SENATE BILL No. 1189

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March 5, 2008, Introduced by Senators CLARKE, GILBERT, STAMAS and HUNTER and referred to the Committee on Commerce and Tourism.

A bill to amend 1995 PA 24, entitled

"Michigan economic growth authority act,"

by amending sections 6 and 8 (MCL 207.806 and 207.808), section 6 as amended by 2007 PA 150 and section 8 as amended by 2007 PA 62.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 6. The authority shall have powers necessary or convenient to carry out and effectuate the purpose of this act, including, but not limited to, the following:

(a) To authorize eligible businesses to receive tax credits to foster job creation in this state.

(b) To determine which businesses qualify for tax credits under this act.

(c) To determine the amount and duration of tax credits

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authorized under this act.

(d) To issue certificates and enter into written agreements specifying the conditions under which tax credits are authorized and the circumstances under which those tax credits may be reduced or terminated.

(e) To charge and collect reasonable administrative fees.

(f) To delegate to the chairperson of the authority, staff, or others the functions and powers it considers necessary and appropriate to administer the programs under this act.

(g) To assist an eligible business to obtain the benefits of a tax credit, incentive, or inducement program provided by this act or by law.

(h) To determine the eligibility of and issue certificates to certain qualified taxpayers for credits allowed under **FORMER** section 38g(3) of ~~the single business tax act,~~ 1975 PA 228 ~~, MCL 208.38g,~~ and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, and to develop the application process and necessary forms to claim the credit under **FORMER** section 38g(3) of ~~the single business tax act,~~ 1975 PA 228 ~~, MCL 208.38g,~~ and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431. The Michigan economic growth authority annually shall prepare and submit to the house of representatives and senate committees responsible for tax policy and economic development issues a report on the credits under **FORMER** section 38g(3) of ~~the single business tax act,~~ 1975 PA 228 ~~, MCL 208.38g,~~ and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431. The report shall include, but is not limited to, all of the following:

(*i*) A listing of the projects under **FORMER** section 38g(3) of ~~the single business tax act,~~ 1975 PA 228 ~~, MCL 208.38g,~~ and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, that were approved in the previous calendar year.

(*ii*) The total amount of eligible investment approved under **FORMER** section 38g(3) of ~~the single business tax act,~~ 1975 PA 228 ~~, MCL 208.38g,~~ and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, in the previous calendar year.

(i) To approve the capture of school operating taxes and work plans as provided in sections 13 and 15 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2663 and 125.2665.

(j) To determine the eligibility of and issue certificates to certain qualified taxpayers for credits allowed under section 407 of the Michigan business tax act, 2007 PA 36, MCL 208.1407.

(K) TO DETERMINE THE ELIGIBILITY OF AND ISSUE CERTIFICATES TO CERTAIN TAXPAYERS FOR CREDITS ALLOWED UNDER SECTIONS 431A AND 431B OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1431A AND 208.1431B.

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

(a) Except as provided in subsection (5), the eligible business creates 1 or more of the following ~~within 12 months of the expansion or location~~ as determined by the authority **AND PROVIDED WITH WRITTEN AGREEMENT**:

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

(*ii*) A minimum of ~~100~~ **50** qualified new jobs at the facility if locating in this state.

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

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

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

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

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

(*ii*) A minimum of ~~100~~ **50** qualified new jobs at the facility if locating in this state.

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

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

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

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

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

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

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

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

(c) Except as provided in subsection (5) and as otherwise provided in this subdivision, in addition to the jobs specified in subdivision (b), the eligible business, if already located within this state, agrees to maintain a number of full-time jobs equal to or greater than the number of full-time jobs it maintained in this state prior to the expansion, as determined by the authority. After an eligible business has entered into a written agreement as provided in subsection (2), the authority may adjust the number of full-time jobs required to be maintained by the authorized business under this subdivision, in order to adjust for decreases in full-time jobs in the authorized business in this state due to the divestiture of operations, provided a single other person continues to maintain those full-time jobs in this state. The authority shall not approve a reduction in the number of full-time jobs to be maintained unless the authority has determined that it can monitor the maintenance of the full-time jobs in this state by the other person, and the authorized business agrees in writing that the continued maintenance of the full-time jobs in this state by the other person, as determined by the authority, is a condition of receiving tax credits under the written agreement. A full-time job maintained by another person under this subdivision, that otherwise meets the requirements of section 3(i), shall be considered a full-time job, notwithstanding the requirement that a full-time job be performed by an individual employed by an authorized business, or an employee leasing company or professional employer organization on behalf of an authorized business.

(d) Except as otherwise provided in this subdivision, the ~~average~~ wage paid for ~~all~~ **EACH** retained ~~jobs~~ **JOB** and qualified new ~~jobs~~ **JOB** is equal to or greater than 150% of the federal minimum wage. However, if the eligible business is a qualified high-technology business, then the ~~average~~ wage paid for ~~all~~ **EACH** qualified new ~~jobs~~ **JOB** is equal to or greater than 300% of the federal minimum wage.

~~(e) Except for a qualified high-technology business, the expansion, retention, or location of the eligible business will not occur in this state without the tax credits offered under this act.~~

~~(f) Except for an eligible business described in subsection (5)(b)(*ii*), the local governmental unit in which the eligible~~

~~business will expand, be located, or maintain retained jobs, or a local economic development corporation or similar entity, will make a staff, financial, or economic commitment to the eligible business for the expansion, retention, or location.~~

(E) ~~(g)~~ The ~~financial statements of the eligible business indicated that it is financially sound or has submitted a chapter 11 plan of reorganization to the bankruptcy court and that its~~ plans for the expansion, retention, or location are economically sound.

