting a Brownfield Plan***

Pursuant to the  
Brownfield Redevelopment Financing Act,  
1996 PA 381, as amended  
Rick Snyder, Governor



C. Heidi Grether, Director  
Michigan Department of Environmental Quality  
[www.michigan.gov/deqBrownfields](http://www.michigan.gov/deqBrownfields)



Uptown at Rivers Edge Redevelopment  
City of Bay City



Jeff Mason, CEO  
Michigan Economic Development Corporation  
<https://www.miplace.org/programs/brownfield-tax-increment-financing/>

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## INTRODUCTION

The Brownfield Redevelopment Financing Act, 1996 Public Act (PA) 381, as amended (Act 381) (Michigan Compiled Law [\[MCL\] 125.2651 through 125.2672](#)) authorizes Brownfield Redevelopment Authorities (BRAs) to approve Brownfield Plans and Act 381 Work Plans that help revitalize, redevelop, and reuse contaminated, blighted, functionally obsolete, or historic resources. Under Act 381, eligible school and local tax revenues can be captured and used to reduce the burden of brownfield-related costs when redeveloping affected properties through a process called tax increment financing (TIF).

Act 381 prescribes the powers and duties of BRAs and certain powers and duties of the Michigan Department of Environmental Quality (DEQ) and the Michigan Strategic Fund (MSF). The Michigan Economic Development Corporation (MEDC) serves as staff support to the MSF.

The following document is provided by the DEQ and the MSF to assist with the preparation of and adoption process for Brownfield Plans to allow for the capture of local tax increment revenue (TIR) and/or as the first step to allow for the capture of state school TIR.

***This guide is designed to clarify parts of Act 381, but should not be relied upon as a substitute for a thorough reading and understanding of the statute. Users should contact their legal counsel regarding any issues with Act 381.***

## **ACRONYMS OR DEFINITIONS**

BRA – Brownfield Redevelopment Authority  
CIA – Corridor Improvement Authority  
DDA – Downtown Development Authority  
DEQ – Department of Environmental Quality  
LBRF – Local Brownfield Remediation Fund  
LID – Low Impact Design  
LBFTA – Land Bank Fast Track Authority  
MBT – Michigan Business Tax  
MCRP – Michigan Community Revitalization Program  
MCL – Michigan Compiled Laws  
MEDC – Michigan Economic Development Corporation  
MSF – Michigan Strategic Fund  
NREPA – Natural Resources and Environmental Protection Act  
P.E. – Professional Engineer  
QLGU – Qualified Local Governmental Unit  
SBRF – State Brownfield Revolving Fund  
SET – State Education Tax  
TIF – Tax Increment Financing  
TIR – Tax Increment Revenues  
TRA – Targeted Redevelopment Area

“School” tax increment financing – includes state education tax plus taxes levied for school operating purposes (does not include intermediate school district [ISD] tax which is considered a local tax)

## Part 1 - Eligibility

### Eligible Property

To be considered eligible, property must be included in a Brownfield Plan and qualify as either a facility, functionally obsolete, blighted, historic resource, transit oriented property or development or targeted redevelopment area;

Properties are tax identification parcels that have corresponding legal descriptions.

**“Facility/site/property”** is defined by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101(s) (also see [Part 201 Citizen’s Guide](#)) or defined by Part 213, Leaking Underground Storage Tanks of NREPA, MCL 324.21303(d) and (m). The parcel(s) needs to be determined to be a facility (site or property) prior to preparation of a Brownfield Plan. Parcels adjacent or contiguous to a facility (site or property) do not have to be facilities (sites or properties) for non-environmental eligible activities to be conducted on them if the development of those parcels is estimated to increase the captured taxable value of the eligible property.

**"Blighted"** means property that meets any of the following criteria as determined by the governing body:

Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

Is an attractive nuisance to children because of physical condition, use, or occupancy.

Is a fire hazard or is otherwise dangerous to the safety of persons or property.

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.

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.

