

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5640

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 2006 PA 21.

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 that owns at least
5 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 that has met the requirements of section 8

1 and with which the authority has entered into a written agreement
2 for a tax credit under section 9.

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

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

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

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

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

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

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

17 (g) "Eligible business" means a distressed business or
18 business that proposes to maintain retained jobs after December 31,
19 1999 or to create qualified new jobs in this state after April 18,
20 1995 in manufacturing, mining, research and development, wholesale
21 and trade, or office operations or a business that is a qualified
22 high-technology business. An eligible business does not include
23 retail establishments, professional sports stadiums, or that
24 portion of an eligible business used exclusively for retail sales.
25 Professional sports stadium does not include a sports stadium in
26 existence on June 6, 2000 that is not used by a professional sports
27 team on the date that an application related to that professional

1 sports stadium is filed under section 8.

2 (h) "Facility" means a site or sites within this state in
3 which an authorized business or subsidiary businesses maintains
4 retained jobs or creates qualified new jobs.

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

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

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

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

18 (A) Computer hardware and software.

19 (B) Data communications.

20 (C) Information technologies.

21 (ii) Advanced materials, which are materials with engineered
22 properties created through the development of specialized process
23 and synthesis technology.

24 (iii) Biotechnology, which is any technology that uses living
25 organisms, cells, macromolecules, microorganisms, or substances
26 from living organisms to make or modify a product, improve plants
27 or animals, or develop microorganisms for useful purposes.

1 Biotechnology does not include human cloning as defined in section
2 16274 of the public health code, 1978 PA 368, MCL 333.16274, or
3 stem cell research with embryonic tissue.

4 (iv) Electronic device technology, which is any technology that
5 involves microelectronics, semiconductors, electronic equipment,
6 and instrumentation, radio frequency, microwave, and millimeter
7 electronics, and optical and optic-electrical devices, or data and
8 digital communications and imaging devices.

9 (v) Engineering or laboratory testing related to the
10 development of a product.

11 (vi) Technology that assists in the assessment or prevention of
12 threats or damage to human health or the environment, including,
13 but not limited to, environmental cleanup technology, pollution
14 prevention technology, or development of alternative energy
15 sources.

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

19 (viii) Product research and development.

20 (ix) Advanced vehicles technology, which is any technology that
21 involves electric vehicles, hybrid vehicles, or alternative fuel
22 vehicles, or components used in the construction of electric
23 vehicles, hybrid vehicles, or alternative fuel vehicles. For
24 purposes of this act:

25 (A) "Electric vehicle" means a road vehicle that draws
26 propulsion energy only from an on-board source of electrical
27 energy.

1 (B) "Hybrid vehicle" means a road vehicle that can draw
2 propulsion energy from both a consumable fuel and a rechargeable
3 energy storage system.

4 (x) Tool and die manufacturing.

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

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

7 (A) "New construction" means property not in existence on the
8 date the authorized business enters into a written agreement with
9 the authority and not replacement construction. New construction
10 includes the physical addition of equipment or furnishings, subject
11 to section 27(2)(a) to (o) of the general property tax act, 1893 PA
12 206, MCL 211.27.

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

16 (ii) The purchase of new personal property. As used in this
17 subparagraph, "new personal property" means personal property that
18 is not subject to or that is exempt from the collection of taxes
19 under the general property tax act, 1893 PA 206, MCL 211.1 to
20 211.157, on the date the authorized business enters into a written
21 agreement with the authority.

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

24 (i) A business with not less than 25% of the total operating
25 expenses of the business used for research and development in the
26 tax year in which the business files an application under this act
27 as determined under generally accepted accounting principles and

1 verified by the authority.

2 (ii) A business whose primary business activity is high-
3 technology activity.

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

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

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

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

18 (o) "Retained jobs" means the number of full-time jobs at a
19 facility of an authorized business maintained in this state on a
20 specific date as that date and number of jobs is determined by the
21 authority.

22 (p) "Rural business" means an eligible business located in a
23 county with a population of ~~80,000~~ 90,000 or less.

24 (q) "Subsidiary business" means a business that is directly or
25 indirectly controlled or at least 80% owned by an authorized
26 business.

27 (r) "Written agreement" means a written agreement made

1 pursuant to section 8.

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

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

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

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

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

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

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

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

27 (i) A minimum of 75 qualified new jobs at the facility if

1 expanding in this state.

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

4 (iii) A minimum of 25 qualified new jobs at the facility if the
5 facility is located in a neighborhood enterprise zone as determined
6 under the neighborhood enterprise zone act, 1992 PA 147, MCL
7 207.771 to 207.786, is located in a renaissance zone under the
8 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
9 125.2696, or is located in a federally designated empowerment zone,
10 rural enterprise community, or enterprise community.

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

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

14 (B) A minimum of 25 qualified new jobs at the facility within
15 5 years after the date of the expansion or location as determined
16 by the authority and a minimum of 25 qualified new jobs at the
17 facility each year thereafter for which a credit is authorized
18 under this act.

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

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

22 (B) A minimum of 25 qualified new jobs at the facility within
23 5 years after the date of the expansion or location as determined
24 by the authority.

25 (c) Except as provided in subsection (5), in addition to the
26 jobs specified in subdivision (b), the eligible business, if
27 already located within this state, agrees to maintain a number of

1 full-time jobs equal to or greater than the number of full-time
2 jobs it maintained in this state prior to the expansion, as
3 determined by the authority.

