

HOUSE BILL No. 4547

March 10, 2009, Introduced by Rep. Scripps and referred to the Committee on Commerce.

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
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 the
3 facility is located in a neighborhood enterprise zone as determined
4 under the neighborhood enterprise zone act, 1992 PA 147, MCL
5 207.771 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 the
21 facility is located in a neighborhood enterprise zone as determined
22 under the neighborhood enterprise zone act, 1992 PA 147, MCL
23 207.771 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(i)~~ **3(J)**, shall be considered a
9 full-time job, notwithstanding the requirement that a full-time job
10 be performed by an individual employed by an authorized business,
11 or an employee leasing company or professional employer
12 organization 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 federal minimum wage. However, beginning ~~on the effective date~~
19 ~~of the amendatory act that added this sentence~~ **AUGUST 4, 2008**, the
20 authority may include the value of the health care benefit in
21 determining the wage paid for each retained job or qualified new
22 job for an eligible business under this act.

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

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

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

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

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

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

17 (2) If the authority determines that the requirements of
18 subsection (1), (5), (9), or (11) have been met, the authority
19 shall determine the amount and duration of tax credits to be
20 authorized under section 9, and shall enter into a written
21 agreement as provided in this section. The duration of the tax
22 credits shall not exceed 20 years or for an authorized business
23 that is a distressed business, 3 years. In determining the amount
24 and duration of tax credits authorized, the authority shall
25 consider the following factors:

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

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

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

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

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

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

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

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

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

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

26 (b) Conditions upon which the authorized business designation
27 is made.

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

5 (d) A statement by the eligible business that a
6 misrepresentation in the application may result in the revocation
7 of the designation as an authorized business and the refund of
8 credits received under section 9.

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

12 (f) A written certification from the eligible business
13 regarding all of the following:

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

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

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

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

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

6 (H) ALL WRITTEN AGREEMENTS ENTERED INTO ON OR AFTER JANUARY 1,
7 2010 SHALL CONTAIN A PROVISION REQUIRING THE PAYMENT OF A PENALTY
8 IF THE AUTHORIZED BUSINESS FAILS TO COMPLY WITH SECTION 3 OF THE
9 MICHIGAN CORPORATE RESPONSIBILITY ACT OR FAILS TO DISCLOSE A CIVIL
10 OR CRIMINAL OFFENSE AS REQUIRED BY SECTION 3 OF THE MICHIGAN
11 CORPORATE RESPONSIBILITY ACT. THE PENALTY IS EQUAL TO THE AMOUNT OF
12 ALL TAX CREDITS DESCRIBED IN SECTION 9 THAT WERE UTILIZED BY THE
13 AUTHORIZED BUSINESS UNDER THIS ACT.

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

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

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

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

24 (i) Relocates production of a product to this state after the
25 date of the application, makes capital investment of
26 \$500,000,000.00 in this state, and maintains 500 retained jobs, as
27 determined by the authority.

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

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

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

1 existing management and labor make a commitment to improve the
2 viability and productivity of the facility to better meet
3 international competition as determined by the authority.

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

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

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

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

14 (c) Is a distressed business.

15 (6) Each year, the authority shall not execute new written
16 agreements that in total provide for more than 400 yearly credits
17 over the terms of those agreements entered into that year for
18 eligible businesses that are not qualified high-technology
19 businesses, distressed businesses, rural businesses, or an eligible
20 business described in subsection (11).

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

27 (8) The authority shall not execute more than 20 new written

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

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

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

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

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

26 (d) Certifies to the authority that the management or
27 ownership is committed to improving the long-term viability of the

1 facility in meeting the national and international competition
2 facing the facility through better management techniques, best
3 practices, including state of the art lean manufacturing practices,
4 and market diversification.

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

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

11 (10) Beginning on ~~the effective date of the amendatory act~~
12 ~~that added this subsection~~ **APRIL 28, 2008**, if the authority enters
13 into 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) BEGINNING JANUARY 1, 2010, THE AUTHORITY SHALL NOT ENTER
6 INTO AN AGREEMENT WITH AN ELIGIBLE BUSINESS THAT HAS FAILED TO
7 COMPLY WITH SECTION 3 OF THE MICHIGAN CORPORATE RESPONSIBILITY ACT.