Is property owned or under the control of a land bank fast track authority (LBFTA) under the land bank fast track act, 2003 PA 258, as amended, MCL 124.751 through 124.774, whether or not located within a qualified local governmental unit (QLGU). 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 LBFTA 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.

Has substantial subsurface demolition debris buried on site so that the property is unfit for its intended use.

**"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.

**"Historic Resource"** means a publically or privately owned historic building, structure, site, object, feature or open space either man-made or natural, individually listed, or located within and contributing to a historic district designated by the national register of historic places, the state register of historic sites, or a local unit acting under the Local Historic Districts Act, 1970 PA 169, MCL 399.201 through 399.215.

**"Targeted Redevelopment Area (TRA)"** means between at least 40 and no more than 500 contiguous parcels located within a QLGU and designated as a TRA by resolution of the governing body and approved by the MSF.

*A Brownfield Plan must be developed for a TRA. The TRA designation must be approved by both the local jurisdiction and the MSF, regardless if it is local only tax capture. No more than five TRAs may be approved per year across the state, and there is a maximum of two per jurisdiction, per year.*

*The TRA Brownfield Plan should fully describe what the goals of the project are and why the area should qualify for the designation. MSF will consider support for a TRA based on the prevalence of Brownfield conditions throughout the proposed area, and the likelihood that designation will lead to significant alleviation of Brownfield conditions. Capture on all parcels must begin at the same time within 5 years of inclusion in the Brownfield Plan.*

**"Transit oriented property"** means property that houses a transit station in a manner that promotes transit ridership or passenger rail use.

**"Transit oriented development"** means infrastructure improvements that are located within ½ mile of a transit station or transit oriented property that promotes transit ridership or passenger rail use as determined by the municipality.

**"Adjacent and/or contiguous"** means parcels adjacent and/or contiguous to eligible property if the development of the adjacent and/or contiguous parcels is estimated to increase the captured taxable value of that property. *Property adjacent to a facility may be included in a Brownfield Plan, but eligible activities can only occur on the eligible property.*

*Publicly owned streets, alleyways, waterways, public or private easements, or similar divisions crossing or separating parcels may be ignored when determining adjacent and/or contiguous status, as long as the divided or separated parcel is under the same ownership as the qualifying property and is within reasonable distance and no major obstruction between the parcels.*

## **Eligible Activities**

Eligible Activities are actions that are undertaken to redevelop a brownfield property, the costs for which are eligible for reimbursement via TIF. The MSF approves eligible activities based on QLGU (or Core Community) status. Please see the detailed list [here](#) to determine whether your municipality is a QLGU.

In general the following activities are eligible under Act 381:

- Brownfield Plan and Act 381 Work Plan preparation
- Brownfield Plan and Act 381 Work Plan implementation
- Interest paid on eligible activities

### Eligible Environmental Activities

- Pre-demolition and building hazardous materials surveys
- Asbestos, mold, and lead surveys
- Department specific activities including:
  - Site investigations and baseline environmental assessments (BEAs)
  - Due care activities including preparing a plan for compliance with due care
  - Response activities
  - Removal and closure of underground storage tanks (USTs)
  - Disposal of solid waste, as defined in Part 115, Solid Waste Management, of NREPA, MCL 324.11501 through 324.11554
  - Dust control during construction
  - Removal and disposal of contaminated lake or river sediments
  - Industrial cleaning
  - Sheeting and shoring necessary for safe removal of contaminated materials
  - Lead, mold, or asbestos abatement when they are an imminent and significant threat
  - Demolition that is a response activity
  - Environmental insurance
  - Other environmental actions in addition to the minimum requirements of due care
- According to Act 381 Section 13b(9)(b), local TIR may be used to conduct eligible environmental activities on eligible property or prospective eligible properties prior to approval of a Brownfield Plan, if those costs and eligible property are subsequently included in a Brownfield Plan.

