

EXHIBIT 2

No. 18-1855/18-1871

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

GARY B., JESSIE K., a minor, by Yvette K., guardian ad litem; **CHRISTOPHER R.**, a minor, by Escarle R., guardian ad litem; **ISAIAS R.**, a minor, by Escarle R., guardian ad litem; **ESMERALDA V.**, a minor, by Laura V., guardian ad litem; **PAUL M.; JAIME R.**, a minor, by Karen R., guardian ad litem,

Plaintiffs-Appellants,

v.

GRETCHEN WHITMER, Governor; **TOM McMILLIN**, member of MI Bd of Education; **MICHELLE FECTEAU**, member of MI Bd of Education; **LUPE RAMOS-MONTIGNY**, member of MI Bd of Education; **PAMELA PUGH**, member of MI Bd of Education; **JUDITH PRITCHETT**, member of MI Bd of Education; **CASANDRA E. ULBRICH**, member of MI Bd of Education; **NIKKI SNYDER**, member of MI Bd of Education; **TIFFANY TILLEY**, member of MI Bd of Education; **SHEILA ALLES**, Interim Superintendent of Public Instruction for the State of MI; **TRICIA L. FOSTER**, Director of the MI Dept of Technology; and **WILLIAM PEARSON**, State School Reform/Redesign Officer, in their official capacities,

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of
Michigan, the Honorable Stephen J. Murphy III, Presiding

Case No. 2:16-CV-13292

**AMICUS CURIAE BRIEF BY PAMELA PUGH IN SUPPORT
OF PLAINTIFF-APPELLANTS' APPEAL BRIEF FOR
REVERSAL OF THE DISTRICT COURT'S ORDER OF DISMISSAL**

TABLE OF CONTENTS

Index of Authorities	
Statement of Interest of Amicus Curiae Pamela Pugh.....	1
Introduction.....	5
Argument.....	6
I. BASICS OF MICHIGAN SCHOOL FUNDING	6
II. DECLINES IN STATE FUNDING HAVE PARTICULARLY IMPACTED AT-RISK STUDENTS LIKE THOSE IN DETROIT	8
III. STATE ENACTED AND ADMINISTERED TAX BREAKS AND TAX CAPTURES FOR DEVELOPERS HAVE LEFT THE DETROIT PUBLIC SCHOOLS WITH \$500 MILLION IN DESPERATELY NEEDED INFRASTRUCTURE REPAIRS, WITH NO ABILITY TO RAISE THE FUNDS TO PAY FOR THEM	9
Conclusion	14
Certificate of Compliance	16
Certificate of Service	16

INDEX OF AUTHORITIES

Michigan constitution Article VIII Section 8	1, 2, 6
PA 145 of 1993	6, 7
MCL 125.2651 et. seq.....	11, 12

**STATEMENT OF INTEREST OF AMICUS CURIAE MICHIGAN STATE
BOARD OF EDUCATION VICE PRESIDENT PAMELA PUGH**

Dr. Pamela Pugh was elected by the voters of Michigan to the State Board of Education in November 2014 and is currently the board's Vice President. Her term will expire in January 2023.

Dr. Pugh is a longtime advocate for the children of Michigan. She is the Chief Public Health Advisor for the City of Flint, Michigan, where she has served since October 2016. She was employed by the Saginaw County Department of Public Health for 14 years. Dr. Pugh received a Doctorate of Public Health (DrPH) from the University of Michigan School of Public Health, a Master of Science from the University of Michigan School of Public Health, and a Bachelor of Science in Chemical Engineering from Florida A&M University. Dr. Pugh's previous work includes being at the forefront of the fight to reduce childhood lead poisoning in Michigan. She has worked on numerous projects aimed at fostering the wellness of young children by addressing systems and programs that involve the physical, social, and emotional aspects of their development.

Article VIII Section 8 of the Michigan constitution, which creates the State Board of Education and outlines its duties, states:

Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including

higher education, and shall advise the legislature as to the financial requirements in connection therewith.

Consistent with her responsibilities as a Michigan State Board of Education member and vice president, and in line with her longtime advocacy on behalf of the children of Michigan, Dr. Pugh has determined that she cannot agree with the position taken by attorneys for the Attorney General's office who are representing all the Michigan state school board members in their official capacity. In an email to the Attorney General's office dated May 28, 2019, she articulated that position.

The email stated:

Greetings Mr. Howd,

I would like to bring to your attention and confirm that I did not respond to your email message dated May 21, 2019, or otherwise communicate with you that I would be taking the legal positions stated in the State Defendants' reply brief that was filed with the U. S. Court of Appeals for the Sixth Circuit on Friday, May 24, 2019.

Upon receiving your message on May 21, 2019, I began doing my due diligence and analyzing the legal arguments and options that were presented. In doing so, I determined that I was not in agreement with the claim of the Governor, Interim Superintendent, and School Reform officer that the Court should dismiss the Plaintiffs' appeal on mootness grounds. Please be advised that I am exploring the options available to me, as a member of the Michigan Board of Education, to properly and procedurally address this matter.

Exhibit 1, attached, emails.

Following discussions with the Attorney General's office, Dr. Pugh sent an email to Attorney General Dana Nessel on June 14, 2019. The email stated:

I have spoken with Raymond Howd, Department of Attorney General Health & Education Services Division Chief, on May 9th and June 3rd via phone, and via email on June 6th regarding the State Defendants' brief in Gary B. v. Whitmer. In considering Mr. Howd's advice during these discussions, I would like to inform you of the position that I will be taking as a co-defendant, and my desires for legal representation as a member of the Michigan State Board of Education.

It is my desire that the appellate record in this case reflect that my position is consistent with the legal position and arguments contained in the amicus brief you filed with the U. S. Court of Appeals for the Sixth Circuit on Friday, June 7, 2019. I am confirming that I would like legal counsel, an Assistant Attorney General from a different division in the Department, to represent my legal interests in this matter.

See Exhibit 1, emails.

On June 28, 2019, the Deputy Solicitor General for the Michigan Attorney General filed a Motion for Leave to Amend their Brief on Appeal filed on May 24, 2019, to reflect that Dr. Pugh did not join in the arguments raised in their Brief on Appeal, and to allow Dr. Pugh to seek her own counsel and proceed accordingly in this matter. RE 152, page id 1-4, Appellant's Motion for Leave to file Amended Appeal Brief. This motion was granted and Appellee's Amended Brief has now been filed. RE 153-2, page id 2, Order. RE 154, Amended appellee brief.

Consistent with her understanding of her constitutional duties, Dr. Pugh issued statements on May 28 and June 28, 2019, indicating her position in the current proceedings. They read in part:

This case has caused me to reflect deeply upon my beliefs, my values, and the very reason that I decided to run for the office of the State Board

of Education; a role that the framers of our state constitution created to function distinct from that of the Governor and the state's Executive Branch. . . . Michigan ranks among the worst states in the nation for the educational performance of African American students. While our children and educators are being labeled as failures, Michigan's K-12 public education has been built on a crumbling foundation of racism and historic segregationist practices; many of which were sanctioned by our very own state government. There is no doubt that these practices, and the policy makers who were unwilling to determinedly address the inequitable effects of them, are ultimately responsible for the failure of our children, their parents, and their teachers/educators. Through decades of inequitable funding and disastrous education program experiments, there's been a perpetuation of children of color being deprived of the basic and proven conditions necessary for them to learn. Classroom learning is thwarted without literacy. Essential to a decent education are an adequate number of well trained teachers, sufficient teaching resources, and school buildings that aren't environmental health hazards.

Dr. Pugh's amicus brief specifically addresses the issues of Michigan school finance and its impact on the constitutionality of the education provided to the students of Detroit schools. Such a brief will not be repetitive of the many briefs already filed in this case, and will contribute to the Court's analysis on the question of mootness regarding the state's ongoing responsibility, as well as the overriding question of whether Michigan is providing an even minimum education to Detroit's students to lift them out of illiteracy.

Amicus Curiae Pamela Pugh in her individual capacity has retained counsel which has prepared this brief on her behalf.

INTRODUCTION

In its Brief on Appeal, Defendant State of Michigan argues that the case against it is mute, because the Detroit Public Schools are no longer under the direct control of the state through its appointed emergency manager.

Without a doubt, the actions of state appointed emergency managers played a major role in leaving the Detroit Public Schools in the disastrous condition in which they currently find themselves, which necessitated the bringing of Plaintiffs' lawsuit demanding a basic constitutional right to an education which at least provides a minimum of literacy.

Even after the end of emergency management, however, the state continues to exercise a great deal of control over the education of Detroit's youth. The state exercises control over the funding of the operation of Detroit schools and all schools in Michigan. This funding mechanism has left Detroit schools in their current crisis because it has cut back on at-risk funds for the poorest of Michigan's children, who are a majority African American and concentrated in urban areas like Detroit.

And it is state law and state agencies like the Michigan Strategic Fund that have developed and oversee the property tax breaks and tax captures which have particularly left the Detroit schools in a crisis situation. As described in Plaintiffs' complaint, Detroit students are relegated at attempting to receive an education in

buildings desperately in need of repair, while these corporate tax breaks and captures have left the Detroit School District without the mechanism to fund these repairs.

This brief attempts to give a brief overview of the question of Michigan school funding and how it has impacted education in the city of Detroit and the issue in this case, whether the Detroit Public Schools are offering an education that meets a minimum standard of providing the right to literacy.

ARGUMENT

Article VIII Section 8 of the Michigan constitution, which creates the State Board of Education and outlines its duties, states:

Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

I. BASICS OF MICHIGAN SCHOOL FUNDING

In 1993, the Michigan state legislature approved PA 145 of 1993, effective at the beginning of 1994, which altered the method of public school funding in Michigan. Prior to this Act being enacted, local taxation accounted for approximately 69% of the state/local split, with state funding making up the other 31%. Subsequent to the passing of the new law, the state/local split changed to an approximate 80% state/20% local split. **Exhibit 2, Basics of School Funding.**

Revenues from the state sales tax which was increased from 4% to 6%, use tax, tobacco taxes, income tax, lottery, real estate transfer tax, industrial facilities tax, and casino taxes are earmarked for school funding. There is also a state education tax funded by a 6 mill levy on the taxable value of property, residential (homestead) and commercial. **Id.**

Localities also were mandated to levy an additional 18 mill property tax on the taxable value of non-homestead property. The state deducts the collection of this 18 mill property tax levy from the state payment of the foundation allowance guaranteed to all students in the intermediate district which levies this commercial property tax. **Id.**

Under the law, there were three levels for basic student funding for school operating expenses assured by the state: a minimum foundation grant covering 405 school districts, an intermediate level, and a higher level for approximately 59 hold harmless districts that had the highest per pupil funding prior to adoption of the 1993 act. The approximately 59 school districts with a higher per pupil student funding amount prior to the enactment of the 1993 law continued to be allowed to levy additional property mills to maintain their higher per pupil funding level prior to the enactment of the law. **Id.**

II. DECLINES IN STATE FUNDING HAVE PARTICULARLY IMPACTED AT-RISK STUDENTS LIKE THOSE IN DETROIT

This inequity in school funding for operations was somewhat evened out by schools at the lower end of the funding spectrum receiving a larger increase in their foundation grant between 1995 and 2000, and again in 2007-2008. However, due to state cuts in the foundation allowance since that time, and other diversions from the state school education fund, the basic foundation allowance for per pupil funding in Michigan schools has declined dramatically since 2003, with an inflation adjusted reduction of 25.6% between 2003 and 2017. Michigan ranks last among all 50 states in per-pupil revenue growth between 1995 and 2015. Michigan's 2015 state education revenue was only 82% of the state's 1995 revenue. **Exhibit 3, Michigan School Finance at a Crossroads, pp. 26, 29-30**

Funding for at-risk students, whose definition includes students from low-income families, has taken a particularly hard hit from the state. The state supports at-risk student funding through Section 31a earmarked funding. State Section 31a funding per at-risk student has plunged 60% since its peak in 2001. **Id. p 28, 29.** This affects Detroit students especially, as the City continues to experience one of highest poverty rates in the United States.

III. STATE ENACTED AND ADMINISTERED TAX BREAKS AND TAX CAPTURES FOR DEVELOPERS HAVE LEFT THE DETROIT PUBLIC SCHOOLS WITH \$500 MILLION IN DESPERATELY NEEDED INFRASTRUCTURE REPAIRS, WITH NO ABILITY TO RAISE THE FUNDS TO PAY FOR THEM

While the state assumed more direct control over the funding for school operations, the 1993 act did not provide for the raising of funds for maintaining or repairing school facilities and infrastructure. Funding and repair of school facilities and infrastructure is totally dependent on local property taxation, primarily to pay off bonds issued to fund improvements. **Id., p 46.-49.**

As alleged in Plaintiffs' complaint and acknowledged in the District Court's opinion in this case, inadequate facilities prevent students from attaining their potential, and in the case of the City of Detroit are so deplorable as to prevent even a modicum of learning on many occasions.

While local property taxation is the funding source for school facilities and infrastructure, the state has enacted legislation and approved projects pursuant to that legislation which diverts local property taxation from funding infrastructure for Detroit schools into the hands of billionaire developers like Dan Gilbert, the Ilitch family, Ford family, and others. This diversion of funds is done without consultation of the State Board of Education, despite its direct impact on the quality of school facilities particularly in the City of Detroit and similar African-American cities like Benton Harbor, Michigan.

An article in Crain's Detroit Business dated May 26, 2019, points out that Detroit Public Schools has \$500 billion in capital construction needs for dozens of aging buildings. The article cites Detroit Public Schools Superintendent Nikolai Vitti stating that unless DPS can raise these funds, the potential for improvement in the District has reached a ceiling. **Exhibit 4, Crain's article, May 26, 2019.** It should be noted that to this date Detroit Public Schools still have toxic lead and copper in the water at most of its schools, as well as the numerous other disastrous building conditions outlined in Plaintiffs' complaint.

The Crain's article documents how the Detroit Public Schools Community District lacks the ability to raise the funds needed for these capital funding repairs. The reason for this inability is that the district has an inadequate funding base in property tax revenues to service the \$1.4 billion in capital bonds already owed by the school district. These bonds were taken out during the period when the Detroit Public Schools were under state control. The \$152.6 million which DPS currently owes the State school loan fund, is to service that \$1.4 billion bond debt. As a legacy of state control of Detroit public schools, DPSCD has no capacity to issue bonds for desperately needed capital construction until the existing \$1.4 billion debt is paid off. **Id.**

The Crain's article notes how Detroit district debt problems are a "hangover" from the last recession, as a result of which the city's property tax base fell from \$10

billion in 2010 to \$6 billion in 2018. Despite Detroit being hailed as a comeback city, with large-scale commercial development and a recent resurgence in residential property values, the Detroit school district's taxable base from which to raise funds for infrastructure has even fallen lower today, to \$5.6 billion.

Detroit Public Schools CFO Jeremy Vidito stated the reason that Detroit schools are not benefitting from the rash of new developments in the City: "The taxable value of property of property was even lower, at \$5.6 billion, **because of tax abatements of commercial and industrial property as well as the Downtown Development Authority's capture of downtown property tax revenue that's helping pay of the public financing on Little Caesar's Arena.**" [Emphasis added.] **Id.**

In recent years, in accordance with the Brownfield Redevelopment Financing Act, MCL 125.2651 et. seq., the Michigan Economic Development Corporation is empowered to create Brownfield Redevelopment Areas subject to approval of the Michigan Strategic Fund. A Brownfield Redevelopment Area provides for the developer, or a development authority working in conjunction with the developer, to capture or appropriate the increase in property taxes resulting from the increase in property values because of the development. This is known as tax increment financing. The Brownfield act also allows for the capture by the developer, or an authority working with the development, of the income taxes paid by workers on the

construction of the development, sales taxes generated by the development, and 50% of income taxes paid by workers for employers who move into the Brownfield Development Area.

A report issued by Patrick Morris, Legislative Analyst for the Michigan House Fiscal Agency, gives an excellent explanation of how tax captures work in a report called “Brownfield Redevelopment Financing and Tax Increment Legislation and Use.” Page 16 of the report cites to a legislative report by the Michigan Strategic Fund stating there were 295 Brownfield Redevelopment Areas in Michigan, and of that number 125 collected or reimbursed tax increment funding for the 2015 tax year, with the bulk of them in Wayne County, where Detroit is located. **Exhibit 5, legislative report, attached.**

Since 2015, large-scale Brownfield Redevelopment Areas have been approved for the Hudson’s project and Little Caesar’s Arena in downtown Detroit. The Transformation Brownfield Plan for the Hudson’s Block, Monroe Block, One Campus Martius and Book Buildings in downtown Detroit, include, just from tax increment funding related to property taxes, \$145,907,929 in school operating tax revenues and \$89,188,288 for school debt to be captured by the Downtown Development Authority. **Exhibit 6, Hudson Brownfield plan, attached.**

An article in Crain’s Detroit Business dated May 23, 2017, noted that public funding accounted for \$324.1 million of the \$863 million in cost to build the new

Little Caesar's Arena in downtown Detroit. The bonds being issued to cover the public financing are to be paid off by the tax capture of property taxes, funds that otherwise would be available to fund Detroit Public Schools infrastructure repairs.

Exhibit 7, Crain's article of May 23, 2017, attached.

Benton Harbor, which like Detroit is a predominantly African-American city, also cannot afford to pay the debt service owed by the school district and continues to face the potential closing of its high school because of it. The Benton Harbor School District was deprived of needed tax revenue to pay that debt by the creation of a tax increment authority in connection with the Harbor Shores Development, which is slated to capture \$125 million in sorely needed property tax revenue which could be used for the school district. **Exhibit 8, attached.**

In the report "Michigan Finance at the Crossroads," the authors discuss the impact of the state relying on local property taxation for the repair and building of public school facilities, while at the same time, through the Michigan Strategic Fund, depleting the property taxes available to African-American districts like Detroit. They state:

One can learn a great deal about a community by walking through a school building. These places in which children and educators spend a great deal of time influence how people interact and feel. The setting can feel comfortable and uplifting or drab and depressing. Some schools announce opportunity and promise—with atrium ceilings, Carnegie Hall auditoriums, Olympic swimming pools, spectacular athletic training and performance facilities, welcoming spaces for interaction, attractive grounds, and more. Other schools tell

children that adults don't care much about their comfort and opportunities.

See Exhibit 3, pp 46, 47.

Nowhere is that statement more relevant than in the City of Detroit, where the deplorable conditions of the public schools and the district's inability under current state law to raise the funds necessary to repair them announce to children, already at a disadvantage with many coming out of impoverished homes, that their education is a low priority. Instead, the state is diverting to the pockets of billionaire developers the very taxes that could be used to lift the conditions in Detroit schools to institutions fit for learning, or at least to meet a minimal level of educational value in order to guarantee the right to literacy.

CONCLUSION

Any discussion of the conditions of Detroit's schools, and whether or not they provide a basic level of education so as to at least meet a constitutional standard of achieving literacy, must include an examination of the funding of the schools, and how state policy has impacted that funding. Amicus Curiae Pamela Pugh hopes that this brief will contribute to that discussion.

Respectfully submitted,

/s/ Jerome D. Goldberg

Jerome D. Goldberg (P61678)
Jerome D. Goldberg, PLLC
Attorney for Amicus Curiae Pamela Pugh
2727 Second Avenue, Suite 111
Detroit, MI 48207
Phone (313) 393-6001
Email apclawyer@sbcglobal.net

/s/ Benjamin L. Crump

Benjamin L. Crump
Ben Crump Law, PLLC
Attorney for Amicus Curiae Pamela Pugh
122 South Calhoun Street
Tallahassee, FL 32301
(850) 224-2020

/s/ Vanessa G. Fluker

Vanessa G. Fluker (P64870)
VANESSA G. FLUKER, ESQ., PLLC
Attorney for Amicus Curiae
Pamela Pugh
2727 Second Avenue, Suite 111
Detroit, MI 48201
(313) 393-6005
Email vgflawyer@sbcglobal.net

DATE: July 19, 2019

CERTIFICATE OF COMPLIANCE

The undersigned certifies this amicus brief was prepared in compliance with Federal Rules of Appellate Procedure governing type-volume limit, typeface requirements and type style requirements in that it contains fewer than 6,500 words and is prepared in 14-point Times New Roman font.

/s/ Jerome D. Goldberg

Jerome D. Goldberg (P61678)

CERTIFICATE OF SERVICE

The undersigned certifies that he caused a copy of the foregoing document to be filed with the Clerk of the Court and to be served electronically upon counsel to all parties in this matter on July 18, 2019.

/s/ Jerome D. Goldberg

Jerome D. Goldberg (P61678)

INDEX OF EXHIBITS

1. Emails
2. Basics of School Funding
3. Michigan School Finance at a Crossroads, selected pages
4. Crain's article May 26, 2019
5. Legislative Report on Brownfield Redevelopment Funding
6. Transformational Hudson's Brownfield plan, selected pages
7. Crain's article May 23, 2017
8. Statement on Benton Harbor tax increment funding

EXHIBIT 1

Fwd: Gary B. v. Whitmer

From: Pamela Pugh (pampugh@umich.edu)
To: Apclawyer@sbcglobal.net; V1success@aol.com
Date: Monday, July 15, 2019, 04:58 PM EDT

Pamela L. Pugh, DrPH, MS
Michigan State Board of Education
pampugh@umich.edu
(989) 992-6353

Begin forwarded message:

From: Pamela Pugh <plpugh1270@aol.com>
Subject: Re: Gary B. v. Whitmer
Date: June 28, 2019 at 1:49:24 PM EDT
To: "Sonneborn, Suzanne (AG)" <SonnebornS@michigan.gov>
Cc: "Howd, Raymond (AG)" <HowdR@michigan.gov>

Greetings Suzanne,

I received a call from an assistant AG, I believe that his name was Josh, this week stating that a filing would be made to correct the filing made by Assistant AG Howd. Will I be receiving a copy of this filing and the reason for correction?