4 (d) Except as otherwise provided in this subdivision, the
5 average wage paid for all retained jobs and qualified new jobs is
6 equal to or greater than 150% of the federal minimum wage. However,
7 if the eligible business is a qualified high-technology business,
8 then the average wage paid for all qualified new jobs is equal to
9 or greater than 400% of the federal minimum wage.

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

13 (f) Except for an eligible business described in subsection
14 (5)(b)(ii), the local governmental unit in which the eligible
15 business will expand, be located, or maintain retained jobs, or a
16 local economic development corporation or similar entity, will make
17 a staff, financial, or economic commitment to the eligible business
18 for the expansion, retention, or location.

19 (g) The financial statements of the eligible business
20 indicated that it is financially sound or has submitted a chapter
21 11 plan of reorganization to the bankruptcy court and that its
22 plans for the expansion, retention, or location are economically
23 sound.

24 (h) Except for an eligible business described in subsection
25 (5)(c), the eligible business has not begun construction of the
26 facility.

27 (i) The expansion, retention, or location of the eligible

1 business will benefit the people of this state by increasing
2 opportunities for employment and by strengthening the economy of
3 this state.

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

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

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

14 (m) If the eligible business is a qualified high-technology
15 business described in section 3(m)(i), the eligible business agrees
16 that not less than 25% of the total operating expenses of the
17 business will be maintained for research and development for the
18 first 3 years of the written agreement.

19 (2) If the authority determines that the requirements of
20 subsection (1) or (5) have been met, the authority shall determine
21 the amount and duration of tax credits to be authorized under
22 section 9, and shall enter into a written agreement as provided in
23 this section. The duration of the tax credits shall not exceed 20
24 years or for an authorized business that is a distressed business,
25 3 years. In determining the amount and duration of tax credits
26 authorized, the authority shall consider the following factors:

27 (a) The number of qualified new jobs to be created or retained

1 jobs to be maintained.

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

5 (c) The total capital investment or new capital investment the
6 eligible business will make.

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

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

12 (f) The cost of the credit under section 9, the staff,
13 financial, or economic assistance provided by the local government
14 unit, or local economic development corporation or similar entity,
15 and the value of assistance otherwise provided by this state.

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

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

21 (b) Conditions upon which the authorized business designation
22 is made.

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

27 (d) A statement by the eligible business that a

1 misrepresentation in the application may result in the revocation
2 of the designation as an authorized business and the refund of
3 credits received under section 9.

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

7 (f) A written certification from the eligible business
8 regarding all of the following:

9 (i) The eligible business will follow a competitive bid process
10 for the construction, rehabilitation, development, or renovation of
11 the facility, and that this process will be open to all Michigan
12 residents and firms. The eligible business may not discriminate
13 against any contractor on the basis of its affiliation or
14 nonaffiliation with any collective bargaining organization.

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

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

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

23 (g) A condition that if the eligible business qualified under
24 subsection (5)(b)(ii) and met the subsection (1)(g) requirement by
25 filing a chapter 11 plan of reorganization, the plan must be
26 approved by the bankruptcy court within 2 years of the date of the
27 agreement or the agreement is rescinded.

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

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

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

11 (b) Meets 1 or more of the following criteria:

12 (i) Relocates production of a product to this state after the
13 date of the application, makes capital investment of
14 \$500,000,000.00 in this state, and maintains 500 retained jobs, as
15 determined by the authority.

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

19 (iii) Is located in this state on the date of the application,
20 maintains at least 100 retained jobs at a single facility, and
21 agrees to make new capital investment at that facility equal to the
22 greater of \$100,000.00 per retained job maintained at that facility
23 or \$10,000,000.00 to be completed or contracted for not later than
24 December 31, 2007.

25 (iv) Maintains 300 retained jobs at a facility; is a rural
26 business; the facility is at risk of being closed and if it were to
27 close, the work would go to a location outside this state, as

determined by the authority; new management or new ownership is proposed for the facility that is committed to improve the viability of the facility; and the tax credits offered under this act are necessary for the facility to maintain operations. The authority may not enter into a written agreement under this subparagraph after December 31, 2006. Of the written agreements entered into under this subparagraph, the authority may enter into 1 written agreement under this subparagraph that is excluded from the requirements of subsection (1)(e), (f), (g), (h), (j), and (k) if the authority considers it in the public interest and if the eligible business would have met the requirements of subsection (1)(e), (i), (j), and (k) within the immediately preceding 6 months from the signing of the written agreement for a tax credit.

(v) MAINTAINS 175 RETAINED JOBS AND MAKES NEW CAPITAL INVESTMENT AT A FACILITY IN A COUNTY WITH A POPULATION OF NOT LESS THAN 7,500 BUT NOT GREATER THAN 8,000.

(c) Is a distressed business.

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

(7) The authority shall not execute more than 50 new written agreements each year for eligible businesses that are qualified high-technology businesses or rural business. Only 5 of the 50

1 written agreements for businesses that are qualified high-
2 technology businesses or rural business may be executed each year
3 for qualified rural businesses.

4 (8) The authority shall not execute more than 20 new written
5 agreements each year for eligible businesses that are distressed
6 businesses. The authority shall not execute more than 5 of the
7 written agreements described in this subsection each year for
8 distressed businesses that had 1,000 or more full-time jobs at a
9 facility 4 years immediately preceding the application to the
10 authority under this act.

11 Enacting section 1. This amendatory act does not take effect
12 unless Senate Bill No. 922 of the 93rd Legislature is enacted into
13 law.