

HOUSE BILL No. 5787

February 9, 2010, Introduced by Rep. Slezak and referred to the Committee on Tax Policy.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (d) Except as otherwise provided in this subdivision, the wage
15 paid for each retained job and qualified new job is equal to or
16 greater than 150% of the federal minimum wage. However, if the
17 eligible business is a qualified high-wage activity, then the wage
18 paid for each qualified new job is equal to or greater than 300% of
19 the state minimum wage. However, beginning on 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 (2) If the authority determines that the requirements of
13 subsection (1), (5), (9), or (11) have been met, the authority
14 shall determine the amount and duration of tax credits to be
15 authorized under section 9, and shall enter into a written
16 agreement as provided in this section. Except as otherwise provided
17 under this section, the duration of the tax credits shall not
18 exceed 20 years or for an authorized business that is a distressed
19 business, 3 years. In determining the amount and duration of tax
20 credits authorized, the authority shall consider the following
21 factors:

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

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

1 (c) The total capital investment or new capital investment the
2 eligible business will make.

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

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

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

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

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

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

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

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

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

26 (c) A statement by the eligible business that a violation of
27 the written agreement may result in the revocation of the

1 designation as an authorized business and the loss or reduction of
2 future credits under section 9.

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

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

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

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

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

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

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

27 (g) A condition that if the eligible business qualified under

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

5 (H) FOR WRITTEN AGREEMENTS ENTERED INTO ON OR AFTER OCTOBER 1,
6 2010, BOTH OF THE FOLLOWING:

7 (i) A PROVISION THAT THE ELIGIBLE BUSINESS WILL PAY A PENALTY
8 DESCRIBED IN THIS SUBDIVISION IF THE ELIGIBLE BUSINESS RELOCATES
9 OUTSIDE THIS STATE DURING THE TERM OF THE WRITTEN AGREEMENT. THE
10 PENALTY IS AN AMOUNT EQUAL TO THE AMOUNT OF THE CREDITS RECEIVED BY
11 THE AUTHORIZED BUSINESS UNDER THAT WRITTEN AGREEMENT.

12 (ii) A PROVISION THAT THE ELIGIBLE BUSINESS CONSENTS TO THE
13 JURISDICTION OF THE COURTS OF THIS STATE FOR THE COLLECTION AND
14 ENFORCEMENT OF A PENALTY DESCRIBED IN THIS SUBDIVISION.

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

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

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

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

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

1 determined by the authority.

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

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

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

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

5 (v) Maintains 100 retained jobs at a facility; is a rural
6 business, unless otherwise provided in this subparagraph; the
7 facility is at risk of being closed and if it were to close, the
8 work would go to a location outside this state, as determined by
9 the authority; new management or new ownership is proposed for the
10 facility that is committed to improve the viability of the
11 facility; and the tax credits offered under this act are necessary
12 for the facility to maintain operations. The authority may not
13 enter into a written agreement under this subparagraph after
14 December 31, 2007. Of the written agreements entered into under
15 this subparagraph, the authority may enter into 3 written
16 agreements under this subparagraph that are excluded from the
17 requirements of subsection (1)(e), (f), and (h) if the authority
18 considers it in the public interest and if the eligible business
19 would have met the requirements of subsection (1)(e), (g), and (h)
20 within the immediately preceding 6 months from the signing of the
21 written agreement for a tax credit. Of the 3 written agreements
22 described in this subparagraph, the authority may also waive the
23 requirement that the business be a rural business if the business
24 is located in a county with a population of 500,000 or more and
25 600,000 or less.

26 (vi) Maintains 175 retained jobs and makes new capital
27 investment at a facility in a county with a population of not less

1 than 7,500 but not greater than 8,000.

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

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

15 (c) Is a distressed business.

16 (6) Through December 31, 2008, each year, the authority shall
17 not execute new written agreements that in total provide for more
18 than 400 yearly credits over the terms of those agreements entered
19 into that year for eligible businesses that are not qualified high-
20 technology businesses, distressed businesses, rural businesses, or
21 an eligible business described in subsection (11). For calendar
22 year 2009, the authority shall not execute new written agreements
23 described in this subsection that in total provide for more than
24 400 yearly credits over the terms of those agreements entered into
25 that year, plus up to 85 additional yearly credits taken from
26 previously issued credits by the authority. For calendar year 2010
27 and each year thereafter, the authority shall not execute new

1 written agreements described in this subsection that in total
2 provide for more than 300 yearly credits over the terms of those
3 agreements entered into that year, plus up to 85 additional yearly
4 credits taken from previously issued credits by the authority. As
5 used in this subsection, beginning calendar year 2010, "yearly
6 credit" means the number of years over the term of an agreement
7 multiplied by the percentage amount authorized in the agreement. As
8 used in this subsection, "previously issued credits" means 2/3 of
9 the number of tax credits authorized by the authority for an
10 authorized business beginning in calendar year 1999 that meet all
11 of the following:

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

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

17 (7) The authority shall not execute more than 50 new written
18 agreements each year for eligible businesses that are qualified
19 high-technology businesses or rural business. In addition, the
20 authority may execute not more than 25 additional new written
21 agreements each year for eligible businesses that are qualified
22 high-technology businesses that have demonstrated that not less
23 than 10% of the total operating expenses of the eligible business
24 in the immediately preceding 2 years was attributable to research
25 and development. Not more than 35 of the 75 written agreements for
26 businesses that are qualified high-technology businesses or rural
27 business may be executed each year for qualified rural businesses.

1 Not more than 50 of the 75 written agreements for businesses that
2 are qualified high-technology businesses or rural businesses may be
3 executed each year for a high-technology business that engages in a
4 qualified high-wage activity. Not more than 4 of the 75 agreements
5 executed under this subsection may provide for a tax credit with a
6 duration of more than 12 years but not more than 20 years. The
7 authority shall not execute a written agreement for an eligible
8 business that is a qualified high-technology business or rural
9 business under this subsection if that eligible business has
10 claimed a credit under section 455 of the Michigan business tax
11 act, 2007 PA 36, MCL 208.1455.

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

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

1 following:

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

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

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

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

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

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

23 (10) Beginning on April 28, 2008, if the authority enters into
24 a written agreement with an eligible business, the written
25 agreement shall include a repayment provision of all or a portion
26 of the credits received by the eligible business for a facility if
27 the eligible business moves full-time jobs outside this state

1 during the term of the written agreement and for a period of years
2 after the term of the written agreement, as determined by the
3 authority.

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

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

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

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