

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4922**

A bill to amend 1995 PA 24, entitled
"Michigan economic growth authority act,"
by amending section 8 (MCL 207.808), as amended by 2008 PA 257.

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

1 expanding in this state.

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

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

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

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

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

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

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

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

1 rural enterprise community, or enterprise community.

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

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

5 (B) A minimum of 25 qualified new jobs at the facility within
6 5 years after the date of the expansion or location as determined
7 by the authority and a minimum of 25 qualified new jobs at the
8 facility each year thereafter for which a credit is authorized
9 under this act.

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

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

13 (B) A minimum of 25 qualified new jobs at the facility within
14 5 years after the date of the expansion or location as determined
15 by the authority.

16 (c) Except as provided in subsection (5) and as otherwise
17 provided in this subdivision, in addition to the jobs specified in
18 subdivision (b), the eligible business, if already located within
19 this state, agrees to maintain a number of full-time jobs equal to
20 or greater than the number of full-time jobs it maintained in this
21 state prior to the expansion, as determined by the authority. After
22 an eligible business has entered into a written agreement as
23 provided in subsection (2), the authority may adjust the number of
24 full-time jobs required to be maintained by the authorized business
25 under this subdivision, in order to adjust for decreases in full-
26 time jobs in the authorized business in this state due to the
27 divestiture of operations, provided a single other person continues

1 to maintain those full-time jobs in this state. The authority shall
2 not approve a reduction in the number of full-time jobs to be
3 maintained unless the authority has determined that it can monitor
4 the maintenance of the full-time jobs in this state by the other
5 person, and the authorized business agrees in writing that the
6 continued maintenance of the full-time jobs in this state by the
7 other person, as determined by the authority, is a condition of
8 receiving tax credits under the written agreement. A full-time job
9 maintained by another person under this subdivision, that otherwise
10 meets the requirements of section ~~3(i)~~ 3(J), shall be considered a
11 full-time job, notwithstanding the requirement that a full-time job
12 be performed by an individual employed by an authorized business,
13 or an employee leasing company or professional employer
14 organization on behalf of an authorized business.

15 (d) Except as otherwise provided in this subdivision, the wage
16 paid for each retained job and qualified new job is equal to or
17 greater than 150% of the federal minimum wage. However, if the
18 eligible business is a qualified high-wage activity, then the wage
19 paid for each qualified new job is equal to or greater than 300% of
20 the ~~federal~~ **STATE** minimum wage. However, beginning on ~~the effective~~
21 ~~date of the amendatory act that added this sentence~~ **AUGUST 4, 2008,**
22 the authority may include the value of the health care benefit in
23 determining the wage paid for each retained job or qualified new
24 job for an eligible business under this act.

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

27 (f) Except for an eligible business described in subsection

1 (5) (c), the eligible business has not begun construction of the
2 facility.

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

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

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

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

19 (2) If the authority determines that the requirements of
20 subsection (1), (5), (9), or (11) have been met, the authority
21 shall determine the amount and duration of tax credits to be
22 authorized under section 9, and shall enter into a written
23 agreement as provided in this section. ~~The~~ **EXCEPT AS OTHERWISE**
24 **PROVIDED UNDER THIS SECTION, THE** duration of the tax credits shall
25 not exceed 20 years or for an authorized business that is a
26 distressed business, 3 years. In determining the amount and
27 duration of tax credits authorized, the authority shall consider

1 the following factors:

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

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

8 (c) The total capital investment or new capital investment the
9 eligible business will make.

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

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

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

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

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

24 **(I) THE PROJECT'S EFFECTS ON OTHER MICHIGAN BUSINESSES WITHIN**
25 **THE SAME INDUSTRY.**

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

1 following:

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

4 (b) Conditions upon which the authorized business designation
5 is made.

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

10 (d) A statement by the eligible business that a
11 misrepresentation in the application may result in the revocation
12 of the designation as an authorized business and the refund of
13 credits received under section 9 **PLUS A PENALTY EQUAL TO 10% OF THE**
14 **CREDITS RECEIVED UNDER SECTION 9.**

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

18 (f) A written certification from the eligible business
19 regarding all of the following:

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

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

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

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

7 (g) A condition that if the eligible business qualified under
8 subsection (5) (b) (ii) and met the subsection (1) (e) requirement by
9 filing a chapter 11 plan of reorganization, the plan must be
10 confirmed by the bankruptcy court within 6 years of the date of the
11 agreement or the agreement is rescinded.

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

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

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

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

22 (i) Relocates production of a product to this state after the
23 date of the application, makes capital investment of
24 \$500,000,000.00 in this state, and maintains 500 retained jobs, as
25 determined by the authority.

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

1 investment in this state.

