

MICHIGAN ECONOMIC GROWTH AUTHORITY ACT
Act 24 of 1995

AN ACT to promote economic growth and job creation within this state; to create and regulate the Michigan economic growth authority; to prescribe the powers and duties of the authority and of state and local officials; to assess and collect a fee; to approve certain plans and the use of certain funds; and to provide qualifications for and determine eligibility for tax credits and other incentives for authorized businesses and for qualified taxpayers.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995;—Am. 2000, Act 144, Imd. Eff. June 6, 2000.

Popular name: MEGA

The People of the State of Michigan enact:

207.801 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan economic growth authority act”.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995.

Popular name: MEGA

207.802 Legislative findings.

Sec. 2. The legislature finds that it is in the public interest to promote economic growth and to encourage private investment, job creation, and job upgrading for residents in this state.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995.

Popular name: MEGA

207.803 Definitions.

Sec. 3. As used in this act:

(a) "Affiliated business" means a business that is at least 50% owned and controlled, directly or indirectly, by an associated business.

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

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

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

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

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

(e) "Business" means proprietorship, joint venture, partnership, limited liability partnership, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, limited liability company, or any other organization.

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

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

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

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

(g) "Eligible business" means a distressed business or business that proposes to maintain retained jobs after December 31, 1999 or to create qualified new jobs in this state after April 18, 1995 in manufacturing, mining,

research and development, wholesale and trade, film and digital media production, or office operations or a business that is a qualified high-technology business or a business that is a tourism attraction facility or a qualified lodging facility. Except for a retail establishment that meets the criteria in section 8(11), an eligible business does not include retail establishments, professional sports stadiums, or that portion of an eligible business used exclusively for retail sales. Professional sports stadium does not include a sports stadium in existence on June 6, 2000 that is not used by a professional sports team on the date that an application related to that professional sports stadium is filed under section 8.

(h) "Eligible next Michigan business" means a business engaged in the shipment of tangible personal property via multimodal commerce; a supply chain business providing a majority of its services to businesses engaged in the shipment of tangible personal property, including inventory, via multimodal commerce; a manufacturing or assembly facility receiving a majority of its production components via multimodal commerce; a manufacturing or assembly facility shipping a majority of products via multimodal commerce; or a light manufacturing or assembly facility that packages, kits, labels, or customizes products and ships those products via multimodal commerce.

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

(j) "Film and digital media production" means the development, preproduction, production, postproduction, and distribution of single media or multimedia entertainment content for distribution or exhibition to the general public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website. Film and digital media production also includes the development, preproduction, production, postproduction, and distribution of a trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in a film or digital media production. Film or digital media production does not include the production of any of the following:

(i) A production for which records are required to be maintained with respect to any performer in the production under 18 USC 2257.

(ii) A production that includes obscene matter or an obscene performance as described in 1984 PA 343, MCL 752.361 to 752.374.

(iii) A production that primarily consists of televised news or current events.

(iv) A production that primarily consists of a live sporting event.

(v) A production that primarily consists of political advertising.

(vi) A radio program.

(vii) A weather show.

(viii) A financial market report.

(ix) A talk show.

(x) A game show.

(xi) A production that primarily markets a product or service.

(xii) An awards show or other gala event production.

(xiii) A production with the primary purpose of fund-raising.

(xiv) A production that primarily is for employee training or in-house corporate advertising or other similar production.

(k) "Full-time job" means a job performed by an individual for 35 hours or more each week and whose income and social security taxes are withheld by 1 or more of the following:

(i) An authorized business.

(ii) An employee leasing company.

(iii) A professional employer organization on behalf of the authorized business.

(iv) Another person as provided in section 8(1)(c).

(v) A business that sells all or part of its assets to an eligible business that receives a credit under section 8(1) or (5).

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

(m) "High-technology activity" means 1 or more of the following:

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

(A) Computer hardware and software.

(B) Data communications.

(C) Information technologies.

(D) Film and digital media production.

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

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

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

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

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

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

(viii) Product research and development.

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

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

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

(x) Tool and die manufacturing.

(xi) Competitive edge technology as defined in section 88a of the Michigan strategic fund act, 1984 PA 270, MCL 125.2088a.

(xii) Digital media, including internet publishing and broadcasting, video gaming, web development, and entertainment technology.