Thanks,

Pamela L. Pugh, DrPH, MS
Michigan State Board of Education
Vice President
pampugh@umich.edu
(989)992-6353

On Jun 20, 2019, at 3:11 PM, Sonneborn, Suzanne (AG) <SonnebornS@michigan.gov> wrote:

Dear Dr. Pugh,

Upon receipt of your request for new representation by our Department in the above case, wherein you seek to advance a legal position contrary to that taken by the Board of Education's assigned counsel, Raymond Howd, I discussed this matter with the Attorney General and, at her behest, I referred this matter to our office's Chief Ethics Officer, Frank Monticello, for his review and guidance. Frank has since conducted this review and has determined the following.

The State Board of Education and its members are named in their official capacity only in the above case. And, while the State Board established its official position in this case in the United States District Court for the Eastern District prior to your election to the Board, the Board is unable to now raise a new argument on appeal that wasn't preserved below and you are unable to raise a new argument on the Board's behalf in your official capacity.

Although you seek separate representation by another attorney in our office in order to advance a different position, you are not a party to this litigation in your individual capacity and therefore our office cannot provide you with legal representation in your individual capacity. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 106 S.Ct. 1326 at 1332-33. (" [A] person sued in his official capacity has no stake, as an individual, in the outcome of the

litigation.”) However, you are certainly at liberty to obtain your own representation in order file an amicus brief in the Sixth Circuit if you wish to make your position known to that court. Please know that doing so would be your financial responsibility.

I hope that this information provides helpful clarification to you regarding our office's role and responsibilities as it relates to providing legal representation.

Suzanne

Suzanne D. Sonneborn
Chief Legal Counsel
Attorney General Dana Nessel
Michigan Department of Attorney General
sonneborns@michigan.gov
(517) 241-8958 (direct)

From: Pamela Pugh <pampugh@umich.edu>
Sent: Friday, June 14, 2019 5:03 PM
To: Nessel, Dana (AG) <NesselD@michigan.gov>
Cc: Sonneborn, Suzanne (AG) <SonnebornS@michigan.gov>; Pamela Pugh <plpugh1270@aol.com>
Subject: Gary B. v. Whitmer

Dear Attorney General Nessel,

I have spoken with Raymond Howd, Department of Attorney General Health & Education Services Division Chief, on May 9th and June 3rd via phone, and via email on June 6th regarding the State Defendants' brief in Gary B. v. Whitmer. In considering Mr. Howd's advice during these discussions, I would like to inform you of the position that I will be taking as a co-defendant, and my desires for legal representation as a member of the Michigan State Board of Education.

It is my desire that the appellate record in this case reflect that my position is consistent with the legal position and arguments contained in the amicus brief you filed with the U. S. Court of Appeals for the Sixth Circuit on Friday, June 7, 2019. I am confirming that I would like legal counsel, an Assistant Attorney General from a different division in the Department, to represent my legal interests in this matter. Furthermore, I wish to confirm that I would like to have my personal attorney, Ben Crump, serve as a member of my legal team for consultation purposes. Per my conversations with Mr. Howd, it is my understanding that Mr. Crump will not be able to argue in the court, and will serve as a silent member of the legal team.

I look forward to speaking with you soon to determine next steps. Thank you.

Pamela L. Pugh, DrPH, MS
Michigan State Board of Education
Vice President
mailto:pampugh@umich.edu
(989)992-6353

Fwd: Gary B v Governor et al; State Defendants Brief on Appeal

From: Pamela Pugh (pampugh@umich.edu)
To: Apclawyer@sbcglobal.net; V1success@aol.com
Date: Monday, July 15, 2019, 04:55 PM EDT

Pamela L. Pugh, DrPH, MS
Michigan State Board of Education
pampugh@umich.edu
(989) 992-6353

Begin forwarded message:

From: "Howd, Raymond (AG)" <HowdR@michigan.gov>
Subject: RE: Gary B v Governor et al; State Defendants Brief on Appeal
Date: June 6, 2019 at 6:01:45 PM EDT
To: Pamela Pugh <pampugh@umich.edu>
Cc: "Nessel, Dana (AG)" <NesselD@michigan.gov>, "Keenan, Kelly (AG)" <Keenank@michigan.gov>, "Sonneborn, Suzanne (AG)" <SonnebornS@michigan.gov>, "Moody, Laura (AG)" <MoodyL@michigan.gov>, "Teszlewicz, Barbara (AG)" <teszlewiczb@michigan.gov>, "Pehlivanoglu, Trinidad (AG)" <PehlivanogluT@michigan.gov>

Hello Dr. Pugh.

I have discussed your request with management in our department. Since you have opted to take a legal position different from the other State Defendants that the HEFS Division represents, and that legal position is at odds with the other State Defendants, I can no longer represent you in this appeal. You should send a request for representation to:

Department of Attorney General,
525 West Ottawa Street 7th Floor
Lansing MI. 48933

with a reference to this case and a brief description of the legal position you wish to take. The request will be routed to an Assistant Attorney General that is on the other side of the Department conflict wall set up for this case. He or she will then contact you to discuss your legal options.

Thank you.

Raymond O. Howd, Division Chief
Health, Education & Family Services Division
Bureau Chief
State Government Bureau
Department of Attorney General

525 West Ottawa Street
Lansing, Michigan 48933
(517) 335-7603

From: Pamela Pugh <pampugh@umich.edu>
Sent: Thursday, June 6, 2019 5:35 PM
To: Howd, Raymond (AG) <HowdR@michigan.gov>
Cc: Nessel, Dana (AG) <NesselD@michigan.gov>
Subject: Re: Gary B v Governor et al; State Defendants Brief on Appeal

Greetings Mr. Howd,

I'm following up to determine if you are able to forward in writing the information requested regarding my options, as a member of the Michigan State Board of Education, to attain legal representation.
Thanks.

Sent from my iPhone. Please excuse typos.

On Jun 3, 2019, at 11:35 PM, Pamela Pugh <pampugh@umich.edu> wrote:

Greetings Mr. Howd,

Per our conversation earlier today and last week, I would like to inform you that I will be taking a legal position different from that which was stated in the State Defendants' reply brief that was filed with the U. S. Court of Appeals for the Sixth Circuit on Friday, May 24, 2019.

Again, as I stated on May 26, 2019, upon receiving your message on May 21, 2019, I began doing my due diligence and analyzing the legal arguments and options that were presented. In doing so, I determined that I was not in agreement with the claim of the Governor, Interim Superintendent, and School Reform officer that the Court should dismiss the Plaintiffs' appeal on mootness grounds.

I again thank you for today, verbally, providing me with my options as a member of the Michigan State Board of Education to attain legal representation.

At this time, I am kindly requesting that you provide me with these options in writing. Please advise if you are able to do so. Subsequently, I will provide you with further detail of the direction in which I will proceed.

Pamela L. Pugh, DrPH, MS
Michigan State Board of Education

Vice President
pampugh@umich.edu

(989) 992-6353

On May 28, 2019, at 11:10 AM, Pamela Pugh <pampugh@umich.edu> wrote:

Greetings Mr. Howd,

I would like to bring to your attention and confirm that I did not respond to your email message dated May 21, 2019, or otherwise communicate with you that I would be taking the legal positions stated in the State Defendants' reply brief that was filed with the U. S. Court of Appeals for the Sixth Circuit on Friday, May 24, 2019.

Upon receiving your message on May 21, 2019, I began doing my due diligence and analyzing the legal arguments and options that were presented. In doing so, I determined that I was not in agreement with the claim of the Governor, Interim Superintendent, and School Reform officer that the Court should dismiss the Plaintiffs' appeal on mootness grounds. Please be advised that I am exploring the options available to me, as a member of the Michigan Board of Education, to properly and procedurally address this matter.

Pamela L. Pugh, DrPH, MS
Michigan State Board of Education

Vice President
pampugh@umich.edu
(989) 992-6353

On May 24, 2019, at 3:10 PM, Howd, Raymond (AG)
<HowdR@michigan.gov> wrote:

Hello all.

I am attaching a copy of the State Defendants' brief that was filed this afternoon. Please contact me if you have any questions.

Thank you for all of your assistance and cooperation during this process.

Ray

Raymond O. Howd, Division Chief
Health, Education & Family Services Division
Bureau Chief

State Government Bureau
Department of Attorney General
525 West Ottawa Street
Lansing, Michigan 48933
(517) 335-7603

<DOC #145 - Appellees' Brief.pdf>

EXHIBIT 2



The Basics of School Funding

**Kathryn Summers, Associate Director
Senate Fiscal Agency
www.senate.michigan.gov/sfa
February 2019**

School Finance

How are Local School Districts Financed? Three Primary Sources

- Local Taxation
- State Funding
- Federal Funding



Part I

How the State Raises Revenues for Schools

The first part of the presentation will discuss pre-Proposal A, Proposal A, and post-Proposal A taxation rates and how the State finances the K-12 system in general.

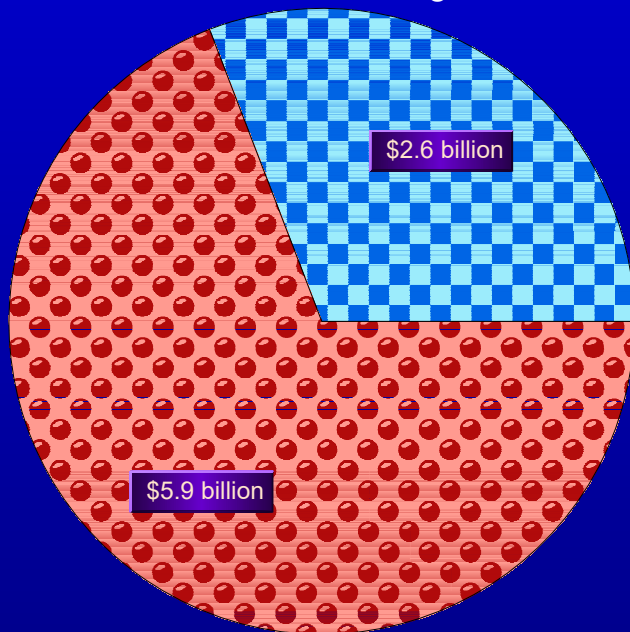


BEFORE Proposal A

Local Taxation Plays a Large Role

Prior to Proposal A, schools were financed primarily through local property taxes. In fact, in 1993-94, home and business owners were paying on average 33 operational mills assessed on the State Equalized Value (50% of market value) of their properties. At that time, local taxation accounted for roughly 69% of the State/local split of school finance, with State funding making up the other 31%.

State/Local Funding Mix



State



Local

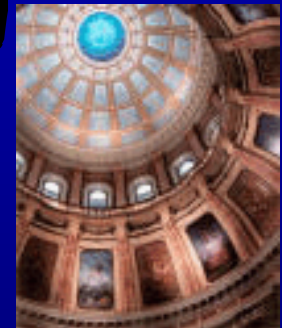
The School Aid Fund at that time consisted of:

- Sales Tax:** 60% of proceeds at 4% rate;
- Cigarette Tax:** 2 cents of 25 cents/pack tax;
- Lottery:** Net Revenue;
- Industrial and Commerical Facilities Tax:** Paid to the SAF for properties of “in-formula” districts;
- Commerical Forest Tax:** same as above;
- Liquor Excise Tax:** Revenue from 4% excise tax.

What Spurred Proposal A?

Public Act 145 of 1993

- In July of 1993, the Legislature approved, and the Governor signed into law, P.A. 145 of 1993.
- This law exempted all real and personal property taxes for school operating purposes beginning in 1994.
- This law eliminated approximately 64% or \$6.4 billion of \$10.0 billion of total K-12 school funding beginning in FY 1994-95.
- The Legislature had approximately five months to create a new funding structure.



PROPOSAL A

How Did the Method of Financing Schools Change?

1. State School Aid Fund

- Sales Tax Increased from 4% to 6%, with 100% of the Revenue from the Additional 2% Dedicated to the School Aid Fund (SAF);
- Use Tax - All Revenue from the 2% Increase --SAF;
- State Education Tax Assessed on the *Taxable Value* of all Property at 6 mills;
- New Real Estate Transfer Tax - 0.75% applied to the selling price of the property;
- Cigarette Tax - increased from 25 to 75 cents per pack, with 63.4% of the increase dedicated to the School Aid Fund. (August 1, 2002 saw a 50 cent increase, 20 cents of which was dedicated to the SAF. This tax increased again on July 1, 2004, to \$2.00/pack; none of the 75 cent increase was dedicated to the School Aid Fund.)

School Aid Fund Earmarked Taxes and Lottery January 2019 Consensus Revenue Estimating Conference

Fund Source (in Millions)	FY 2018-19 Estimate
Sales Tax	\$6,201.6
Use Tax	\$572.6
Tobacco Taxes	\$346.1
State Education Tax (6 mills)	\$2,085.4
Real Estate Transfer Tax	\$352.9
Industrial Facilities Tax	\$37.5
Income Tax	\$2,813.0
Lottery	\$942.0
Casino Tax	\$115.0
Other	\$84.4
Total (in Millions)	\$13,550.5

PROPOSAL A

How Did the Method of Financing Schools Change?

2. Local Taxation

- In general, local taxation for operations (not including debt/capital or sinking fund) is capped at 18 mills levied on the *taxable value* of non-homestead property, with no operational mills levied on homesteads (there is an exception for “hold-harmless” districts);
 - Homesteads: Taxpayer’s primary residence, including noncommercial agricultural property.
 - Non-homesteads: All other property such as business, rental property, vacation homes, and commercial agriculture.

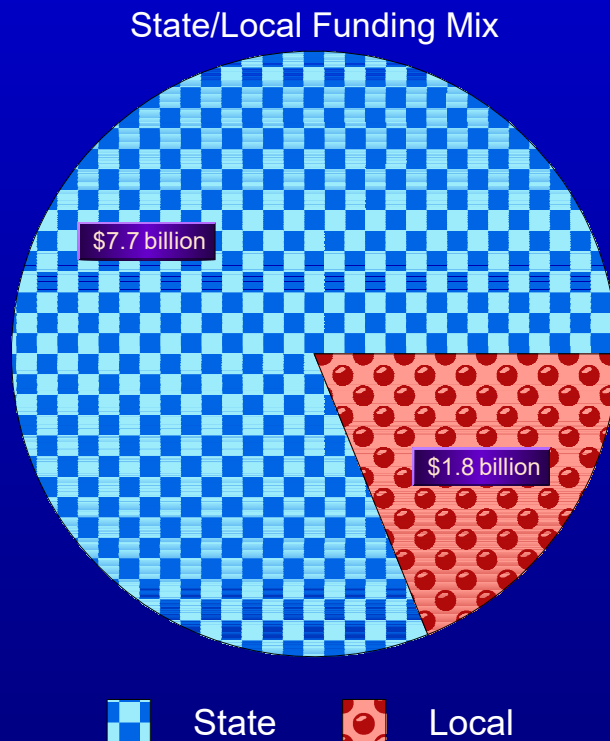
Also, *taxable value* increases are capped at the lesser of the rate of inflation or 5%. SEV continues to grow uncapped, and taxable value=SEV when a property transfers ownership.



AFTER Proposal A

How Did Local Taxation Change?

After the passage of Proposal A in March 1994 by the voters of Michigan (69% Yes, 31% No), average operational mills decreased to 6 mills levied on homeowners by the State for the State Education Tax (SET), and 24 mills for non-homesteads (6 mills for the SET, 18 mills levied by schools). This reduction in property taxes, and increase in State revenues for schools, changed the State/local funding mix to approximate an 80%/20% split.



AFTER Proposal A

Local Taxation Can and Does Still Occur

School district voters still must approve the mills assessed on non-homesteads, and are required to renew these mills over time. School districts also may ask voters for approval to levy mills for *debt* (i.e., capital outlay to build or renovate facilities), *sinking funds* (i.e., purchase of land for future building projects), and to enhance funding for *operations* on an Intermediate School District-wide basis only (up to 3 “enhancement” mills).

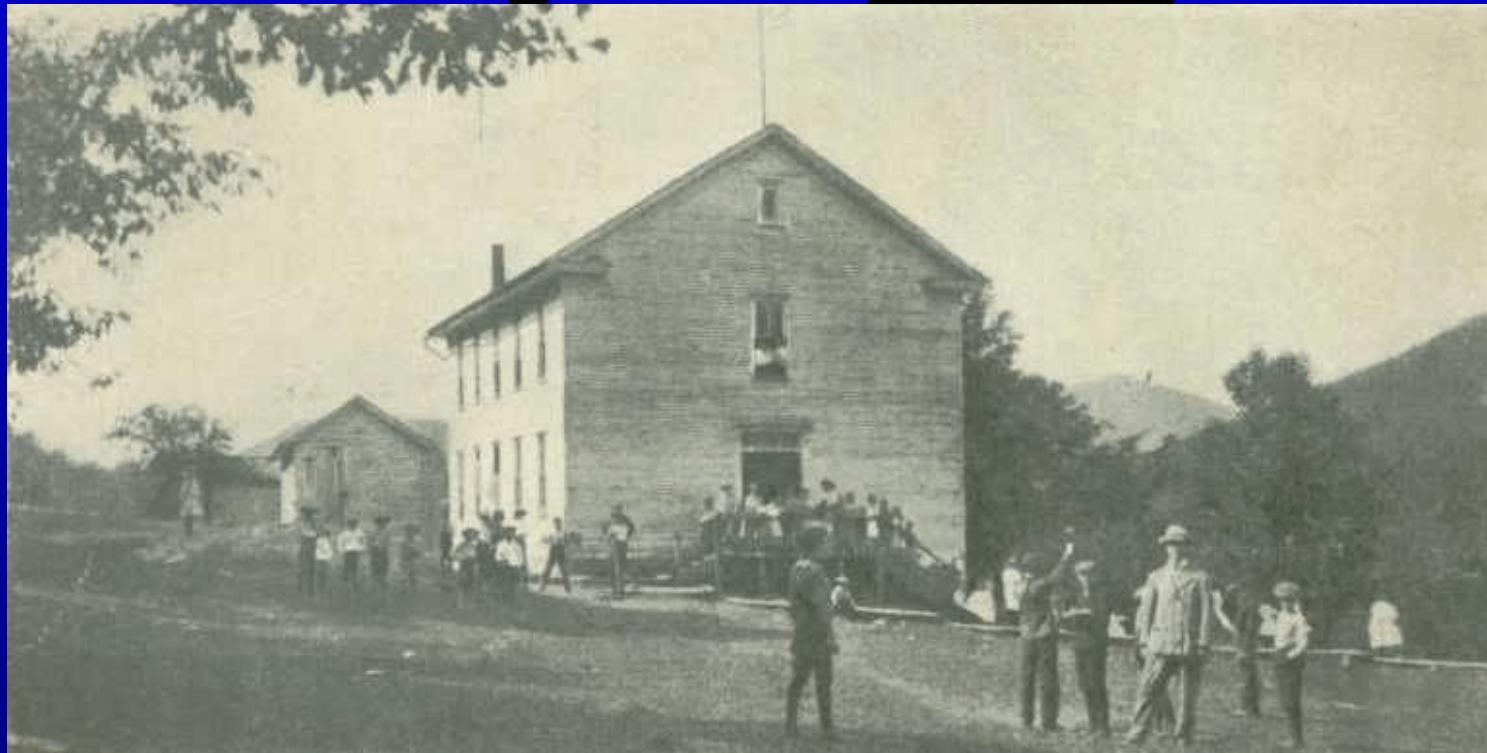
(Six of 56 ISDs are levying an enhancement millage for operations: Monroe at 0.9866 mill, Kalamazoo and Midland at 1.5 mills each, Muskegon at 1.0 mill, Kent at 0.9 mill, and Wayne at 2.0 mills.)



Part II

Funding at the School District Level

Now that we've covered how State funding of schools has changed with Proposal A, we will turn to a discussion of funding at the district level.



Financing for Schools Before Proposal A: Guaranteed Mill Amount

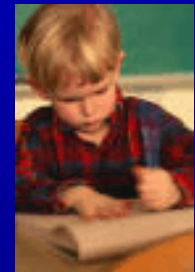
Prior to Proposal A, schools received local property tax revenue as determined by voters, plus State aid. If districts were “in-formula”, they received State funds so that they were guaranteed a dollar amount for each mill levied. There were 381 “in-formula” and 177 “out-of-formula” districts. Districts also received categorical aid for specific expenditures, such as School Readiness and Special Education.

$$\bar{x} \pm z \frac{s}{\sqrt{n}}$$

Financing for Schools

After Proposal A: the Foundation Allowance Concept

After Proposal A, school funding was tied to each pupil counted in a district's membership. Districts receive a foundation allowance, which is a per-pupil funding amount initially determined in 1994-95 based on what the district was receiving on a per-pupil basis in 1993-94. A minimum level of funding was established (\$4,200), a target level (the "basic") was determined (\$5,000), and a "cutoff" point for State Aid was set (\$6,500), with dollars above that point raised from local mills.



