

SENATE BILL No. 802

October 6, 2005, Introduced by Senators ALLEN, BARCIA, BIRKHOLZ, McMANUS, HARDIMAN and GOSCHKA and referred to the Committee on Commerce and Labor.

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 398.

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~~ **THAT** owns
5 at 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

1 identification number, which has met the requirements of section 8
2 and with which the authority has entered into a written agreement
3 for a tax credit under section 9.

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

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

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

27 (e) "Business" means proprietorship, joint venture,

1 partnership, limited liability partnership, trust, business trust,
2 syndicate, association, joint stock company, corporation,
3 cooperative, limited liability company, or any other 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 a
11 reduction of not less than 30% of the number of full-time jobs in
12 this state during any consecutive 3-year period. The highest number
13 of full-time jobs within the consecutive 3-year period shall be
14 used in order to determine the percentage reduction of full-time
15 jobs in this subparagraph.

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

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

1 team on the date that an application related to that professional
2 sports stadium is filed under section 8.

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

8 (i) "Full-time job" means a job performed by an individual who
9 is employed by an authorized business or an employee leasing
10 company or professional employer organization on behalf of the
11 authorized business, **OR BY ANOTHER PERSON AS PROVIDED IN SECTION**
12 **8(1)(C)**, for consideration for 35 hours or more each week and for
13 which the authorized business or an employee leasing company or
14 professional employer organization on behalf of the authorized
15 business, **OR BY ANOTHER PERSON AS PROVIDED IN SECTION 8(1)(C)**,
16 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 section
7 16274 of the public health code, 1978 PA 368, MCL 333.16274, or
8 stem cell research with embryonic tissue.

9 (iv) Electronic device technology, which is any technology that
10 involves microelectronics, semiconductors, electronic equipment,
11 and instrumentation, radio frequency, microwave, and millimeter
12 electronics, and optical and optic-electrical devices, or data and
13 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 of
17 threats or damage to human health or the environment, including,
18 but not limited to, environmental cleanup technology, pollution
19 prevention technology, or development of alternative energy
20 sources.

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

24 (viii) Product research and development.

25 (ix) Advanced vehicles technology that is any technology that
26 involves electric vehicles, hybrid vehicles, or alternative fuel
27 vehicles, or components used in the construction of electric

1 vehicles, hybrid vehicles, or alternative fuel vehicles. For
2 purposes of this act:

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

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

9 (x) Tool and die manufacturing.

10 (xi) **COMPETITIVE EDGE TECHNOLOGY AS DEFINED IN SECTION 88A OF**
11 **THE MICHIGAN STRATEGIC FUND ACT, 1984 PA 270, MCL 125.2088A.**

12 (l) "New capital investment" means 1 or more of the 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, subject
18 to section 27(2) (a) to (o) of the general property tax act, 1893 PA
19 206, 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 206,
22 MCL 211.34d.

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

1 agreement with the authority.

2 (m) "Qualified high-technology business" means a business that
3 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 act
7 as determined under generally accepted accounting principles and
8 verified by the authority.

9 (ii) A business whose primary business activity is high-
10 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 expansion
15 or location, as determined by the authority.

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

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

26 (o) "Retained jobs" means the number of full-time jobs at a
27 facility of an authorized business maintained in this state on a

1 specific date as that date and number of jobs is determined by the
2 authority.

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

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

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

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

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

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

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

21 (iii) A minimum of 25 qualified new jobs at the facility if the
22 facility is located in a neighborhood enterprise zone as determined
23 under the neighborhood enterprise zone act, 1992 PA 147, MCL
24 207.771 to 207.786, is located in a renaissance zone under the
25 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
26 125.2696, or is located in a federally designated empowerment zone,
27 rural enterprise community, or enterprise 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 the
13 facility is located in a neighborhood enterprise zone as determined
14 under the neighborhood enterprise zone act, 1992 PA 147, MCL
15 207.771 to 207.786, is located in a renaissance zone under the
16 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
17 125.2696, or is located in a federally designated empowerment zone,
18 rural enterprise community, or enterprise community.

19 (iv) If the eligible business is a qualified high-technology
20 business, all of the 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 and a minimum of 25 qualified new jobs at the
25 facility each year thereafter for which a credit is authorized
26 under this act.

27 (v) If the eligible business is a rural business, all of the

1 following apply:

