

# HOUSE BILL No. 6093

April 29, 2010, Introduced by Reps. Nerat, Sheltroun, McDowell, Lindberg, Clemente, Lipton, Lahti, Lemmons, Griffin and Liss and referred to the Committee on New Economy and Quality of Life.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending section 437 (MCL 208.1437), as amended by 2009 PA 241.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 437. (1) Subject to the criteria under this section, a  
2       qualified taxpayer that has unused credits or has a preapproval  
3       letter issued after December 31, 2007 and before January 1, 2014,  
4       or a taxpayer that received a preapproval letter prior to January  
5       1, 2008 under section 38g of former 1975 PA 228 and has not  
6       received a certificate of completion prior to the taxpayer's last  
7       tax year, provided that the project is completed not more than 5  
8       years after the preapproval letter for the project is issued unless  
9       extended under subsection (9) or if it is a multiphase project not  
10      more than 10 years after the preapproval letter, as amended, if

1 applicable, for the project is issued, or an assignee under  
2 subsection (20), (21), or (22) may claim a credit that has been  
3 approved under section 38g of former 1975 PA 228 or under  
4 subsection (2), (3), or (4) against the tax imposed by this act  
5 equal to either of the following:

6 (a) For projects approved before April 8, 2008, if the total  
7 of all credits for a project is \$1,000,000.00 or less, 10% of the  
8 cost of the qualified taxpayer's eligible investment paid or  
9 accrued by the qualified taxpayer on an eligible property provided  
10 that the project does not exceed the amount stated in the  
11 preapproval letter, as amended. For projects approved, or amended,  
12 on and after April 8, 2008, if the total of all eligible  
13 investments for a project are \$10,000,000.00 or less, up to 12.5%  
14 of the costs of the qualified taxpayer's eligible investment paid  
15 or accrued by the qualified taxpayer on an eligible property or up  
16 to 15% of the costs of the qualified taxpayer's eligible investment  
17 paid or accrued by the qualified taxpayer on an eligible property  
18 if the project is designated as an urban development area project  
19 by the Michigan economic growth authority to the extent that the  
20 project does not exceed the amount stated in the preapproval  
21 letter, as amended, or, until December 31, 2010, up to 20% of the  
22 costs of the qualified taxpayer's eligible investment paid or  
23 accrued by the qualified taxpayer on an eligible property if the  
24 project is designated as an urban development area project by the  
25 Michigan economic growth authority. If eligible investment exceeds  
26 the amount of eligible investment in the preapproval letter, as  
27 amended, for that project, the total of all credits for the project

1 shall not exceed the total of all credits on the certificate of  
2 completion.

3 (b) For projects approved before April 8, 2008, if the total  
4 of all credits for a project is more than \$1,000,000.00 but  
5 \$30,000,000.00 or less and, except as provided in subsection  
6 (6)(b), the project is located in a qualified local governmental  
7 unit, a percentage as determined by the Michigan economic growth  
8 authority not to exceed 10% of the cost of the qualified taxpayer's  
9 eligible investment as determined under subsection (11) paid or  
10 accrued by the qualified taxpayer on an eligible property. For  
11 projects approved, or amended, on and after April 8, 2008 and  
12 before January 1, 2010, if the total of all eligible investments  
13 for a project is more than \$10,000,000.00 but \$300,000,000.00 or  
14 less, up to 12.5% of the costs of the qualified taxpayer's eligible  
15 investment as determined under subsection (11) paid or accrued by  
16 the qualified taxpayer on an eligible property that, except as  
17 provided in subsection (6)(b), is located in a qualified local  
18 governmental unit, up to 15% of the cost of the qualified  
19 taxpayer's eligible investment as determined under subsection (11)  
20 paid or accrued by the qualified taxpayer on an eligible property  
21 if the project is designated as an urban development area project  
22 by the Michigan economic growth authority, or, until December 31,  
23 2010, up to 20% of the costs of the qualified taxpayer's eligible  
24 investment as determined under subsection (11) paid or accrued by  
25 the qualified taxpayer on an eligible property if the project is  
26 designated as an urban development area project by the Michigan  
27 economic growth authority. For projects approved, or amended, on

1 and after January 1, 2010, if the total of all eligible investments  
2 for a project is more than \$10,000,000.00 but \$100,000,000.00 or  
3 less, up to 12.5% of the costs of the qualified taxpayer's eligible  
4 investment as determined under subsection (11) paid or accrued by  
5 the qualified taxpayer on an eligible property that, except as  
6 provided in subsection (6)(b), is located in a qualified local  
7 governmental unit, up to 15% of the cost of the qualified  
8 taxpayer's eligible investment as determined under subsection (11)  
9 paid or accrued by the qualified taxpayer on an eligible property  
10 if the project is designated as an urban development area project  
11 by the Michigan economic growth authority, or, until December 31,  
12 2010, up to 20% of the costs of the qualified taxpayer's eligible  
13 investment as determined under subsection (11) paid or accrued by  
14 the qualified taxpayer on an eligible property if the project is  
15 designated as an urban development area project by the Michigan  
16 economic growth authority. If eligible investment exceeds the  
17 amount of eligible investment in the preapproval letter, as  
18 amended, for that project, the total of all credits for the project  
19 shall not exceed the total of all credits on the certificate of  
20 completion.

21 (2) If the cost of a project will be \$2,000,000.00 or less, a  
22 qualified taxpayer shall apply to the Michigan economic growth  
23 authority for approval of the project under this subsection. An  
24 application under this subsection shall state whether the project  
25 is a multiphase project. Subject to the limitation provided under  
26 subsection (31), the chairperson of the Michigan economic growth  
27 authority or his or her designee is authorized to approve an

1 application or project under this subsection. Only the chairperson  
2 of the Michigan economic growth authority is authorized to deny an  
3 application or project under this subsection. A project shall be  
4 approved or denied not more than 45 days after receipt of the  
5 application. If the chairperson of the Michigan economic growth  
6 authority or his or her designee does not approve or deny the  
7 application within 45 days after the application is received by the  
8 Michigan economic growth authority, the application is considered  
9 approved as written. If the chairperson of the Michigan economic  
10 growth authority or his or her designee approves a project under  
11 this subsection, the chairperson of the Michigan economic growth  
12 authority or his or her designee shall issue a preapproval letter  
13 that states that the taxpayer is a qualified taxpayer; the maximum  
14 total eligible investment for the project on which credits may be  
15 claimed and the maximum total of all credits for the project when  
16 the project is completed and a certificate of completion is issued;  
17 and the project number assigned by the Michigan economic growth  
18 authority. If a project is denied under this subsection, a taxpayer  
19 is not prohibited from subsequently applying under this subsection  
20 for the same project or for another project. The Michigan economic  
21 growth authority shall develop and implement the use of the  
22 application form to be used for projects under this subsection.