(xiii) Music production, including record production and development, sound recording studios, and integrated high-technology record production and distribution.

(xiv) Film and video, including motion picture and video production and distribution, postproduction services, and teleproduction and production services.

(n) "Multimodal commerce" means the movement of products or services via 2 of the following:

(i) Air.

(ii) Road.

(iii) Rail.

(iv) Water.

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

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

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

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

(ii) The purchase of new personal property. As used in this subparagraph, "new personal property" means personal property that is not subject to or that is exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, on the date the authorized business enters into a written agreement with the authority.

(p) "Qualified high-technology business" means a business or facility whose primary business activity is high-technology activity or a qualified high-wage activity.

(q) "Qualified high-wage activity" means a business that has an average wage of 300% or more of the federal minimum wage. Qualified high-wage activity may also include, but is not limited to, 1 or more of the following as long as they have an average wage of 300% or more of the federal minimum wage:

(i) Architecture and design, including architectural design, graphic design, interior design, fashion design,

and industrial design.

(ii) Advertising and marketing, including advertising and marketing firms and agencies, public relations agencies, and display advertising.

(r) "Qualified lodging facility" means 1 or more of the following:

(i) Lodging facilities that constitute a portion of a tourism attraction facility and represent less than 50% of the total cost of the tourism attraction facility, or the lodging facilities are to be located on recreational property owned or leased by the municipal, state, or federal government.

(ii) The lodging facilities involve the restoration or rehabilitation of a structure that is listed individually in the national register of historic places or are located in a national register historic district and certified by this state as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by this state.

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

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

(ii) For jobs created after July 1, 2000, a full-time job at a facility created by an eligible business that is in excess of the number of full-time jobs maintained by that eligible business in this state up to 90 days before the eligible business became an authorized business, as determined by the authority.

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

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

(u) "Rural business" means an eligible business located in a county with a population of 90,000 or less.

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

(w) "Tourism attraction facility" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomena or scenic beauty, or an entertainment destination center as determined by the Michigan economic growth authority as follows:

(i) In making a determination, the Michigan economic growth authority shall consider all of the following:

(A) Whether the facility will actually attract tourists.

(B) Whether 50% or more of the persons using the facility reside outside a 100-mile radius.

(C) Whether 50% or more of the gross receipts are from admissions, food, or nonalcoholic drinks.

(D) Whether the facility offers a unique experience.

(ii) The Michigan economic growth authority shall not determine any of the following as a tourism attraction facility:

(A) Facilities, other than an entertainment destination center, that are primarily devoted to the retail sale of goods, a theme restaurant destination attraction, or a tourism attraction where the attraction is a secondary and subordinate component to the sale of goods.

(B) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the facility.

(x) "Written agreement" means a written agreement made pursuant to section 8. A written agreement may address new jobs, qualified new jobs, full-time jobs, retained jobs, or any combination of new jobs, qualified new jobs, full-time jobs, or retained jobs.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995;—Am. 2000, Act 144, Imd. Eff. June 6, 2000;—Am. 2000, Act 428, Imd. Eff. Jan. 9, 2001;—Am. 2003, Act 248, Imd. Eff. Dec. 29, 2003;—Am. 2004, Act 81, Imd. Eff. Apr. 22, 2004;—Am. 2004, Act 398, Imd. Eff. Oct. 15, 2004;—Am. 2006, Act 21, Imd. Eff. Feb. 14, 2006;—Am. 2006, Act 117, Imd. Eff. Apr. 11, 2006;—Am. 2006, Act 188, Imd. Eff. June 19, 2006;—Am. 2006, Act 281, Imd. Eff. July 10, 2006;—Am. 2007, Act 62, Imd. Eff. Sept. 19, 2007;—Am. 2008, Act 87, Imd. Eff. Apr. 8, 2008;—Am. 2008, Act 108, Imd. Eff. Apr. 28, 2008;—Am. 2008, Act 257, Imd. Eff. Aug. 4, 2008;—Am. 2010, Act 272, Imd. Eff. Dec. 15, 2010.

Popular name: MEGA

207.804 Michigan economic growth authority; creation within Michigan strategic fund; duties; membership, appointment, and terms of members; vacancy; compensation; expenses.