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

8 (iv) Maintains 300 retained jobs at a facility; the facility is
9 at risk of being closed and if it were to close, the work would go
10 to a location outside this state, as determined by the authority;
11 new management or new ownership is proposed for the facility that
12 is committed to improve the viability of the facility, unless
13 otherwise provided in this subparagraph; and the tax credits
14 offered under this act are necessary for the facility to maintain
15 operations. The authority may not enter into a written agreement
16 under this subparagraph after December 31, 2007. Of the written
17 agreements entered into under this subparagraph, the authority may
18 enter into 3 written agreements under this subparagraph that are
19 excluded from the requirements of subsection (1)(e), (f), **AND** (h) ~~7~~
20 ~~and (i)~~ if the authority considers it in the public interest and if
21 the eligible business would have met the requirements of subsection
22 (1)(g) ~~7~~ **AND** (h) ~~7~~ ~~and (k)~~ within the immediately preceding 6
23 months from the signing of the written agreement for a tax credit.
24 Of the 3 written agreements described in this subparagraph, the
25 authority may also waive the requirement for new management if the
26 existing management and labor make a commitment to improve the
27 viability and productivity of the facility to better meet

1 international competition as determined by the authority.

2 (v) Maintains 100 retained jobs at a facility; is a rural
3 business, unless otherwise provided in this subparagraph; the
4 facility is at risk of being closed and if it were to close, the
5 work would go to a location outside this state, as determined by
6 the authority; new management or new ownership is proposed for the
7 facility that is committed to improve the viability of the
8 facility; and the tax credits offered under this act are necessary
9 for the facility to maintain operations. The authority may not
10 enter into a written agreement under this subparagraph after
11 December 31, 2007. Of the written agreements entered into under
12 this subparagraph, the authority may enter into 3 written
13 agreements under this subparagraph that are excluded from the
14 requirements of subsection (1)(e), (f), and (h) if the authority
15 considers it in the public interest and if the eligible business
16 would have met the requirements of subsection ~~(1)(g)~~ **(1)(E), (G),**
17 **AND** (h) ~~and (e)~~ within the immediately preceding 6 months from
18 the signing of the written agreement for a tax credit. Of the 3
19 written agreements described in this subparagraph, the authority
20 may also waive the requirement that the business be a rural
21 business if the business is located in a county with a population
22 of 500,000 or more and 600,000 or less.

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

26 (vii) Is located in this state on the date of the application,
27 maintains at least 675 retained jobs at a facility, agrees to

1 create 400 new jobs, and agrees to make a new capital investment of
2 at least \$45,000,000.00 to be completed or contracted for not later
3 than December 31, 2007. Of the written agreements entered into
4 under this subparagraph, the authority may enter into 1 written
5 agreement under this subparagraph that is excluded from the
6 requirements of subsection (1)(f) if the authority considers it in
7 the public interest.

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

12 (c) Is a distressed business.

13 (6) ~~Each~~ **THROUGH DECEMBER 31, 2008, EACH** year, the authority
14 shall not execute new written agreements that in total provide for
15 more than 400 yearly credits over the terms of those agreements
16 entered into that year for eligible businesses that are not
17 qualified high-technology businesses, distressed businesses, rural
18 businesses, or an eligible business described in subsection (11).
19 **FOR CALENDAR YEAR 2009, THE AUTHORITY SHALL NOT EXECUTE NEW WRITTEN**
20 **AGREEMENTS DESCRIBED IN THIS SUBSECTION THAT IN TOTAL PROVIDE FOR**
21 **MORE THAN 400 YEARLY CREDITS OVER THE TERMS OF THOSE AGREEMENTS**
22 **ENTERED INTO THAT YEAR, PLUS UP TO 85 ADDITIONAL YEARLY CREDITS**
23 **TAKEN FROM PREVIOUSLY ISSUED CREDITS BY THE AUTHORITY. FOR CALENDAR**
24 **YEAR 2010 AND EACH YEAR THEREAFTER, THE AUTHORITY SHALL NOT EXECUTE**
25 **NEW WRITTEN AGREEMENTS DESCRIBED IN THIS SUBSECTION THAT IN TOTAL**
26 **PROVIDE FOR MORE THAN 300 YEARLY CREDITS OVER THE TERMS OF THOSE**
27 **AGREEMENTS ENTERED INTO THAT YEAR, PLUS UP TO 85 ADDITIONAL YEARLY**

1 CREDITS TAKEN FROM PREVIOUSLY ISSUED CREDITS BY THE AUTHORITY. AS
2 USED IN THIS SUBSECTION, "YEARLY CREDIT" MEANS THE NUMBER OF YEARS
3 OVER THE TERM OF AN AGREEMENT MULTIPLIED BY THE PERCENTAGE AMOUNT
4 AUTHORIZED IN THE AGREEMENT. AS USED IN THIS SUBSECTION,
5 "PREVIOUSLY ISSUED CREDITS" MEANS 2/3 OF THE NUMBER OF TAX CREDITS
6 AUTHORIZED BY THE AUTHORITY FOR AN AUTHORIZED BUSINESS BEGINNING IN
7 CALENDAR YEAR 1999 THAT MEET ALL OF THE FOLLOWING:

8 (A) THAT THE AUTHORIZED BUSINESS DID NOT USE ANY OR A PORTION
9 OF THE TAX CREDITS AUTHORIZED UNDER THAT WRITTEN AGREEMENT.

