

**SUBSTITUTE FOR
HOUSE BILL NO. 4333**

A bill to amend 1995 PA 24, entitled
"Michigan economic growth authority act,"
by amending section 8 (MCL 207.808), as amended by 2009 PA 123.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (a) Except as provided in subsection (5), the eligible
6 business creates 1 or more of the following as determined by the
7 authority and provided with written agreement:

8 (i) A minimum of 50 qualified new jobs at the facility if
9 expanding in this state.

10 (ii) A minimum of 50 qualified new jobs at the facility if

1 locating in this state.

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

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

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

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

16 (i) A minimum of 50 qualified new jobs at the facility if
17 expanding in this state.

18 (ii) A minimum of 50 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 147,
23 MCL 207.771 to 207.786, is located in a renaissance zone under the
24 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
25 125.2696, or is located in a federally designated empowerment zone,
26 rural enterprise community, or enterprise community.

27 (iv) If the eligible business is a qualified high-technology

1 business, all of the 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 and a minimum of 25 qualified new jobs at the
6 facility each year thereafter for which a credit is authorized
7 under this act.

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

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

11 (B) A minimum of 25 qualified new jobs at the facility within
12 5 years after the date of the expansion or location as determined
13 by the authority.

14 (c) Except as provided in subsection (5) and as otherwise
15 provided in this subdivision, in addition to the jobs specified in
16 subdivision (b), the eligible business, if already located within
17 this state, agrees to maintain a number of full-time jobs equal to
18 or greater than the number of full-time jobs it maintained in this
19 state prior to the expansion, as determined by the authority. After
20 an eligible business has entered into a written agreement as
21 provided in subsection (2), the authority may adjust the number of
22 full-time jobs required to be maintained by the authorized business
23 under this subdivision, in order to adjust for decreases in full-
24 time jobs in the authorized business in this state due to the
25 divestiture of operations, provided a single other person continues
26 to maintain those full-time jobs in this state. The authority shall
27 not approve a reduction in the number of full-time jobs to be

1 maintained unless the authority has determined that it can monitor
2 the maintenance of the full-time jobs in this state by the other
3 person, and the authorized business agrees in writing that the
4 continued maintenance of the full-time jobs in this state by the
5 other person, as determined by the authority, is a condition of
6 receiving tax credits under the written agreement. A full-time job
7 maintained by another person under this subdivision, that otherwise
8 meets the requirements of section 3(j), shall be considered a full-
9 time job, notwithstanding the requirement that a full-time job be
10 performed by an individual employed by an authorized business, or
11 an employee leasing company or professional employer organization
12 on behalf of an authorized business.

13 (d) Except as otherwise provided in this subdivision, the wage
14 paid for each retained job and qualified new job is equal to or
15 greater than 150% of the federal minimum wage. However, if the
16 eligible business is a qualified high-wage activity, then the wage
17 paid for each qualified new job is equal to or greater than 300% of
18 the state minimum wage. However, beginning on August 4, 2008, the
19 authority may include the value of the health care benefit in
20 determining the wage paid for each retained job or qualified new
21 job for an eligible business under this act.

22 (e) The plans for the expansion, retention, or location are
23 economically sound.

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

27 (g) 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 (h) 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 (i) 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 (2) If the authority determines that the requirements of
12 subsection (1), (5), (9), or (11) have been met, the authority
13 shall determine the amount and duration of tax credits to be
14 authorized under section 9, and shall enter into a written
15 agreement as provided in this section. Except as otherwise provided
16 under this section, the duration of the tax credits shall not
17 exceed 20 years or for an authorized business that is a distressed
18 business, 3 years. In determining the amount and duration of tax
19 credits authorized, the authority shall consider the following
20 factors:

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

23 (b) The average wage and health care benefit level of the
24 qualified new jobs or retained jobs relative to the average wage
25 and health care benefit paid by private entities in the county in
26 which the facility is located.

27 (c) The total capital investment or new capital investment the

1 eligible business will make.

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

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

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

11 (g) Whether the expansion, retention, or location will occur
12 in this state without the tax credits offered under this act.

13 (h) Whether the authorized business reuses or redevelops
14 property that was previously used for an industrial or commercial
15 purpose in locating the facility.

16 (i) The project's effects on other Michigan businesses within
17 the same industry.

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

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

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

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

1 future credits under section 9.

2 (d) A statement by the eligible business that a
3 misrepresentation in the application may result in the revocation
4 of the designation as an authorized business and the refund of
5 credits received under section 9 plus a penalty equal to 10% of the
6 credits received under section 9.

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

10 (f) A written certification from the eligible business
11 regarding all of the following:

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

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

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

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

26 (g) A condition that if the eligible business qualified under
27 subsection (5)(b)(ii) and met the subsection (1)(e) requirement by

1 filing a chapter 11 plan of reorganization, the plan must be
2 confirmed by the bankruptcy court within 6 years of the date of the
3 agreement or the agreement is rescinded.