23 (3) If the cost of a project will be for more than  
24 \$2,000,000.00 but \$10,000,000.00 or less, a qualified taxpayer  
25 shall apply to the Michigan economic growth authority for approval  
26 of the project under this subsection. An application under this  
27 subsection shall state whether the project is a multiphase project.

1 Subject to the limitation provided under subsection (31), the  
2 chairperson of the Michigan economic growth authority or his or her  
3 designee is authorized to approve an application or project under  
4 this subsection. Only the chairperson of the Michigan economic  
5 growth authority is authorized to deny an application or project  
6 under this subsection. A project shall be approved or denied not  
7 more than 45 days after receipt of the application. If the  
8 chairperson of the Michigan economic growth authority or his or her  
9 designee does not approve or deny an application within 45 days  
10 after the application is received by the Michigan economic growth  
11 authority, the application is considered approved as written. The  
12 criteria in subsection (7) shall be used when approving projects  
13 under this subsection. When approving projects under this  
14 subsection, priority shall be given to projects on a facility. The  
15 total of all credits for an approved project under this subsection  
16 shall not exceed the amounts authorized under subsection (1)(a). A  
17 taxpayer may apply under this subsection instead of subsection (4)  
18 for approval of a project that will be for more than  
19 \$10,000,000.00, but the total of all credits for that project shall  
20 not exceed the amounts authorized under subsection (1)(a). If the  
21 chairperson of the Michigan economic growth authority or his or her  
22 designee approves a project under this subsection, the chairperson  
23 of the Michigan economic growth authority or his or her designee  
24 shall issue a preapproval letter that states that the taxpayer is a  
25 qualified taxpayer; the maximum total eligible investment for the  
26 project on which credits may be claimed and the maximum total of  
27 all credits for the project when the project is completed and a

1 certificate of completion is issued; and the project number  
2 assigned by the Michigan economic growth authority. If a project is  
3 denied under this subsection, a taxpayer is not prohibited from  
4 subsequently applying under this subsection or subsection (4) for  
5 the same project or for another project.

6 (4) If the cost of a project will be for more than  
7 \$10,000,000.00 and, except as provided in subsection (6)(b), the  
8 project is located in a qualified local governmental unit, a  
9 qualified taxpayer shall apply to the Michigan economic growth  
10 authority for approval of the project. An application under this  
11 subsection shall state whether the project is a multiphase project.  
12 The Michigan economic growth authority shall approve or deny the  
13 project not more than 65 days after receipt of the application. A  
14 project under this subsection shall not be approved without the  
15 concurrence of the state treasurer. If the Michigan economic growth  
16 authority does not approve or deny the application within 65 days  
17 after it receives the application, the Michigan economic growth  
18 authority shall send the application to the state treasurer. The  
19 state treasurer shall approve or deny the application within 5 days  
20 after receipt of the application. If the state treasurer does not  
21 deny the application within 5 days after receipt of the  
22 application, the application is considered approved. The Michigan  
23 economic growth authority shall approve a limited number of  
24 projects under this subsection during each calendar year as  
25 provided in subsection (6). The Michigan economic growth authority  
26 shall use the criteria in subsection (7) when approving projects  
27 under this subsection, when determining the total amount of

1 eligible investment, and when determining the percentage of  
2 eligible investment for the project to be used to calculate a  
3 credit. The total of all credits for an approved project under this  
4 subsection shall not exceed the amount designated in the  
5 preapproval letter, as amended, for that project. If the Michigan  
6 economic growth authority approves a project under this subsection,  
7 the Michigan economic growth authority shall issue a preapproval  
8 letter that states that the taxpayer is a qualified taxpayer; the  
9 percentage of eligible investment for the project determined by the  
10 Michigan economic growth authority for purposes of subsection  
11 (1)(b); the maximum total eligible investment for the project on  
12 which credits may be claimed and the maximum total of all credits  
13 for the project when the project is completed and a certificate of  
14 completion is issued; and the project number assigned by the  
15 Michigan economic growth authority. The Michigan economic growth  
16 authority shall send a copy of the preapproval letter to the  
17 department. If a project is denied under this subsection, a  
18 taxpayer is not prohibited from subsequently applying under this  
19 subsection or subsection (3) for the same project or for another  
20 project.

21 (5) If the project is on property that is functionally  
22 obsolete, the taxpayer shall include with the application an  
23 affidavit signed by a level 3 or level 4 assessor, that states that  
24 it is the assessor's expert opinion that the property is  
25 functionally obsolete and the underlying basis for that opinion.

26 (6) The Michigan economic growth authority may approve not  
27 more than 20 projects each calendar year through December 31, 2009,



1 not more than 19 projects for the 2010 calendar year, and, except  
2 as otherwise provided under subdivision (d), not more than 17  
3 projects for each calendar year after December 31, 2010 under  
4 subsection (4), and the following limitations apply:

5 (a) Of the projects allowed under this subsection, the total  
6 of all credits for each project may be more than \$10,000,000.00 but  
7 \$30,000,000.00 or less for only 1 project before December 31, 2009.

8 (b) Of the projects allowed under this subsection, up to 3  
9 projects may be approved for projects that are not in a qualified  
10 local governmental unit if the property is a facility for which  
11 eligible activities are identified in a brownfield plan or, for 1  
12 of the 3 projects, if the property is not a facility but is  
13 functionally obsolete or blighted, property identified in a  
14 brownfield plan. For purposes of this subdivision, a facility  
15 includes a building or complex of buildings that was used by a  
16 state or federal agency and that is no longer being used for the  
17 purpose for which it was used by the state or federal agency.

18 (c) The project allowed under subdivision (a) may also qualify  
19 under subdivision (b).