### Non-Environmental Eligible Activities

- Statewide
  - Lead, mold, or asbestos surveys and abatement
  - Site and building demolition that is not a response activity
  - Relocation of public buildings or operations for economic development purposes
- Site located in a QLGU, economic opportunity zone, or that is a former mill
  - Infrastructure improvements that directly benefit an eligible property
  - Site preparation that is not a response activity
- Site owned or controlled by a QLGU or LBFTA
  - Infrastructure improvements that directly benefit an eligible property
  - Site preparation that is not a response activity
  - Assistance clearing or quieting a title to, selling, or otherwise conveying property and acquisition of a property by the QLGU or LBFTA

*Please consult with DEQ and/or MEDC staff prior to incurring costs so all parties clearly understand which activities are potentially eligible, and the timeframe for incurring the costs. Any costs incurred for MSF eligible activities prior to approval of the Brownfield Plan, Work Plan, or Combined Brownfield Plan are made at the risk of the project, and school TIF may not be approved for those activities.*

*Costs incurred for DEQ eligible activities prior to Work Plan approval are not eligible for reimbursement for school TIF with the exception of pre-approved activities. Eligible activities may be conducted using only local TIR without DEQ approval of a Work Plan.*

*Refer to the [Act 381 Work Plan Guidance](#) for further information on costs the DEQ and MSF may consider eligible for capture of school taxes and submittal of an Act 381 Work Plan or Combined Brownfield Plan.*

## Part 2 - Tax Increment Financing

### Initial Taxable Value and Increment

Cleanup and redevelopment of a brownfield property will increase the taxable value of the property, and therefore will increase the property taxes generated from the property. The increased tax revenues above the base taxable value resulting from redevelopment are known as Tax Increment Revenue (TIR), or more commonly as captured taxes. Taxes captured under Act 381 can reimburse eligible environmental and non-environmental activity costs. Taxing jurisdictions continue to receive base year tax revenues until the Brownfield Plan ends, at which time the TIR reverts to the taxing jurisdictions.

The property's initial taxable value (or "base year") can be the year in which the Brownfield Plan is approved, or the next assessment year following approval of the Brownfield Plan.

If TIR is not generated for three consecutive years due to declines in taxable value, the initial assessed (taxable) value may be lowered through a Brownfield Plan amendment once during the term of the Plan.

### Tax Increment Revenue Initial Capture Date and Capture Period

For eligible property included in a Brownfield Plan, the beginning date of capture of TIR shall be identified to begin up to five years from the Brownfield Plan approval date, after which, the 30 year limit for capture begins. The beginning date of capture may not be amended if the jurisdiction has begun to reimburse costs on the eligible property.

TIR capture does not have to be collection of actual dollars, but is the date that was set in the Brownfield Plan to begin capture within five years of the eligible property being approved in the Brownfield Plan.

A Brownfield Plan that did not include tax capture, but was created for the purposes of an MBT tax credit cannot be amended to begin capture if it is outside of five years from the original approval date. However, the Brownfield Plan is considered valid for the term of the MBT credit eligible investment period.

If an eligible property was not previously included in the Brownfield Plan and is being added via an amendment, the beginning date of capture of TIR can begin up to five years from the date that the eligible property is included in the amended Brownfield Plan. The number of years of tax capture for the eligible properties in the original Brownfield Plan remains the same as originally approved.

If seeking capture of state school taxes, the [TIF table](#) template format provided by the DEQ and MSF is required for approval.

### TIR and Applicable Taxes

TIR from all ad valorem, personal property, and specific taxes, including taxes levied for school operating purposes, are eligible for capture with approval from the DEQ and/or MSF. The intermediate school district tax is not a school tax under Act 381.

If a new millage is passed by the jurisdiction after the Brownfield Plan has been approved, that new millage is added to, and captured as, TIR.

Neither ad valorem special assessments nor State Essential Services Assessments are available for capture under a Brownfield Plan. Taxes levied to pay off specific obligations such as bonds are typically not available for capture.

The amount of allowable local and school tax capture is limited to the actual cost of eligible activities approved by the DEQ and/or MSF, except as provided by Act 381 Section 8 for deposit into the local brownfield revolving fund (LBRF).