Sec. 4. (1) The Michigan economic growth authority is created within the Michigan strategic fund. The Michigan strategic fund shall provide staff for the authority and shall carry out the administrative duties and functions as directed by the authority. The budgeting, procurement, and related functions as directed by the

authority are under the supervision of the president of the Michigan strategic fund.

(2) The authority consists of the following 8 members:

- (a) The president of the Michigan strategic fund, or his or her designee, as chairperson of the authority.
- (b) The state treasurer or his or her designee.
- (c) The director of the department of labor and economic growth, or his or her designee.
- (d) The director of the state transportation department, or his or her designee.
- (e) Four other members appointed by the governor by and with the advice and consent of the senate who are not employed by this state and who have knowledge, skill, and experience in the academic, business, local government, labor, or financial fields.

(3) A member shall be appointed for a term of 4 years, except that of the members first appointed by the governor, 2 shall be appointed for a term of 2 years and 2 for a term of 4 years from the dates of their appointments. A vacancy shall be filled for the balance of the unexpired term in the same manner as an original appointment by the governor and by and with the advice and consent of the senate.

(4) Except as otherwise provided by law, a member of the authority shall not receive compensation for services, but the authority may reimburse each member for expenses necessarily incurred in the performance of his or her duties.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995;—Am. 2003, Act 248, Imd. Eff. Dec. 29, 2003;—Am. 2006, Act 484, Imd. Eff. Dec. 29, 2006.

Compiler's note: For transfer of the position as member of Michigan economic growth authority designated for the director of the Michigan jobs commission to the president and chief executive officer of the Michigan economic development corporation to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of the position as member of the Michigan economic growth authority designated for the director of the department of management and budget to the director of the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of position of member of board designated for director of department of transportation from director of department of transportation to state budget director, see E.R.O. No. 2010-3, compiled at MCL 125.1992.

Popular name: MEGA

207.805 Michigan economic growth authority; powers; quorum; meetings; business conducted at public meeting; confidential information; written statement; disclosure; "financial or proprietary information" defined.

Sec. 5. (1) The powers of the authority are vested in the authority members in office. Regardless of the existence of a vacancy, a majority of the members of the authority constitutes a quorum necessary for the transaction of business at a meeting or the exercise of a power or function of the authority. Action may be taken by the authority at a meeting upon a vote of the majority of the members present. Members of the authority may be present in person at a meeting of the authority or, if authorized by the bylaws of the authority, by use of telecommunications or other electronic equipment.

(2) The authority shall meet at the call of the chairperson or as may be provided by the authority. Meetings of the authority may be held anywhere within this state.

(3) The business of the authority shall be conducted at a public meeting of the authority held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given as provided by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A record or portion of a record, material, or other data received, prepared, used, or retained by the authority in connection with an application for a tax credit under section 9 that relates to financial or proprietary information submitted by the applicant that is considered by the applicant and acknowledged by the authority as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. A designee of the authority shall make the determination as to whether the authority acknowledges as confidential any financial or proprietary information submitted by the applicant and considered by the applicant as confidential. Unless considered proprietary information, the authority shall not acknowledge routine financial information as confidential. If the designee of the authority determines that information submitted to the authority is financial or proprietary information and is confidential, the designee of the authority shall release a written statement, subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, which states all of the following:

(a) The name and business location of the person requesting that the information submitted be confidential as financial or proprietary information.

(b) That the information submitted was determined by the designee of the authority to be confidential as financial or proprietary information.

(c) A broad nonspecific overview of the financial or proprietary information determined to be confidential.

(4) The authority shall not disclose financial or proprietary information not subject to disclosure pursuant

to subsection (3) without consent of the applicant submitting the information.

(5) As used in this section, "financial or proprietary information" means information that has not been publicly disseminated or is unavailable from other sources, the release of which might cause the applicant significant competitive harm. Financial or proprietary information does not include a written agreement under this act.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995;—Am. 2003, Act 248, Imd. Eff. Dec. 29, 2003;—Am. 2008, Act 108, Imd. Eff. Apr. 28, 2008.