State/Local Funding of Foundation Allowance

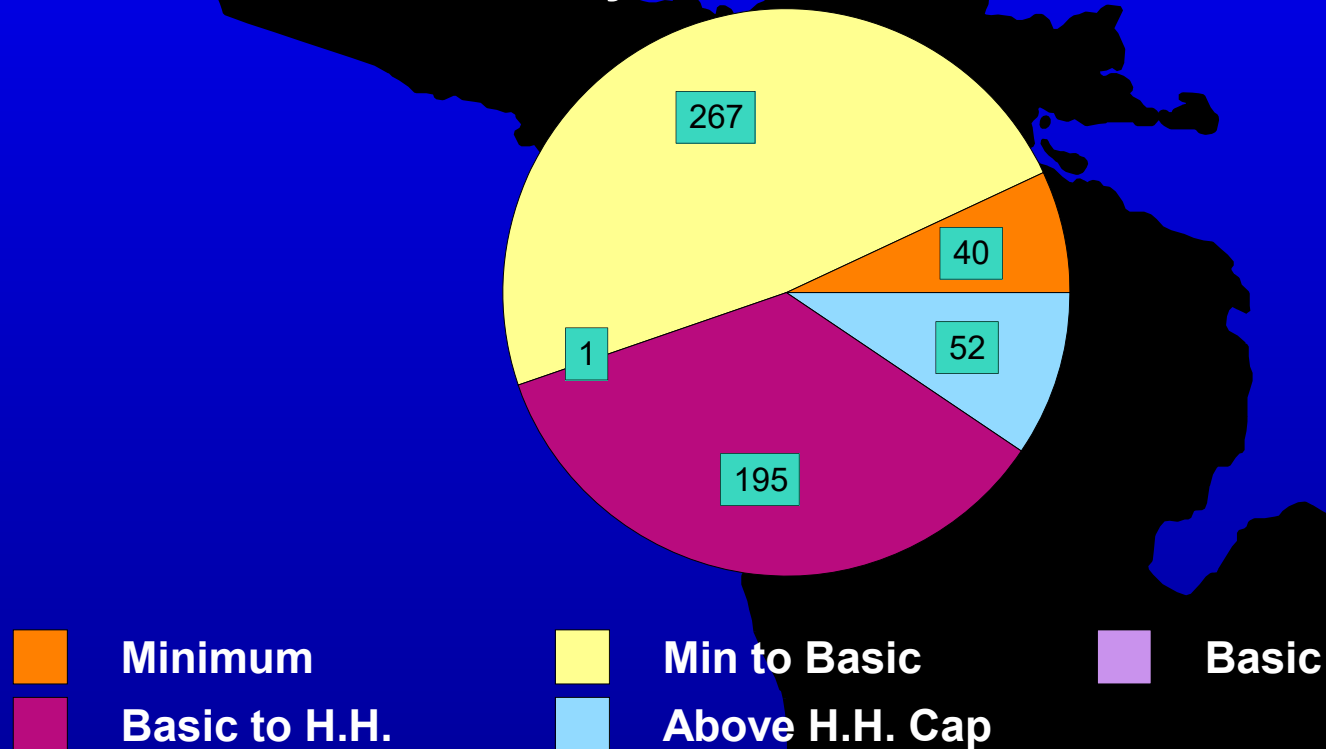
- Each district must levy 18 mills on non-homesteads.
- Local revenue from 18 mills is calculated at the State level on a per-pupil basis.
- State deducts the per-pupil local revenue from the lesser of the foundation allowance or hold-harmless “guaranteed” per-pupil amount.
- Districts above the hold-harmless cap are allowed by law to levy additional mills (with voter approval) to achieve their prescribed foundation allowance.

	Munising Public Schools
1994-95 Foundation	\$4,200
1994 Non-homestead T.V.	\$45,545,273
1994-95 Pupils	1,107.34
18 Mills (Per-Pupil Basis)	\$740
State Aid (Per-Pupil Basis)	\$3,460
Hold-Harmless Millage Rev. If Nec.	\$0
	Central Lake Schools
1994-95 Foundation	\$5,961
1994 Non-homestead T.V.	\$62,930,152
1994-95 Pupils	504.4
18 Mills (Per-Pupil Basis)	\$3,715
State Aid (Per-Pupil Basis)	\$2,246
Hold-Harmless Millage Rev. If Nec.	\$0
	New Buffalo Schools
1994-95 Foundation	\$8,527
1994 Non-homestead T.V.	\$203,811,384
1994-95 Pupils	651.24
18 Mills (Per-Pupil Basis)	\$5,633
State Aid (Per-Pupil Basis)	\$867
Hold-Harmless Millage Rev. If Nec.	\$2,527
Hold-Harmless Mills Levied	12

1994-95 Foundation Allowances

Five Groupings of Districts' Per-Pupil Funding

Numbers of Districts by 1994-95 Foundation Allowance Grouping



Minimum	\$4,200	40
Min to Basic	\$4,200-\$5,000	267
Basic	\$5,000	1
Basic to H.H.	\$5,000-\$6,500	195
Above H.H. Cap	Above \$6,500	52

Dollar Increases in the Basic Foundation Grant

- The amount of available State funding determines the increase in the BASIC foundation allowance.
- Every district at or above the BASIC foundation gets the same dollar increase as is given to the Basic.
- Between '95 and '00, districts at the minimum foundation got TWICE the dollar increase of the Basic Foundation grant, in order to partially close the funding gap. Between '01 and '07, all districts received the same dollar increase per pupil. The "2x" formula was reinstated in FY 2007-08 and the basic was increased to the hold harmless/"State max" level of funding.
- **In FY 2009-10, districts' State aid payments were reduced \$154 per pupil, and in FY 2010-11, they were reduced \$170 per pupil (when compared to FY '09 funding levels). However, these reductions did NOT statutorily roll back foundation allowances, until FY 2011-12 with an additional \$300 cut on top of the previous \$170, for a total decline of \$470.

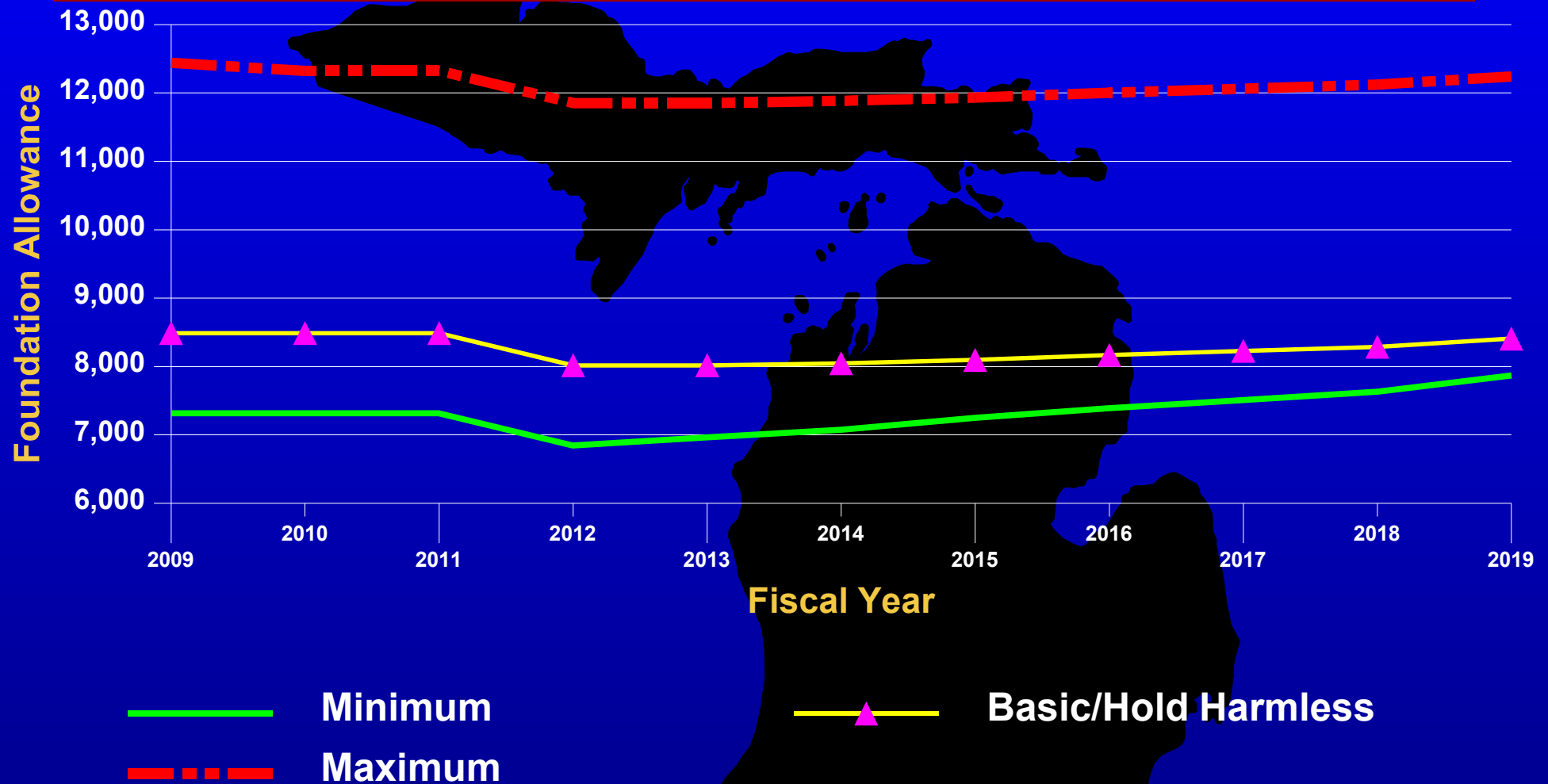
Basic Foundation Allowance

Fiscal Year	Dollar Increase
1994-1995	n/a
1995-1996	153
1996-1997	155
1997-1998	154
1998-1999	0
1999-2000	238
2000-2001	300
2001-2002	300
2002-2003*	200
2003-2004*	0
2004-2005	0
2005-2006	175
2006-2007	210
2007-2008	48
2008-2009	56
2009-2010**	0
2010-2011**	0
2011-2012	-470
2012-2013	0
2013-2014	30
2014-2015	50
2015-2016	70
2016-17	60
2017-18	60
2018-19	120

*Proration of approximately \$74 per pupil occurred in each of these years, which statutorily did not reduce the foundation allowance. Districts were allowed to choose how to absorb the cut. Funding was restored in 2004-2005.

Change in Foundation Allowance Over Time

FY 2008-09 through FY 2018-19

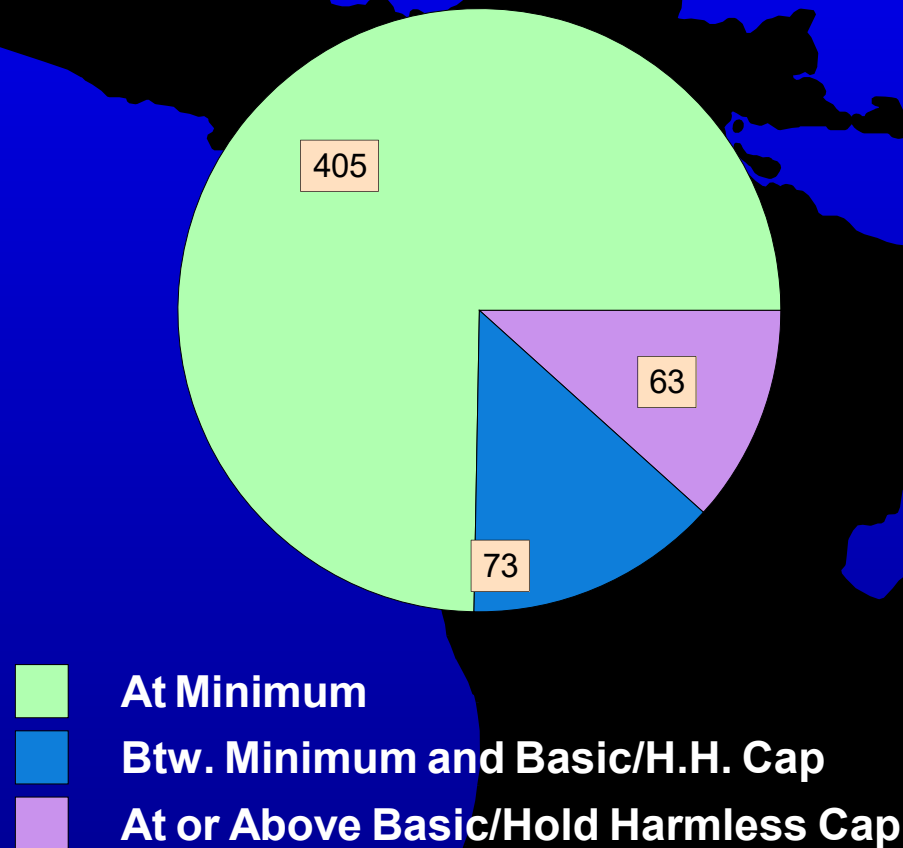


Minimum	7,316	7,316	7,316	6,846	6,966	7,076	7,251	7,391	7,511	7,631	7,871
Basic/Hold >	8,489	8,489	8,489	8,019	8,019	8,049	8,099	8,169	8,229	8,289	8,409
Maximum	12,443	12,324	12,324	11,854	11,854	11,884	11,934	12,004	12,064	12,124	12,244

2018-19 Foundation Allowances

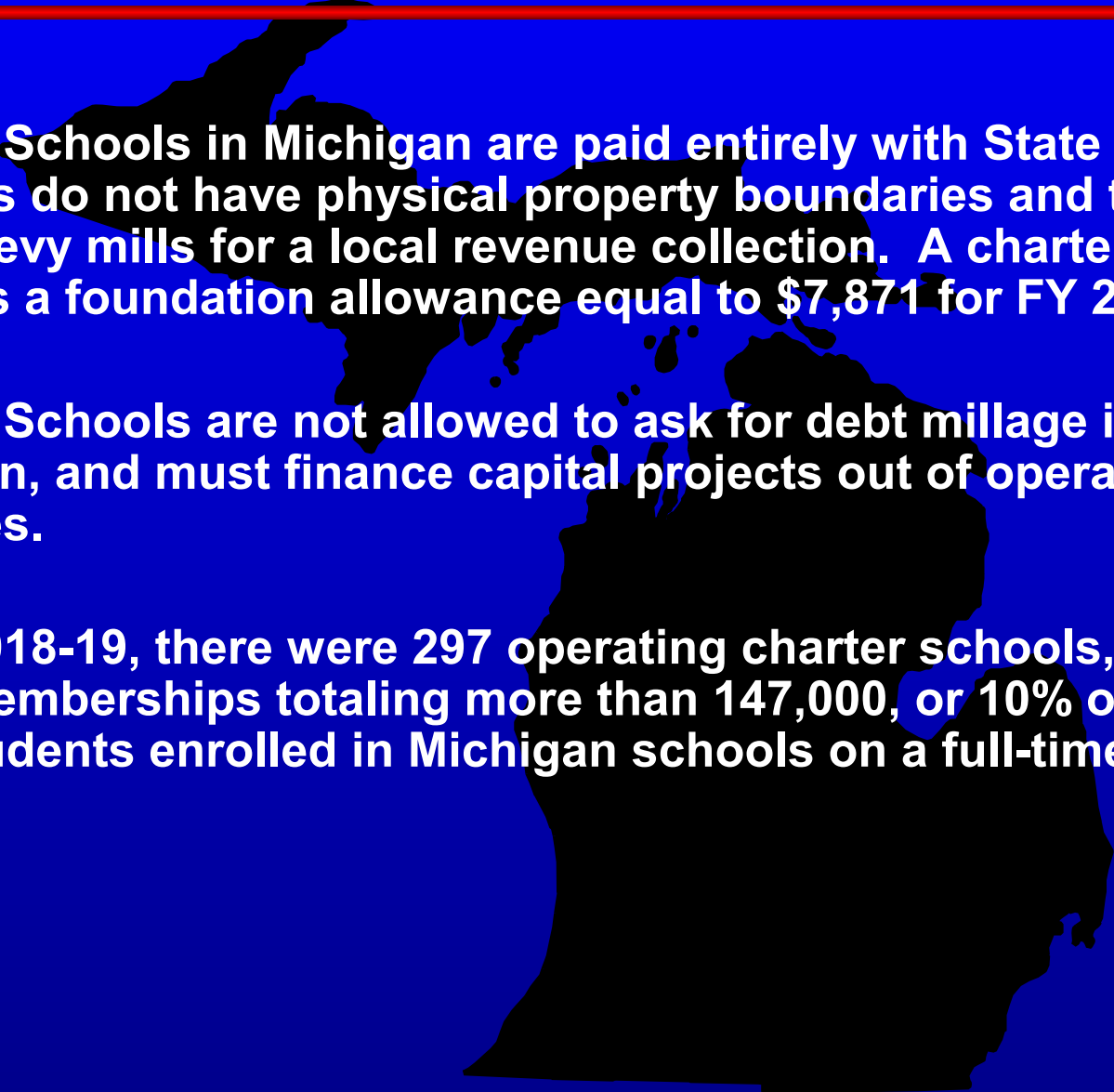
Three Groupings of Local Districts' Per-Pupil Funding (excludes Charter Schools)

Numbers of Local Districts by 2018-19 Foundation Allowance Groupings



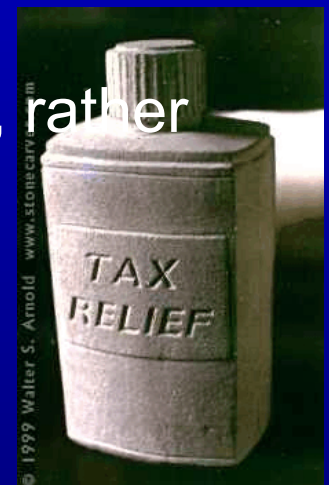
At Minimum	\$7,871	405
Btw. Minimum and Basic/H.H. Cap	\$7,872-\$8,408	73
At or Above Basic/Hold Harmless Cap	At or Above \$8,409	63

Charter Schools

- 
- **Charter Schools in Michigan are paid entirely with State funds. Charters do not have physical property boundaries and therefore do not levy mills for a local revenue collection. A charter school receives a foundation allowance equal to \$7,871 for FY 2018-19.**
 - **Charter Schools are not allowed to ask for debt millage in Michigan, and must finance capital projects out of operating revenues.**
 - **In FY 2018-19, there were 297 operating charter schools, with pupil memberships totaling more than 147,000, or 10% of the total students enrolled in Michigan schools on a full-time basis.**

Part III Summary: How has School Finance Changed with Proposal A?

- First and foremost, Proposal A was designed to lower Property Taxes - we now have higher sales, use, and cigarette taxes, and a new real estate transfer tax to offset lower property taxes.
- Annual growth in local taxable value is capped at the lower of the rate of inflation, or 5%.
- Second, Proposal A raised the lowest per-pupil districts to a “basic” level of funding.
- Third, Proposal A tied funding to a per-pupil concept, rather than the Property Tax basis.



Part IV

Now and the Future: Some Recurring Questions in School Finance

- Districts above the Hold Harmless cap generally have not received inflationary increases and, though “wealthier” on a per-pupil basis, typically have smaller fund balances. Section 20j operational funding was vetoed in FY 2009-10, further exacerbating the issue. ‘Out-of-formula’ districts (those whose local revenue exceeds their foundation allowance) receive no State increases.
- Declining Enrollment districts: since funding is tied to pupils, what happens to a district with a shrinking pupil base? There is a minimum level of funding necessary to operate district and pupil counts are not known until October.
- Fiscal year of State doesn’t align with districts’ fiscal years, leading to cash flow borrowing costs. State begins paying in October, but school year begins in July.
- Inequities in taxable values of similar homes, dependent on when last sold (i.e., longer in same house, lower taxes). This is the so-called “pop-up” issue. Empty nesters sometimes now stay in the home.
- Probable future discussions - consolidation, class sizes, busing, sales tax stability, sinking fund uses.
- Continued use of School Aid Fund Revenue to Partially support Postsecondary Budgets (higher education and community colleges)? More than \$908 million for FY 2018-19.
- MPSERS - Rate cap, assumed rates of return, new hybrid’s implementation.

Facts and Figures

- For enacted FY 2018-19, the total K-12 budget is \$14.8 billion of which \$1.7 billion is Federal aid, and the remaining \$13.0 billion is State funding. (Local revenues are not included here.)
- Foundation Allowance payments make up roughly 64% of the K-12 budget. Federal grants are 12%, State Special Education is 7%, State MPSERS costs are 9%, At-Risk funding makes up 4%, Early Childhood makes up 2%, and other items account for the remainder of the budget.
- In 2018-19, there will be an estimated 1,323,700 FTEs in 541 Local School Districts and 146,700 FTEs in just under 300 Charter Schools.