20 (d) If the Michigan economic growth authority determines that  
21 there are previously issued credits authorized under section 434(6)  
22 available, the Michigan economic growth authority may approve 2  
23 additional projects for each calendar year after December 31, 2010.  
24 As used in this subdivision, "previously issued credits" means the  
25 total amount of credits authorized by the Michigan economic growth  
26 authority for a taxpayer under section 434(6) that meets all of the  
27 following:

1           (i) The taxpayer did not use any or a portion of the credits  
2 authorized under the written agreement under section 434(6).

3           (ii) The authority determined at a meeting upon a vote of the  
4 majority of the members present that the credits previously  
5 authorized satisfy subparagraph (i).

6           (7) The Michigan economic growth authority shall review all  
7 applications for projects under subsection (4) and, if an  
8 application is approved, shall determine the maximum total of all  
9 credits for that project. Before approving a project for which the  
10 total of all credits will be more than \$10,000,000.00 but  
11 \$30,000,000.00 or less only, the Michigan economic growth authority  
12 shall determine that the project would not occur in this state  
13 without the tax credit offered under subsection (4). The Michigan  
14 economic growth authority shall consider the following criteria to  
15 the extent reasonably applicable to the type of project proposed  
16 when approving a project under subsection (4), and the chairperson  
17 of the Michigan economic growth authority or his or her designee  
18 shall consider the following criteria to the extent reasonably  
19 applicable to the type of project proposed when approving a project  
20 under subsection (2) or (3) or when considering an amendment to a  
21 project under subsection (9):

22           (a) The overall benefit to the public.

23           (b) The extent of reuse of vacant buildings and redevelopment  
24 of blighted property.

25           (c) Creation of jobs.

26           (d) Whether the eligible property is in an area of high  
27 unemployment.

1 (e) The level and extent of contamination alleviated by the  
2 qualified taxpayer's eligible activities to the extent known to the  
3 qualified taxpayer.

4 (f) The level of private sector contribution.

5 (g) The cost gap that exists between the site and a similar  
6 greenfield site as determined by the Michigan economic growth  
7 authority.

8 (h) If the qualified taxpayer is moving from another location  
9 in this state, whether the move will create a brownfield.

10 (i) Whether the project is financially and economically sound.

11 (j) Any other criteria that the Michigan economic growth  
12 authority or the chairperson of the Michigan economic growth  
13 authority, as applicable, considers appropriate for the  
14 determination of eligibility under subsection (3) or (4).

15 (8) A qualified taxpayer may apply for projects under this  
16 section for eligible investment on more than 1 eligible property in  
17 a tax year. Each project approved and each project for which a  
18 certificate of completion is issued under this section shall be for  
19 eligible investment on 1 eligible property.

20 (9) If, after a taxpayer's project has been approved and the  
21 taxpayer has received a preapproval letter but before the taxpayer  
22 has made an eligible investment, other than soft costs, at the  
23 property, the taxpayer determines that the project cannot be  
24 completed as preapproved, the taxpayer may petition the Michigan  
25 economic growth authority to amend the project and the preapproval  
26 letter to increase the maximum total eligible investment for the  
27 project on which credits may be claimed and the maximum total of

1 all credits for the project. A taxpayer may petition the Michigan  
2 economic growth authority to make any other amendments to the  
3 project or preapproval letter at any time before a certificate of  
4 completion is issued. Amendments to the project or preapproval  
5 letter may include, but are not limited to, extending the duration  
6 of time provided to complete the project, as long as that extension  
7 does not exceed 10 years from the date of the preapproval letter.

8 (10) A project may be a multiphase project. If a project is a  
9 multiphase project, when each component of the multiphase project  
10 is completed, the taxpayer shall submit documentation that the  
11 component is complete, an accounting of the cost of the component,  
12 and the eligible investment for the component of each taxpayer  
13 eligible for a credit for the project of which the component is a  
14 part to the Michigan economic growth authority or the designee of  
15 the Michigan economic growth authority, who shall verify that the  
16 component is complete. When the completion of the component is  
17 verified, a component completion certificate shall be issued to the  
18 qualified taxpayer which shall state that the taxpayer is a  
19 qualified taxpayer, the credit amount for the component, the  
20 qualified taxpayer's federal employer identification number or the  
21 Michigan treasury number assigned to the taxpayer, and the project  
22 number. The taxpayer may assign all or part of the credit for a  
23 multiphase project as provided in this section after a component  
24 completion certificate for a component is issued. The qualified  
25 taxpayer may transfer ownership of or lease the completed component  
26 and assign a proportionate share of the credit for the entire  
27 project to the qualified taxpayer that is the new owner or lessee.

1 A multiphase project shall not be divided into more than 10  
2 components. A component is considered to be completed when a  
3 certificate of occupancy has been issued by the local municipality  
4 in which the project is located for all of the buildings or  
5 facilities that comprise the completed component and a component  
6 completion certificate is issued or the chairperson of the Michigan  
7 economic growth authority or his or her designee, for projects  
8 approved under subsection (2) or (3), or the Michigan economic  
9 growth authority, for projects approved under subsection (4),  
10 verifies that the component is complete. A credit assigned based on  
11 a multiphase project shall be claimed by the assignee in the tax  
12 year in which the assignment is made. The total of all credits for  
13 a multiphase project shall not exceed the amount stated in the  
14 preapproval letter, as amended, for the project under subsection  
15 (1). If all components of a multiphase project are not completed by  
16 10 years after the date on which the preapproval letter, as  
17 amended, if applicable, for the project was issued, the qualified  
18 taxpayer that received the preapproval letter for the project shall  
19 pay to the state treasurer, as a penalty, an amount equal to the  
20 sum of all credits claimed and assigned for all components of the  
21 multiphase project and no credits based on that multiphase project  
22 shall be claimed after that date by the qualified taxpayer or any  
23 assignee of the qualified taxpayer. The penalty under this  
24 subsection is subject to interest on the amount of the credit  
25 claimed or assigned determined individually for each component at  
26 the rate in section 23(2) of 1941 PA 122, MCL 205.23, beginning on  
27 the date that the credit for that component was claimed or

1 assigned. As used in this subsection, "proportionate share" means  
2 the same percentage of the total of all credits for the project  
3 that the qualified investment for the completed component is of the  
4 total qualified investment stated in the preapproval letter, as  
5 amended, for the entire project.