**Proportionality of School and Local Taxes**

If seeking to capture school TIR, refer to the [Act 381 Work Plan Guidance](#) for information regarding the proportionality between school and local taxes.

## **Part 3 - Liability**

### **Liable Party Prohibitions for Environmental Activities**

Act 381 Section 13(b)(1) does not prohibit a BRA from using local TIR to conduct environmental eligible activities when a party who is responsible for an activity causing a release (responsible party or person) under MCL 324.20126 and MCL 324.21323a may benefit from the project. However, school TIR cannot be used when a responsible party may benefit. Refer to the [Act 381 Work Plan Guidance](#) for help on liability questions.

## Part 4 - Local Brownfield Revolving Fund

According to Act 381 Section 8, a BRA may establish a Local Brownfield Revolving Fund (LBRF) and approve TIR capture in excess of eligible costs.

- Excess TIR captured for the LBRF cannot exceed the total cost of eligible DEQ activities approved in the Brownfield Plan.
- Excess school TIR captured for the LBRF cannot exceed the total cost of eligible DEQ activities in an approved Act 381 Work Plan.
- School TIR may not be captured on eligible activities approved by the MSF for deposit into the LBRF.

The BRA may use both local and school portions of the LBRF to conduct eligible activities on other eligible properties without DEQ or MSF approval.

Act 381 does not expressly prohibit a BRA from establishing an LBRF after a Brownfield Plan has been adopted. However, if tax capture has begun or is completed for a specific project, then the BRA should amend the Brownfield Plan to capture TIR for an additional five years or up to the statutory limits of funding (no more than the original amount of TIF and no more than the amount of school TIF approved for capture) for the LBRF.

*If you are requesting school TIR for your LBRF, the DEQ requires an Act 381 Work Plan that includes a description of the eligible activities and will undertake its normal review of those activities.*

## Part 5 – Brownfield Plans

A Brownfield Plan has three main functions:

1. It establishes the boundary of the eligible property
2. It describes how the eligible property qualifies as a Brownfield
3. It outlines the costs of the eligible activities that must be undertaken to alleviate the Brownfield conditions and prepare the site for redevelopment

Please see the Brownfield Plan Template or Combined Brownfield Plan Instructions on the MEDC website for a detailed explanation of specific information that needs to be incorporated into the Brownfield Plan.

### How to Adopt a Brownfield Plan

#### Step 1 – Brownfield Plan Preparation

Act 381 Section 13(2) requires a Brownfield Plan to include:

- A description of the costs to be paid with the TIR
- A brief summary of the eligible activities proposed for each eligible property
- For properties owned or controlled by a LBFTA, a listing of all eligible activities and a brief summary of eligible activities that may be conducted on one or more of the eligible properties
- An estimate of the anticipated captured taxable value and TIR from the eligible property for each year of the Brownfield Plan, including deposits in the LBRF
- The method by which the cost to implement the Brownfield Plan will be financed, including a description of any advances made from the municipality
- The maximum amount of note or bonded indebtedness to be incurred, if any
- The proposed beginning date and duration of TIR
- An estimate of the total anticipated TIR for the duration of the Brownfield Plan for all taxing jurisdictions in which the eligible property is located
- Eligible property information including:
  - A legal description of the eligible property(ies)
  - A map showing the location and dimensions of each eligible property
  - A statement of the characteristics that make the property eligible
  - A statement indicating whether personal property is included in the eligible property's taxable value
  - If the project is located on property that is functionally obsolete, the taxpayer shall include with the application, an affidavit signed by a Michigan Certified Assessing Officer (former level 3 assessor) or Michigan Master Assessing Officer (former level 4 assessor), which states that it is the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion.
- An estimate of the number of persons residing on each eligible property to which the Brownfield Plan applies and the number of families and individuals to be displaced
- A plan for establishing priority for the relocation of persons displaced by implementation of the Brownfield Plan
- Provision for the costs of relocating persons displaced by implementation of the Brownfield Plan, and financial assistance and reimbursement of expenses, including litigation expenses and expenses incidental to the transfer of title, in accordance with the standards and provisions of Chapter 61, Federal Uniform Relocation Assistance and Real Property

Acquisition Policies for Federal and Federally Assisted Programs, of the Public Health and Welfare Law, U.S. Code 42, as amended 4601 through 4655.