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

6 (5) Through December 31, 2007, after receipt of an
7 application, the authority may enter into a written agreement with
8 an eligible business that meets 1 or more of the following
9 criteria:

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

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

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

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

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

27 (iv) Maintains 300 retained jobs at a facility; the facility

1 is at risk of being closed and if it were to close, the work would
2 go to a location outside this state, as determined by the
3 authority; new management or new ownership is proposed for the
4 facility that is committed to improve the viability of the
5 facility, unless otherwise provided in this subparagraph; and the
6 tax credits offered under this act are necessary for the facility
7 to maintain operations. The authority may not enter into a written
8 agreement under this subparagraph after December 31, 2007. Of the
9 written agreements entered into under this subparagraph, the
10 authority may enter into 3 written agreements under this
11 subparagraph that are excluded from the requirements of subsection
12 (1)(e), (f), and (h) if the authority considers it in the public
13 interest and if the eligible business would have met the
14 requirements of subsection (1)(g) and (h) within the immediately
15 preceding 6 months from the signing of the written agreement for a
16 tax credit. Of the 3 written agreements described in this
17 subparagraph, the authority may also waive the requirement for new
18 management if the existing management and labor make a commitment
19 to improve the viability and productivity of the facility to better
20 meet international competition as determined by the authority.

21 (v) Maintains 100 retained jobs at a facility; is a rural
22 business, unless otherwise provided in this subparagraph; the
23 facility is at risk of being closed and if it were to close, the
24 work would go to a location outside this state, as determined by
25 the authority; new management or new ownership is proposed for the
26 facility that is committed to improve the viability of the
27 facility; and the tax credits offered under this act are necessary

1 for the facility to maintain operations. The authority may not
2 enter into a written agreement under this subparagraph after
3 December 31, 2007. Of the written agreements entered into under
4 this subparagraph, the authority may enter into 3 written
5 agreements under this subparagraph that are excluded from the
6 requirements of subsection (1)(e), (f), and (h) if the authority
7 considers it in the public interest and if the eligible business
8 would have met the requirements of subsection (1)(e), (g), and (h)
9 within the immediately preceding 6 months from the signing of the
10 written agreement for a tax credit. Of the 3 written agreements
11 described in this subparagraph, the authority may also waive the
12 requirement that the business be a rural business if the business
13 is located in a county with a population of 500,000 or more and
14 600,000 or less.

15 (vi) Maintains 175 retained jobs and makes new capital
16 investment at a facility in a county with a population of not less
17 than 7,500 but not greater than 8,000.

18 (vii) Is located in this state on the date of the application,
19 maintains at least 675 retained jobs at a facility, agrees to
20 create 400 new jobs, and agrees to make a new capital investment of
21 at least \$45,000,000.00 to be completed or contracted for not later
22 than December 31, 2007. Of the written agreements entered into
23 under this subparagraph, the authority may enter into 1 written
24 agreement under this subparagraph that is excluded from the
25 requirements of subsection (1)(f) if the authority considers it in
26 the public interest.

27 (viii) Is located in this state on the date of the

1 application, makes new capital investment of \$250,000,000.00 or
2 more in this state, and makes that capital investment at a facility
3 located north of the 45th parallel.

4 (c) Is a distressed business.

5 (6) Through December 31, 2008, each year, the authority shall
6 not execute new written agreements that in total provide for more
7 than 400 yearly credits over the terms of those agreements entered
8 into that year for eligible businesses that are not qualified high-
9 technology businesses, distressed businesses, rural businesses, or
10 an eligible business described in subsection (11). For calendar
11 year 2009, the authority shall not execute new written agreements
12 described in this subsection that in total provide for more than
13 400 yearly credits over the terms of those agreements entered into
14 that year, plus up to 85 additional yearly credits taken from
15 previously issued credits by the authority. For calendar year 2010
16 and each year thereafter **THROUGH CALENDAR YEAR 2014**, the authority
17 shall not execute new written agreements described in this
18 subsection that in total provide for more than 300 yearly credits
19 over the terms of those agreements entered into that year, plus up
20 to 85 additional yearly credits taken from previously issued
21 credits by the authority. As used in this subsection, beginning
22 calendar year 2010, "yearly credit" means the number of years over
23 the term of an agreement multiplied by the percentage amount
24 authorized in the agreement. As used in this subsection,
25 "previously issued credits" means 2/3 of the number of tax credits
26 authorized by the authority for an authorized business beginning in
27 calendar year 1999 that meet all of the following:

1 (a) That the authorized business did not use any or a portion
2 of the tax credits authorized under that written agreement.

3 (b) The authority determined at a meeting upon a vote of the
4 majority of the members present that the credits previously
5 authorized satisfy subdivision (a).

