

HOUSE BILL No. 4089

January 22, 2009, Introduced by Reps. Nerat, Robert Jones, Polidori, Liss, Haugh, Terry Brown, Lisa Brown, Segal, Valentine, Haase, Geiss, Roberts, Kennedy, Barnett, Miller, Bauer, Slavens, Angerer and Ebli and referred to the Committee on Commerce.

A bill to amend 1995 PA 24, entitled "Michigan economic growth authority act," by amending sections 8 and 10 (MCL 207.808 and 207.810), section 8 as amended by 2008 PA 257 and section 10 as amended by 2006 PA 283.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 not approve a reduction in the number of full-time jobs to be
2 maintained unless the authority has determined that it can monitor
3 the maintenance of the full-time jobs in this state by the other
4 person, and the authorized business agrees in writing that the
5 continued maintenance of the full-time jobs in this state by the
6 other person, as determined by the authority, is a condition of
7 receiving tax credits under the written agreement. A full-time job
8 maintained by another person under this subdivision, that otherwise
9 meets the requirements of section ~~3-(i)~~ 3(J), shall be considered a
10 full-time job, notwithstanding the requirement that a full-time job
11 be performed by an individual employed by an authorized business,
12 or an employee leasing company or professional employer
13 organization 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 federal minimum wage. However, beginning ~~on the effective date~~
20 ~~of the amendatory act that added this sentence~~ **AUGUST 4, 2008**, the
21 authority may include the value of the health care benefit in
22 determining the wage paid for each retained job or qualified new
23 job for an eligible business under this act.

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

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

1 facility.

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

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

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

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

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

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

1 jobs to be maintained.

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

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

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

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

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

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

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

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

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

27 (b) Conditions upon which the authorized business designation

1 is made.

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

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

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

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

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

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

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

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

1 purchasing goods and services.

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

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

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

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

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

17 (i) Relocates production of a product to this state after the
18 date of the application, makes capital investment of
19 \$500,000,000.00 in this state, and maintains 500 retained jobs, as
20 determined by the authority.

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

24 (iii) Is located in this state on the date of the application,
25 maintains at least 100 retained jobs at a single facility, and
26 agrees to make new capital investment at that facility equal to the
27 greater of \$100,000.00 per retained job maintained at that facility

1 or \$10,000,000.00 to be completed or contracted for not later than
2 December 31, 2007.

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

24 (v) Maintains 100 retained jobs at a facility; is a rural
25 business, unless otherwise provided in this subparagraph; the
26 facility is at risk of being closed and if it were to close, the
27 work would go to a location outside this state, as determined by

1 the authority; new management or new ownership is proposed for the
2 facility that is committed to improve the viability of the
3 facility; and the tax credits offered under this act are necessary
4 for the facility to maintain operations. The authority may not
5 enter into a written agreement under this subparagraph after
6 December 31, 2007. Of the written agreements entered into under
7 this subparagraph, the authority may enter into 3 written
8 agreements under this subparagraph that are excluded from the
9 requirements of subsection (1)(e), (f), and (h) if the authority
10 considers it in the public interest and if the eligible business
11 would have met the requirements of subsection ~~(1)(g)~~, **(1)(E) AND**
12 ~~(h) , and (e)~~ within the immediately preceding 6 months from the
13 signing of the written agreement for a tax credit. Of the 3 written
14 agreements described in this subparagraph, the authority may also
15 waive the requirement that the business be a rural business if the
16 business is located in a county with a population of 500,000 or
17 more and 600,000 or less.

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

21 (vii) Is located in this state on the date of the application,
22 maintains at least 675 retained jobs at a facility, agrees to
23 create 400 new jobs, and agrees to make a new capital investment of
24 at least \$45,000,000.00 to be completed or contracted for not later
25 than December 31, 2007. Of the written agreements entered into
26 under this subparagraph, the authority may enter into 1 written
27 agreement under this subparagraph that is excluded from the

1 requirements of subsection (1)(f) if the authority considers it in
2 the public interest.

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

7 (c) Is a distressed business.

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

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

20 (8) The authority shall not execute more than 20 new written
21 agreements each year for eligible businesses that are distressed
22 businesses. The authority shall not execute more than 5 of the
23 written agreements described in this subsection each year for
24 distressed businesses that had 1,000 or more full-time jobs at a
25 facility 4 years immediately preceding the application to the
26 authority under this act. The authority shall not execute more than
27 5 new written agreements each year for eligible businesses

1 described in subsection (11). The authority shall not execute more
2 than 4 new written agreements each year for eligible businesses
3 described in subsection (11) in local governmental units that have
4 a population greater than 16,000.

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

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

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

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

19 (d) Certifies to the authority that the management or
20 ownership is committed to improving the long-term viability of the
21 facility in meeting the national and international competition
22 facing the facility through better management techniques, best
23 practices, including state of the art lean manufacturing practices,
24 and market diversification.

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

1 (f) Certifies to the authority that the workforce at the
2 facility demonstrates its commitment to improving productivity and
3 profitability at the facility through various means.

4 (10) Beginning on ~~the effective date of the amendatory act~~
5 ~~that added this subsection~~ **APRIL 28, 2008**, if the authority enters
6 into a written agreement with an eligible business, the written
7 agreement shall include a repayment provision of all or a portion
8 of the credits received by the eligible business for a facility if
9 the eligible business moves full-time jobs outside this state
10 during the term of the written agreement and for a period of years
11 after the term of the written agreement, as determined by the
12 authority.