6 (11) When a project under this section is completed, the  
7 taxpayer shall submit documentation that the project is completed,  
8 an accounting of the cost of the project, the eligible investment  
9 of each taxpayer if there is more than 1 taxpayer eligible for a  
10 credit for the project, and, if the taxpayer is not the owner or  
11 lessee of the eligible property on which the eligible investment  
12 was made at the time the project is completed, that the taxpayer  
13 was the owner or lessee of, or was a party to an agreement to  
14 purchase or lease, that eligible property when all eligible  
15 investment of the taxpayer was made. The chairperson of the  
16 Michigan economic growth authority or his or her designee, for  
17 projects approved under subsection (2) or (3), or the Michigan  
18 economic growth authority, for projects approved under subsection  
19 (4) OR (32), shall verify that the project is completed. The  
20 Michigan economic growth authority shall conduct an on-site  
21 inspection as part of the verification process for projects  
22 approved under subsection (4). When the completion of the project  
23 is verified, a certificate of completion shall be issued to each  
24 qualified taxpayer that has made eligible investment on that  
25 eligible property. The certificate of completion shall state the  
26 total amount of all credits for the project and that total shall  
27 not exceed the maximum total of all credits listed in the

1 preapproval letter for the project under subsection (2), (3), ~~or~~  
2 (4), **OR (32)** as applicable and as amended under subsection (9) and  
3 shall state all of the following:

4 (a) That the taxpayer is a qualified taxpayer.

5 (b) The total cost of the project and the eligible investment  
6 of each qualified taxpayer.

7 (c) Each qualified taxpayer's credit amount.

8 (d) The qualified taxpayer's federal employer identification  
9 number or the Michigan treasury number assigned to the taxpayer.

10 (e) The project number.

11 (f) For a project approved under subsection (4) for which the  
12 total of all credits is more than \$10,000,000.00 but \$30,000,000.00  
13 or less, the total of all credits and the schedule on which the  
14 annual credit amount shall be claimed by the qualified taxpayer.

15 (g) For a multiphase project under subsection (10), the amount  
16 of each credit assigned and the amount of all credits claimed in  
17 each tax year before the year in which the project is completed.

18 **(H) FOR A PROJECT APPROVED UNDER SUBSECTION (32), THE TOTAL**  
19 **AMOUNT OF THE CREDIT ALLOWED TO BE CLAIMED BY THE QUALIFIED**  
20 **TAXPAYER.**

21 (12) Except as otherwise provided in this section, qualified  
22 taxpayers shall claim credits under this section in the tax year in  
23 which the certificate of completion is issued. For a project  
24 approved under subsection (4) for which the total of all credits is  
25 more than \$10,000,000.00 but \$30,000,000.00 or less, the qualified  
26 taxpayer shall claim 10% of its approved credit each year for 10  
27 years. A credit assigned based on a multiphase project shall be

1 claimed in the year in which the credit is assigned.

2 (13) The cost of eligible investment for leased machinery,  
3 equipment, or fixtures is the cost of that property had the  
4 property been purchased minus the lessor's estimate, made at the  
5 time the lease is entered into, of the market value the property  
6 will have at the end of the lease. A credit for property described  
7 in this subsection is allowed only if the cost of that property had  
8 the property been purchased and the lessor's estimate of the market  
9 value at the end of the lease are provided to the Michigan economic  
10 growth authority.

11 (14) Credits claimed by a lessee of eligible property are  
12 subject to the total of all credits limitation under this section.

13 (15) Each qualified taxpayer and assignee under subsection  
14 (20), (21), or (22) that claims a credit under this section shall  
15 attach a copy of the certificate of completion and, if the credit  
16 was assigned, a copy of the assignment form provided for under this  
17 section to the annual return filed under this act on which the  
18 credit under this section is claimed. An assignee of a credit based  
19 on a multiphase project shall attach a copy of the assignment form  
20 provided for under this section and the component completion  
21 certificate provided for in subsection (10) to the annual return  
22 filed under this act on which the credit is claimed but is not  
23 required to file a copy of a certificate of completion.

24 (16) Except as otherwise provided in this subsection or  
25 subsection (10), (18), (20), (21), or (22), a credit under this  
26 section shall be claimed in the tax year in which the certificate  
27 of completion is issued to the qualified taxpayer. For a project



1 described in subsection (11)(f) for which a schedule for claiming  
2 annual credit amounts is designated on the certificate of  
3 completion by the Michigan economic growth authority, the annual  
4 credit amount shall be claimed in the tax year specified on the  
5 certificate of completion.

6 (17) Except as otherwise provided under this subsection, the  
7 credits approved under this section shall be calculated after  
8 application of all other credits allowed under this act. The  
9 credits under this section shall be calculated before the  
10 calculation of the credits under sections 413, 423, 431, and 450.

11 (18) Except as otherwise provided under this subsection, if  
12 the credit allowed under this section for the tax year and any  
13 unused carryforward of the credit allowed under this section exceed  
14 the qualified taxpayer's or assignee's tax liability for the tax  
15 year, that portion that exceeds the tax liability for the tax year  
16 shall not be refunded but may be carried forward to offset tax  
17 liability in subsequent tax years for 10 years or until used up,  
18 whichever occurs first. Except as otherwise provided in this  
19 subsection, the maximum time allowed under the carryforward  
20 provisions under this subsection begins with the tax year in which  
21 the certificate of completion is issued to the qualified taxpayer.  
22 If the qualified taxpayer assigns all or any portion of its credit  
23 approved under this section, the maximum time allowed under the  
24 carryforward provisions for an assignee begins to run with the tax  
25 year in which the assignment is made and the assignee first claims  
26 a credit, which shall be the same tax year. The maximum time  
27 allowed under the carryforward provisions for an annual credit

1 amount for a credit allowed under subsection (4) **OR (32), IF**  
2 **APPLICABLE**, begins to run in the tax year for which the annual  
3 credit amount is designated on the certificate of completion issued  
4 under this section. A credit carryforward available under section  
5 38g of former 1975 PA 228 that is unused at the end of the last tax  
6 year may be claimed against the tax imposed under this act for the  
7 years the carryforward would have been available under former 1975  
8 PA 228. Beginning on and after April 8, 2008, if the credit allowed  
9 under this section for the tax year exceeds the qualified  
10 taxpayer's tax liability for the tax year, the qualified taxpayer  
11 may elect to have the excess refunded at a rate equal to 85% of  
12 that portion of the credit that exceeds the tax liability of the  
13 qualified taxpayer for the tax year and forgo the remaining 15% of  
14 the credit and any carryforward.