- A strategy for compliance with the Relocation Assistance Act, 1972 PA 227, MCL 213.321 through 213.332
- Other material that the BRA or governing body considers pertinent to the Brownfield Plan

Tips:

- Tax parcel identification number(s) should be included in the Brownfield Plan in addition to the legal description.
- The maximum duration of a Brownfield Plan is 35 years (up to five years to begin capture and up to 30 years for capture); however, capture of TIR from an eligible property is limited to the lesser of the length of time required to reimburse eligible costs and deposit to the LBRF or 30 years.
- A Brownfield Plan should identify if interest costs associated with the financing of the eligible activities will be reimbursed, if school TIR will be used for interest reimbursement, the interest rate, and interest amount. An interest calculator is provided on the MEDC website.
- The BRA may adopt multiple Brownfield Plans, each with a single property, or groups of properties, or a single Brownfield Plan with multiple properties.
- The BRA should approve the Brownfield Plan and forward it to the local governing body for a public hearing and required approval.
- Brownfield Plan Template and Instructions are provided on the MEDC website.

### **Step 2 – Public Hearing Notification**

The local governing body must hold a public hearing before approving or amending a Brownfield Plan. Public hearing notices must state the time, date and place of the public hearing, and state that the property description, maps, description of the Brownfield Plan, and other appropriate information is available for public review at a specified location. The notices must also state that all aspects of the Brownfield Plan are open for discussion at the public hearing.

Tips:

- The local governing body may delegate the public hearing process to the BRA or to a subcommittee of the governing body.
- A sample Notice of Public Hearing is provided on the MEDC website.

### **Step 3 – Taxing Jurisdiction Notification**

The local governing body must notify all affected taxing jurisdictions from which TIR will be captured under the Brownfield Plan. The draft Brownfield Plan should be submitted to all affected taxing jurisdictions with the notice to inform them of the Brownfield Plan's fiscal and economic implications.

Taxing jurisdictions must be notified with a notice to all affected taxing jurisdictions at least ten days prior to the public hearing on the Brownfield Plan. If the Brownfield Plan includes the capture and use of school taxes, the governing body must also notify the DEQ and/or the MSF depending on the types of eligible activities to be reimbursed with school taxes. This notice must also be given at least 10 days prior to the public hearing on the Brownfield Plan. The same notification that is provided to the taxing jurisdictions can be used for notifying the DEQ and MSF. For address/contact information refer to the [Act 381 Work Plan Guidance](#).

Tip:

- A sample Notice to All Affected Taxing Jurisdictions is provided on the MEDC website in the Act 381 Sample Notices and Documents.

#### **Step 4 – Public Hearing**

The local governing body must hold the public hearing on the date stated in the notice in accordance with the Open Meetings Act, 1976 PA 267, MCL 15.261 through 15.275 and any local requirements, and note all comments including all data presented at the hearing.

#### **Step 5 – Adoption of a Brownfield Plan**

The governing body must determine whether the project described in the Brownfield Plan constitutes a public purpose. If the Brownfield Plan is determined to constitute a public purpose, the governing body may adopt the Brownfield Plan by resolution. The resolution must include a series of factual findings and legal conclusions related to financing and other issues.

Tips:

- If the BRA wants to use school taxes for certain environmental eligible activities, an Act 381 Work Plan “Work Plan” or “Combined Brownfield Plan” must be submitted and approved by the DEQ.
- If the BRA wants to use school taxes for non-environmental eligible activities, a Work Plan or Combined Brownfield Plan must be submitted and approved by the MSF. In addition, a development agreement or reimbursement agreement between the BRA or municipality and owner or developer of the eligible property is required.
- It’s helpful to provide DEQ and/or MEDC with a draft Work Plan or Combined Brownfield Plan prior to approval.
- Procedure, adequacy of notice and findings with respect to purpose and captured tax value shall be presumptively valid unless contested in a court of law within 60 days after the governing body adopts the Brownfield Plan.
- A sample Resolution Adopting a Brownfield Plan is provided by the MSF and DEQ.

