

HOUSE BILL NO. 4190

February 14, 2019, Introduced by Reps. Webber, Sheppard and Coleman 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

1 business creates 1 or more of the following as determined by the
2 authority and provided with written agreement:

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

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

7 (iii) A minimum of 25 qualified new jobs at the facility if the
8 facility is located in a neighborhood enterprise zone as determined
9 under the neighborhood enterprise zone act, 1992 PA 147, MCL
10 207.771 to 207.786, is located in a renaissance zone under the
11 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
12 125.2696, or is located in a federally designated empowerment zone,
13 rural enterprise community, or enterprise community.

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

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

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

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

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

25 (iii) A minimum of 25 qualified new jobs at the facility if the
26 facility is located in a neighborhood enterprise zone as determined
27 under the neighborhood enterprise zone act, 1992 PA 147, MCL
28 207.771 to 207.786, is located in a renaissance zone under the
29 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to

1 125.2696, or is located in a federally designated empowerment zone,
2 rural enterprise community, or enterprise community.

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

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

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

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

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

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

17 (c) Except as provided in subsection (5) and as otherwise
18 provided in this subdivision, in addition to the jobs specified in
19 subdivision (b), the eligible business, if already located within
20 this state, agrees to maintain a number of full-time jobs equal to
21 or greater than the number of full-time jobs it maintained in this
22 state prior to the expansion, as determined by the authority. After
23 an eligible business has entered into a written agreement as
24 provided in subsection (2), the authority may adjust the number of
25 full-time jobs required to be maintained by the authorized business
26 under this subdivision, in order to adjust for decreases in full-
27 time jobs in the authorized business in this state due to the
28 divestiture of operations, provided a single other person continues
29 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.

28 (g) The expansion, retention, or location of the eligible
29 business will benefit the people of this state by increasing

1 opportunities for employment and by strengthening the economy of
2 this state.

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

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

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

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

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

26 (c) The total capital investment or new capital investment the
27 eligible business will make.

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

1 Michigan.

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

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

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

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

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

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

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

20 (b) Conditions upon which the authorized business designation
21 is made.

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

26 (d) A statement by the eligible business that a
27 misrepresentation in the application may result in the revocation
28 of the designation as an authorized business and the refund of
29 credits received under section 9 plus a penalty equal to 10% of the

1 credits received under section 9.

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

5 (f) A written certification from the eligible business
6 regarding all of the following:

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

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

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

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

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

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

28 (5) Through December 31, 2007, after receipt of an
29 application, the authority may enter into a written agreement with

1 an eligible business that meets 1 or more of the following
2 criteria:

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

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

7 (i) Relocates production of a product to this state after the
8 date of the application, makes capital investment of
9 \$500,000,000.00 in this state, and maintains 500 retained jobs, as
10 determined by the authority.

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

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

20 (iv) Maintains 300 retained jobs at a facility; the facility is
21 at risk of being closed and if it were to close, the work would go
22 to a location outside this state, as determined by the authority;
23 new management or new ownership is proposed for the facility that
24 is committed to improve the viability of the facility, unless
25 otherwise provided in this subparagraph; and the tax credits
26 offered under this act are necessary for the facility to maintain
27 operations. The authority may not enter into a written agreement
28 under this subparagraph after December 31, 2007. Of the written
29 agreements entered into under this subparagraph, the authority may

1 enter into 3 written agreements under this subparagraph that are
2 excluded from the requirements of subsection (1)(e), (f), and (h)
3 if the authority considers it in the public interest and if the
4 eligible business would have met the requirements of subsection
5 (1)(g) and (h) within the immediately preceding 6 months from the
6 signing of the written agreement for a tax credit. Of the 3 written
7 agreements described in this subparagraph, the authority may also
8 waive the requirement for new management if the existing management
9 and labor make a commitment to improve the viability and
10 productivity of the facility to better meet international
11 competition as determined by the authority.

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

1 requirement that the business be a rural business if the business
2 is located in a county with a population of 500,000 or more and
3 600,000 or less.

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

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

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

20 (c) Is a distressed business.

21 (6) Through December 31, 2008, each year, the authority shall
22 not execute new written agreements that in total provide for more
23 than 400 yearly credits over the terms of those agreements entered
24 into that year for eligible businesses that are not qualified high-
25 technology businesses, distressed businesses, rural businesses, or
26 an eligible business described in subsection (11). For calendar
27 year 2009, the authority shall not execute new written agreements
28 described in this subsection that in total provide for more than
29 400 yearly credits over the terms of those agreements entered into

1 that year, plus up to 85 additional yearly credits taken from
2 previously issued credits by the authority. For calendar year 2010
3 and each year thereafter **through calendar year 2014**, the authority
4 shall not execute new written agreements described in this
5 subsection that in total provide for more than 300 yearly credits
6 over the terms of those agreements entered into that year, plus up
7 to 85 additional yearly credits taken from previously issued
8 credits by the authority. As used in this subsection, beginning
9 calendar year 2010, "yearly credit" means the number of years over
10 the term of an agreement multiplied by the percentage amount
11 authorized in the agreement. As used in this subsection,
12 "previously issued credits" means 2/3 of the number of tax credits
13 authorized by the authority for an authorized business beginning in
14 calendar year 1999 that meet all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (b) Agrees to occupy property that is a historic resource as
8 that term is defined in section 435 of the Michigan business tax
9 act, 2007 PA 36, MCL 208.1435, and that is located in a downtown
10 district as defined in ~~section 1 of 1975 PA 197, MCL~~
11 ~~125.1651.~~ **section 201 of the recodified tax increment financing act,**
12 **2018 PA 57, MCL 125.4201.**

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

15 **(12) Notwithstanding any other provision of this act,**
16 **beginning on the effective date of the amendatory act that added**
17 **this subsection, the authority or its successor shall not enter**
18 **into a new written agreement with an eligible business, modify or**
19 **amend an existing written agreement with an authorized business, or**
20 **transfer or assign an existing agreement to another legal entity,**
21 **for a certified credit under section 430, 431, 431a, 431b, 431c,**
22 **432, 434, or 450 of the Michigan business tax act, 2007 PA 36, MCL**
23 **208.1430, 208.1431, 208.1431a, 208.1431b, 208.1431c, 208.1432,**
24 **208.1434, and 208.1450, unless the modification, amendment,**
25 **transfer, or assignment reduces the net amount of the credit to the**
26 **authorized business. However, the authority or its successor may**
27 **modify, amend, transfer, or assign an existing agreement with an**
28 **authorized business for technical changes as long as the**
29 **modification, amendment, transfer, or assignment does not increase**

1 the net amount of the credit as determined by the fund to the
2 authorized business. Under no circumstances shall the authority or
3 its successor modify, amend, transfer, or assign an existing
4 agreement to provide the authorized business with a longer term to
5 claim that credit.

6 (13) Subject to subsection (12), the fund shall determine
7 guidelines for modification and amendment of existing written
8 agreements and shall publish them on its website.

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.