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

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

6 (c) Except as provided in subsection (5) **AND AS OTHERWISE**
7 **PROVIDED IN THIS SUBDIVISION**, in addition to the jobs specified in
8 subdivision (b), the eligible business, if already located within
9 this state, agrees to maintain a number of full-time jobs equal to
10 or greater than the number of full-time jobs it maintained in this
11 state prior to the expansion, as determined by the authority. **AFTER**
12 **AN ELIGIBLE BUSINESS HAS ENTERED INTO A WRITTEN AGREEMENT AS**
13 **PROVIDED IN SUBSECTION (2), THE AUTHORITY MAY ADJUST THE NUMBER OF**
14 **FULL-TIME JOBS REQUIRED TO BE MAINTAINED BY THE AUTHORIZED BUSINESS**
15 **UNDER THIS SUBDIVISION, IN ORDER TO ADJUST FOR DECREASES IN FULL-**
16 **TIME JOBS IN THE AUTHORIZED BUSINESS IN THIS STATE DUE TO THE**
17 **DIVESTITURE OF OPERATIONS, PROVIDED A SINGLE OTHER PERSON CONTINUES**
18 **TO MAINTAIN THOSE FULL-TIME JOBS IN THIS STATE. THE AUTHORITY SHALL**
19 **NOT APPROVE A REDUCTION IN THE NUMBER OF FULL-TIME JOBS TO BE**
20 **MAINTAINED UNLESS THE AUTHORITY HAS DETERMINED THAT IT CAN MONITOR**
21 **THE MAINTENANCE OF THE FULL-TIME JOBS IN THIS STATE BY THE OTHER**
22 **PERSON, AND THE AUTHORIZED BUSINESS AGREES IN WRITING THAT THE**
23 **CONTINUED MAINTENANCE OF THE FULL-TIME JOBS IN THIS STATE BY THE**
24 **OTHER PERSON, AS DETERMINED BY THE AUTHORITY, IS A CONDITION OF**
25 **RECEIVING TAX CREDITS UNDER THE WRITTEN AGREEMENT. A FULL-TIME JOB**
26 **MAINTAINED BY ANOTHER PERSON UNDER THIS SUBDIVISION, THAT OTHERWISE**
27 **MEETS THE REQUIREMENTS OF SECTION 3(I), SHALL BE CONSIDERED A FULL-**

1 TIME JOB, NOTWITHSTANDING THE REQUIREMENT THAT A FULL-TIME JOB BE
2 PERFORMED BY AN INDIVIDUAL EMPLOYED BY AN AUTHORIZED BUSINESS, OR
3 AN EMPLOYEE LEASING COMPANY OR PROFESSIONAL EMPLOYER ORGANIZATION
4 ON BEHALF OF AN AUTHORIZED BUSINESS.

5 (d) Except as otherwise provided in this subdivision, the
6 average wage paid for all retained jobs and qualified new jobs is
7 equal to or greater than 150% of the federal minimum wage. However,
8 if the eligible business is a qualified high-technology business,
9 then the average wage paid for all qualified new jobs is equal to
10 or greater than ~~400%~~ 300% of the federal minimum wage.

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

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

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

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

1 (i) The expansion, retention, or location of the eligible
2 business will benefit the people of this state by increasing
3 opportunities for employment and by strengthening the economy of
4 this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) A statement by the eligible business that a
2 misrepresentation in the application may result in the revocation
3 of the designation as an authorized business and the refund of
4 credits received under section 9.

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

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

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

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

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

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

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

1 agreement or the agreement is rescinded.

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

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

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

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

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

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

20 (iii) Is located in this state on the date of the application,
21 maintains at least 100 retained jobs at a single facility, and
22 agrees to make new capital investment at that facility equal to the
23 greater of \$100,000.00 per retained job maintained at that
24 facility or \$10,000,000.00 to be completed not later than December
25 31, 2006.

26 (iv) **MAINTAINS 300 RETAINED JOBS AT A FACILITY; IS A RURAL**
27 **BUSINESS; THE FACILITY IS AT RISK OF BEING CLOSED AND IF IT WERE TO**

1 CLOSE, THE WORK WOULD GO TO A LOCATION OUTSIDE THIS STATE, AS
2 DETERMINED BY THE AUTHORITY; NEW MANAGEMENT OR NEW OWNERSHIP IS
3 PROPOSED FOR THE FACILITY THAT IS COMMITTED TO IMPROVE THE
4 VIABILITY OF THE FACILITY; AND THE TAX CREDITS OFFERED UNDER THIS
5 ACT ARE NECESSARY FOR THE FACILITY TO MAINTAIN OPERATIONS. THE
6 AUTHORITY MAY NOT ENTER INTO A WRITTEN AGREEMENT UNDER THIS
7 SUBPARAGRAPH AFTER DECEMBER 31, 2006. OF THE WRITTEN AGREEMENTS
8 ENTERED INTO UNDER THIS SUBPARAGRAPH, THE AUTHORITY MAY ENTER INTO
9 1 WRITTEN AGREEMENT UNDER THIS SUBPARAGRAPH THAT IS EXCLUDED FROM
10 THE REQUIREMENTS OF SUBSECTION (1) (E), (F), (G), (H), (J), AND (K)
11 IF THE AUTHORITY CONSIDERS IT IN THE PUBLIC INTEREST AND IF THE
12 ELIGIBLE BUSINESS WOULD HAVE MET THE REQUIREMENTS OF SUBSECTION
13 (1) (E), (I), (J), AND (K) WITHIN THE IMMEDIATELY PRECEDING 6 MONTHS
14 FROM THE SIGNING OF THE WRITTEN AGREEMENT FOR A TAX CREDIT.

15 (c) Is a distressed business.

16 (6) The authority shall not execute more than ~~25~~ 35 new
17 written agreements each year for eligible businesses that are not
18 qualified high-technology businesses, distressed businesses, or
19 rural businesses. If the authority executes less than ~~25~~ 35 new
20 written agreements in a year, the authority may carry forward for 1
21 year only the difference between ~~25~~ 35 and the number of new
22 agreements executed in the immediately preceding year.

23 (7) The authority shall not execute more than 50 new written
24 agreements each year for eligible businesses that are qualified
25 high-technology businesses or rural business. Only ~~5~~ 10 of the 50
26 written agreements for businesses that are qualified high-
27 technology businesses or rural business may be executed each year

1 for qualified rural businesses.

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