6 (7) The authority shall not execute more than 50 new written
7 agreements each year for eligible businesses that are qualified
8 high-technology businesses or rural business. In addition, the
9 authority may execute not more than 25 additional new written
10 agreements each year for eligible businesses that are qualified
11 high-technology businesses that have demonstrated that not less
12 than 10% of the total operating expenses of the eligible business
13 in the immediately preceding 2 years was attributable to research
14 and development. Not more than 35 of the 75 written agreements for
15 businesses that are qualified high-technology businesses or rural
16 business may be executed each year for qualified rural businesses.
17 Not more than 50 of the 75 written agreements for businesses that
18 are qualified high-technology businesses or rural businesses may be
19 executed each year for a high-technology business that engages in a
20 qualified high-wage activity. Not more than 4 of the 75 agreements
21 executed under this subsection may provide for a tax credit with a
22 duration of more than 12 years but not more than 20 years. The
23 authority shall not execute a written agreement for an eligible
24 business that is a qualified high-technology business or rural
25 business under this subsection if that eligible business has
26 claimed a credit under section 455 of the Michigan business tax
27 act, 2007 PA 36, MCL 208.1455.

1 (8) The authority shall not execute more than 20 new written
2 agreements each year for eligible businesses that are distressed
3 businesses. The authority shall not execute more than 5 of the
4 written agreements described in this subsection each year for
5 distressed businesses that had 1,000 or more full-time jobs at a
6 facility 4 years immediately preceding the application to the
7 authority under this act. The authority shall not execute more than
8 5 new written agreements each year for eligible businesses
9 described in subsection (11). The authority shall not execute more
10 than 4 new written agreements each year for eligible businesses
11 described in subsection (11) in local governmental units that have
12 a population greater than 16,000.

13 (9) Beginning January 1, 2008, after receipt of an
14 application, the authority may enter into a written agreement with
15 an eligible business that does not meet the criteria described in
16 subsection (1), if the eligible business meets all of the
17 following:

18 (a) Agrees to retain not fewer than 50 jobs.

19 (b) Agrees to invest, through construction, acquisition,
20 transfer, purchase, contract, or any other method as determined by
21 the authority, at a facility equal to \$50,000.00 or more per
22 retained job maintained at the facility.

23 (c) Certifies to the authority that, without the credits under
24 this act and without the new capital investment, the facility is at
25 risk of closing and the work and jobs would be removed to a
26 location outside of this state.

27 (d) Certifies to the authority that the management or

1 ownership is committed to improving the long-term viability of the
2 facility in meeting the national and international competition
3 facing the facility through better management techniques, best
4 practices, including state of the art lean manufacturing practices,
5 and market diversification.

6 (e) Certifies to the authority that it will make best efforts
7 to keep jobs in Michigan when making plant location and closing
8 decisions.

9 (f) Certifies to the authority that the workforce at the
10 facility demonstrates its commitment to improving productivity and
11 profitability at the facility through various means.

12 (10) Beginning on April 28, 2008, if the authority enters into
13 a written agreement with an eligible business, the written
14 agreement shall include a repayment provision of all or a portion
15 of the credits received by the eligible business for a facility if
16 the eligible business moves full-time jobs outside this state
17 during the term of the written agreement and for a period of years
18 after the term of the written agreement, as determined by the
19 authority.

20 (11) Beginning January 1, 2008, after receipt of an
21 application, the authority may enter into a written agreement with
22 an eligible business that does not meet the criteria described in
23 subsection (1), if the eligible business meets all of the
24 following:

25 (a) Agrees to create or retain not fewer than 15 jobs.

26 (b) Agrees to occupy property that is a historic resource as
27 that term is defined in section 435 of the Michigan business tax

1 act, 2007 PA 36, MCL 208.1435, and that is located in a downtown
2 district as defined in section 1 of 1975 PA 197, MCL 125.1651.

3 (c) The average wage paid for each retained job and full-time
4 job is equal to or greater than 150% of the federal minimum wage.

5 (12) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT,
6 BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
7 THIS SUBSECTION, THE AUTHORITY OR ITS SUCCESSOR SHALL NOT ENTER
8 INTO A NEW WRITTEN AGREEMENT WITH AN ELIGIBLE BUSINESS OR MODIFY OR
9 AMEND AN EXISTING WRITTEN AGREEMENT WITH AN AUTHORIZED BUSINESS,
10 FOR A CERTIFIED CREDIT UNDER SECTION 430, 431, 431A, 431B, 431C,
11 432, 434, OR 450 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL
12 208.1430, 208.1431, 208.1431A, 208.1431B, 208.1431C, 208.1432,
13 208.1434, AND 208.1450, UNLESS THE MODIFICATION OR AMENDMENT
14 REDUCES THE NET AMOUNT OF THE CREDIT TO THE AUTHORIZED BUSINESS.
15 HOWEVER, THE AUTHORITY OR ITS SUCCESSOR MAY MODIFY OR AMEND AN
16 EXISTING AGREEMENT WITH AN AUTHORIZED BUSINESS FOR TECHNICAL
17 CHANGES AS LONG AS THE MODIFICATION OR AMENDMENT DOES NOT INCREASE
18 THE NET AMOUNT OF THE CREDIT TO THE AUTHORIZED BUSINESS. UNDER NO
19 CIRCUMSTANCES SHALL THE AUTHORITY OR ITS SUCCESSOR MODIFY OR AMEND
20 AN EXISTING AGREEMENT TO PROVIDE THE AUTHORIZED BUSINESS WITH A
21 LONGER TERM TO CLAIM THAT CREDIT.