

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1396

A bill to amend 1995 PA 24, entitled
"Michigan economic growth authority act,"
by amending sections 3 and 8 (MCL 207.803 and 207.808), as
amended by 2004 PA 81.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

2 (a) "Affiliated business" means a business that is 100% owned
3 and controlled by an associated business.

4 (b) "Associated business" means a business which owns at
5 least 50% of and controls, directly or indirectly, an authorized
6 business.

7 (c) "Authorized business" means 1 of the following:

8 (i) A single eligible business with a unique federal employer
9 identification number which has met the requirements of section 8
10 and with which the authority has entered into a written agreement

1 for a tax credit under section 9.

2 (ii) A single eligible business with a unique federal
3 employer identification number which has met the requirements of
4 section 8, except as provided in this subparagraph, and with
5 which the authority has entered into a written agreement for a
6 tax credit under section 9. An eligible business is not required
7 to create qualified new jobs or maintain retained jobs if
8 qualified new jobs are created or retained jobs are maintained by
9 an associated or affiliated business.

10 (iii) A single eligible business with a unique federal
11 employer identification number which has met the requirements of
12 section 8, except as provided in this subparagraph, and with
13 which the authority has entered into a written agreement for a
14 tax credit under section 9. An eligible business is not required
15 to create qualified new jobs or maintain retained jobs if
16 qualified new jobs are created or retained jobs are maintained by
17 a subsidiary business which withholds income and social security
18 taxes, or an employee leasing company or professional employer
19 organization that has entered into a contractual service
20 agreement with the authorized business in which the employee
21 leasing company or professional employer organization withholds
22 income and social security taxes on behalf of the authorized
23 business.

24 (d) "Authority" means the Michigan economic growth authority
25 created under section 4.

26 (e) "Business" means proprietorship, joint venture,
27 partnership, limited liability partnership, trust, business

1 trust, syndicate, association, joint stock company, corporation,
2 cooperative, limited liability company, or any other
3 organization.

4 (f) "Distressed business" means a business that meets all of
5 the following as verified by the Michigan economic growth
6 authority:

7 (i) Four years immediately preceding the application to the
8 authority under this act, the business had 150 or more full-time
9 jobs in this state.

10 (ii) Within the immediately preceding 4 years, there has been
11 a reduction of not less than 30% of the number of full-time jobs
12 in this state during any consecutive 3-year period. The highest
13 number of full-time jobs within the consecutive 3-year period
14 shall be used in order to determine the percentage reduction of
15 full-time jobs in this subparagraph.

16 (iii) Is not a seasonal employer as defined in section 27 of
17 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
18 421.27.

19 (g) "Eligible business" means a distressed business or
20 business that proposes to maintain retained jobs after
21 December 31, 1999 or to create qualified new jobs in this state
22 after April 18, 1995 in manufacturing, mining, research and
23 development, wholesale and trade, or office operations or a
24 business that is a qualified high-technology business. An
25 eligible business does not include retail establishments,
26 professional sports stadiums, or that portion of an eligible
27 business used exclusively for retail sales. Professional sports

1 stadium does not include a sports stadium in existence on June 6,
2 2000 that is not used by a professional sports team on the date
3 that an application related to that professional sports stadium
4 is filed under section 8.

5 (h) "Facility" means a site or sites within this state in
6 which an authorized business or subsidiary businesses maintains
7 retained jobs or creates qualified new jobs. A facility does not
8 include a site that was a vaccine laboratory owned by this state
9 on April 1, 1995.

10 (i) "Full-time job" means a job performed by an individual
11 who is employed by an authorized business or an employee leasing
12 company or professional employer organization on behalf of the
13 authorized business for consideration for 35 hours or more each
14 week and for which the authorized business or an employee leasing
15 company or professional employer organization on behalf of the
16 authorized business withholds income and social security taxes.

17 (j) "Local governmental unit" means a county, city, village,
18 or township in this state.

19 (k) "High-technology activity" means 1 or more of the
20 following:

21 (i) Advanced computing, which is any technology used in the
22 design and development of any of the following:

23 (A) Computer hardware and software.

24 (B) Data communications.

25 (C) Information technologies.

26 (ii) Advanced materials, which are materials with engineered
27 properties created through the development of specialized process

1 and synthesis technology.

2 (iii) Biotechnology, which is any technology that uses living
3 organisms, cells, macromolecules, microorganisms, or substances
4 from living organisms to make or modify a product, improve plants
5 or animals, or develop microorganisms for useful purposes.
6 Biotechnology does not include human cloning as defined in
7 section 16274 of the public health code, 1978 PA 368, MCL
8 333.16274, or stem cell research with embryonic tissue.