15 (19) If a project or credit under this section is for the  
16 addition of personal property, if the cost of that personal  
17 property is used to calculate a credit under this section, and if  
18 the personal property is disposed of or transferred from the  
19 eligible property to any other location, the qualified taxpayer  
20 that disposed of that property, or transferred the personal  
21 property shall add the same percentage as determined under  
22 subsection (1) of the federal basis of the personal property used  
23 for determining gain or loss as of the date of the disposition or  
24 transfer to the qualified taxpayer's tax liability under this act  
25 after application of all credits under this act for the tax year in  
26 which the disposition or transfer occurs. If a qualified taxpayer  
27 has an unused carryforward of a credit under this section, the

1 amount otherwise added under this subsection to the qualified  
2 taxpayer's tax liability may instead be used to reduce the  
3 qualified taxpayer's carryforward under subsection (18).

4 (20) For credits under this section for projects for which a  
5 certificate of completion is issued before January 1, 2006 and  
6 except as otherwise provided in this subsection, if a qualified  
7 taxpayer pays or accrues eligible investment on or to an eligible  
8 property that is leased for a minimum term of 10 years or sold to  
9 another taxpayer for use in a business activity, the qualified  
10 taxpayer may assign all or a portion of the credit under this  
11 section based on that eligible investment to the lessee or  
12 purchaser of that eligible property. A credit assignment under this  
13 subsection shall only be made to a taxpayer that when the  
14 assignment is complete will be a qualified taxpayer. All credit  
15 assignments under this subsection are irrevocable and, except for a  
16 credit based on a multiphase project, shall be made in the tax year  
17 in which the certificate of completion is issued, unless the  
18 assignee is an unknown lessee. If a qualified taxpayer wishes to  
19 assign all or a portion of its credit to a lessee but the lessee is  
20 unknown in the tax year in which the certificate of completion is  
21 issued, the qualified taxpayer may delay claiming and assigning the  
22 credit until the first tax year in which the lessee is known. A  
23 qualified taxpayer may claim a portion of a credit and assign the  
24 remaining credit amount. Except as otherwise provided in this  
25 subsection, if the qualified taxpayer both claims and assigns  
26 portions of the credit, the qualified taxpayer shall claim the  
27 portion it claims in the tax year in which the certificate of

1 completion is issued or, for a credit assigned and claimed for a  
2 multiphase project before a certificate of completion is issued,  
3 the taxpayer shall claim the credit in the year in which the credit  
4 is assigned. If a qualified taxpayer assigns all or a portion of  
5 the credit and the eligible property is leased to more than 1  
6 taxpayer, the qualified taxpayer shall determine the amount of  
7 credit assigned to each lessee. A lessee shall not subsequently  
8 assign a credit or any portion of a credit assigned under this  
9 subsection. A purchaser may subsequently assign a credit or any  
10 portion of a credit assigned to the purchaser under this subsection  
11 to a lessee of the eligible property. The credit assignment under  
12 this subsection shall be made on a form prescribed by the Michigan  
13 economic growth authority. The qualified taxpayer shall send a copy  
14 of the completed assignment form to the Michigan economic growth  
15 authority in the tax year in which the assignment is made. The  
16 assignee shall attach a copy of the completed assignment form to  
17 its annual return required to be filed under this act, for the tax  
18 year in which the assignment is made and the assignee first claims  
19 a credit, which shall be the same tax year. In addition to all  
20 other procedures under this subsection, the following apply if the  
21 total of all credits for a project is more than \$10,000,000.00 but  
22 \$30,000,000.00 or less:

23 (a) The credit shall be assigned based on the schedule  
24 contained in the certificate of completion.

25 (b) If the qualified taxpayer assigns all or a portion of the  
26 credit amount, the qualified taxpayer shall assign the annual  
27 credit amount for each tax year separately.

1 (c) More than 1 annual credit amount may be assigned to any 1  
2 assignee and the qualified taxpayer may assign all or a portion of  
3 each annual credit amount to any assignee.

4 (d) The qualified taxpayer shall not assign more than the  
5 annual credit amount for each tax year.

6 (21) Except as otherwise provided in this subsection, for  
7 projects for which a certificate of completion is issued before  
8 January 1, 2006, and except as otherwise provided in this  
9 subsection, if a qualified taxpayer is a partnership, limited  
10 liability company, or subchapter S corporation, the qualified  
11 taxpayer may assign all or a portion of a credit under this section  
12 to its partners, members, or shareholders, based on their  
13 proportionate share of ownership of the partnership, limited  
14 liability company, or subchapter S corporation or based on an  
15 alternative method approved by the Michigan economic growth  
16 authority. A credit assignment under this subsection is irrevocable  
17 and, except for a credit assignment based on a multiphase project,  
18 shall be made in the tax year in which a certificate of completion  
19 is issued. A qualified taxpayer may claim a portion of a credit and  
20 assign the remaining credit amount. Except as otherwise provided in  
21 this subsection, if the qualified taxpayer both claims and assigns  
22 portions of the credit, the qualified taxpayer shall claim the  
23 portion it claims in the tax year in which a certificate of  
24 completion is issued or for a credit assigned and claimed for a  
25 multiphase project, before the component completion certificate is  
26 issued, the taxpayer shall claim the credit in the year in which  
27 the credit is assigned. A partner, member, or shareholder that is

1 an assignee shall not subsequently assign a credit or any portion  
2 of a credit assigned under this subsection. The credit assignment  
3 under this subsection shall be made on a form prescribed by the  
4 Michigan economic growth authority. The qualified taxpayer shall  
5 send a copy of the completed assignment form to the Michigan  
6 economic growth authority in the tax year in which the assignment  
7 is made. A partner, member, or shareholder who is an assignee shall  
8 attach a copy of the completed assignment form to its annual return  
9 required under this act, for the tax year in which the assignment  
10 is made and the assignee first claims a credit, which shall be the  
11 same tax year. A credit assignment based on a credit for a  
12 component of a multiphase project that is completed before January  
13 1, 2006 shall be made under this subsection. In addition to all  
14 other procedures under this subsection, the following apply if the  
15 total of all credits for a project is more than \$10,000,000.00 but  
16 \$30,000,000.00 or less:

17 (a) The credit shall be assigned based on the schedule  
18 contained in the certificate of completion.