FY 2018-19 School Aid Budget

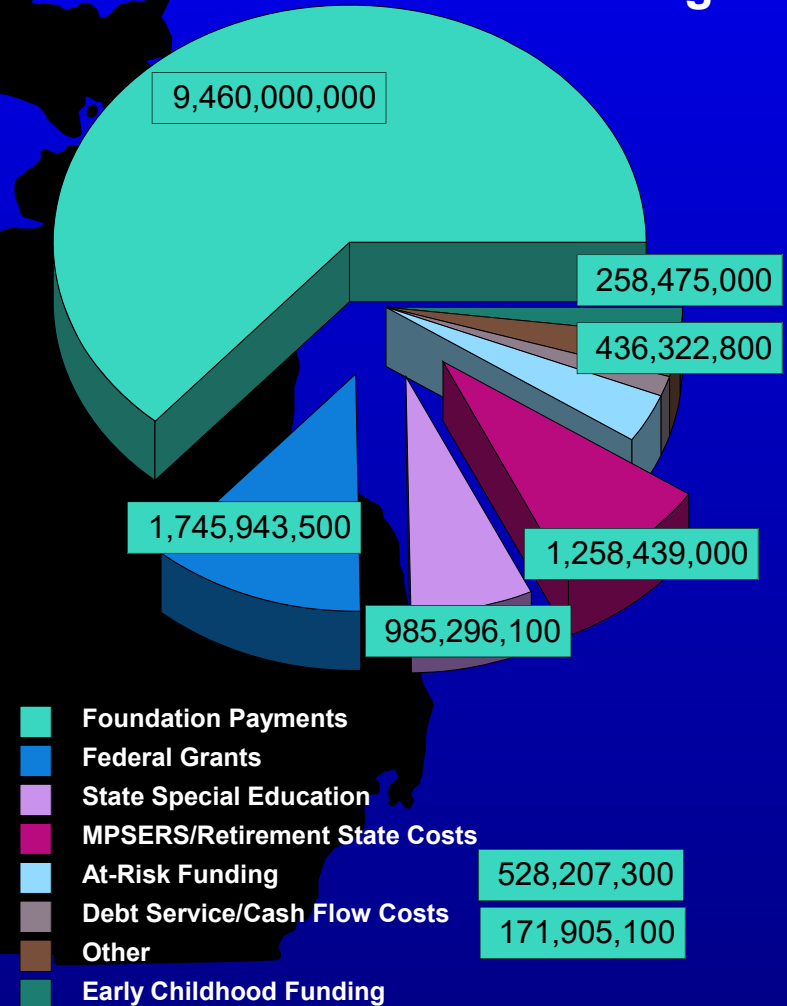


EXHIBIT 3

MICHIGAN SCHOOL FINANCE AT THE CROSSROADS:

A QUARTER CENTURY OF STATE CONTROL



**Michigan State University
Education Policy Report
January 2019**

**David Arsen,
Tanner Delpier,
and Jesse Nagel**



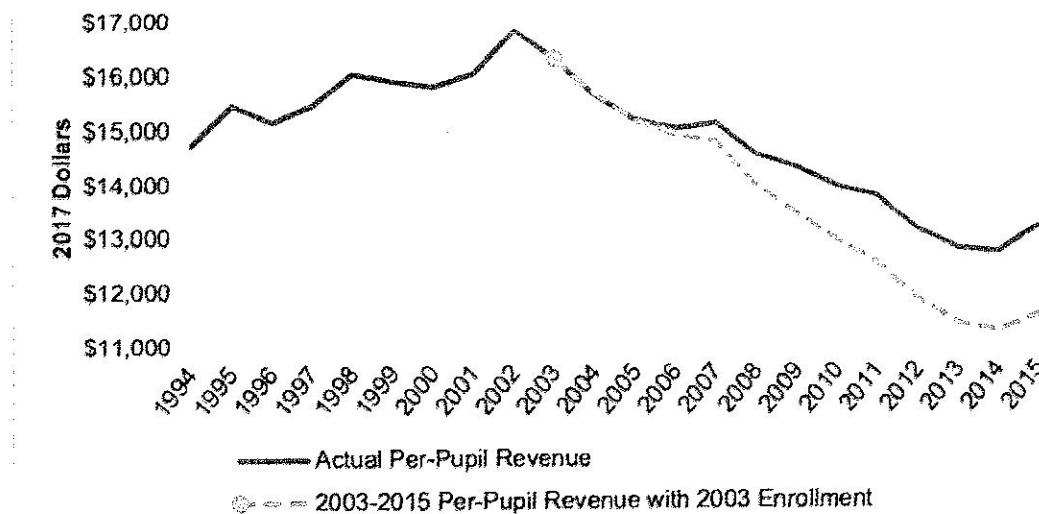
College of Education
MICHIGAN STATE UNIVERSITY

Figure 3 displays the trend in total *per-pupil* real revenue for Michigan's schools. The numerator in Figure 3 is the same aggregate funding measure as in Figure 2. The per-pupil revenue trend is very similar to the total revenue trend. Per-pupil revenues increased during the first eight years of Proposal A, peaking in 2002, and then declined substantially thereafter, before increasing modestly in 2015.

The 22 percent decline in real per-pupil revenue between 2002 and 2015 is less than the corresponding decline in total revenue (30 percent). This is because Michigan's statewide K-12 enrollment fell substantially during this period. While enrollment decline decreases funding for individual districts or charter schools, for the state as a whole, declining enrollment increases the per-pupil funding associated with any given level of total revenue.

During the time period represented in Figure 3, Michigan's K-12 enrollment peaked at 1.7 million students in 2003-04. The dotted line in Figure 3 shows the 2003 to 2015 trend in per-pupil revenue had enrollment remained constant at its 2003 level. Had enrollment not declined, per-pupil revenue would have fallen by roughly 32 percent between 2002 and 2015.¹⁰ Consequently, enrollment decline saved the state from an additional 10-percentage-point decline in per-pupil revenue.

Figure 3. Total Revenue per Pupil, 1994–2015



Source: National Center for Education Statistics, F-33 Common Core of Data; and Michigan Fall Head Count.

Trends in Foundation Allowance Revenue

Foundation allowance revenue has a special status among the total revenues depicted in Figures 2 and 3. Unlike state or federal categorical grants or facility-funding revenue generated at the local level, districts and charter schools are free to spend foundation revenue as they wish. They may decide to increase teacher salaries, purchase new

¹⁰ This estimate does not account for the fact that with higher enrollment Michigan's federal funding would have been somewhat higher.

textbooks, reduce class size, or improve counseling or custodial services. By contrast, most other revenues are restricted to particular uses such as special education or facility upgrades.

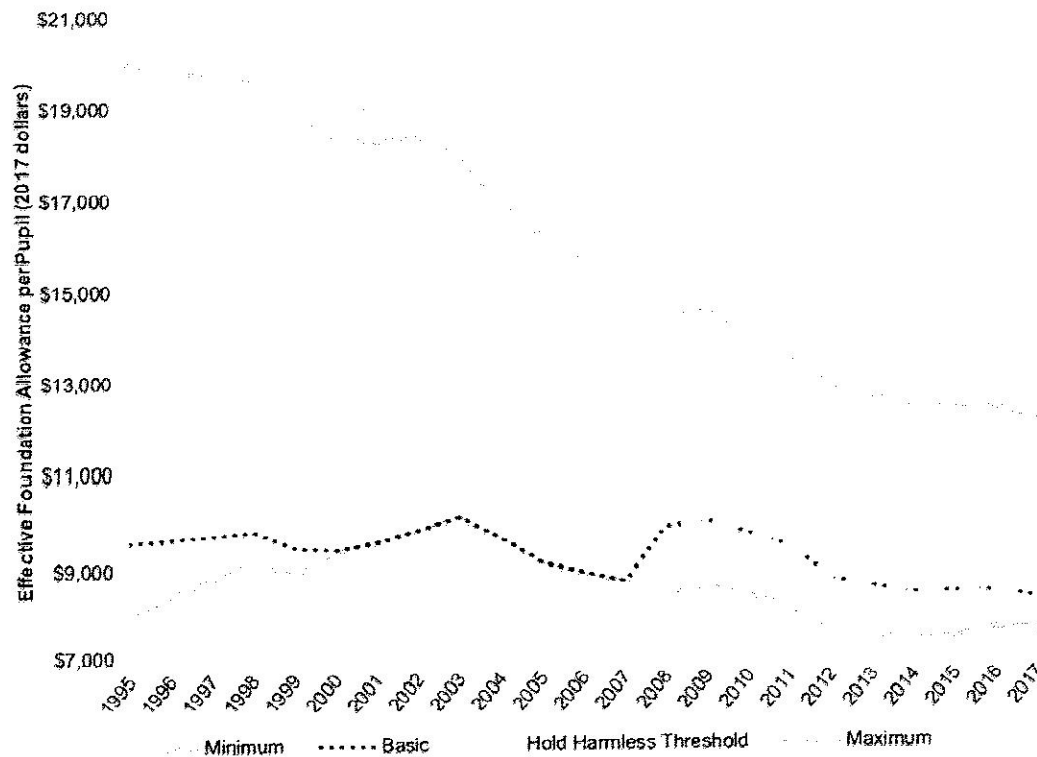
As noted in [section 3](#), Michigan has maintained multiple foundation categories in order to narrow funding gaps across districts over time. Most of this narrowing was accomplished in the first decade following Proposal A's passage.

The basic foundation is the state's target funding level, although some districts have had lower or higher foundation allowances. From 1995 to 2002, the basic foundation increased, in nominal terms, on average \$185 per year. Over the next 15 years, however, from 2003 to 2018, it increased on average only \$26 per year. This is substantially below the rate of inflation.

Figure 4 shows this decline in the real value of foundation grants over time. The decline is clearly greatest for the high-revenue, hold-harmless districts. The vertical distance between the trend lines for the "hold-harmless threshold" and the "maximum" foundation represents revenue from local hold-harmless millages. Michigan's highest-revenue districts have experienced a nearly uninterrupted drop in their foundation grants' value over the entire Proposal A period. The maximum foundation fell by 39.8 percent between 1994 and 2017.

Nevertheless, most districts' inflation-adjusted foundation allowances increased in the early years under Proposal A. Since 2003, however, the basic foundation allowance has fallen by 18.5 percent, while the minimum foundation declined by 25.6 percent.

Figure 4. Michigan Foundation Allowances, 1995–2017



Source: Michigan Department of Education, "State Aid Foundation Allowance Parameters."

Table 4. Change in Foundation Grants and Enrollment by School District Type, 2002–13

School district type	% change enrollment	% change nominal per-pupil foundation grant	% change real per-pupil foundation grant	% change nominal total foundation revenue	% change real total foundation revenue
Central city	-26.6	6.7	-27.2	-21.6	-46.5
Low-income suburb	-7.9	6.8	-27.1	-1.2	-32.6
Mid-income suburb	0.1	7.6	-26.6	7.7	-26.5
High-income suburb	5.8	4.8	-28.5	10.8	-24.4
Rural	-14.7	9.2	-25.5	-6.9	-36.5

Source: David Arsen, Thomas DeLuca, Yongmei Ni, and Michael Bates, "Which Districts Get into Financial Trouble and Why? Michigan's Story," *Journal of Education Finance* 42, no. 2 (2017): 100–126.

Differential patterns of district enrollment change, however, had a much greater impact on total foundation revenue available to local decision-makers. Over a span of 11 years, Michigan's central-city districts lost more than a quarter of their enrollment, producing an average decline of 21.6 percent in total foundation revenue, or a striking 46.5 percent revenue decline in real terms. Meanwhile, enrollment growth mitigated the funding squeeze in high-income suburbs. As indicated in the final column of Table 4, however, average total real foundation revenue declined substantially over the last decade in all types of communities.

As noted in [section 3](#), declining enrollment poses a serious financial challenge for local districts and charter schools, because their revenues decline more rapidly than their costs. Some costs are fixed in the short run. Consequently, districts with declining enrollment must reduce spending on services for students left behind, draw down their fund balances, or both.

In fact, districts have drawn down their fund balances significantly. The aggregate fund balances for all Michigan districts and charter schools, adjusted for inflation, declined by over half from \$2.7 billion in 2002 to \$1.0 billion in 2013. This corresponds with a fivefold increase in the average number of districts with end-of-year general fund deficits after 2000 compared to 1996–2000.¹²

Trends in At-Risk Funding

Michigan's school revenue downturn is also evident in a variety of categorical grants designed to support services for high-need students. Among the most important is funding for at-risk students, which the state supports through Section 31a earmarked funding. The state's at-risk definition includes students who are from low-income families or families with

¹² Arsen et al., "Which Districts Get into Trouble."

histories of incarceration or substance abuse, who are victims of child abuse, or who are teenage parents.

Despite Michigan's declining total statewide enrollment, the number of at-risk students has increased significantly, from 490,050 in 1995 to 676,483 in 2017. Nearly half of Michigan students are now classified as at-risk. The share is far higher in many districts and charter schools.

Yet despite the growth in student need, Section 31a funding has declined sharply in real terms. Figure 5 shows Michigan's at-risk funding per at-risk student from 1994 to 2017 in 2017 dollars.

Since 1995, total real at-risk funding has declined by 30 percent. Meanwhile, Section 31a funding per at-risk student has plunged by over 60 percent from its peak in 2001. This is not a record that reflects serious concern by state policymakers for the needs of Michigan's most vulnerable students.

Figure 5. At-Risk Funding per At-Risk Pupil, 1994–2017



Source: Michigan Department of Education.

Michigan's Revenue Trend in National Perspective

Michigan's real K-12 education funding is clearly much lower than in the past, but how does this compare to trends in other states? In the new knowledge economy, Michigan competes with other states in providing the skilled workforce that employers demand. Have other

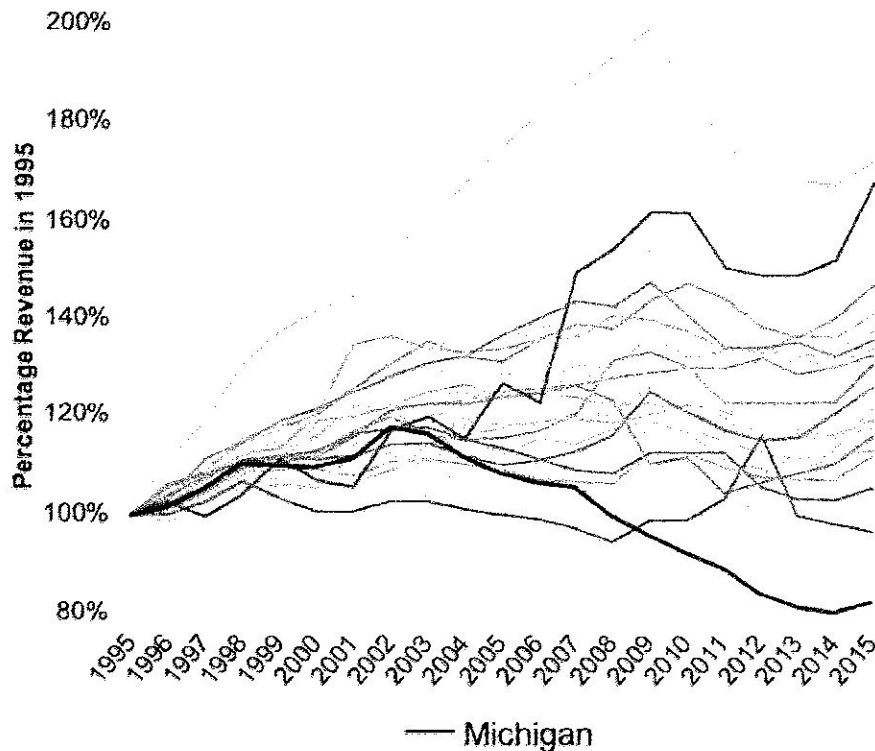
states similarly retrenched education funding just as employers' skill demands have increased?

Figure 6 shows total education revenue for each state, adjusted for inflation, as a percentage of that state's education revenue in 1995. As in Figures 2 and 3, Figure 6 includes all revenues from all sources. Between 1995 and 2015, Michigan was dead last in revenue growth—50th out of 50 states. Michigan's 2015 education revenue was only 82 percent of the state's 1995 revenue.

Between 1995 and 2015, Michigan was dead last in revenue growth—50th out of 50 states.

Equally striking is the gap between Michigan and the next lowest state, West Virginia, where 2015 revenue was 97 percent of the 1995 level. In every other state, inflation-adjusted revenue in 2015 was higher, often much higher, than in 1995. Few states ever dipped below 100 percent over the two decades.

Figure 6. Inflation Adjusted Total K-12 Education Revenue as Percentage of 1995 Revenue, 50 States



Source: National Center for Education Statistics, F-33 Common Core of Data.

Figure 6 tracks total revenues, but the trajectory of Michigan's per-pupil real revenue relative to other states fares little better. Although Michigan's post-2003 enrollment decline muted the decline of per-pupil revenue, the state nevertheless ranks in the very bottom tier of states in terms of per-pupil revenue growth. Between 1995 and 2015, Michigan's real per-pupil revenues declined by 13 percent, placing the state 48th among the 50 states.

Michigan's extraordinary slide in K-12 education funding is all the more striking because it occurred simultaneously with the state's establishment of ambitious curricular and achievement standards for children. The standards-based accountability movement has brought historic and fundamental changes to U.S. public schools. But while most other states have accompanied increased outcome expectations with increased resources to meet them, Michigan policymakers have reduced resources.

Although Michigan is the national leader in educational belt-tightening, it has only fallen to the middle of the pack in per-pupil funding *levels*, at 25th out of 50 states. Some have suggested that this middling status eliminates funding from the possible causes of Michigan's precipitous fall to the bottom rank of states in student achievement. This reasoning, however, is mistaken, because it neglects the harmful consequences of sustained reductions in resources on organizational performance. Moreover, as we have noted, because costs do not decline proportionately with spending cuts, resources needed for effective performance are further depleted.

Business scholars use resource dependence theory to analyze how access to external resources affect organizational behavior and how the loss of resources can imperil organizational performance.¹³ In business settings, the loss of external resources may trigger a host of strategic initiatives such as price adjustments, production relocation, or forming joint ventures, interlocking directorates, or mergers and acquisitions. Resource declines also have deleterious impacts on public school organizations, but by comparison to business firms the range of strategic responses available to them is much more limited.

For too long, Michigan's school leaders have been preoccupied with imperatives to reduce spending even if it diminishes the quality of services. Arresting the state's decline in real funding would permit more single-minded attention to improving student outcomes.

Why Has Real Revenue Declined?

We answer this question in two steps. The first is a partial explanation that focuses on shifts in revenues between the state's General Fund and School Aid Fund (SAF). These shifts are a consequence of the second and more fundamental cause—Michigan's declining tax effort.

Transfers between the SAF and the General Fund

At \$13.2 billion, Michigan's SAF budget is currently larger than the state's General Fund budget of about \$10 billion. The General Fund covers most of the state's discretionary spending other than K-12 education, including roads, universities, state police, and health care. Adjusted for inflation, the General Fund budget has declined by a third since 2000, a

¹³ Jeffrey Pfeffer, J. and Gerald R. Salancik, *The External Control of Organizations: A Resource Dependence Perspective*, (New York, NY, Harper and Row, 1978).

SECTION 6

School Facility Finance

The sweeping policy changes associated with Proposal A did not include any elements directed to financing school facilities. While facility finance was discussed during the negotiations leading up to Proposal A, a solution was never put into statute. Consequently, funding for school facilities and capital equipment is unfinished business of Proposal A. Michigan's financing system continues to pose major equity and adequacy problems, limiting educational opportunities for many children.

The way Michigan finances school infrastructure has remained largely unchanged since 1980, when a program that partially equalized revenue between districts was abandoned. To this day, school construction and infrastructure improvements remain a local responsibility, funded by local property taxes. While Proposal A created a centralized system of finance for school operations, facility finance is entirely decentralized. Inequalities in the property wealth of local districts are directly translated into inequalities in school facilities.

States have various policies to promote greater equity and adequacy in school facilities. Michigan is one of only 14 states that provide no state aid for capital infrastructure.²⁴ Duncombe and Wang ranked the equity of Michigan's capital funding in the bottom fifth of U.S. states.²⁵

If one set out to design a system of funding in which the vast differences across Michigan's local communities in the size and quality of students' homes were reproduced in the schools children attend, one could scarcely do better than our current system of school facility finance.

States have various policies to promote equity and adequacy in school facilities. Michigan is one of only 14 states that provide no state aid for capital infrastructure.

The Importance of School Infrastructure

The quality of schools' infrastructure influences many facets of schooling. Inadequate facilities prevent students from attaining their potential. School facilities are necessary to

- Support educational programming;
- Maintain the health and well-being of students and staff;
- Sustain community development and engagement.

²⁴ Jeffrey M. Vincent, "State Funding for K-12 School Facilities: A Survey of the States," Center for Cities and Schools, University of California, Berkeley, June 2014. Available at http://citiesandschools.berkeley.edu/reports/Vincent_2014_State_K12%20fac_funding_final.pdf.

²⁵ William D. Duncombe and Wen Wang, "School Facilities Funding and Capital-Outlay Distribution in the States," *Journal of Education Finance* 34, no. 3 (2009): 324-50.

Facilities affect the ability of teachers to teach and students to learn. Schools must have sufficient quantity and quality of physical space to accommodate students and staff. Parents expect specialized infrastructure such as science and computer labs, libraries and media centers, physical education equipment, and art studios. Capital funding also pays for a wide range of technology used to assist instruction as well as maintain security.

School capital facilities matter greatly for the type of learning experiences that students have access to. The opportunity to work with modern technologies in schools is becoming ever more important to prepare students for emerging high-skill employment opportunities. Today, students in relatively affluent Michigan school districts learn to use computer-controlled machine tools, computer-aided drafting and graphic art technology, state-of-the-art television studio equipment, and more. Learning opportunities such as these can stimulate students' interest, imagination, and career aspirations, but they are rarely available in less-affluent communities.

School buildings also affect the health and well-being of students and staff. Research has identified a range of effects of school buildings' ventilation, acoustics, lighting, and thermal controls on students and staff. Schools with poor ventilation can cause respiratory illness and declines in alertness and attendance.²⁶ Classroom acoustics affect students' attention and learning.²⁷ Poor lighting in schools affects how well students sleep at night and therefore how ready they are to learn during the day.²⁸ A recent study found that uncomfortably hot classrooms in schools without air conditioning had a strong negative effect on student learning.²⁹ The 21st Century School Fund found that poor conditions in facilities were related to truancy.³⁰

Teachers represent the most important resource for any school. Teacher turnover is a major problem for districts, especially in urban and rural schools serving low-income children. Several factors influence teachers' decision to leave their jobs, but studies have highlighted the role of facilities in these decisions.³¹ It is difficult to expect educators to spend their working lives using outdated equipment in dilapidated structures when far superior work environments are available in other jobs or more affluent school districts.

School buildings also matter for neighborhood and community development. High-quality facilities attract households to a community, increasing demand for the housing stock and raising home values.³² Well-designed and well-used schools also represent critical resources

²⁶ W. J. Fisk, "The Ventilation Problem in Schools: Literature Review," *Indoor Air* 27, no. 6 (2017): 1039–51.