9 (iv) Electronic device technology, which is any technology
10 that involves microelectronics, semiconductors, electronic
11 equipment, and instrumentation, radio frequency, microwave, and
12 millimeter electronics, and optical and optic-electrical devices,
13 or data and digital communications and imaging devices.

14 (v) Engineering or laboratory testing related to the
15 development of a product.

16 (vi) Technology that assists in the assessment or prevention
17 of threats or damage to human health or the environment,
18 including, but not limited to, environmental cleanup technology,
19 pollution prevention technology, or development of alternative
20 energy sources.

21 (vii) Medical device technology, which is any technology that
22 involves medical equipment or products other than a
23 pharmaceutical product that has therapeutic or diagnostic value
24 and is regulated.

25 (viii) Product research and development.

26 (ix) Advanced vehicles technology that is any technology that
27 involves electric vehicles, hybrid vehicles, or alternative fuel

1 vehicles, or components used in the construction of electric
2 vehicles, hybrid vehicles, or alternative fuel vehicles. For
3 purposes of this act:

4 (A) "Electric vehicle" means a road vehicle that draws
5 propulsion energy only from an on-board source of electrical
6 energy.

7 (B) "Hybrid vehicle" means a road vehicle that can draw
8 propulsion energy from both a consumable fuel and a rechargeable
9 energy storage system.

10 (x) Tool and die manufacturing.

11 (l) "New capital investment" means 1 or more of the
12 following:

13 (i) New construction. As used in this subparagraph:

14 (A) "New construction" means property not in existence on the
15 date the authorized business enters into a written agreement with
16 the authority and not replacement construction. New construction
17 includes the physical addition of equipment or furnishings,
18 subject to section 27(2)(a) to (o) of the general property tax
19 act, 1893 PA 206, MCL 211.27.

20 (B) "Replacement construction" means that term as defined in
21 section 34d(1)(b)(v) of the general property tax act, 1893 PA
22 206, MCL 211.34d.

23 (ii) The purchase of new personal property. As used in this
24 subparagraph, "new personal property" means personal property
25 that is not subject to or that is exempt from the collection of
26 taxes under the general property tax act, 1893 PA 206, MCL 211.1
27 to 211.157, on the date the authorized business enters into a

1 written agreement with the authority.

2 (m) "Qualified high-technology business" means a business
3 that is either of the following:

4 (i) A business with not less than 25% of the total operating
5 expenses of the business used for research and development in the
6 tax year in which the business files an application under this
7 act as determined under generally accepted accounting principles
8 and verified by the authority.

9 (ii) A business whose primary business activity is
10 high-technology activity.

11 (n) "Qualified new job" means 1 of the following:

12 (i) A full-time job created by an authorized business at a
13 facility that is in excess of the number of full-time jobs the
14 authorized business maintained in this state prior to the
15 expansion or location, as determined by the authority.

16 (ii) For jobs created after July 1, 2000, a full-time job at
17 a facility created by an eligible business that is in excess of
18 the number of full-time jobs maintained by that eligible business
19 in this state 120 days before the eligible business became an
20 authorized business, as determined by the authority.

21 (iii) For a distressed business, a full-time job at a
22 facility that is in excess of the number of full-time jobs
23 maintained by that eligible business in this state on the date
24 the eligible business became an authorized business.

25 (o) "Retained jobs" means the number of full-time jobs at a
26 facility of an authorized business maintained in this state on a
27 specific date as that date and number of jobs is determined by

1 the authority.

2 (p) "Rural business" means an eligible business located in a
3 county with a population of ~~75,000~~ 80,000 or less.

4 (q) "Subsidiary business" means a business that is directly
5 or indirectly controlled or at least 80% owned by an authorized
6 business.

7 (r) "Written agreement" means a written agreement made
8 pursuant to section 8.

9 Sec. 8. (1) After receipt of an application, the authority
10 may enter into an agreement with an eligible business for a tax
11 credit under section 9 if the authority determines that all of
12 the following are met:

13 (a) Except as provided in subsection (5), the eligible
14 business creates 1 or more of the following within 12 months of
15 the expansion or location as determined by the authority:

16 (i) A minimum of 75 qualified new jobs at the facility if
17 expanding in this state.

18 (ii) A minimum of 150 qualified new jobs at the facility if
19 locating in this state.

20 (iii) A minimum of 25 qualified new jobs at the facility if
21 the facility is located in a neighborhood enterprise zone as
22 determined under the neighborhood enterprise zone act, 1992 PA
23 147, MCL 207.771 to 207.786, is located in a renaissance zone
24 under the Michigan renaissance zone act, 1996 PA 376, MCL
25 125.2681 to 125.2696, or is located in a federally designated
26 empowerment zone, rural enterprise community, or enterprise
27 community.