19 (b) If the qualified taxpayer assigns all or a portion of the  
20 credit amount, the qualified taxpayer shall assign the annual  
21 credit amount for each tax year separately.

22 (c) More than 1 annual credit amount may be assigned to any 1  
23 assignee and the qualified taxpayer may assign all or a portion of  
24 each annual credit amount to any assignee.

25 (d) The qualified taxpayer shall not assign more than the  
26 annual credit amount for each tax year.

27 (22) For projects approved under this section or section 38g

1 of former 1975 PA 228 for which a certificate of completion is  
2 issued on and after January 1, 2006, a qualified taxpayer may  
3 assign all or a portion of a credit allowed under this section or  
4 section 38g(2), (3), or (33) of former 1975 PA 228 under this  
5 subsection. A credit assignment under this subsection is  
6 irrevocable and, except for a credit assignment based on a  
7 multiphase project, shall be made in the tax year in which a  
8 certificate of completion is issued unless the assignee is an  
9 unknown lessee. If a qualified taxpayer wishes to assign all or a  
10 portion of its credit to a lessee but the lessee is unknown in the  
11 tax year in which the certificate of completion is issued, the  
12 qualified taxpayer may delay claiming and assigning the credit  
13 until the first tax year in which the lessee is known. A qualified  
14 taxpayer may claim a portion of a credit and assign the remaining  
15 credit amount. If the qualified taxpayer both claims and assigns  
16 portions of the credit, the qualified taxpayer shall claim the  
17 portion it claims in the tax year in which a certificate of  
18 completion is issued pursuant to this section or section 38g of  
19 former 1975 PA 228. An assignee may subsequently assign a credit or  
20 any portion of a credit assigned under this subsection to 1 or more  
21 assignees. The credit assignment or a subsequent reassignment under  
22 this subsection shall be made on a form prescribed by the Michigan  
23 economic growth authority. The Michigan economic growth authority  
24 or its designee shall review and issue a completed assignment or  
25 reassignment certificate to the assignee or reassignee. An assignee  
26 or subsequent reassignee shall attach a copy of the completed  
27 assignment certificate to its annual return required under this

1 act, for the tax year in which the assignment or reassignment is  
2 made and the assignee or reassignee first claims a credit, which  
3 shall be the same tax year. A credit assignment based on a credit  
4 for a component of a multiphase project that is completed before  
5 January 1, 2006 shall be made under section 38g(18) of former 1975  
6 PA 228. A credit assignment based on a credit for a component of a  
7 multiphase project that is completed on or after January 1, 2006  
8 may be made under this section. In addition to all other procedures  
9 and requirements under this section, the following apply if the  
10 total of all credits for a project is more than \$10,000,000.00 but  
11 \$30,000,000.00 or less:

12 (a) The credit shall be assigned based on the schedule  
13 contained in the certificate of completion.

14 (b) If the qualified taxpayer assigns all or a portion of the  
15 credit amount, the qualified taxpayer shall assign the annual  
16 credit amount for each tax year separately.

17 (c) More than 1 annual credit amount may be assigned to any 1  
18 assignee, and the qualified taxpayer may assign all or a portion of  
19 each annual credit amount to any assignee.

20 (23) A qualified taxpayer or assignee under subsection (20),  
21 (21), or (22) shall not claim a credit under subsection (1)(a) or  
22 (b) based on eligible investment on which a credit claimed under  
23 section 38d of former 1975 PA 228 was based.

24 (24) When reviewing an application for a project for  
25 designation as an urban development area project, the Michigan  
26 economic growth authority for projects approved under subsection  
27 (4) or the chairperson of the Michigan economic growth authority or



1 his or her designee for projects approved under subsections (2) and  
2 (3) shall consider all of the following criteria:

3 (a) If the project increases the density of the area by  
4 promoting multistory development.

5 (b) If the project promotes mixed-use development and walkable  
6 communities.

7 (c) If the project promotes sustainable redevelopment.

8 (d) If the project addresses areawide redevelopment and  
9 includes multiple parcels of property.

10 (e) If the project addresses underserved markets of commerce.

11 (f) Any other criteria determined by the Michigan economic  
12 growth authority or the chairperson of the Michigan economic growth  
13 authority.

14 (25) An eligible taxpayer that claims a credit under this  
15 section is not prohibited from claiming a credit under section 431.  
16 However, the eligible taxpayer shall not claim a credit under this  
17 section and section 431 based on the same costs.

18 (26) Eligible investment attributable or related to the  
19 operation of a professional sports stadium, and eligible investment  
20 that is associated or affiliated with the operation of a  
21 professional sports stadium, including, but not limited to, the  
22 operation of a parking lot or retail store, shall not be used as a  
23 basis for a credit under this section. Professional sports stadium  
24 does not include a professional sports stadium that will no longer  
25 be used by a professional sports team on and after the date that an  
26 application related to that professional sports stadium is filed  
27 under this section.

1           (27) Eligible investment attributable or related to the  
2 operation of a casino, and eligible investment that is associated  
3 or affiliated with the operation of a casino, including, but not  
4 limited to, the operation of a parking lot, hotel, motel, or retail  
5 store, shall not be used as a basis for a credit under this  
6 section. As used in this subsection, "casino" means a casino  
7 regulated by this state pursuant to the Michigan gaming control and  
8 revenue act, 1996 IL 1, MCL 432.201 to 432.226.

9           (28) Eligible investment attributable or related to the  
10 construction of a new landfill or the expansion of an existing  
11 landfill regulated under part 115 of the natural resources and  
12 environmental protection act, 1994 PA 451, MCL 324.11501 to  
13 324.11550, shall not be used as a basis for a credit under this  
14 section.

15           (29) The Michigan economic growth authority annually shall  
16 prepare and submit to the house of representatives and senate  
17 committees responsible for tax policy and economic development  
18 issues a report on the credits under subsections (2), (3), and (4).  
19 The report shall include, but is not limited to, all of the  
20 following:

21           (a) A listing of the projects under subsections (2), (3), and  
22 (4) that were approved in the calendar year.