(F) ~~(h)~~ Except for an eligible business described in subsection (5)(c), the eligible business has not begun construction of the facility.

(G) ~~(i)~~ The expansion, retention, or location of the eligible business will benefit the people of this state by increasing opportunities for employment and by strengthening the economy of this state.

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

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

~~(*l*) If feasible, as determined by the authority, in locating the facility, the authorized business reuses or redevelops property that was previously used for an industrial or commercial purpose.~~

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

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

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

(b) The average wage **AND HEALTH CARE BENEFIT** level of the qualified new jobs or retained jobs relative to the average wage **AND HEALTH CARE BENEFIT** paid by private entities in the county in which the facility is located.

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

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

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

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

(G) WHETHER THE EXPANSION, RETENTION, OR LOCATION WILL OCCUR IN THIS STATE WITHOUT THE TAX CREDITS OFFERED UNDER THIS ACT.

(H) WHETHER THE AUTHORIZED BUSINESS REUSES OR REDEVELOPS PROPERTY THAT WAS PREVIOUSLY USED FOR AN INDUSTRIAL OR COMMERCIAL PURPOSE IN LOCATING THE FACILITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) ~~After~~ **THROUGH DECEMBER 31, 2007, AFTER** receipt of an application, the authority may enter into a written agreement ~~, which shall include a repayment provision of all or a portion of the credits under section 9 for a violation of the written agreement,~~ with an eligible business that meets 1 or more of the

following criteria:

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

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

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

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

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

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

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

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

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

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

(c) Is a distressed business.

(6) ~~The~~ **EACH YEAR, THE** authority shall not execute ~~more than 25~~ new written agreements ~~each~~ **THAT IN TOTAL PROVIDE FOR MORE THAN 500 YEARLY CREDITS OVER THE TERMS OF THOSE AGREEMENTS ENTERED INTO**

THAT year for eligible businesses that are not qualified high-technology businesses, distressed businesses, or rural businesses. ~~If the authority executes less than 25 new written agreements in a year, the authority may carry forward for 1 year only the difference between 25 and the number of new agreements executed in the immediately preceding year.~~

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

(8) The authority shall not execute more than 20 new written agreements each year for eligible businesses that are distressed businesses. The authority shall not execute more than 5 of the written agreements described in this subsection each year for distressed businesses that had 1,000 or more full-time jobs at a facility 4 years immediately preceding the application to the authority under this act.

(9) BEGINNING JANUARY 1, 2008, AFTER RECEIPT OF AN APPLICATION, THE AUTHORITY MAY ENTER INTO A WRITTEN AGREEMENT WITH AN ELIGIBLE BUSINESS THAT DOES NOT MEET THE CRITERIA DESCRIBED IN SUBSECTION (1), IF THE ELIGIBLE BUSINESS MEETS ALL OF THE FOLLOWING:

(A) AGREES TO RETAIN NOT FEWER THAN 50 JOBS.

(B) AGREES TO MAKE NEW CAPITAL INVESTMENT AT A FACILITY EQUAL TO $50,000.00 OR MORE PER RETAINED JOB MAINTAINED AT THE FACILITY.

(C) CERTIFIES TO THE AUTHORITY THAT, WITHOUT THE CREDITS UNDER THIS ACT AND WITHOUT THE NEW CAPITAL INVESTMENT, THE FACILITY IS AT RISK OF CLOSING AND THE WORK AND JOBS WOULD BE REMOVED TO A LOCATION OUTSIDE OF THIS STATE.

(D) CERTIFIES TO THE AUTHORITY THAT THE MANAGEMENT OR OWNERSHIP IS COMMITTED TO IMPROVING THE LONG-TERM VIABILITY OF THE FACILITY IN MEETING THE NATIONAL AND INTERNATIONAL COMPETITION FACING THE FACILITY THROUGH BETTER MANAGEMENT TECHNIQUES, BEST PRACTICES, INCLUDING STATE OF THE ART LEAN MANUFACTURING PRACTICES, AND MARKET DIVERSIFICATION.

(E) CERTIFIES TO THE AUTHORITY THAT IT WILL MAKE BEST EFFORTS TO KEEP JOBS IN MICHIGAN WHEN MAKING PLANT LOCATION AND CLOSING DECISIONS.

(F) CERTIFIES TO THE AUTHORITY THAT THE WORKFORCE AT THE FACILITY DEMONSTRATES ITS COMMITMENT TO IMPROVING PRODUCTIVITY AND PROFITABILITY AT THE FACILITY THROUGH VARIOUS MEANS.

(10) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, IF THE AUTHORITY ENTERS INTO A WRITTEN AGREEMENT WITH AN ELIGIBLE BUSINESS, THE WRITTEN AGREEMENT SHALL INCLUDE A REPAYMENT PROVISION OF ALL OR A PORTION OF THE CREDITS RECEIVED BY THE ELIGIBLE BUSINESS FOR A FACILITY IF THE ELIGIBLE BUSINESS MOVES FULL-TIME JOBS OUTSIDE THIS STATE DURING THE TERM OF THE WRITTEN AGREEMENT AND FOR A PERIOD OF YEARS AFTER THE TERM OF THE WRITTEN AGREEMENT, AS DETERMINED BY THE AUTHORITY.