#### **Concurrence**

The village, city or township where the property is located must concur when a property from its jurisdiction will be included in a county BRA’s Brownfield Plan. The executive body of the local jurisdiction must approve tax capture for the project via resolution.

#### **Administrative Fees**

A BRA may use local TIR for BRA administrative and operating expenses. In each fiscal year, the amount of TIR that can be used for administrative and operating expenses purposes is:

<b>NUMBER OF ACTIVE PROJECTS</b>	<b>AMOUNT</b>
<b>5 OR FEWER</b>	\$100,000
<b>6 TO 10</b>	\$125,000
<b>11 TO 15</b>	\$175,000
<b>16 TO 20</b>	\$200,000
<b>26 TO 30</b>	\$300,000
<b>31 OR MORE</b>	\$500,000

Fees may be increased by increments of two percent (2%) for each written agreement entered into by a County BRA to serve as another municipality's BRA, or 2% if a BRA enters into an agreement with one or more other authorities to administer one or more administrative operations of those other authorities, up to ten percent (10%) total.

### **State Brownfield Redevelopment Fund**

The State Brownfield Redevelopment Fund (SBRF) is a revolving fund within the Department of Treasury. If school taxes will be captured, refer to the [Act 381 Work Plan Guidance](#) regarding SBRF contribution requirements. SBRF contribution is not required for Brownfield Plans that will reimburse eligible expenses solely with local TIR.

### **Combined Brownfield Plan**

According to Act 381 Section 15, a BRA may submit a Combined Brownfield Plan to the DEQ and/or MSF for review. A Combined Brownfield Plan contains all of the information required in a Brownfield Plan and an Act 381 Work Plan, potentially reducing review and approval time.

The BRA must notify the DEQ and/or MSF At least 30 days prior to the public hearing that the BRA is seeking approval of the Combined Brownfield Plan.

Combined Brownfield Plan Instructions are provided on the MEDC website.

### **Brownfield Plan Amendment**

A BRA may wish to amend a Brownfield Plan to include additional costs. If school TIR will be used for the additional costs, the BRA must seek approval from the MSF and DEQ for those costs through an Act 381 Work Plan or amendment of the original Act 381 Work Plan, or the BRA can approve the additional costs using only local TIR.

### **Abolishing or Terminating a Brownfield Plan**

When a project is finished and all costs under that Brownfield Plan have been reimbursed, the governing body may abolish the Brownfield Plan. If eligible activities in the Brownfield Plan fail to occur within two years following the date of the resolution adopting the Brownfield Plan, the governing body may terminate the Brownfield Plan via resolution provided that the governing body first gives the developer 30 days' prior written notice and provides the developer an opportunity to be heard at a public hearing.

If a new project later develops on eligible property that was in a Brownfield Plan previously terminated, the jurisdiction may create a new Brownfield Plan for that property, which would restart the five year clock for TIR capture to begin, and TIR may be captured for up to 30 years on the property under the new Brownfield Plan. If seeking capture of school taxes, the SBRF contribution is applicable to the properties under the new Brownfield Plan.

Abolishing or Terminating a Brownfield Plan that includes a Single Business Tax (SBT) or Michigan Business Tax (MBT) brownfield credit may impact the availability of the credit. Please contact Brownfield staff for further information.

## **Part 6 – Brownfield Annual Reporting**

BRAs are required by law to annually report Act 381 Brownfield TIR to the MEDC. Reports are due no later than August 31 for the previous year via an online portal. Please note that jurisdictions are required to report both local and school tax capture.

The BRA is still responsible for completing all appropriate information in the portal in order to be compliant, even when it has no TIR to report.

Please be aware that failure to report by the deadline will result in the MSF and DEQ withholding financial support from the jurisdiction's future projects.

Annual reporting information can be found on the MEDC website.