23           (b) The total amount of eligible investment for projects  
24 approved under subsections (2), (3), and (4) in the calendar year.

25           (30) For purposes of this section, taxpayer includes a person  
26 subject to the tax imposed under ~~chapters~~ **CHAPTER 2A** and **A PERSON**  
27 **SUBJECT TO THE TAX IMPOSED UNDER CHAPTER 2B.**

1           (31) For the 2008 calendar year, the total of all credits for  
2 all projects approved under subsection (2) or (3) shall not exceed  
3 \$63,000,000.00. For each calendar year after 2008, the total of all  
4 credits for all projects approved under subsection (2) or (3) shall  
5 not exceed \$40,000,000.00. If the Michigan economic growth  
6 authority approves a total of all credits for all projects under  
7 subsection (2) or (3) of less than \$40,000,000.00 in a calendar  
8 year, the Michigan economic growth authority may carry forward for  
9 1 year only the difference between \$40,000,000.00 and the total of  
10 all credits for all projects under this subsection approved in the  
11 immediately preceding calendar year.

12           **(32) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A**  
13 **PROJECT ON PROPERTY LOCATED IN A CITY THAT HAS A POPULATION OF MORE**  
14 **THAN 9,000 BUT LESS THAN 10,000 AND IS LOCATED IN A COUNTY WITH A**  
15 **POPULATION OF LESS THAN 30,000, WHICH PROPERTY WAS INCLUDED IN A**  
16 **BROWNFIELD PLAN IN DECEMBER 2005 THAT WAS SUBSEQUENTLY APPROVED BY**  
17 **A RESOLUTION OF THE GOVERNING BODY OF THAT CITY IN FEBRUARY 2006,**  
18 **IS CONSIDERED APPROVED AS REQUIRED UNDER THIS SECTION BEFORE APRIL**  
19 **8, 2008 AND THE TAXPAYER MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED**  
20 **BY THIS ACT AS PROVIDED UNDER SUBSECTION (1). TO BE ELIGIBLE FOR**  
21 **THE CREDIT UNDER THIS SUBSECTION, THE TAXPAYER SHALL SUBMIT, WITHIN**  
22 **14 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED**  
23 **THIS SUBSECTION, AN AFFIDAVIT TO THE CHAIRPERSON OF THE MICHIGAN**  
24 **ECONOMIC GROWTH AUTHORITY OR HIS OR HER DESIGNEE THAT STATES ALL OF**  
25 **THE FOLLOWING AND SUBSEQUENTLY SHALL RECEIVE A CERTIFICATE OF**  
26 **COMPLETION AS PROVIDED UNDER SUBSECTION (33):**

27           **(A) THE LEVEL AND EXTENT OF THE REHABILITATION NECESSARY FOR**

1 THE BLIGHTED AREA OR THE LEVEL AND EXTENT OF CONTAMINATION  
2 ALLEVIATED BY THE TAXPAYER'S ELIGIBLE ACTIVITIES TO THE EXTENT  
3 KNOWN TO THE TAXPAYER.

4 (B) THE COST OF THE TAXPAYER'S ELIGIBLE INVESTMENT PAID OR  
5 ACCRUED BY THE TAXPAYER FOR THE PROJECT ON THE ELIGIBLE PROPERTY.

6 (C) ANY OTHER CRITERIA THAT THE MICHIGAN ECONOMIC GROWTH  
7 AUTHORITY OR THE CHAIRPERSON OF THE MICHIGAN ECONOMIC GROWTH  
8 AUTHORITY, AS APPLICABLE, CONSIDERS APPROPRIATE FOR THE  
9 DETERMINATION OF THE AMOUNT OF THE CREDIT TO BE APPROVED.

10 (33) WITHIN 45 DAYS AFTER RECEIPT OF AN AFFIDAVIT SUBMITTED  
11 PURSUANT TO SUBSECTION (32), THE MICHIGAN ECONOMIC GROWTH AUTHORITY  
12 SHALL VERIFY THAT THE PROJECT IS COMPLETE AND ISSUE A CERTIFICATE  
13 OF COMPLETION TO THE TAXPAYER AS PROVIDED UNDER SUBSECTION (11).

14 (34) ~~(32)~~As used in this section:

15 (a) "Annual credit amount" means the maximum amount that a  
16 qualified taxpayer is eligible to claim each tax year for a project  
17 for which the total of all credits is more than \$10,000,000.00 but  
18 \$30,000,000.00 or less, as approved under subsection (4).

19 (b) "Authority" means a brownfield redevelopment authority  
20 created under the brownfield redevelopment financing act, 1996 PA  
21 381, MCL 125.2651 to 125.2672.

22 (c) "Blighted", "brownfield plan", "eligible activities",  
23 "facility", "functionally obsolete", "qualified local governmental  
24 unit", and "response activity" mean those terms as defined in the  
25 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651  
26 to 125.2672.

27 (d) "Eligible investment" or "eligible investments" means,

1 when made after the approval date of the brownfield plan but in any  
2 event no earlier than 90 days prior to the date of the preapproval  
3 letter, any demolition, construction, restoration, alteration,  
4 renovation, or improvement of buildings or site improvements on  
5 eligible property and the addition of machinery, equipment, and  
6 fixtures to eligible property after the date that eligible  
7 activities on that eligible property have started pursuant to a  
8 brownfield plan under the brownfield redevelopment financing act,  
9 1996 PA 381, MCL 125.2651 to 125.2672, if the costs of the eligible  
10 investment are not otherwise reimbursed to the taxpayer or paid for  
11 on behalf of the taxpayer from any source other than the taxpayer.  
12 The addition of leased machinery, equipment, or fixtures to  
13 eligible property by a lessee of the machinery, equipment, or  
14 fixtures is eligible investment if the lease of the machinery,  
15 equipment, or fixtures has a minimum term of 10 years or is for the  
16 expected useful life of the machinery, equipment, or fixtures, and  
17 if the owner of the machinery, equipment, or fixtures is not the  
18 qualified taxpayer with regard to that machinery, equipment, or  
19 fixtures. For projects approved after April 8, 2008, eligible  
20 investment does not include certain soft costs of the eligible  
21 investment as determined by the Michigan economic growth authority,  
22 including, but not limited to, developer fees, appraisals,  
23 performance bonds, closing costs, bank fees, loan fees, risk  
24 contingencies, financing costs, permanent or construction period  
25 interest, legal expenses, leasing or sales commissions, marketing  
26 costs, professional fees, shared savings, taxes, title insurance,  
27 bank inspection fees, insurance, and project management fees.