Popular name: MEGA

207.806 Michigan economic growth authority; powers.

Sec. 6. The authority shall have powers necessary or convenient to carry out and effectuate the purpose of this act, including, but not limited to, the following:

- (a) To authorize eligible businesses to receive tax credits to foster job creation in this state.
- (b) To determine which businesses qualify for tax credits under this act.
- (c) To determine the amount and duration of tax credits authorized under this act.
- (d) To issue certificates and enter into written agreements specifying the conditions under which tax credits are authorized and the circumstances under which those tax credits may be reduced or terminated.
- (e) To charge and collect reasonable administrative fees.
- (f) To delegate to the chairperson of the authority, staff, or others the functions and powers it considers necessary and appropriate to administer the programs under this act.
- (g) To assist an eligible business to obtain the benefits of a tax credit, incentive, or inducement program provided by this act or by law.
- (h) To determine the eligibility of and issue certificates to certain qualified taxpayers for credits allowed under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, and to develop the application process and necessary forms to claim the credit under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431. The Michigan economic growth authority annually shall prepare and submit to the house of representatives and senate committees responsible for tax policy and economic development issues a report on the credits under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431. The report shall include, but is not limited to, all of the following:
 - (i) A listing of the projects under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, that were approved in the previous calendar year.
 - (ii) The total amount of eligible investment approved under former section 38g(3) of 1975 PA 228 and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, in the previous calendar year.
- (i) To approve the capture of school operating taxes and work plans as provided in sections 13 and 15 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2663 and 125.2665.
- (j) To determine the eligibility of and issue certificates to certain qualified taxpayers for credits allowed under section 407 of the Michigan business tax act, 2007 PA 36, MCL 208.1407.
- (k) To determine the eligibility of and issue certificates to certain taxpayers for credits allowed under sections 431a and 431b of the Michigan business tax act, 2007 PA 36, MCL 208.1431a and 208.1431b.
- (l) To determine the eligibility of and issue certificates to certain taxpayers for credits allowed under sections 432 to 432d of the Michigan business tax act, 2007 PA 36, MCL 208.1432 to 208.1432d.
- (m) To determine the eligibility of and issue certificates to certain taxpayers for credits allowed under section 434 of the Michigan business tax act, 2007 PA 36, MCL 208.1434.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995;—Am. 2000, Act 144, Imd. Eff. June 6, 2000;—Am. 2003, Act 248, Imd. Eff. Dec. 29, 2003;—Am. 2007, Act 150, Imd. Eff. Dec. 14, 2007;—Am. 2008, Act 110, Imd. Eff. Apr. 28, 2008;—Am. 2008, Act 262, Imd. Eff. Aug. 6, 2008;—Am. 2008, Act 548, Imd. Eff. Jan. 13, 2009.

Popular name: MEGA

207.807 Application for tax credit; written agreement; form.

Sec. 7. (1) An eligible business may apply to the authority to enter into a written agreement which authorizes a tax credit under section 9.

(2) The form of the application shall be as specified by the authority from time to time. The authority may request such information, in addition to that contained in an application, as may be needed to permit the authority to discharge its responsibilities under section 8.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995.

Popular name: MEGA

207.808 Agreement for tax credit; determination; requirements; amount and duration of tax credits; factors; written agreement; criteria; limitation on new agreements; execution; repayment provision; conditions; agreement with eligible business not meeting criteria.

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

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

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

(ii) A minimum of 50 qualified new jobs at the facility if locating in this state.

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

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

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

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

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

(ii) A minimum of 50 qualified new jobs at the facility if locating in this state.

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

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

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

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

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

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

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

(c) Except as provided in subsection (5) and as otherwise provided in this subdivision, in addition to the jobs specified in subdivision (b), the eligible business, if already located within this state, agrees to maintain a number of full-time jobs equal to or greater than the number of full-time jobs it maintained in this state prior to the expansion, as determined by the authority. After an eligible business has entered into a written agreement as provided in subsection (2), the authority may adjust the number of full-time jobs required to be maintained by the authorized business under this subdivision, in order to adjust for decreases in full-time jobs in the authorized business in this state due to the divestiture of operations, provided a single other person continues to maintain those full-time jobs in this state. The authority shall not approve a reduction in the number of full-time jobs to be maintained unless the authority has determined that it can monitor the maintenance of the full-time jobs in this state by the other person, and the authorized business agrees in writing that the continued maintenance of the full-time jobs in this state by the other person, as determined by the authority, is a condition of receiving tax credits under the written agreement. A full-time job maintained by another person under this subdivision, that otherwise meets the requirements of section 3(j), shall be considered a full-time job, notwithstanding the requirement that a full-time job be performed by an individual employed by an authorized business, or an employee leasing company or professional employer organization on behalf of an authorized business.