1 (iv) A minimum of 5 qualified new jobs at the facility if the
2 eligible business is a qualified high-technology business.

3 (v) A minimum of 5 qualified new jobs at the facility if the
4 eligible business is a rural business.

5 (b) Except as provided in subsection (5), the eligible
6 business agrees to maintain 1 or more of the following for each
7 year that a credit is authorized under this act:

8 (i) A minimum of 75 qualified new jobs at the facility if
9 expanding in this state.

10 (ii) A minimum of 150 qualified new jobs at the facility if
11 locating in this state.

12 (iii) A minimum of 25 qualified new jobs at the facility if
13 the facility is located in a neighborhood enterprise zone as
14 determined under the neighborhood enterprise zone act, 1992 PA
15 147, MCL 207.771 to 207.786, is located in a renaissance zone
16 under the Michigan renaissance zone act, 1996 PA 376, MCL
17 125.2681 to 125.2696, or is located in a federally designated
18 empowerment zone, rural enterprise community, or enterprise
19 community.

20 (iv) If the eligible business is a qualified high-technology
21 business, all of the following apply:

22 (A) A minimum of 5 qualified new jobs at the facility.

23 (B) A minimum of 25 qualified new jobs at the facility within
24 5 years after the date of the expansion or location as determined
25 by the authority and a minimum of 25 qualified new jobs at the
26 facility each year thereafter for which a credit is authorized
27 under this act.

1 (v) If the eligible business is a rural business, all of the
2 following apply:

3 (A) A minimum of 5 qualified new jobs at the facility.

4 (B) A minimum of 25 qualified new jobs at the facility within
5 5 years after the date of the expansion or location as determined
6 by the authority.

7 (c) Except as provided in subsection (5), in addition to the
8 jobs specified in subdivision (b), the eligible business, if
9 already located within this state, agrees to maintain a number of
10 full-time jobs equal to or greater than the number of full-time
11 jobs it maintained in this state prior to the expansion, as
12 determined by the authority.

13 (d) Except as otherwise provided in this subdivision, the
14 average wage paid for all retained jobs and qualified new jobs is
15 equal to or greater than 150% of the federal minimum wage.
16 However, if the eligible business is a qualified high-technology
17 business, then the average wage paid for all qualified new jobs
18 is equal to or greater than 400% of the federal minimum wage.

19 (e) Except for a qualified high-technology business, the
20 expansion, retention, or location of the eligible business will
21 not occur in this state without the tax credits offered under
22 this act.

23 (f) Except for an eligible business described in subsection
24 (5)(b)(ii), the local governmental unit in which the eligible
25 business will expand, be located, or maintain retained jobs, or a
26 local economic development corporation or similar entity, will
27 make a staff, financial, or economic commitment to the eligible

1 business for the expansion, retention, or location.

2 (g) The financial statements of the eligible business
3 indicated that it is financially sound or has submitted a chapter
4 11 plan of reorganization to the bankruptcy court and that its
5 plans for the expansion, retention, or location are economically
6 sound.

7 (h) Except for an eligible business described in subsection
8 (5)(c), the eligible business has not begun construction of the
9 facility.

10 (i) The expansion, retention, or location of the eligible
11 business will benefit the people of this state by increasing
12 opportunities for employment and by strengthening the economy of
13 this state.

14 (j) The tax credits offered under this act are an incentive
15 to expand, retain, or locate the eligible business in Michigan
16 and address the competitive disadvantages with sites outside this
17 state.

18 (k) A cost/benefit analysis reveals that authorizing the
19 eligible business to receive tax credits under this act will
20 result in an overall positive fiscal impact to the state.

21 (l) If feasible, as determined by the authority, in locating
22 the facility, the authorized business reuses or redevelops
23 property that was previously used for an industrial or commercial
24 purpose.

25 (m) If the eligible business is a qualified high-technology
26 business described in section 3(m)(i), the eligible business
27 agrees that not less than 25% of the total operating expenses of

1 the business will be maintained for research and development for
2 the first 3 years of the written agreement.

3 (2) If the authority determines that the requirements of
4 subsection (1) or (5) have been met, the authority shall
5 determine the amount and duration of tax credits to be authorized
6 under section 9, and shall enter into a written agreement as
7 provided in this section. The duration of the tax credits shall
8 not exceed 20 years or for an authorized business that is a
9 distressed business, 3 years. In determining the amount and
10 duration of tax credits authorized, the authority shall consider
11 the following factors:

12 (a) The number of qualified new jobs to be created or
13 retained jobs to be maintained.

14 (b) The average wage level of the qualified new jobs or
15 retained jobs relative to the average wage paid by private
16 entities in the county in which the facility is located.