1 Notwithstanding the foregoing, eligible investment does include  
2 architectural, engineering, surveying, and similar professional  
3 fees.

4 (e) "Eligible property", except as otherwise provided under  
5 subsection ~~(33)~~—(35), means property for which eligible activities  
6 are identified under a brownfield plan that was used or is  
7 currently used for commercial, industrial, public, or residential  
8 purposes, including personal property located on the property, to  
9 the extent included in the brownfield plan, and that is 1 or more  
10 of the following:

11 (i) Is in a qualified local governmental unit and is a  
12 facility, functionally obsolete, or blighted and includes parcels  
13 that are adjacent or contiguous to that property if the development  
14 of the adjacent and contiguous parcels is estimated to increase the  
15 captured taxable value of that property.

16 (ii) Is not in a qualified local governmental unit and is a  
17 facility, and includes parcels that are adjacent or contiguous to  
18 that property if the development of the adjacent and contiguous  
19 parcels is estimated to increase the captured taxable value of that  
20 property.

21 (iii) Is tax reverted property owned or under the control of a  
22 land bank fast track authority.

23 (f) "Last tax year" means the taxpayer's tax year under former  
24 1975 PA 228 that begins after December 31, 2006 and before January  
25 1, 2008.

26 (g) "Michigan economic growth authority" means the Michigan  
27 economic growth authority created in the Michigan economic growth

1 authority act, 1995 PA 24, MCL 207.801 to 207.810.

2 (h) "Multiphase project" means a project approved under this  
3 section that has more than 1 component, each of which can be  
4 completed separately.

5 (i) "Personal property" means that term as defined in section  
6 8 of the general property tax act, 1893 PA 206, MCL 211.8, except  
7 that personal property does not include either of the following:

8 (i) Personal property described in section 8(h), (i), or (j) of  
9 the general property tax act, 1893 PA 206, MCL 211.8.

10 (ii) Buildings described in section 14(6) of the general  
11 property tax act, 1893 PA 206, MCL 211.14.

12 (j) "Project" means the total of all eligible investment on an  
13 eligible property or, for purposes of subsection (6)(b), 1 of the  
14 following:

15 (i) All eligible investment on property not in a qualified  
16 local governmental unit that is a facility.

17 (ii) All eligible investment on property that is not a facility  
18 but is functionally obsolete or blighted.

19 (k) "Qualified local governmental unit" means that term as  
20 defined in the obsolete property rehabilitation act, 2000 PA 146,  
21 MCL 125.2781 to 125.2797.

22 (l) "Qualified taxpayer" means a taxpayer that meets both of  
23 the following criteria:

24 (i) Owns, leases, or has entered into an agreement to purchase  
25 or lease eligible property.

26 (ii) Certifies that, except as otherwise provided in this  
27 subparagraph, the department of natural resources and environment

1 has not sued or issued a unilateral order to the taxpayer pursuant  
2 to part 201 of the natural resources and environmental protection  
3 act, 1994 PA 451, MCL 324.20101 to 324.20142, to compel response  
4 activity on or to the eligible property, or expended any state  
5 funds for response activity on or to the eligible property and  
6 demanded reimbursement for those expenditures from the qualified  
7 taxpayer. However, if the taxpayer has completed all response  
8 activity required by part 201 of the natural resources and  
9 environmental protection act, 1994 PA 451, MCL 324.20101 to  
10 324.20142, is in compliance with any deed restriction or  
11 administrative or judicial order related to the required response  
12 activity, and has reimbursed the state for all costs incurred by  
13 the state related to the required response activity, the taxpayer  
14 meets the criteria under this subparagraph.

15 (m) "Urban development area project" means a project located  
16 on eligible property in the downtown or traditional central  
17 business district of a qualified local governmental unit or county  
18 seat or along a traditional commercial corridor of a qualified  
19 local governmental unit or county seat as determined by the  
20 Michigan economic growth authority or the chairperson of the  
21 Michigan economic growth authority or his or her designee.

22 (35) ~~(33)~~—For purposes of subsection (2), eligible property  
23 means that term as defined under subsection ~~(32)(e)~~—(34) (E) except  
24 that all of the following apply:

25 (a) Eligible property means property identified under a  
26 brownfield plan that was used or is currently used for commercial,  
27 industrial, public, or residential purposes and that is 1 of the



1 following:

2 (i) Property for which eligible activities are identified under  
3 the brownfield plan, is in a qualified local governmental unit, and  
4 is a facility, functionally obsolete, or blighted.

5 (ii) Property that is not in a qualified local governmental  
6 unit but is within a downtown development district established  
7 under 1975 PA 197, MCL 125.1651 to 125.1681, and is functionally  
8 obsolete or blighted, and a component of the project on that  
9 eligible property is 1 or more of the following:

10 (A) Infrastructure improvements that directly benefit the  
11 eligible property.

12 (B) Demolition of structures that is not response activity  
13 under section 20101 of the natural resources and environmental  
14 protection act, 1994 PA 451, MCL 324.20101.

15 (C) Lead or asbestos abatement.

16 (D) Site preparation that is not response activity under  
17 section 20101 of the natural resources and environmental protection  
18 act, 1994 PA 451, MCL 324.20101.

19 (iii) Property for which eligible activities are identified  
20 under the brownfield plan, is not in a qualified local governmental  
21 unit, and is a facility.

22 (b) Eligible property includes parcels that are adjacent or  
23 contiguous to the eligible property if the development of the  
24 adjacent or contiguous parcels is estimated to increase the  
25 captured taxable value of the property or tax reverted property  
26 owned or under the control of a land bank fast track authority  
27 pursuant to the land bank fast track act, 2003 PA 258, MCL 124.751

1 to 124.774.

2 (c) Eligible property includes, to the extent included in the  
3 brownfield plan, personal property located on the eligible  
4 property.

5 (d) Eligible property does not include qualified agricultural  
6 property exempt under section 7ee of the general property tax act,  
7 1893 PA 206, MCL 211.7ee, from the tax levied by a local school  
8 district for school operating purposes to the extent provided under  
9 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.