²⁷ Maria Klatte, Thomas Lachmann, and Markus Meis, "Effects of Noise and Reverberation on Speech Perception and Listening Comprehension of Children and Adults in a Classroom-Like Setting," *Noise and Health* 12, no. 49 (2010): 270.

²⁸ Mariana G. Figueiro and Mark S. Rea, "Lack of Short-Wavelength Light during the School Day Delays Dim Light Melatonin Onset (DLMO) in Middle School Students," *Neuro Endocrinology Letters* 31, no. 1 (2010): 92.

²⁹ Joshua Goodman, Michael Hurwitz, Jisung Park, and Jonathan Smith, "Heat and Learning," National Bureau of Economic Research Working Paper No. 24639, May 2018.

³⁰ Mary Filardo, "State of Our Schools: America's K-12 Facilities 2016," 21st Century School Fund. Available at <https://files.eric.ed.gov/fulltext/ED581630.pdf>.

³¹ Jack Buckley, Mark Schneider, and Yi Shang, "The Effects of School Facility Quality on Teacher Retention in Urban School Districts," National Clearinghouse for Educational Facilities, February 2004. Available at <http://www.ncef.org/pubs/teacherretention.pdf>.

³² Stephanie Rigg Cellini, Fernando Ferreira, and Jesse Rothstein, "The Value of School Facility Investments: Evidence from a Dynamic Regression Discontinuity Design," *Quarterly Journal of Economics* 125, no. 1 (2010): 215–61.

for community activities: as sites for recreation, the arts, group meetings, provision of public health services, and voting. In many of Michigan's rural districts, school buildings are a hub for community activities where few alternatives exist. Unfortunately, these potential benefits of school facilities are presently realized to a greater extent in relatively affluent communities than in less affluent areas, where the need for such resources is greatest.

How Districts Finance School Infrastructure

Michigan school districts currently pay for capital projects in three ways: long-term bonds, sinking funds, and cash reserves. Each method is regulated by state guidelines.

Long-Term Bonds

Bonds are the most common way for school districts to generate funds for large-scale capital improvements. By selling bonds, districts can acquire resources up front to pay for infrastructure projects. The bonds are repaid with interest over a predetermined number of years with revenue from a dedicated millage levied on local property. Capital projects and millages must be approved by a district's voters.

The millage rate needed to finance a capital project depends on a district's taxable property value. Districts with lots of property wealth can generate revenue at a lower millage than property-poor districts.

As we noted in section 2, in Michigan, property taxes are levied on each parcel's taxable value, which is targeted to be half of the property's market value. A mill is equivalent to one dollar of tax per \$1,000 of a property's taxable value. For example, with a five-mill levy on a property with market value of \$200,000 and taxable value of \$100,000, a property owner would pay \$500 per year in taxes.³³

While the state does not pay for school facilities, it does help lower local districts' borrowing costs. The School Bond Qualification and Loan program (SBQL), established in 1955, allows districts to borrow against the state's credit rating to reduce interest payments on debt. About 80 percent (\$12.9 billion out of a total of \$16.2 billion) of long-term bonds issued by districts go through the SBQL program.

In order to use the state's credit rating, a district's capital project must receive approval from the SBQL program. This qualification process requires districts to raise between seven and 13 mills until their debt to the state is paid. Districts do not face these limits on bonds that do not go through the SBQL program.

The school bond loan fund (SBLF) once allowed districts to secure state loans to extend repayment of their bonds over a longer period, and thereby reduce the number of mills they had to levy. PA 437 of 2012 effectively ended the SBLF for the foreseeable future and set tighter restrictions on district capital bonds.

Whether or not a capital bond goes through the SBQL process, there are strict limits on the use of long-term bond revenue. Bonds can pay for capital improvements such as

³³ Tax payment = mills × (taxable value / 1,000). In this example, \$500 = 5 (\$100,000 / 1,000).

construction, remodeling, site acquisition, and durable goods such as buses, technology, furnishings, and equipment, but cannot fund maintenance or operation expenses.

In 2017, 415 of Michigan's 537 school districts (77 percent) had outstanding debt for capital projects, totaling over \$16.2 billion. The average rate of capital debt mills levied by districts was 4.59, the highest being 16.15.³⁴

Sinking Funds

Sinking funds allow districts to use revenue generated through local millages to pay for capital improvements on a pay-as-you-go basis. Instead of receiving a sum up front to be repaid over a period (as with long-term bonds), sinking fund millages provide revenue annually over a specified number of years that districts can use for capital improvements. Compared to long-term bonds, sinking funds are cheaper because they avoid interest payments. Because the funds are generated incrementally over time, however, this method of finance is typically not suitable for major capital projects, such as school construction. Like long-term bonds, sinking fund projects and millage rates must be approved by a district's voters.

The use of sinking funds is strictly regulated by state guidelines. Public Act 319 of 2016 expanded the possible uses of sinking funds, while simultaneously reducing the permissible number of sinking fund mills districts can propose to voters from five to three, and reducing the maximum number of years from 20 to 10. Sinking fund revenues can be used to purchase real estate, construct or repair school buildings, purchase technology and other durable equipment, or retire bonded debt. Sinking funds are frequently used for building renovations or technology upgrades.

Cash Reserves

Finally, districts can use up to 20 percent of their foundation allowance revenue to pay for infrastructure needs. While districts sometimes divert cash reserves from operational funds to capital improvements, few are in a position to do so. Because funding for school operations in Michigan has been so tight for over a decade, districts typically seek to pay for capital infrastructure through bonds or sinking funds to preserve revenue available for instruction.

Charter Schools

Unlike traditional public schools, charter schools do not have geographic boundaries or taxing authority, so they cannot levy millages for long-term bonds or sinking funds. Charter schools, therefore, typically rent their school buildings with foundation allowance revenue. Many Michigan charter schools lease their facilities from a private education management organization with sufficient resources or credit to purchase or build school buildings.

³⁴ Michigan Department of Treasury, Bureau of State and Authority Finance, School Bond Qualification and Loan Program, Annual Report, 2017. Available at https://www.michigan.gov/documents/treasury/2017_SBQLP_Annual_Report_Final_617595_7.pdf.

EXHIBIT 4



6/8/2019

Printable

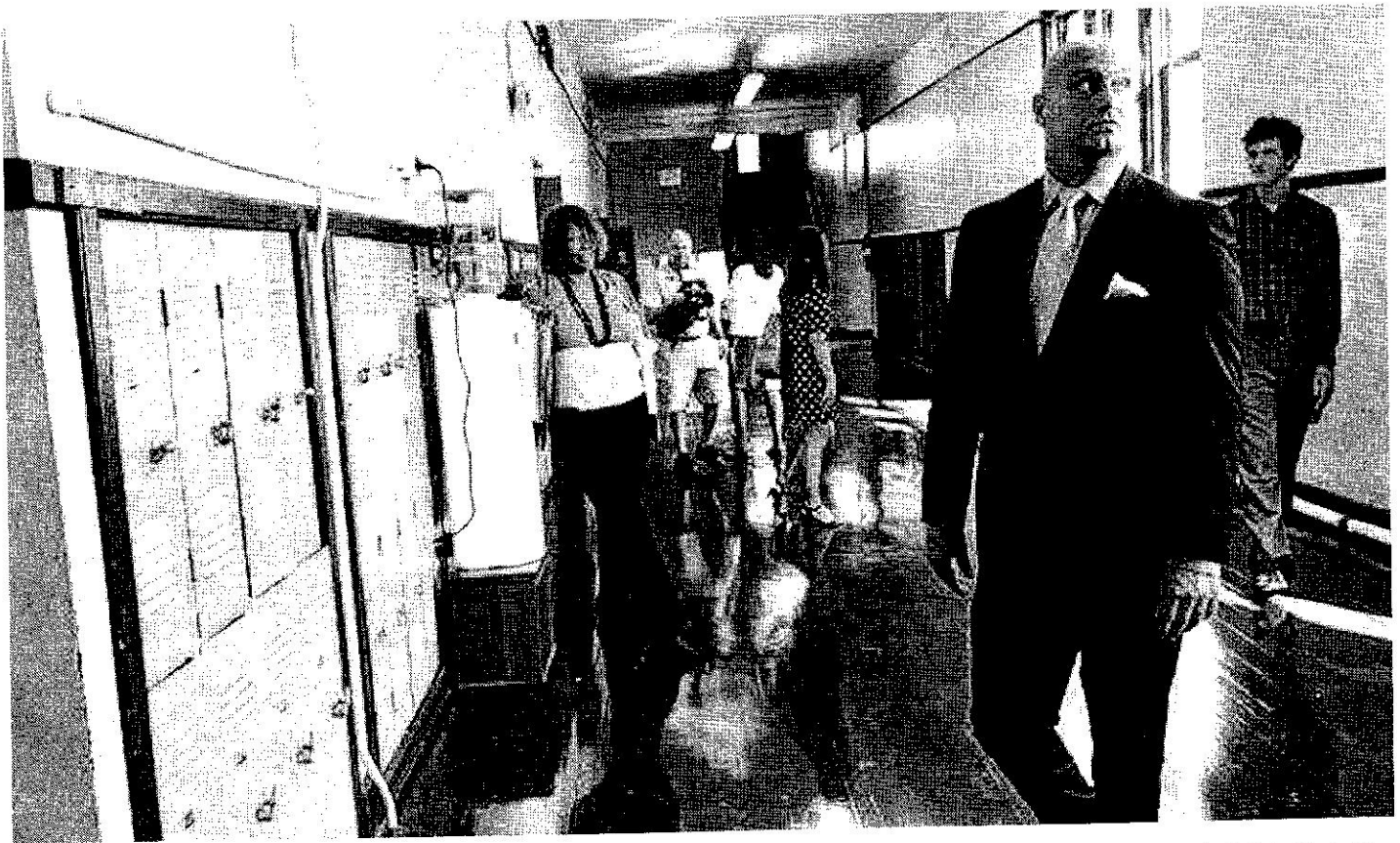
CRAIN'S DETROIT BUSINESS

May 26, 2019 12:05 AM

Detroit schools borrow more and more to pay back bonds

CHAD LIVENGOOD  

- Detroit schools millage not generating enough tax revenue to meet bond obligation
- School district borrowing tens of millions of dollars annually to service debt
- Turnaround superintendent faces "some pretty tall cliffs" with aging buildings



Annalise Frank/Crain's Detroit Business

Detroit Public Schools Community District Superintendent Nikolai Vitti: "The facilities are a nagging, reoccurring challenge."

Detroit's public school district is borrowing money to make payments on debt it borrowed years ago to fix up schools.

And earlier this month, for the first time in nine consecutive years of this practice, the district had to borrow more than half of the \$182.1 million total payment to bondholders for capital debt.

6/8/2019

Printable

Detroit Public Schools, the standalone entity left in place in 2016 to pay off legacy costs when a new debt-free school district was formed, borrowed \$91.5 million from the state's School Loan Revolving Fund because a greatly reduced property tax base in Detroit does not produce enough tax dollars for the school district to make good on its debt.

It's not unusual for districts to borrow some short-term money to make long-term debt payments, but the \$91.5 million DPS borrowed represents its largest loan ever from the fund and more than one-fifth of the \$412 million that 103 school districts in Michigan borrowed to bridge the gap between tax collections and debt obligations, according to the state Treasury Department.

The worsening debt picture comes as Superintendent Nikolai Vitti marks two years on the job and is starting to turn to the business community for help in drafting a plan to renovate or replace aging school buildings.

The Detroit school district already levies the maximum allowed, 13 mills, in taxes on commercial, industrial and residential property to service the \$1.4 billion in capital bonds.

For Michigan's largest school district, the new debt piling up three years after the Legislature rescued it from a financial freefall pushes out repayment of the bonds to between 2049 and 2052, depending on interest rates, officials said.

"It's unreal. The amount is so large," said Bob Moore, a retired deputy superintendent of Oakland Schools and school finance expert. "It's just extending (the debt repayment) out ridiculously."

The new public debt adds to a confounding new crisis emerging in Detroit Public Schools Community District as it lacks the ability to issue new bonds to confront \$500 million in capital construction needs for dozens of aging buildings.

The capital debt of those buildings falls to the old DPS under the financial workout plan former Gov. Rick Snyder's administration engineered in 2016 to keep the school district from following the city of Detroit to municipal bankruptcy court.

The 2016 legislation that separated the new school district — DPSCD — from the old DPS prohibited the successor organization from seeking voter approval for new capital bond debt.

"The larger challenge is we have \$500 million in capital needs, and we don't have an avenue to gain access to capital markets that's secured by the state," said Jeremy Vidito, CFO for the

6/8/2019

Printable

Detroit school district. "Then there's the question as to whether we *could* access the capital markets."

Moore said most school districts use the School Loan Revolving Fund to enhance their credit profile with investors because the loans are backed by the state's credit.

For Detroit, it has become a long-term lifeline to avoid a default. The city school system has borrowed nearly \$410 million from the loan fund since 2011, according to district records.

"They have to come up with a different capital program for Michigan schools," Moore said. "Just borrowing to make these debt payments is doing nothing but kicking the can down the road."

Detroit schools has an outstanding loan balance of \$152.6 million in the School Loan Revolving Fund, which has variable interest rates — currently 3.44 percent — and does not have a set repayment schedule.

"The schools repay when they have funds to do so," said Debbie Roberts, director of the bureau of state and authority finance for the Treasury Department. "This is not special for DPS or any particular school district."

The Detroit school district's emerging debt repayment troubles are a hangover from the Great Recession. The city's taxable property values plummeted then, and are a fraction of what they were before the housing crisis ravaged neighborhoods.

In 2010, the first year DPS borrowed from the loan fund, the city's property tax base totaled \$10 billion. By 2018, that had fallen to \$6 billion after a reassessment of all industrial, commercial and residential property lowered values, Vidito said.

For just the Detroit school district, Vidito said the taxable value of property was even lower — at \$5.6 billion — because of tax abatements of commercial and industrial property as well as the Downtown Development Authority's capture of downtown property tax revenue that's helping pay off the public financing on Little Caesars Arena.

'Slow financial death'

Vitti said the inability for district to issue state-secured debt to fix existing buildings creates a "ceiling" for turning around the 50,000-student school district after making strides to lower absenteeism, improve educational growth and produce a 10 percent budget reserve surplus for the first time in more than a decade.

6/8/2019

Printable

"The facilities are a nagging, reoccurring challenge," Vitti said in an interview with Crain's in early May, a week after students in some schools in Detroit had to be moved out of their classrooms during heavy rainstorms because of water seeping through leaky roofs.

After two years on the job, Vitti is starting to turn to Detroit's business community to help the district craft a plan for renovating, closing or building new schools — and winning buy-in for that plan from parents, taxpayers and the Legislature, which may be called upon to reconsider restrictions it put in place during the state's 2016 financial rescue of the district.

Under the Legislature's \$617 million financial rescue of Detroit's public school system, DPSCD has no capacity to issue bonds for capital construction until \$1.4 billion in outstanding bond debt from the old debt-ridden district is paid off in 30 or more years.

But based on one assessment of the school district's infrastructure, the buildings won't hold up for another 30 years without a significant investment.

A facility assessment by OHM Advisors and Alfa Facilities Solutions LLC last year concluded the price tag for replacing roofs, boilers, doors, windows and HVAC systems is currently about \$500 million and will rise to \$1.5 billion by 2023 if nothing is done to put a dent in years of deferred maintenance.

"I don't think we'll ever get to the point where we can dramatically increase enrollment, for example, if we don't modernize our facilities," Vitti told Crain's. "Because at the end of the day, parents will look at some of our facilities and say, 'OK, I think DPSCD has a better brand, they're doing better work, but I'm not going to send my child to that building.' And that's not something we can control."

In making the business case that the condition of Detroit's school buildings has to be competitive with charter schools and neighboring districts to attract families and students, Vitti has found an ally in Dave Meador, vice chairman and chief administrative officer of DTE Energy Co.

Meador sees the district's unfunded capital needs as a recipe for a "slow financial death" for Detroit's public school system.

"He's got to solve this building problem," Meador said of Vitti. "He's making progress, but boy, he's up against some pretty tall cliffs here."

6/8/2019

Printable



Larry Peplin for Crain's Detroit Business

Marquette Elementary on Detroit's far east side.

More seats than kids

To help Vitti get a long-term plan for addressing the facility needs, Meador is going to start assembling a "small cross-functional team" of public finance experts, construction project managers and attorneys from businesses in Detroit.

It's an extension of the type of corporate involvement Meador has led in the \$20 million in renovations the city and business community invested over the past two years in the Randolph and Breithaupt career and technical education high schools on the city's west side.

In both of those projects, DTE, Bedrock LLC and construction companies such as Barton Malow Co. loaned employees to a city-coordinated task force that organized renovations of

6/8/2019

Printable

the two high schools that DPSCD could not afford to pay for from its operating budget.

The two schools have both seen increases in enrollment in CTE programs — and are used at night for training adults in skilled-trades professions.

Meador said the team of outside experts will analyze the district's finances to "come up with an approach to finance (Vitti's) capital — and also helping him prioritize."

With half of Detroit's schoolchildren attending charter schools, private schools and neighboring districts through Schools of Choice, DPSCD is still operating numerous schools that are under capacity. The district has 80,000 seats and roughly 50,000 students.

Meador said consolidation of schools will help the district make its case to the Legislature for help in securing financing for capital improvements.

"You don't want to fix a school that might not survive over time," Meador said.

Starting this fall, Vitti said the district will begin a "methodical" process to get public input on which schools should be saved and which schools should be closed without replicating "the horrors of emergency management."

"We have more seats than we have kids," Vitti acknowledged. "I don't think we can move forward with any kind of ask concretely around facilities if we don't right-size the district at a sharper, more precise level."

Closures made under emergency managers left the district with a disjointed system of 33 elementaries and 42 middle schools that feed students into the district's 25 high schools.

Vitti's goal is to have a school investment and closure plan in place by January to implement in the 2020-2021 school year.

"On paper, I can look at a school and say it's under-enrolled, it's low-performing, we should close it," Vitti said. "That's what an emergency manager would do. I'm not an emergency manager. And we actually have an elected and empowered board now. They have to be responsible to constituents."

"But at the same time," Vitti added, "it would be irresponsible for us not to make these hard decisions."

6/8/2019

Printable

Source URL: <https://www.crainsdetroit.com/education/detroit-schools-borrow-more-and-more-pay-back-bonds>

EXHIBIT 5

FISCAL FOCUS

Brownfield Redevelopment Financing: Tax Increment Legislation and Use

**Prepared by
Patrick Morris, Legislative Analyst**

March 2018



Mary Ann Cleary, Director

**HOUSE FISCAL AGENCY
GOVERNING COMMITTEE**

**Laura Cox
Tom Leonard
Dan Lauwers**

**Fred Durhal III
Sam Singh
Christine Greig**

**MICHIGAN HOUSE OF REPRESENTATIVES
APPROPRIATIONS COMMITTEE**

**Laura Cox, Chair
Rob VerHeulen, Vice-Chair
Chris Afendoulis
Sue Allor
John Bizon
Tommy Brann
Edward Canfield, D.O.
Shane Hernandez
Larry Inman
Tim Kelly
Kimberly LaSata
Steve Marino
Aaron Miller
Dave Pagel
Scott VanSingel**

**Roger Victory
Mary Whiteford
Jeff Yaroch
Fred Durhal III, Minority Vice-Chair
Tom Cochran
Pam Faris
Jon Hoadley
Robert Kosowski
David LaGrand
Kristy Pagan
Ronnie Peterson
Yousef Rabhi
Sylvia Santana
Henry Yanez**

STATE OF MICHIGAN
HOUSE OF REPRESENTATIVES



HOUSE FISCAL AGENCY

MARY ANN CLEARY, DIRECTOR

P.O. Box 30014 ■ LANSING, MICHIGAN 48909-7514
PHONE: (517) 373-8080 ■ FAX: (517) 373-5874
www.house.mi.gov/hfa

GOVERNING COMMITTEE

LAURA COX, CHAIR
TOM LEONARD, VC
DAN LAUWERS

FRED DURHAL III, MVC
SAM SINGH
CHRISTINE GREIG

March 2018

TO: Members of the House of Representatives

Economic development programs, those broadly aimed at increasing jobs, incomes, property values, and population in Michigan, have been of legislative interest for a number of years. One category of economic development program utilizes tax increment financing. In such an arrangement, an authority is created to promote redevelopment in an area and is able to capture the increase in property tax revenue resulting from the redevelopment. The captured revenue is then used to finance a project or further promote redevelopment in the area.

This publication summarizes the statute authorizing one of Michigan's main tax increment financing programs, the Brownfield Redevelopment Financing Act. The report provides a background on tax increment financing and environmental remediation policy, identifies and discusses important statutory changes to the act, describes the brownfield program's use in Michigan, and highlights the legislative debate surrounding the most recent revision to the act, the Transformational Brownfield Plan amendments.

Patrick Morris, Legislative Analyst, is the author of this report. Samuel Christensen, Fiscal Analyst, produced the maps that appear in the State Use Statistics section. Kathryn Bateson, Administrative Assistant, prepared the material for publication.

Please do not hesitate to call if you have questions about the information in this report.

A handwritten signature in black ink that reads "Mary Ann Cleary". The signature is written in a cursive, flowing style.