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

- (e) The plans for the expansion, retention, or location are economically sound.
 - (f) Except for an eligible business described in subsection (5)(c), the eligible business has not begun construction of the facility.
 - (g) The expansion, retention, or location of the eligible business will benefit the people of this state by increasing opportunities for employment and by strengthening the economy of this state.
 - (h) The tax credits offered under this act are an incentive to expand, retain, or locate the eligible business in Michigan and address the competitive disadvantages with sites outside this state.
 - (i) A cost/benefit analysis reveals that authorizing the eligible business to receive tax credits under this act will result in an overall positive fiscal impact to the state.
- (2) If the authority determines that the requirements of subsection (1), (5), (9), or (11) have been met, the authority shall determine the amount and duration of tax credits to be authorized under section 9, and shall enter into a written agreement as provided in this section. Except as otherwise provided under this section, the duration of the tax credits shall not exceed 20 years or for an authorized business that is a distressed business, 3 years. In determining the amount and duration of tax credits authorized, the authority shall consider the following factors:
- (a) The number of qualified new jobs to be created or retained jobs to be maintained.
 - (b) The average wage and health care benefit level of the qualified new jobs or retained jobs relative to the average wage and health care benefit paid by private entities in the county in which the facility is located.
 - (c) The total capital investment or new capital investment the eligible business will make.
 - (d) The cost differential to the business between expanding, locating, or retaining new jobs in Michigan and a site outside of Michigan.
 - (e) The potential impact of the expansion, retention, or location on the economy of Michigan.
 - (f) The cost of the credit under section 9, the staff, financial, or economic assistance provided by the local government unit, or local economic development corporation or similar entity, and the value of assistance otherwise provided by this state.
 - (g) Whether the expansion, retention, or location will occur in this state without the tax credits offered under this act.
 - (h) Whether the authorized business reuses or redevelops property that was previously used for an industrial or commercial purpose in locating the facility.
 - (i) The project's effects on other Michigan businesses within the same industry.
- (3) A written agreement between an eligible business and the authority shall include, but need not be limited to, all of the following:
- (a) A description of the business expansion, retention, or location that is the subject of the agreement.
 - (b) Conditions upon which the authorized business designation is made.
 - (c) A statement by the eligible business that a violation of the written agreement may result in the revocation of the designation as an authorized business and the loss or reduction of future credits under section 9.
 - (d) A statement by the eligible business that a misrepresentation in the application may result in the revocation of the designation as an authorized business and the refund of credits received under section 9 plus a penalty equal to 10% of the credits received under section 9.
 - (e) A method for measuring full-time jobs before and after an expansion, retention, or location of an authorized business in this state.
 - (f) A written certification from the eligible business regarding all of the following:
 - (i) The eligible business will follow a competitive bid process for the construction, rehabilitation, development, or renovation of the facility, and that this process will be open to all Michigan residents and firms. The eligible business may not discriminate against any contractor on the basis of its affiliation or nonaffiliation with any collective bargaining organization.
 - (ii) The eligible business will make a good faith effort to employ, if qualified, Michigan residents at the facility.
 - (iii) The eligible business will make a good faith effort to employ or contract with Michigan residents and firms to construct, rehabilitate, develop, or renovate the facility.
 - (iv) The eligible business is encouraged to make a good faith effort to utilize Michigan-based suppliers and vendors when purchasing goods and services.
 - (g) A condition that if the eligible business qualified under subsection (5)(b)(ii) and met the subsection (1)(e) requirement by filing a chapter 11 plan of reorganization, the plan must be confirmed by the bankruptcy court within 6 years of the date of the agreement or the agreement is rescinded.
- (4) Upon execution of a written agreement as provided in this section, an eligible business is an authorized business.

