

Governor Signs New Legislation Expanding Financial Incentives for Brownfield Investments

On June 6, 2000, Governor John Engler signed a package of bills designed to expand the financial incentives available for Brownfield investments in the State of Michigan. This new legislation increased the maximum single business tax (SBT) credit from \$1 million to \$30 million dollars and provided the opportunity to use tax increment financing (TIF) to pay for demolition, asbestos and lead abatement, and certain infrastructure improvements supporting the Brownfield investment in certain “core” communities.

In addition, a new program was established to create Obsolete Property Rehabilitation Districts to reduce property taxes on new investment in such areas through House Bill 5444. (Public Act ----- 2000). If a local unit of government establishes an Obsolete Property Rehabilitation District, an owner of property within that district may apply for a certificate qualifying the owner for a reduction in property taxes for any investment on that property. The local unit of government and state tax commission must approve the certificate. The State Treasurer may exclude up to one-half of the mills leveled for school operating purposes, but only for up to 25 taxpayers of the obsolete property tax per year. As a substitute for normal tax payments, any property owner who receives an obsolete property rehabilitation exemption certificate must pay an alternate tax called the “obsolete properties tax” based on a formula set forth in Section 10 of the statute.

The bills also established a new approval process and require that all SBT credits be approved either by the Department of Treasury (if the credit is for one million dollars or less) or the Michigan Economic Growth Authority (if the credit is between one million and thirty million dollars). This new approval process inserts some degree of uncertainty in the SBT credit program that did not exist before the bills were passed. Previously, if an investor obtained approval of a Brownfield Plan by a local community that established the basis for the SBT credit, which was equal to ten percent of the investor’s investment, Now the Department of Treasury reserves the right to deny an SBT credit for credits less than one million dollars. Moreover, not only could the Michigan Economic Growth Authority deny a SBT credit of over one million dollars, but there is no guarantee the credit over one million dollars will be for ten percent of the investment. MEGA has the authority to grant a credit based on a percentage of the investment that they deem appropriate, which can be less than ten percent.

The SBT credit also cannot be claimed under the new amendments until after the project is completed and the state has issued a certificate of completion.

In response to a number of concerns from practitioners about the approval process, the final bills included deadlines for decisions by the Department of Treasury (45 days after receipt of application) and for MEGA (65 days after receipt of application - followed by a 5-day period in which the Department of Treasury must concur in MEGA’s determination).

The bills also included new provisions providing greater credits and financial incentives in “core communities.” Only if a project is located in a core community (see list below) can tax increment financing (TIF) be used to pay for demolition, asbestos and lead abatement, and certain infrastructure improvements supporting the project. While MDEQ remains responsible for reviewing any work plans for environmental remediation activities, the Department of Treasury is required to review any work plans that address demolition, asbestos or lead abatement or infrastructure

improvements supporting the redevelopment project. Michigan Department of Treasury and MEGA are preparing guidance materials and the necessary form for processing requests for the SBT credit and other incentives.

This article was prepared by Grant R. Trigger, a partner in our Environmental Department, and previously appeared in the July, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.