Mary Ann Cleary, Director

Agriculture and Rural Development	William E. Hamilton
Capital Outlay	Benjamin Gielczyk
Community Colleges	Perry Zielak
Corrections	Robin R. Risko
Education (Department)	Samuel Christensen
Environmental Quality	Austin Scott
General Government:	
Attorney General/Civil Rights/State (Department)/	
Technology, Management, and Budget	Michael Crossen
Executive Office/Legislature/Legislative Auditor General/Lottery/	
Michigan Strategic Fund/Talent and Economic Development/Treasury	Benjamin Gielczyk
Health and Human Services	
Human Services	Viola Bay Wild
Medicaid, Physical and Behavioral Health	Kevin Koorstra
Public Health, Aging, Departmentwide Administration	Susan Frey
Higher Education	Perry Zielak
Insurance and Financial Services	Marcus Coffin
Judiciary	Robin R. Risko
Licensing and Regulatory Affairs	Marcus Coffin
Military and Veterans Affairs	Kent Dell
Natural Resources	Austin Scott
Natural Resources Trust Fund	Benjamin Gielczyk; Austin Scott
School Aid	Bethany Wicksall; Samuel Christensen
State Police	Kent Dell
Transportation	William E. Hamilton
Economic/Revenue Forecast	Jim Stansell
Local Finance/Revenue Sharing/Tax Analysis	Jim Stansell; Ben Gielczyk
Legislative Analysis	Rick Yuille
	Edith Best; Jennifer McNerney; Patrick Morris; Emily Smith; Sue Stutzky
Fiscal Oversight, Audit, and Litigation	Mary Ann Cleary
Retirement	Bethany Wicksall
Supplemental Coordinator	Robin R. Risko
Transfer Coordinator	Viola Bay Wild
Administrative Assistant/Publications	Kathryn Bateson
Budget Assistant /HFA Internet	Tumai Burris
Front Office Budget Assistant	Dana Adams

March 2018

TABLE OF CONTENTS

Introduction	1
Background: Tax Increment Financing	3
Background: Brownfield Redevelopment in Federal and State	
Environmental Policy	7
Legislative History	9
State Use Statistics	15

FIGURES

1 Tax Increment Financing.....	3
2 PA 381 of 1996 – As Originally Enacted	12
3 Timeline for Legislative Changes.....	14
4 Number of Brownfield Redevelopment Authorities.....	15
5 Number of Active Authorities	16
6 Number of Active Projects	17
7 Brownfield TIF Project Approvals, by Year	18
8 PA 381 of 1996 – As Amended – As of December 1, 2017	22

APPENDICES

I Act Amendments.....	27
II Section Guide to PA 381 – As Amended – As of December 1, 2017	31

INTRODUCTION

With the recent enactment of Senate Bills 111 through 115 (the "Transformational Brownfield" program, 2017 Public Acts 46 through 50), attention focused on the program's enabling legislation: the Brownfield Redevelopment Financing Act (the "act"), PA 381 of 1996.

The act allowed for the creation of a new type of municipal authority—a Brownfield Redevelopment Authority (BRA)—that could capture tax increment revenues and use the funds to support planned environmental cleanup and remediation efforts. By collecting property tax revenues attributable to increases in a property's value, the authority could finance environmental cleanup. Passed in a time of increased attention on environmental policy, its goal was to support the revitalization of environmentally distressed areas.

During the recent legislative process to amend the law, there were numerous discussions about redevelopment across Michigan and the reuse of environmentally contaminated property, as well as debate about the fairness, use, and effectiveness of the tax increment finance (TIF) program.

Building on this foundation, this publication serves to present an overview of some of the key components of Michigan's brownfield tax increment finance program by providing the following:

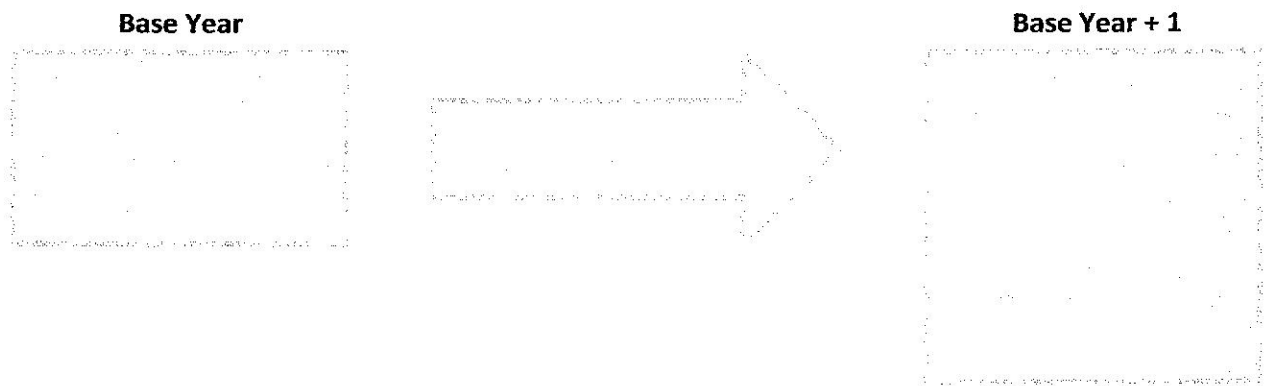
- (1) A primer on the brownfield TIF enabling legislation and subsequent legislative amendments;
and
- (2) A descriptive set of statistics about brownfield TIF use in Michigan.

This publication aims to summarize changes to Michigan's brownfield TIF statute and describe where and how the program is used across the state. This report does not address or audit the effectiveness of the brownfield TIF program (or TIF programs in general) nor assess the costs and benefits of TIF programs.

BACKGROUND: TAX INCREMENT FINANCING

Generally speaking, tax increment finance programs, authorized by state statute, allow a municipality to establish an authority to capture the growth in property tax revenues attributable to an increase in taxable value for an eligible property parcel or area. The tax increment revenues are then used by the authority to pay for certain eligible activities on the eligible property. See [Figure 1](#) below.¹

FIGURE 1
Tax Increment Financing



Tax increment finance authorities capture the tax increment revenues (TIR) attributable to the \$200,000 in captured taxable value (\$300,000 - \$100,000), and use the revenue for certain specific activities (e.g., constructing a parking deck on the designated property). In this example, if the property taxes available for capture total 40 mills, the authority captures \$8,000 in tax increment revenues. All other taxing jurisdictions (e.g., library, community college, municipality) are "locked" into receiving revenue from the Base Year, measured from when capture begins until the plan expires.

TIF is a commonly used tool to incentivize redevelopment within a municipality. Essentially, a taxing jurisdiction (a city, for instance) decides to forgo short-term property tax revenue growth to redevelop a particular area, with the goal of recouping that forgone revenue growth through long-term benefits. The expectation is that redevelopment of a particular area leads to additional

¹ For another example of tax increment financing, see "Survey of Economic Development Programs in Michigan, Third Edition." Citizens Research Council. February 2016. Pp 66-67.

investment, increased economic activity, and the general reputation of a location as a desirable place to live and work.

In the *National Tax Journal*, Robert T. Greenbaum and Jim Landers write about TIF programs in general:

At its core, TIF assists development activities and subsidizes businesses in a TIF area using property or sales tax revenue generated in the TIF area to finance land acquisition, site preparation and cleanup, and infrastructure improvements that benefit private businesses that locate their operations on sites within the TIF area. Often, the financing arrangement involves a bond issue that provides upfront money to pay for the TIF programs. The debt service on the bonds is then paid from the tax revenue generated in the TIF.²

Greenbaum and Landers note that, according to national survey data, TIF is a particularly popular economic development incentive, and is used by about 55 percent of local governments responding to the survey, compared to tax abatements (47 percent) and grants (36 percent). Tax credits, low-cost loans, enterprise zones, and training support are used by half as many or fewer local governments.³

Tax increment financing may be desirable for many reasons. For local governments, it offers a way to incentivize redevelopment without a direct expenditure (as in an appropriation) or a loss of current tax revenue (as in a tax abatement). The tax revenue collected and used to improve an area is recouped through the future increases in property tax values and additional redevelopment that would not have happened without the TIF program. Greenbaum and Landers write of its popularity:

Because TIF only diverts the tax increment to TIF programs and leaves in place the base revenue financing existing local government and school district programs, **TIF has historically been advocated as a self-financing economic development program that does not reduce a local government's base revenues...** The programs that are alternatives to TIF either forego tax revenue (base revenue as well as revenue growth) or make expenditures from current tax revenue to subsidize and encourage development projects. In the case of TIF, the business continues to pay property taxes on its assessed value, part of which continue to flow to local government units. The same argument cannot be made for these other economic development programs.⁴ (emphasis added)

Finally, all TIF projects are time-limited; when capture expires, all ongoing property tax revenues flow to the respective taxing jurisdictions. This can be a significant gain for all taxing jurisdictions, for instance, if property tax values for the area have increased substantially during the window of capture.

PA 381 of 1996 was the fourth TIF authorizing legislation in Michigan, following the Downtown Development Authority Act (1975), the Tax Increment Finance Authority Act (1980), and the Local

² Greenbaum, Robert T. and Jim Landers. "The Tiff over TIF: A Review of the Literature Examining the Effectiveness of the Tax Increment Financing." *National Tax Journal*, September 2014, 67 (3). p 655.

³ Ibid. p 657.

⁴ Ibid. p 656.

Development Financing Act (1986). These acts were broadly aimed at correcting and preventing deterioration in business districts, preventing conditions of unemployment, encouraging neighborhood revitalization, and promoting economic growth.⁵

PA 381 was more narrowly tailored to promote the revitalization of environmentally distressed areas, referred to at the time as "brownfields," most affected by the state's history of manufacturing and industry. The act authorized the creation of a specific type of tax increment finance authority—a Brownfield Redevelopment Authority—to select applicable brownfield sites, develop plans, identify actions, and capture tax increment revenues to pay for environmental activities.

Under Michigan's various TIF programs, certain taxing jurisdictions have the ability to "opt out" of capture, and in other programs taxes levied under specific state laws or for specific purposes are fully exempt from capture. These provisions as related to the brownfield act will be discussed on the following pages.

⁵ Effective January 1, 2019, these acts will be repealed and recodified into a single act under Public Act 57 of 2018 (originally Senate Bill 393). PA 57 does not change the Brownfield Redevelopment Financing Act. For more information, see Legislative Analysis

BACKGROUND: BROWNFIELD REDEVELOPMENT IN FEDERAL AND STATE ENVIRONMENTAL POLICY

The Brownfield Redevelopment Financing Act was passed in a package of legislation related to environmental cleanup and redevelopment. The mid-1990s was a time of environmental focus in Michigan, as the state continued to experience two trends: the deindustrialization of urban centers and the rapid development of suburban fringes. The brownfield program focused on redeveloping the urban sites with the goal of preserving portions of the undeveloped land. Uniquely, the statute joined environmental policy with an identified funding source: tax increment financing. Previously, many contaminated sites remained undeveloped because of the prohibitive costs of environmental cleanup.

A report from Eastern Michigan University provides the following timeline of brownfield policy and environmental remediation efforts in general.⁶

- **1980:** Federal government enacts the Comprehensive Environmental Response, Compensation and Liability Act (commonly known as "superfund") to clean up uncontrolled or abandoned hazardous waste sites.
- **1988:** Michigan voters approve a brownfield redevelopment and remediation bond measure, the Environmental Protection Bond, including \$45 million for site redevelopment purposes.
- **1995:** Michigan enacts PA 71, amending the Natural Resources and Environmental Protection Act (NREPA), to limit liability of those who purchase contaminated property, allow flexibility in cleanup standards based on intended land use, and create baseline environmental standards.⁷
- **1996:** Michigan enacts PA 381, allowing municipalities to create BRAs to issue bonds and collect tax increment revenues to pay for certain environmental activities.

Importantly, regarding the mid-1990s legislation and associated policies, the report notes: "Through both administrative and legislative action, Michigan **cast aside the singular federal focus on cleanup of toxic sites** and the imposition of strict liabilities placed on property owners. The new Michigan approach was **specifically targeted to encourage redevelopment**, relying on a combination of private initiative and public support..." (emphasis added)

⁶ Jones, Robert A. and William F. Welsh. "Michigan Brownfield Redevelopment Innovation: Two Decades of Success." Department of Geography and Geology, Eastern Michigan University. September 2010.

⁷ "Restructure 'Polluter Pay.'" House Fiscal Agency, 3-30-95.

It is important to note that at this time, Michigan unlinked the definition and mission of its brownfield programs from related federal programming. This is still true today, as different states use differing standards for the term "brownfield" and its associated programming. The United States Environmental Protection Agency currently defines "brownfield," found in Public Law 107-118 of 2002, as: "a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."⁸ By contrast, Act 381 has no statutory definition of "brownfield."

⁸ "Overview of the Brownfields Program." United States Environmental Protection Agency, updated 7-17-17.

LEGISLATIVE HISTORY

PA 381 of 1996: Legislative History

The changes enacted by 1995 PA 71 removed many barriers to redevelopment of brownfield sites. The act, however, created a pool of "orphan sites" or "orphan shares" of sites for which no party could be found responsible for the contamination (or the responsible party no longer existed).⁹ Thus, PA 381 served to treat these remaining brownfield sites as similar to other economic development districts and provided the tax increment financing mechanism for environmental activities at these sites. Its goal, as identified in the bill's introduction, was "to promote the revitalization of environmentally distressed areas."

Generally speaking, PA 381 provided that a municipality could create a BRA that would implement a brownfield plan in accordance with statutory requirements. The act's provisions, related to eligible property and eligible activity, were focused on environmental remediation and cleanup. The act also included a sunset on the ability of a plan to capture taxes levied for school operating purposes (defined as both the taxes levied by a local school district for operating purposes and the taxes levied under the State Education Tax Act).

PA 381 was passed in a package of legislation that also did the following:

- Created various state funds, grants, and loan programs to support brownfield redevelopment activities (PAs 380 and 383)
- Amended the Single Business Tax Act to provide for brownfield redevelopment tax credits (PA 382)
- Created a cleanup redevelopment fund with revenue from unclaimed bottle deposits (PA 384)

A generalized overview of the originally enacted act follows.

Authority

The act allowed a municipality (city, village, township, or county) to create a Brownfield Redevelopment Authority. The municipality was required to do so through a resolution, subject to statutory requirements for notifications and public hearings. The municipality was also required to designate the boundaries of the zone in which the BRA would operate and establish a BRA board. The BRA board was subject to both the Open Meetings Act and Freedom of Information Act.

BRA Responsibilities

The BRA was responsible for creating bylaws and could expend funds, enter into contracts, own or lease property and any devices necessary for purposes of the act, accept grants and donations,

⁹ "Brownfield Redevelopment." Senate Fiscal Agency, 7-10-96.

incur general administrative and operating costs, study and make plans for redevelopment, invest money, make loans, and borrow money and issue notes under the Municipal Finance Act.

Financing Sources

A BRA could establish a "local site remediation revolving fund" to pay for the costs of eligible activities related to redevelopment. A BRA had the option of seeding the fund with specific amounts of tax capture. In addition to the local fund, a BRA could be financed by any contributions, revenue from properties, tax increment revenues, proceeds of tax increment bonds and notes, proceeds of revenue bonds and notes, and any other money allowed.

Plan Location and Scope of Activities

A brownfield plan was required to be on an "eligible property" in the designated zone of the BRA. An eligible property was defined as a "facility," which, generally speaking, meant a place with some level of hazardous substance in excess of allowable amounts. Adjacent and contiguous parcels were also eligible. The eligible activities were defined as baseline environmental assessments, due care activities, and additional response activities. Generally speaking, these were environmental studies and assessments of current contamination levels and actions that allowed the land to be in compliance with the environmental standards for its intended use.

The act did allow for an expanded set of activities, but only when using a specific funding source. Section 12 of the act allowed an authority to issue negotiable revenue bonds or notes. Proceeds from the issuance of these bonds or notes could be used to finance "the costs of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with an authorized activity under this act."

Brownfield Plan Requirements

A BRA could implement a brownfield plan to apply to parcels within the designated zone. The plan had to include:

- A description of the costs of the plan to be paid for with tax increment revenues, and a summary of the eligible activities.
- An estimate of the captured taxable value and tax increment revenues for each year of the plan.
- Payment method for costs of the plan, including any advances.
- The maximum amount of note or bonded indebtedness, if applicable.
- The duration of the brownfield plan: the lesser of 30 years or when the total amount of tax increment revenues is equal to all costs of the plan.
- An estimate of the plan's impact on the revenues of all taxing jurisdictions in which the property is located.
- Estimates of the number of persons residing on the property who will be displaced, and a general plan for these persons.
- A description of the use of the local site remediation revolving fund.
- Any other relevant material.

Tax increment revenues associated with a plan could be used only for the associated eligible property.

Local Governing Body Approval

The brownfield plan required approval from the local governing body. That body was required to hold hearings and notify other taxing jurisdictions according to statute. The body would first have to find public purpose in the plan, and then assess whether the financing, costs, and amount of captured taxable value were reasonable.

Limitations on Captured Taxes

A BRA could not capture taxes levied for the repayment of debt and those already being captured by a TIF authority. A BRA could only capture school operating taxes if the plan was approved by the Department of Environmental Quality (DEQ) by January 1, 2001. Essentially, the act provided a five-year window to approve plans to capture school operating taxes. A BRA also had to account for school taxes separately from local taxes.

DEQ Approval

Before beginning the plan, the BRA had to seek approval from the DEQ. The BRA had to submit the brownfield plan and additional information about the specific site and the actions to be conducted. DEQ reviewed the brownfield plan package and issued an unconditional approval, conditional approval, or request for more information. DEQ decisions were final, and DEQ was required to submit a report to the Legislature of all plans it approved.

Transfer of Funds and Reporting

Municipal and county treasurers were required to transmit tax increment revenues to the BRA within 30 days of collection. The BRA spent according to the brownfield plan. BRAs were required to submit a report to the State Tax Commission and the governing body containing financial information; the Tax Commission was required to compile the information and prepare a report for the Legislature.

FIGURE 2
PA 381 of 1996 – As Originally Enacted

"An act... to promote the revitalization of environmentally distressed areas..."

Who

- (1) Municipality establishes a brownfield redevelopment authority (BRA), its board and its zones, and hears input, per statute.
- (2) Authority implements a brownfield plan, per requirements.
- (3) Plan must be approved by BRA and local governing body.
- (4) Authority submits work plan or remedial action plan to DEQ for review purposes.
- (5) If approved, treasurers submit revenue to authority within 30 days of collection; authority spends per brownfield plan.

Eligible Property

"Facility" – any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements [for residential clean up criteria] has been released, deposited, disposed of, or otherwise comes to be located; and adjacent or contiguous parcels if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of the facility in a brownfield plan.

Tax Increment Revenue Sources

- Ad valorem and specific property tax increment revenues, except those levied for debt and those already captured by TIF.
- Property taxes levied for school operating purposes only if consistent with a plan approved by DEQ by January 1, 2001.

Eligible Activities

- Baseline environmental assessment activities
- Due care activities
- Additional response activities

Generally speaking, all the above activities are environmentally related and include evaluations that assess existing conditions and establish a means to distinguish existing contamination from a new release, actions that are necessary to meet compliance with requirements under NREPA, and activities that allow for the intended use of the facility and protect public health and safety.

Legislative Action Since 1996

PA 381 has been amended by 23 separate acts over its 21-year existence. Major updates to the act occurred in 2000, 2007, and 2012. The sunset on plan approval to capture taxes levied for school operating purposes was extended three times (in 2000, 2002, and 2007), then eliminated in 2012. However, Michigan Strategic Fund (MSF) and/or DEQ approval is generally still required in order to capture taxes levied for school operating purposes. Of all amendments to the act, the sections of the act that were most commonly amended pertain to definitions, brownfield plans and plan provisions, and the work plan approval process.

In addition to extending and removing the deadline to capture school taxes, the major updates to the act generally had the same impact: they broadened the properties to which a brownfield plan could apply, broadened the scope of eligible activities that a BRA could pay for with tax increment revenues, and, most recently, broadened the sources of tax increment revenue available for capture. This can be illustrated with a few examples.

Public Act 145 of 2000 authorized a BRA established in a "qualified local governmental unit" (QLGU; defined in companion legislation and also known as a "Core Community") to use "blighted" and "functionally obsolete" property as eligible property. That is, there was no longer a requirement that a brownfield plan apply to contaminated property; the program could be used on property that met the statutory definition of "blighted" or "functionally obsolete." It also gave those BRAs the ability to use tax increment revenues to pay for additional eligible activities including "infrastructure improvements," "demolition of structures," "lead or asbestos abatement," and "site preparation." That is, there was no longer the limitation that tax increment revenue be used only for direct environmental remediation; revenue could be used for other activities (the definition of "infrastructure improvements" included over 15 potential improvements). In conjunction, the act required approval from the Michigan Economic Growth Authority (MEGA) and a written agreement with the developer in order to capture and use school taxes for these activities.¹⁰

Public Act 204 of 2007 authorized all BRAs—not just those in qualified local governmental units—to use "blighted" and "functionally obsolete" property as eligible property and to use tax increment revenues to pay for "demolition of structures" and "lead or asbestos abatement," and required the same agreement and approval.