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

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

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

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

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

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

(iv) Maintains 300 retained jobs at a facility; the facility is at risk of being closed and if it were to 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, unless otherwise provided in this subparagraph; 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, 2007. Of the written agreements entered into under this subparagraph, the authority may enter into 3 written agreements under this subparagraph that are excluded from the requirements of subsection (1)(e), (f), and (h) if the authority considers it in the public interest and if the eligible business would have met the requirements of subsection (1)(g) and (h) within the immediately preceding 6 months from the signing of the written agreement for a tax credit. Of the 3 written agreements described in this subparagraph, the authority may also waive the requirement for new management if the existing management and labor make a commitment to improve the viability and productivity of the facility to better meet international competition as determined by the authority.

(v) Maintains 100 retained jobs at a facility; is a rural business, unless otherwise provided in this subparagraph; the facility is at risk of being closed and if it were to 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, 2007. Of the written agreements entered into under this subparagraph, the authority may enter into 3 written agreements under this subparagraph that are excluded from the requirements of subsection (1)(e), (f), and (h) if the authority considers it in the public interest and if the eligible business would have met the requirements of subsection (1)(e), (g), and (h) within the immediately preceding 6 months from the signing of the written agreement for a tax credit. Of the 3 written agreements described in this subparagraph, the authority may also waive the requirement that the business be a rural business if the business is located in a county with a population of 500,000 or more and 600,000 or less.

(vi) 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.

(vii) Is located in this state on the date of the application, maintains at least 675 retained jobs at a facility, agrees to create 400 new jobs, and agrees to make a new capital investment of at least \$45,000,000.00 to be completed or contracted for not later than December 31, 2007. 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)(f) if the authority considers it in the public interest.

(viii) Is located in this state on the date of the application, makes new capital investment of \$250,000,000.00 or more in this state, and makes that capital investment at a facility located north of the 45th parallel.

(c) Is a distressed business.

(6) Through December 31, 2008, each year, the authority shall not execute new written agreements that in total provide for more than 400 yearly credits over the terms of those agreements entered into that year for eligible businesses that are not qualified high-technology businesses, distressed businesses, rural businesses, or an eligible business described in subsection (11). For calendar year 2009, the authority shall not execute new written agreements described in this subsection that in total provide for more than 400 yearly credits over the terms of those agreements entered into that year, plus up to 85 additional yearly credits taken from previously issued credits by the authority. For calendar year 2010 and each year thereafter, the authority shall not execute new written agreements described in this subsection that in total provide for more than 300 yearly credits over the terms of those agreements entered into that year, plus up to 85 additional yearly credits taken

from previously issued credits by the authority. As used in this subsection, beginning calendar year 2010, "yearly credit" means the number of years over the term of an agreement multiplied by the percentage amount authorized in the agreement. As used in this subsection, "previously issued credits" means 2/3 of the number of tax credits authorized by the authority for an authorized business beginning in calendar year 1999 that meet all of the following:

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

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

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

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

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

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

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

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

(d) Certifies to the authority that the management or ownership is committed to improving the long-term viability of the facility in meeting the national and international competition facing the facility through better management techniques, best practices, including state of the art lean manufacturing practices, and market diversification.

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

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

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

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

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

(b) Agrees to occupy property that is a historic resource as that term is defined in section 435 of the Michigan business tax act, 2007 PA 36, MCL 208.1435, and that is located in a downtown district as defined in section 1 of 1975 PA 197, MCL 125.1651.

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

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995;—Am. 2000, Act 144, Imd. Eff. June 6, 2000;—Am. 2003, Act 248, Imd. Eff. Dec. 29, 2003;—Am. 2004, Act 81, Imd. Eff. Apr. 22, 2004;—Am. 2004, Act 398, Imd. Eff. Oct. 15, 2004;—Am. 2005, Act 185, Imd. Eff. Oct. 24, 2005;—Am. 2006, Act 21, Imd. Eff. Feb. 14, 2006;—Am. 2006, Act 117, Imd. Eff. Apr. 11, 2006;—Am. 2006, Act 283, Imd. Eff. July 10, 2006;—Am. 2006, Act 484, Imd. Eff. Dec. 29, 2006;—Am. 2007, Act 62, Imd. Eff. Sept. 19, 2007;—Am. 2008, Act 110, Imd. Eff. Apr. 28, 2008;—Am. 2008, Act 257, Imd. Eff. Aug. 4, 2008;—Am. 2009, Act 123, Imd. Eff. Oct. 27, 2009.