17 (c) The total capital investment or new capital investment
18 the eligible business will make.

19 (d) The cost differential to the business between expanding,
20 locating, or retaining new jobs in Michigan and a site outside of
21 Michigan.

22 (e) The potential impact of the expansion, retention, or
23 location on the economy of Michigan.

24 (f) The cost of the credit under section 9, the staff,
25 financial, or economic assistance provided by the local
26 government unit, or local economic development corporation or
27 similar entity, and the value of assistance otherwise provided by

1 this state.

2 (3) A written agreement between an eligible business and the
3 authority shall include, but need not be limited to, all of the
4 following:

5 (a) A description of the business expansion, retention, or
6 location that is the subject of the agreement.

7 (b) Conditions upon which the authorized business designation
8 is made.

9 (c) A statement by the eligible business that a violation of
10 the written agreement may result in the revocation of the
11 designation as an authorized business and the loss or reduction
12 of future credits under section 9.

13 (d) A statement by the eligible business that a
14 misrepresentation in the application may result in the revocation
15 of the designation as an authorized business and the refund of
16 credits received under section 9.

17 (e) A method for measuring full-time jobs before and after an
18 expansion, retention, or location of an authorized business in
19 this state.

20 (f) A written certification from the eligible business
21 regarding all of the following:

22 (i) The eligible business will follow a competitive bid
23 process for the construction, rehabilitation, development, or
24 renovation of the facility, and that this process will be open to
25 all Michigan residents and firms. The eligible business may not
26 discriminate against any contractor on the basis of its
27 affiliation or nonaffiliation with any collective bargaining

1 organization.

2 (ii) The eligible business will make a good faith effort to
3 employ, if qualified, Michigan residents at the facility.

4 (iii) The eligible business will make a good faith effort to
5 employ or contract with Michigan residents and firms to
6 construct, rehabilitate, develop, or renovate the facility.

7 (iv) The eligible business is encouraged to make a good faith
8 effort to utilize Michigan-based suppliers and vendors when
9 purchasing goods and services.

10 (g) A condition that if the eligible business qualified under
11 ~~section 8(5)(b)(ii)~~ **subsection (5)(b)(ii)** and met the ~~section~~
12 ~~8(1)(g)~~ **subsection (1)(g)** requirement by filing a chapter 11
13 plan of reorganization, the plan must be approved by the
14 bankruptcy court within 2 years of the date of the agreement or
15 the agreement is rescinded.

16 (4) Upon execution of a written agreement as provided in this
17 section, an eligible business is an authorized business.

18 (5) After receipt of an application, the authority may enter
19 into a written agreement, which shall include a repayment
20 provision of all or a portion of the credits under section 9 for
21 a violation of the written agreement, with an eligible business
22 that meets 1 or more of the following criteria:

23 (a) Is located in this state on the date of the application,
24 makes new capital investment of \$250,000,000.00 in this state,
25 and maintains 500 retained jobs, as determined by the authority.

26 (b) Meets ~~either~~ **1 or more** of the following criteria:

27 (i) Relocates production of a product to this state after the

1 date of the application, makes capital investment of
2 \$500,000,000.00 in this state, and maintains 500 retained jobs,
3 as determined by the authority.

4 (ii) Maintains 150 retained jobs at a facility, maintains
5 1,000 or more full-time jobs in this state, and makes new capital
6 investment in this state.

7 (iii) Is located in this state on the date of the
8 application, maintains at least 100 retained jobs at a single
9 facility, and agrees to make new capital investment at that
10 facility equal to the greater of ~~-\$150,000.00~~ **\$100,000.00** per
11 retained job maintained at that facility or ~~-\$15,000,000.00~~
12 **\$10,000,000.00** to be completed not later than December 31, 2006.

13 (c) Is a distressed business.

14 (6) The authority shall not execute more than 25 new written
15 agreements each year for eligible businesses that are not
16 qualified high-technology businesses, distressed businesses, or
17 rural businesses. If the authority executes less than 25 new
18 written agreements in a year, the authority may carry forward for
19 1 year only the difference between 25 and the number of new
20 agreements executed in the immediately preceding year.

21 (7) The authority shall not execute more than 50 new written
22 agreements each year for eligible businesses that are qualified
23 high-technology businesses or rural business. Only 5 of the 50
24 written agreements for businesses that are qualified
25 high-technology businesses or rural business may be executed each
26 year for qualified rural businesses.

27 (8) The authority shall not execute more than 20 new written

1 agreements each year for eligible businesses that are distressed
2 businesses. The authority shall not execute more than 5 of the
3 written agreements described in this subsection each year for
4 distressed businesses that had 1,000 or more full-time jobs at a
5 facility 4 years immediately preceding the application to the
6 authority under this act.