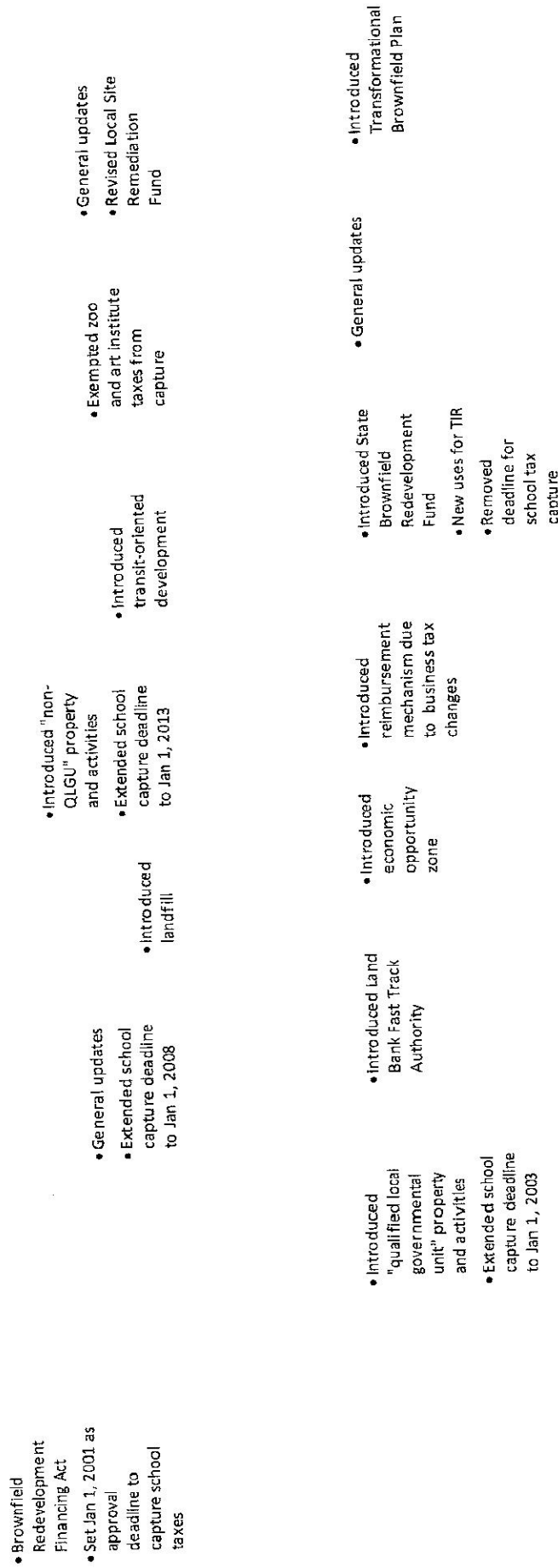
Public Act 502 of 2012 removed the approval deadline to capture school taxes and required that all statewide brownfield plans remit a specific amount of captured tax increment revenue to the state for deposit in the State Brownfield Redevelopment Fund, to be used as a statewide financing source. PA 502 also replaced the role of MEGA in the brownfield process with the Michigan Strategic Fund (MSF).

Other public acts have added additional, smaller allowable eligible properties, and additional, allowable activities. Eligible activities are generally now classified as either "department specific activities" (Department of Environmental Quality; meaning environmental activities) or "non-environmental activities" (meaning those activities requiring MSF approval, if using school taxes).

¹⁰ For a flow chart that details the plan approval process, see Michigan Office of the Auditor General, "Performance Audit of the Brownfield Redevelopment Financing Program," June 2011. Pp 20-21. Available online at:

See the timeline below for a brief overview of the legislative changes. For a more detailed summary of the act's amendments, please see the Appendices.

FIGURE 3

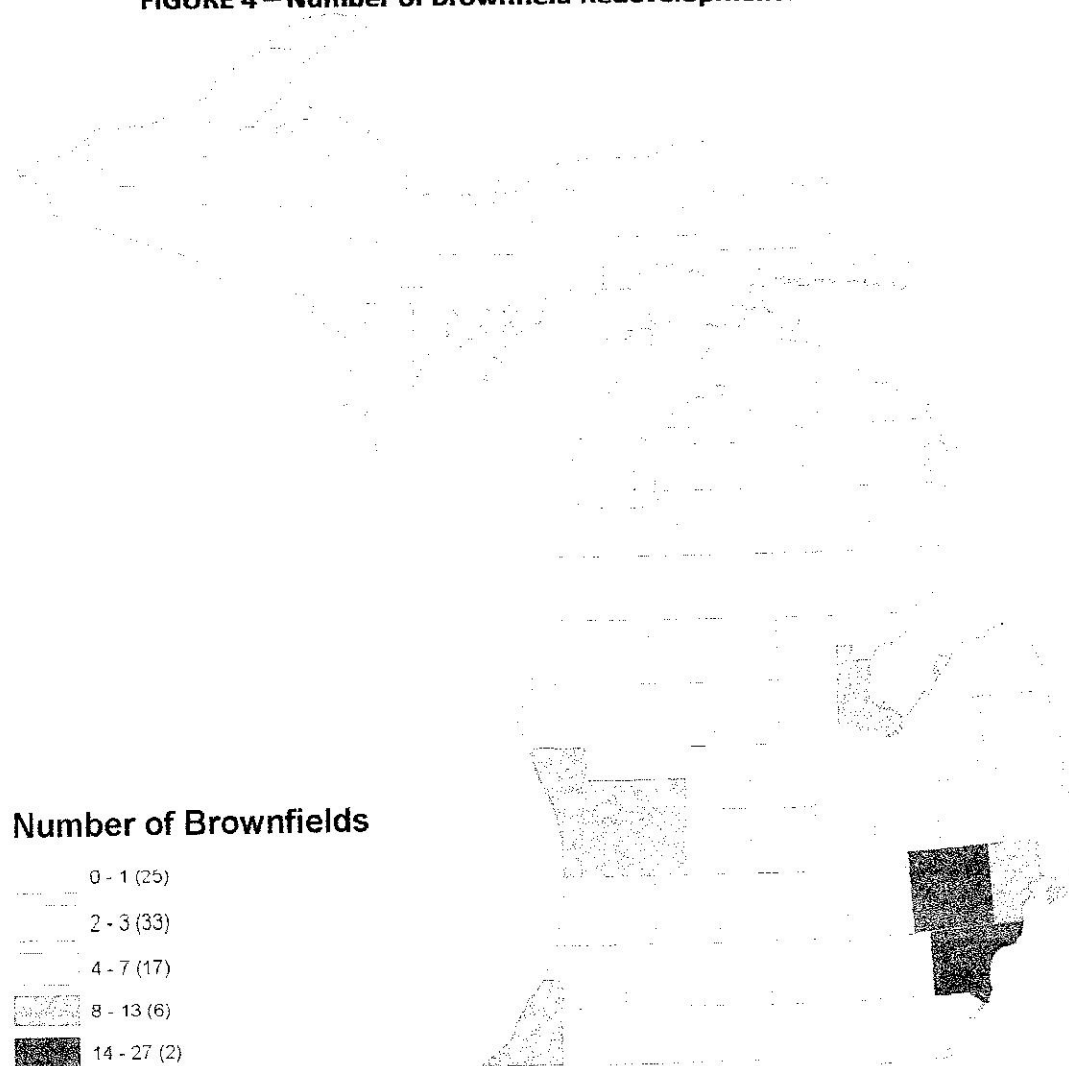


STATE USE STATISTICS

Use and Activities of Brownfield Redevelopment Authorities

According to the most recent legislative report compiled by the Michigan Strategic Fund, there are 295 total brownfield authorities in Michigan.¹¹ Figure 4 shows the location of these authorities in Michigan.

FIGURE 4 – Number of Brownfield Redevelopment Authorities



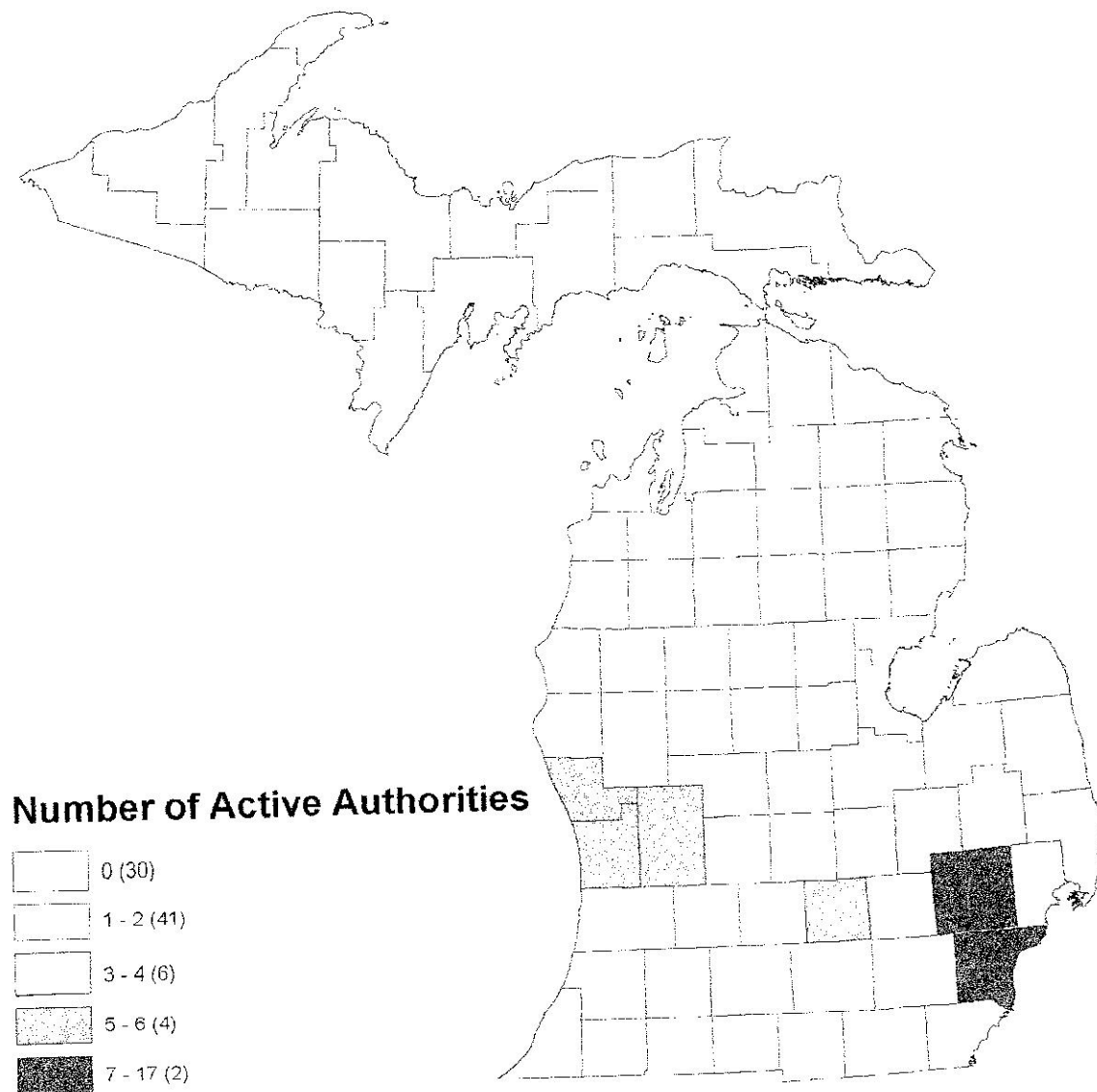
Note: The range represents the number of brownfield authorities.
The value in parentheses represents the number of counties in that range.

¹¹ "Brownfield Redevelopment Financing Act – CY 2015 Legislative Report." Michigan Strategic Fund. 12-16-16.

. All data presented in this section
are from this report.

Of these 295 total BRAs in Michigan, 125 collected or reimbursed tax increment revenue for the 2015 tax year. Put another way, the majority of the existing BRAs in Michigan did not collect or reimburse revenue in 2015. It is uncertain whether these authorities have never collected or reimbursed tax increment revenue, or whether they simply did not do so in 2015. Figure 5 shows the location of these 125 "active" BRAs—that is, those that collected or reimbursed tax increment revenue in 2015.

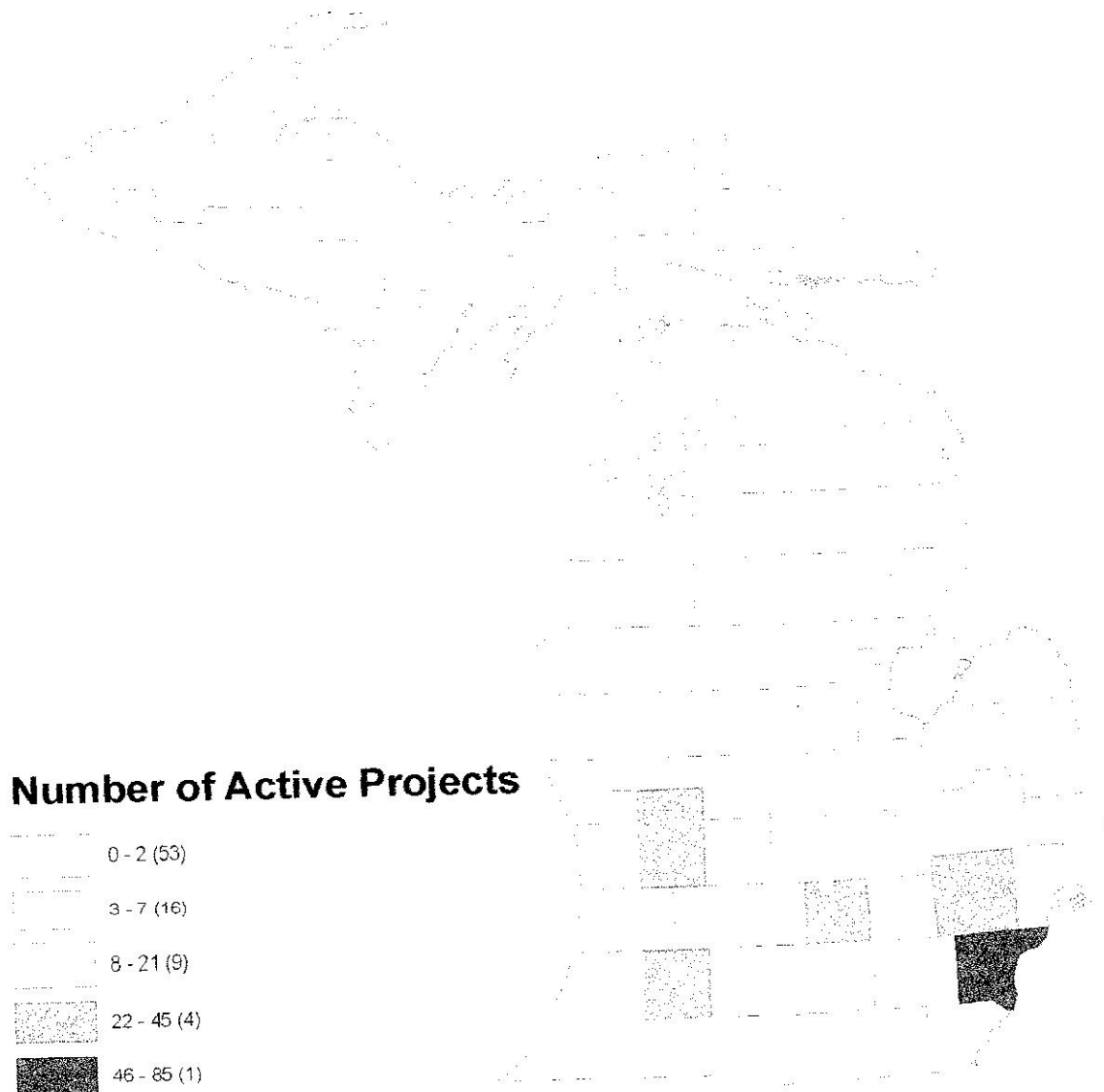
FIGURE 5 – Number of Active Authorities



Note: The range represents the number of active brownfield authorities.
The value in parentheses represents the number of counties in that range.

The 125 active BRAs administer 467 local-only plans and Act 381 work plans that actively collected and/or reimbursed tax increment revenue in 2015 (so-called "active projects"). A "local-only" plan does not capture state taxes, while an "Act 381" work plan requires DEQ and/or MSF approval to capture taxes levied for school operating purposes. Figure 6 shows the location of these active projects.

FIGURE 6 – Number of Active Projects

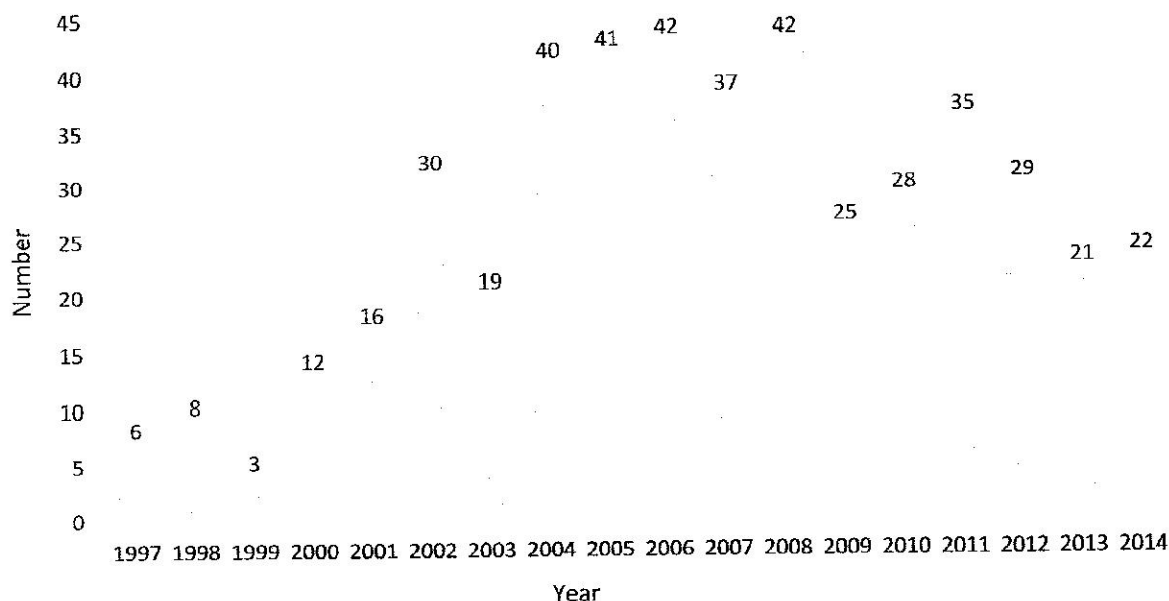


Note: The range represents the total number of active projects.
The value in parentheses represents the number of counties in that range.

Five BRAs—City of Detroit, City of Grand Rapids, City of Kalamazoo, City of Lansing, and City of Benton Harbor—account for approximately 28% of all active projects in the state.

The use of brownfield TIF has changed over time. [Figure 7](#) shows the number of brownfield plan approvals, by year, through calendar year 2014, as reported to MEDC. Currently, annual new approvals are about half of their peak in 2006 and 2008.

FIGURE 7
Brownfield TIF Project Approvals, by Year



TIF legislation is built on the assumption that a redevelopment will generate an increase in taxable value and that the incremental property tax revenue will be captured by the authority and used according to the specific plan for each project. In 2015, the active authorities captured approximately \$48.9 million in tax increment revenue resulting from a \$2.0 billion cumulative increase in taxable value. Local taxes were the largest source of tax increment revenues, followed by school operating taxes, county taxes, and local intermediate school district taxes.

After collecting tax increment revenues, BRAs spend the money according to the brownfield plan. Of the state-approved plans, 37 report only environmental expenditures, 84 report only non-environmental expenditures, and 46 report both environmental and non-environmental expenditures.

Finally, BRAs are required to submit an annual financial report to the governing body of the municipality, DEQ, and MSF. BRAs may require the owner or developer of an active project to submit to the authority much of this information. In turn, DEQ and MSF are required to compile and submit a report based on this information to each member of the legislature. Additionally, DEQ and MSF are required to quarterly post online the name, location, and amount of tax increment revenues for each project approved. Finally, the act requires the auditor general to conduct a performance postaudit of the brownfield TIF program at least once every 3 years.

included elected officials, economic developers, cities, and chambers of commerce. They posited that the bill, with increased amounts and sources of tax increment revenues, would unlock development of up to \$5.0 billion on those troubled sites.¹⁴ Without the legislation, these sites would continue to be impediments for growth, require taxpayer dollars for police and fire protection, and offer no community benefit. Moreover, the program would add to Michigan's efforts to attract investment and talent, keys to the state's continued economic recovery.

This affirmed the basic premise of tax increment programs: that in order to "prime" an area for growth and development, a municipality (or state, in the case of state income tax) gives up short-term revenue growth in order to generate long-term growth for the area. Supporters claimed that, since the income tax capture in the bill is limited to 50% of the income tax increment capture, and absent the legislation the project and the associated jobs *would not otherwise occur*, the state would immediately receive income tax revenue that *would not otherwise exist*. In addition to this limit on income tax capture, the legislation included numerous safeguards to ensure accountability and execution, including third-party analyses, certification of capital investment amounts, and monetary caps on annual capture payments. Additionally, the largest projects required approval from the state treasurer to ensure that the project would result in an overall positive fiscal impact to the state.

Opponents came to the legislation with multiple perspectives. Community activists viewed the program as nothing more than another tax "giveaway" to the rich. They wondered whether real estate developers (the bill specifically requires "mixed-use" development)—whose balance sheets appeared to be doing well—truly needed the added incentives, or whether the development would occur anyway. Regardless of motive, they felt the legislation was simply selling out cities, whose residents often face difficult living conditions, to wealthy developers with political connections. It would do nothing for residents living in the affected communities and areas. Worse, others posited, the sales and use tax exemptions could reduce revenues that support vital government functions, like education and public safety.

Representatives from free-market groups were opposed to the government interference in private redevelopment activity. If a given redevelopment project does not have the financing to be profitable, the market is saying it is not a viable project; the taxpayers should not act as the lender of last resort. They objected to the limited nature of the program, which would inherently involve government officials at the MSF "picking" winning projects in the program. This amounted, in their eyes, to another form of "crony capitalism" that obfuscated hundreds of millions of dollars in tax expenditures spent by unelected government bureaucrats.¹⁵ Moreover, if the transformational program promised growth, jobs, and redevelopment, why place limits on it at all? A better approach to economic development, they argued, is to create a broad, fair, and accommodating tax system, not special subsidies.