Compiler's note: Enacting section 1 of Act 123 of 2009 provides:

"Enacting section 1. It is the intent of the legislature that, when the authority determines whether to, and on what terms and conditions to, enter into a written agreement with an eligible business and the eligible business is considering multiple locations within this state, the authority should make substantial efforts not to endorse 1 location over another."

Popular name: MEGA

207.808a Fee or donation.

Sec. 8a. Beginning on the effective date of the amendatory act that added this section, the authority shall not require an eligible business, as a condition of becoming an authorized business, to pay an unreasonable fee to or make a donation to the Michigan economic development corporation or a foundation or fund associated with the Michigan economic development corporation.

History: Add. 2003, Act 248, Imd. Eff. Dec. 29, 2003.

Popular name: MEGA

207.809 Eligibility for credits; issuance of certificate.

Sec. 9. (1) An authorized business is eligible for the credits provided in sections 37c, 37d, and 38g(19) to (24) of the single business tax act, 1975 PA 228, MCL 208.37c, 208.37d, and 208.38g, and sections 407 and 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1407 and 208.1431.

(2) The authority shall issue a certificate each year to an authorized business that states the following:

(a) That the eligible business is an authorized business.

(b) The amount of the tax credit for the designated tax year.

(c) The taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995;—Am. 2000, Act 144, Imd. Eff. June 6, 2000;—Am. 2007, Act 150, Imd. Eff. Dec. 14, 2007.

Popular name: MEGA

207.810 Report to legislature.

Sec. 10. (1) The authority shall report to both houses of the legislature yearly on October 1 on the activities of the authority. Beginning October 1, 2009, and each year thereafter, the authority shall also report to the chairperson of the senate appropriations committee, the chairperson of the senate finance committee, the chairperson of the house of representatives appropriations committee, the chairperson of the house of representatives tax policy committee, and the directors of the senate and house fiscal agencies. The authority shall also report to the chairperson or director upon written request from the chairperson or director. The report shall include, but is not limited to, all of the following:

(a) The total amount of capital investment attracted under this act.

(b) The total number of qualified new jobs created under this act.

(c) The total number of new written agreements.

(d) Name and location of all authorized businesses and the names and addresses of all of the following:

(i) The directors and officers of the corporation if the authorized business is a corporation.

(ii) The partners of the partnership or limited liability partnership if the authorized business is a partnership or limited liability partnership.

(iii) The members of the limited liability company if the authorized business is a limited liability company.

(e) The amount and duration of the tax credit separately for each authorized business.

(f) The number of jobs required under the written agreement to be created or retained for each authorized business to be eligible for the tax credits under the written agreement including the maximum number of jobs which can be utilized to calculate the credit for each authorized business under the written agreement.

(g) The amount of any fee, donation, or other payment of any kind from the authorized business to the Michigan economic development corporation or a foundation or fund associated with the Michigan economic development corporation paid or made in the previous reporting year end or, if it is the first reporting year for the authorized business, for the immediately preceding 3 calendar years.

(h) The total number of written agreements and the total capital investment required or otherwise

anticipated for the credit under written agreements entered into under section 8(5) or (9) and, of those written agreements, the number in which the board determined that it was in the public interest to waive 1 or more of the requirements of section 8(1).

(i) For each written agreement with each authorized business, the actual number of jobs created or retained for the most recent period that information is available and all previous years under the written agreement, the total capital investment at that facility for tax credits authorized under section 8(5) or (9) for that year and all previous years under the written agreement, and the total value of the tax credits received under that written agreement for that year and all previous years under the written agreement.

(j) A copy of each certificate issued under section 431, 431a, 431b, or 431c of the Michigan business tax act, 2007 PA 36, MCL 208.1431, 208.1431a, 208.1431b, and 208.1431c.

(2) A review and comments concerning the report shall be included in the auditor general's postaudit of the authority.

History: 1995, Act 24, Imd. Eff. Apr. 18, 1995;—Am. 2003, Act 248, Imd. Eff. Dec. 29, 2003;—Am. 2006, Act 283, Imd. Eff. July 10, 2006;—Am. 2009, Act 125, Imd. Eff. Oct. 27, 2009.

Popular name: MEGA

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