10 (B) THE AUTHORITY DETERMINED AT A MEETING UPON A VOTE OF THE
11 MAJORITY OF THE MEMBERS PRESENT THAT THE CREDITS PREVIOUSLY
12 AUTHORIZED SATISFY SUBDIVISION (A).

13 (7) The authority shall not execute more than 50 new written
14 agreements each year for eligible businesses that are qualified
15 high-technology businesses or rural business. IN ADDITION, THE
16 AUTHORITY MAY EXECUTE NOT MORE THAN 25 ADDITIONAL NEW WRITTEN
17 AGREEMENTS EACH YEAR FOR ELIGIBLE BUSINESSES THAT ARE QUALIFIED
18 HIGH-TECHNOLOGY BUSINESSES THAT HAVE DEMONSTRATED THAT NOT LESS
19 THAN 10% OF THE TOTAL OPERATING EXPENSES OF THE ELIGIBLE BUSINESS
20 IN THE IMMEDIATELY PRECEDING 2 YEARS WAS ATTRIBUTABLE TO RESEARCH
21 AND DEVELOPMENT. ~~Only 25~~ NOT MORE THAN 35 of the ~~50-75~~ written
22 agreements for businesses that are qualified high-technology
23 businesses or rural business may be executed each year for
24 qualified rural businesses. NOT MORE THAN 50 OF THE 75 WRITTEN
25 AGREEMENTS FOR BUSINESSES THAT ARE QUALIFIED HIGH-TECHNOLOGY
26 BUSINESSES OR RURAL BUSINESSES MAY BE EXECUTED EACH YEAR FOR A
27 HIGH-TECHNOLOGY BUSINESS THAT ENGAGES IN A QUALIFIED HIGH-WAGE

1 ACTIVITY. NOT MORE THAN 4 OF THE 75 AGREEMENTS EXECUTED UNDER THIS
2 SUBSECTION MAY PROVIDE FOR A TAX CREDIT WITH A DURATION OF MORE
3 THAN 12 YEARS BUT NOT MORE THAN 20 YEARS. THE AUTHORITY SHALL NOT
4 EXECUTE A WRITTEN AGREEMENT FOR AN ELIGIBLE BUSINESS THAT IS A
5 QUALIFIED HIGH-TECHNOLOGY BUSINESS OR RURAL BUSINESS UNDER THIS
6 SUBSECTION IF THAT ELIGIBLE BUSINESS HAS CLAIMED A CREDIT UNDER
7 SECTION 455 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL
8 208.1455.

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

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

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

27 (b) Agrees to invest, through construction, acquisition,

1 transfer, purchase, contract, or any other method as determined by
2 the authority, at a facility equal to \$50,000.00 or more per
3 retained job maintained at the facility.

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

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

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

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

20 (10) Beginning on ~~the effective date of the amendatory act~~
21 ~~that added this subsection~~ **APRIL 28, 2008**, if the authority enters
22 into a written agreement with an eligible business, the written
23 agreement shall include a repayment provision of all or a portion
24 of the credits received by the eligible business for a facility if
25 the eligible business moves full-time jobs outside this state
26 during the term of the written agreement and for a period of years
27 after the term of the written agreement, as determined by the

1 authority.

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

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

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

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

14 (12) **NOTWITHSTANDING SECTION 3, BEGINNING JANUARY 1, 2009, FOR**
15 **A PERIOD OF 2 YEARS AS DETERMINED BY THE AUTHORIZED BUSINESS,**
16 **"FULL-TIME JOB" ALSO MEANS A JOB PERFORMED BY AN INDIVIDUAL FOR 30**
17 **HOURS OR MORE EACH WEEK AND FOR WHICH HEALTH CARE BENEFITS ARE**
18 **PROVIDED AND INCOME AND SOCIAL SECURITY TAXES ARE WITHHELD BY AN**
19 **AUTHORIZED BUSINESS THAT MEETS ALL OF THE FOLLOWING:**

20 (A) **WAS A DEBTOR-IN-POSSESSION IN A BANKRUPTCY PROCEEDING IN**
21 **THE IMMEDIATELY PRECEDING 5-YEAR PERIOD.**

22 (B) **MEETS THE REQUIREMENTS OF SUBSECTION (1)(E) IN THE MANNER**
23 **PROVIDED IN SUBSECTION (3)(G).**

24 (C) **IS SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT.**

25 Enacting section 1. It is the intent of the legislature that,
26 when the authority determines whether to, and on what terms and
27 conditions to, enter into a written agreement with an eligible

1 business and the eligible business is considering multiple
2 locations within this state, the authority should make substantial
3 efforts not to endorse 1 location over another.

4 Enacting section 2. This amendatory act does not take effect
5 unless all of the following bills of the 95th Legislature are
6 enacted into law:

- 7 (a) Senate Bill No. 70.
- 8 (b) Senate Bill No. 71.
- 9 (c) Senate Bill No. 774.