Concerns were also raised that the legislation would primarily benefit specific locations in the state and that it would create unexpected and potentially negative budget impacts like previous tax credit programs. The bill was amended to include a suggestion to encourage MSF to account for

¹⁴ The Michigan Thrive Initiative.

Accessed 9-19-17.

¹⁵ See, for example: Shikha Dalmia, "The Dark Side of Detroit's Renaissance." The Week. April 27, 2017. Accessed 9-19-17.

geographic diversity in awarding projects, waive a cap on the number of projects that could be approved in the smallest population tier, limit the amount of approved projects in any given municipality, and include a sunset that would end program approvals for transformational plans on December 31, 2022, with the intent that the program would be reevaluated at that time.

The bill was signed with immediate effect on June 8, 2017.

FIGURE 8
PA 381 of 1996 – As Amended – As of December 1, 2017

"An act... to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, tax reverted, blighted, or functionally obsolete property..."

<u>Who</u>	<u>Eligible Property</u>
<ol style="list-style-type: none"> 1. Municipality establishes a brownfield redevelopment authority (BRA) and its board and hears input, per statute. 2. Authority implements a brownfield plan, per requirements. 3. Plan must be approved by BRA and local governing body. 4. Authority submits work plan or combined brownfield plan to MSF if it proposes to capture school operating taxes and use for eligible non-environmental activities or if it proposes to use TBP-only tax increment revenue. 5. Authority submits work plan or combined brownfield plan to DEQ if it proposes to capture school operating taxes and use for department specific activities. 6. DEQ and/or MSF review per statute; TBPs require additional MSF review, including, in certain instances, third-party reviews and analyses. 7. If approved, treasurers transmit revenues within 30 days of collection; authority spends per brownfield plan. 	<p>Identified in a brownfield plan, and was/is used for commercial, industrial, public, or residential purposes, and is any of the following:</p> <ol style="list-style-type: none"> 1. Is in a QLGU and is a facility, site, or property (as defined in NREPA), historic resource, functionally obsolete, or blighted (and adjacent and contiguous). 2. Is not in a QLGU and is a facility, site, or property (as defined in NREPA), historic resource, functionally obsolete, or blighted (and adjacent and contiguous). 3. Is tax reverted property owned or under control of a land bank fast track authority. 4. Is a transit-oriented development or property. 5. Is in a QLGU and contains a targeted redevelopment area. 6. Is undeveloped property that was eligible in a previously approved brownfield plan that was subsequently abolished.
<u>Tax Increment Revenue Sources</u>	<u>Eligible Activities</u>
<ol style="list-style-type: none"> 1. Ad valorem and specific property tax increment revenues, except those levied for debt, those already captured by TIF, and those levied under Art Institute Authorities Act and Zoo Authorities Act. 2. MSF and/or DEQ approval required to capture taxes levied for school operating purposes. 3. For TBP only, can capture 100% of income tax generated by site construction workers and 50% of income tax generated by workers and dwellers in the finished site (total \$200.0 million cap on construction capture [less any sales/use tax exemptions] and \$800.0 million on income tax capture). 	<p><u>For all eligible properties:</u></p> <ol style="list-style-type: none"> 1. Department specific activities: generally speaking, these are DEQ activities that largely mimic the three original "eligible activities," and include 8 additional environmentally related activities. 2. Relocation of public buildings or operations for economic development purposes. 3. Costs of environmental insurance. 4. Costs to develop and prepare brownfield and/or work plans. 5. Costs of brownfield and/or work plan implementation. 6. Demolition of structures. 7. Lead, asbestos, or mold abatement. 8. Repayment of principal and interest on any obligation issued by authority. <p><u>For eligible property that is in a QLGU or economic opportunity zone or that is a former mill:</u></p> <ol style="list-style-type: none"> 1. All of the above, PLUS 2. Infrastructure improvements that benefit eligible property. 3. Site preparation. <p><u>For eligible property that is owned or under control of a land bank, or QLGU or authority:</u></p> <ol style="list-style-type: none"> 1. All of the above, PLUS 2. Assistance to a land bank in title work, or selling or conveying or acquiring property if for economic development purposes. 3. Assistance to a QLGU in title work, or selling or conveying or acquiring property if for economic development purposes. <p><u>For eligible property included in a TBP:</u></p> <ol style="list-style-type: none"> 1. Any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements, including infrastructure improvements.

PA 381: Future Considerations

2017 PA 46 is the latest amendment to Michigan's Brownfield Redevelopment Financing Act. From its inception in 1996, with a focus on environmental remediation, the law has been adapted to become one of the primary tools to promote economic development across the state. But this evolution has not come without concern for the program's fundamental privilege: that it allows an authority to capture property tax revenue, which would otherwise accrue to taxing jurisdictions like libraries, community colleges, and intermediate school districts, to use on specific redevelopment projects that are approved by one municipality's governing body.

In fact, a series of public acts enacted into law in late 2016 (PAs 505-510) opened up just this issue: it allowed libraries to exempt their mills from capture in certain tax increment finance programs. The package, however, did not amend PA 381.¹⁶ And this was not the first public act that sought to limit tax increment finance capture. In 2013, after public debate, a law was passed to specifically exempt taxes levied under the Zoological Authorities Act (currently, a tri-county millage supporting the Detroit Zoo) and the Art Institute Authorities Act (a tri-county millage supporting the Detroit Institute of Arts) from capture. These recent public acts hint at the tension inherent in tax increment finance programs: the competition for tax dollars among the providers of public goods and services.

The Michigan Economic Development Corporation expects transformational brownfield plans to arrive in early 2018, as economic development professionals, municipal leaders, and Michigan citizens begin the application and approval process.¹⁷ It remains to be seen whether the recently enacted transformational program will close to new applications in 2022, or whether legislators and the public may be crafting the next iteration of brownfield redevelopment in the coming years.

¹⁶ The public acts amended, respectively, the Tax Increment Finance Authority Act, the Downtown Development Authority Act, the Corridor Improvement Authority Act, the Water Resources Improvement Tax Increment Finance Authority Act, the Local Development Financing Act, and the Historical Neighborhood Tax Increment Finance Authority Act.

¹⁷ VanHulle, Lindsay. "Developers, including Gilbert, start inquiring about new brownfield incentive." Crain's Business Detroit. August 16, 2017.

including tax reverted, blighted, or functionally obsolete property.] (PA 259) Revised initial taxable value to allow for the next tax assessment (PA 277). Provided a specific exemption for the use of school operating taxes to benefit a polluter (PA 283).

2005 (PA 101) –

Added QLGU-eligible activities to activities that occur on a **qualified facility** and defined qualified facility as a specific type of landfill (whether or not located in a QLGU). Jurisdictions could opt out of capture for a plan with this property, and taxes levied for school operating purposes could not be used for this property. Allowed BRA to reimburse advances with or without interest.

2006 (PAs 32 and 467) –

Added QLGU-eligible activities to activities that occur in an **economic opportunity zone** and defined economic opportunity zone as a specific location in Michigan. Taxes levied for school operating purposes could not be used for this property (PA 32). Required a brownfield plan to include a beginning date of capture, no later than 5 years after the resolution approving the plan (PA 467).

2007 (PAs 201, 202, 203, and 204) *Major Update* –

Waived DEQ approval requirement to use school operating taxes for certain environmental activities; revised DEQ review process of a work plan. Extended school tax capture approval deadline to **January 1, 2013**. Set duration of brownfield plan to no longer than 35 years after the resolution approving the plan; could amend beginning date of capture under certain circumstances. Revised local government brownfield plan approval timeline and notification requirements. Revised limits, and created a tiered schedule, for the amounts a BRA could use for administrative expenses and expenses for work conducted prior to plan approval. Required Auditor General audit of brownfield program every three years. Gave **non-QLGU** BRAs the ability to use **functionally obsolete** and **blighted property** as eligible property; and gave them **demolition of structures** and **lead or asbestos abatement** as additional eligible activities. Gave QLGU-eligible activities to a certain former mill and non-QLGU eligible activities to a certain site above the 45th Parallel. Added costs of developing plans to eligible activity.

2008 (PA 154) –

Instituted application process and reimbursement mechanism for revenue lost from captured school operating taxes as a result of replacing the Single Business Tax with the Michigan Business Tax.

2010 (PAs 241, 246, and 288) –

Added **transit-oriented development** and **transit-oriented facility** to eligible property (PA 241). Added assistance to a QLGU for specific land bank type activities as an additional activity for eligible property that is in a QLGU (PA 246). Set maximum plan duration to 30 years, measured from when capture begins; could be amended, but not beyond 5 years from when the plan was adopted (PA 288).

EXHIBIT 6

EXHIBIT A

**CITY OF DETROIT
BROWNFIELD REDEVELOPMENT AUTHORITY**

**TRANSFORMATIONAL BROWNFIELD PLAN FOR
THE HUDSON'S BLOCK, MONROE BLOCKS, ONE
CAMPUS MARTIUS EXPANSION, AND BOOK
BUILDING AND BOOK TOWER REDEVELOPMENT
PROJECTS**

Prepared by:

Bedrock Management Services LLC
630 Woodward Avenue
Detroit, Michigan 48226
Contact Person: Jared Fleisher
Phone: (313) 375-4513

October 12, 2017

Table 2: Estimate of Tax Capture Revenues

<u>Tax Capture Revenue</u>	<u>Reimbursements Costs</u>	<u>DBRA Admin. Costs</u>	<u>State Brownfield Fund</u>	<u>Local Revolving Fund</u>
Tax Increment Revenues	\$229,558,387	\$3,260,262	\$18,805,324	\$0.00
Construction Income Tax Revenues	\$18,174,854	\$0.00	\$0.00	\$0.00
State Income Tax Capture Revenues	\$51,694,296	\$0.00	\$0.00	\$0.00
Withholding Tax Capture Revenues	\$256,283,297	\$0.00	\$0.00	\$0.00
City Income Tax (Ren. Zone)	\$1,660,444	\$0.00	\$0.00	\$0.00
Total	\$557,371,278	\$3,260,262	\$18,805,324	\$0.00

In addition to the foregoing, it is anticipated that the exemption from sales and use taxes available for the redevelopment of eligible property included in a transformational brownfield plan as provided for in 2017 PA 48, MCL 205.54d and 2017 PA 49, MCL 205.91-205.111, will result in a reduction in construction costs of \$60,647,889 as necessary to support the economic viability of the projects included in this Plan.

This Plan intends that 100% of available tax increment revenues will be captured and used. This Plan further intends that, consistent with Act 381, as amended, 100% of available construction period tax capture revenues, 50% of available withholding tax capture revenues, and 50% of available income tax capture revenues will be utilized. However, in accordance with Section 14a(8) and 13c(13), this Plan intends to utilize 100% of the income tax capture revenues generated within the Renaissance Zone applicable to the undeveloped portion of the Hudson's Site prior to the expiration of the Renaissance Zone on December 31, 2025. The tax capture revenues presented above, and in Attachment F, reflect these percentages.

5.7 Estimated Impact of Tax Increment Financing on Revenues of Taxing Jurisdictions

This Plan captures all tax increment revenues within the meaning of section 2(ss) of Act 381. Pursuant to the agreement between the DDA and the Wayne County Board of Commissioners (the "County") dated July 17, 1978, as amended by the First Amendment to Agreement between Charter County of Wayne and the DDA dated December 17, 2013, the DDA does not capture three of the taxes currently imposed by the County (an approximately 0.9897 mill operating millage, an approximately 0.9381 mill jail millage and an approximately 0.2459 mill parks millage). Pursuant to Section 13(2)(c) of Act 381, these millages are required to be included as tax increment revenues captured by this Plan.

Table 4 below provides the estimated impact of the capture of tax increment revenues on the taxing jurisdictions within the DBRA as well as the use of the tax increment revenues.

Table 4: Estimated Impact on Revenues of Taxing Jurisdictions

<u>Tax Capture Revenue</u>	<u>Reimbursements Costs</u>	<u>DBRA Admin. Costs</u>	<u>MSF Admin. Costs</u>	<u>State Brownfield Fund</u>	<u>Local Revolving Fund</u>
School Operating Tax	\$145,907,929	\$0.00	\$0.00	\$0.00	\$0.00
State Education Tax	\$31,325,239	\$0.00	\$0.00	\$18,805,324	\$0.00
County – Operating, Parks, and Jail (Winter)	\$14,831,052	\$924,732	\$0.00	\$0.00	\$0.00
RESA (Winter)	\$37,494,166	\$2,335,530	\$0.00	\$0.00	\$0.00
Total	\$229,558,387	\$3,260,262	\$0.00	\$18,805,324	\$0.00

In addition, the following property taxes are projected to be generated but shall not be captured under this Plan. With the exception of the millages levied for the DIA and Detroit Zoo, all taxes below are captured by the DDA.

City Operating	\$136,277,492
Library	\$31,628,919

County Operating (Summer)	\$38,579,398
WCCC (Winter)	\$21,928,630
HMCA (Winter)	\$1,465,775
City Debt	\$64,943,481
School Debt	\$89,188,288
DIA Tax	\$1,366,053
Zoo Tax	\$683,027
Total	\$386,061,063

5.8 Legal Description, Property Map, Statement of Qualifying Characteristics, and Personal Property

This information is provided in Part 1.1 and Part 1.2 of this Plan.

5.9 Estimates of Residents and Displacement of Individuals/Families

There are no persons residing within the Transformational Project Sites and no occupied residences will be acquired or cleared. Therefore, there will be no displacement or relocation of persons under this Plan.

5.10 Plan for Relocation of Displaced Persons

There are no persons residing within the Transformational Project Sites and no occupied residences will be acquired or cleared. Therefore, there are no plans for relocation of persons under this Plan.

5.11 Provisions for Relocation Costs

There are no persons residing within the Transformational Project Sites and no occupied residences will be acquired or cleared. Therefore, there are no provisions for relocation costs.

EXHIBIT 7

CRAIN'S DETROIT BUSINESS

May 23, 2017 12:43 PM

Latest Little Caesars Arena project construction cost: \$862.9 million

State OKs \$34.5 million in new bonds to accommodate Pistons

BILL SHEA



Olympia Development of Michigan

Work continues on Little Caesars Arena, which is expected to open in September.

The new estimate made public Tuesday by the Michigan Strategic Fund, which unanimously approved changes to the 2013 financing deal for the arena project, includes \$34.5 million in new bonds that will be used to pay for changes to the downtown Detroit venue that will allow the Pistons to play there.

It will cost nearly \$863 million to build the Little Caesars Arena project, which is the latest estimate from the state after \$40 million in taxpayer-financed funding was approved Tuesday to cover the Detroit Pistons relocating to the venue.

The revised deal also includes increased public subsidies for the Ilitch family's The District Detroit commercial development around the arena.

- Private financing: \$538.8 million
 - Public financing: \$324.1 million
 - Previously captured taxes: \$34.75 million
 - Original public bonds: \$250 million
 - New public bonds: \$34.5 million
 - Estimated net closing costs and debt service new bonds: \$4.85 million
 - Project total cost: \$862.9 million
- Source: Michigan Strategic Fund

The new cost estimate made public Tuesday by the Michigan Strategic Fund, which unanimously approved the changes to the 2013 financing deal for the arena, includes \$34.5 million in new bonds (and \$4.85 million in closing costs and interest) that will be used to pay for changes to the downtown Detroit venue that will allow the NBA team to play there when the building opens in September at I-75 and Woodward. A deal was worked out in November by the owner of the building's primary tenant, the Detroit Red Wings, to have the Pistons leave the Palace of Auburn Hills for Little Caesars Arena.

The nearly \$40 million in Pistons-related arena costs, which had been previously disclosed, is atop \$250 million in tax-exempt bonds previously issued by the Detroit Downtown Development Authority — which ultimately owns the arena — to finance some of the construction. The Michigan Strategic Fund issued the original bonds used to finance the DDA bonds under a deal approved in 2012 by the state Legislature.

Tuesday's deal brings the total up-front public cost of the arena, so far, to \$324.1 million. The new \$863 million cost replaced the last working estimate of \$732 million, which included \$635 million in hard

costs and \$97.3 million in soft costs (such as engineering and architectural services).

Ground was broken on the arena in September 2014.

Olympia Development of Michigan, the real estate arm of the Ilitch family's business holdings, has financed the majority of the arena's cost at \$538.8 million. The total \$863 million includes the arena bowl itself along with an adjacent parking garage and commercial buildings flanking the venue along Woodward Avenue and Henry Street.

The building's original cost had been predicted at \$450 million, but that's gone up as Olympia has tweaked and expanded the arena, which is the anchor of the wider Ilitch-led The District Detroit mixed-use redevelopment of 50 downtown blocks. Olympia — owned by the Ilitch family that has made billions from its Little Caesar pizza chain and other businesses — is responsible for any costs beyond the original \$250 million in DDA bonds — except for the Pistons-related bonds approved Tuesday. That money will pay for NBA-quality locker rooms and other work required to make the arena appropriate for an NBA team.

The deal approved Tuesday also ups the public money that will be given to Olympia to cover ancillary development to \$74 million from the original \$62 million. As part of the 2013 agreement with the state and DDA, Olympia gets \$62 million from taxes captured in the DDA district around the arena if the company caused at least \$200 million in non-arena private construction to occur, such as Olympia or outside investors building apartments, restaurants, offices, etc. That taxpayer reimbursement has been increased now by \$12 million.

Olympia has stated that its District Detroit project already has \$2.2 billion in total investment, meaning it has reached the threshold to qualify for the DDA-backed subsidy, which will be paid after the public bonds are paid off. The bond maturity date was extended to 2050-51

as part of the contract approved Tuesday.

By the time all of the arena bonds are paid off, borrowing costs and interest will have pushed the arena's price tag to beyond \$1 billion.

The public bonds will be paid off by the tax capture mechanism, and the Olympia bonds and private financing will be paid via revenue created by the arena, such as games and concerts. Olympia, under the financing deal, keeps all revenue generated by the arena — a departure from its current deal with the city for Joe Louis Arena, where Olympia in the past has paid rent and surrendered revenue in the form of ticket charges and other fees.

Under the financing deal for the new arena, downtown companies will foot much of the property tax bill used to pay off the public bonds, including Quicken Loans Inc., General Motors Co., Olympia Entertainment and real estate firms such as Southfield-based Redico LLC.

How the tax capture works

How the property taxes paid on downtown buildings and land end up paying off the arena debt is a complicated process.

The DDA, which owns the 20,000-seat arena, since 1978 has captured property taxes in defined zones of more than a square mile in the city's central business district for the purpose of using the money to fuel economic development within those zones. Legally, the money can't be diverted to schools or public services such as police and fire protection.

The tax capture arrangement is Byzantine: For starters, the DDA doesn't capture every cent of property taxes. Instead, it captures taxes paid on the increase in property values in the district after a baseline year for each parcel of land. The thinking is that new development increases the value of everything around it, so the value of the increase in taxes is what's captured.

For example, if a property in the DDA TIF district has a \$1,000 tax bill in the baseline year, what's collected is only the amount that the tax increases by the next year — ostensibly because a new development has boosted values nearby. So if the property's value is \$1,100 in year two, the DDA captures that \$100 difference. The rest goes to the taxing entity.

Each property owner pays property taxes to several taxing authorities, much like a homeowner.

The original arena deal approved by the state allows the DDA to capture three property levies — state education tax, Wayne County Regional Educational Service Agency and Detroit Public Schools — as revenue sources for paying off the arena bonds. Money collected from those three taxes can be spent by the DDA only within a 40-block zone around the arena site, known as the Catalyst Development Project Area.

Five other tax entities — city of Detroit, Detroit library, Wayne County, Wayne County Community College District and Huron Clinton Metroparks taxes — are collected in the DDA's wider TIF district known as Development Area 1, but all but \$2 million of those taxes are for use on any DDA project, such as paying down past bonds and loans not tied to the arena.

One caveat: Under the 2012 arena legislation, about \$2 million collected in total from those five taxes will be used to pay off the public bonds.

The Pistons announced in February they will build a separate team headquarters, training and rehab facility for \$65 million. That project is being privately financed by the team.

Apart from a few leaked details, terms of the deal between the Pistons, owned by private equity billionaire Tom Gores, and Olympia to bring the team downtown have not been disclosed. Both sides say

it's a private deal.

Source URL: <https://www.craigslist.com/article/20170523/news/629041/latest-little-caesars-arena-construction-cost-8629-million>

EXHIBIT 8



Publications

JUNE 01, 2014

Major Redevelopment in Benton Harbor

Who: Harbor Shores, Benton Harbor, MI
Industry: Municipal
Area of Law: Economic Incentives
Results: \$150+ million in incentives (brownfield TIF and MBT)

This \$500 million community redevelopment project, accomplished through several public-private partnerships, encompasses 530 acres, including a Jack Nicklaus golf course, a hotel, parks and public waterfront access, residential development and office space. The project, which began in 2007 and continues today, is the largest brownfield tax increment financing (TIF) project to date in Michigan and is expected to create more than 1,000 jobs.



How We Helped

The project called for combining more than 150 separate parcels of land and the cooperation of four municipalities. We layered multiple incentives for tax capture, securing more than \$125 million in brownfield TIF incentives and more than \$25 million in brownfield Michigan Business Tax (MBT) credits. We also helped secure Michigan Department of Environmental Quality grants and loans, U.S. EPA grants and loans, a New Markets Tax Credit and a Public Act 425 agreement.



[Commitment to Diversity](#)

[Subscribe](#)

[Site Map](#)

[Privacy](#)

Alerts

Disclaimer

Accessibility

Alumni

The Warner Norcross + Judd LLP lawyer responsible for the contents of our advertising and this website is

managing partner Douglas Dozeman who can be reached at ddozeman@wnj.com or 616.752.2148.

Please read our full [privacy policy](#) available on our website.

© 2019 Warner Norcross + Judd LLP. All Rights Reserved.