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

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

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

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

25 **(12) BEGINNING JULY 1, 2009, THE AUTHORITY SHALL NOT ENTER**
26 **INTO A WRITTEN AGREEMENT WITH AN ELIGIBLE BUSINESS UNLESS THE**
27 **ELIGIBLE BUSINESS STATES, IN WRITING, THAT THE ELIGIBLE BUSINESS**

1 WILL NOT KNOWINGLY HIRE OR CONTRACT WITH ANY BUSINESS ENTITY THAT
2 KNOWINGLY HIRES AN INDIVIDUAL WHO IS NOT AUTHORIZED UNDER FEDERAL
3 LAW TO WORK IN THE UNITED STATES.

4 (13) BEGINNING JULY 1, 2009, WHEN DETERMINING WHICH QUALIFYING
5 BUSINESSES QUALIFY FOR THE TAX CREDITS UNDER THIS ACT, IF ALL OTHER
6 CONSIDERATIONS ARE EQUAL, THE AUTHORITY SHALL GIVE PREFERENCE TO AN
7 ELIGIBLE BUSINESS THAT STATES, IN WRITING, THE ELIGIBLE BUSINESS
8 WILL DO ALL OF THE FOLLOWING:

9 (A) HIRE ONLY RESIDENTS OF THIS STATE TO CONSTRUCT,
10 REHABILITATE, DEVELOP, OR RENOVATE THE FACILITY UNDER THIS ACT
11 UNLESS THE AUTHORITY DETERMINES THAT THE FACILITY CANNOT BE
12 CONSTRUCTED, REHABILITATED, DEVELOPED, OR RENOVATED BY USING ONLY
13 RESIDENTS OF THIS STATE FOR 1 OR MORE OF THE FOLLOWING:

14 (i) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR
15 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

16 (ii) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS
17 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE
18 NEEDED.

19 (B) CONTRACT WITH BUSINESSES THAT AGREE TO HIRE ONLY RESIDENTS
20 OF THIS STATE TO CONSTRUCT, REHABILITATE, DEVELOP, OR RENOVATE THE
21 FACILITY UNDER THIS ACT UNLESS THE AUTHORITY DETERMINES THAT THE
22 FACILITY CANNOT BE CONSTRUCTED, REHABILITATED, DEVELOPED, OR
23 RENOVATED BY USING ONLY RESIDENTS OF THIS STATE FOR 1 OR MORE OF
24 THE FOLLOWING:

25 (i) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR
26 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

27 (ii) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS

1 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE
2 NEEDED.

3 (14) BEGINNING JULY 1, 2009, A WRITTEN AGREEMENT ENTERED INTO
4 WITH THE ELIGIBLE BUSINESS SHALL ALSO CONTAIN A REMEDY PROVISION
5 THAT PROVIDES FOR ALL OF, BUT NOT LIMITED TO, THE FOLLOWING:

6 (A) A REQUIREMENT THAT THE ELIGIBLE BUSINESS'S CREDITS ARE
7 REVOKED UNDER THIS ACT IF THE ELIGIBLE BUSINESS IS DETERMINED TO BE
8 IN VIOLATION OF THE PROVISIONS OF SUBSECTION (12) OR, IF
9 APPLICABLE, SUBSECTION (13), AS DETERMINED BY THE AUTHORITY.

10 (B) A REQUIREMENT THAT THE ELIGIBLE BUSINESS MAY BE REQUIRED
11 TO REPAY SOME OR ALL OF THE BENEFITS RECEIVED UNDER THIS ACT IF THE
12 ELIGIBLE BUSINESS IS DETERMINED TO BE IN VIOLATION OF THE
13 PROVISIONS OF SUBSECTION (12) OR, IF APPLICABLE, SUBSECTION (13),
14 AS DETERMINED BY THE AUTHORITY.

15 Sec. 10. The authority shall report to THE BOARD OF THE
16 MICHIGAN STRATEGIC FUND AND both houses of the legislature yearly
17 on October 1 on the activities of the authority. The report shall
18 include, but is not limited to, all of the following:

19 (a) The total amount of capital investment attracted under
20 this act.

21 (b) The total number of qualified new jobs created under this
22 act.

23 (c) The total number of new written agreements.

24 (d) Name and location of all authorized businesses and the
25 names and addresses of all of the following:

26 (i) The directors and officers of the corporation if the
27 authorized business is a corporation.

1 (ii) The partners of the partnership or limited liability
2 partnership if the authorized business is a partnership or limited
3 liability partnership.

4 (iii) The members of the limited liability company if the
5 authorized business is a limited liability company.

6 (e) The amount and duration of the tax credit separately for
7 each authorized business.

8 (f) The amount of any fee, donation, or other payment of any
9 kind from the authorized business to the Michigan economic
10 development corporation or a foundation or fund associated with the
11 Michigan economic development corporation paid or made in the
12 previous reporting year end or, if it is the first reporting year
13 for the authorized business, for the immediately preceding 3
14 calendar years.

15 (g) The total number of new written agreements entered into
16 under section 8(5) and, of those written agreements, the number in
17 which the board determined that it was in the public interest to
18 waive 1 or more of the requirements of section 8(1).

19 **(H) THE NUMBER OF MICHIGAN RESIDENTS EMPLOYED IN QUALIFIED NEW**
20 **JOBS THAT WERE CREATED OR RETAINED IN THE IMMEDIATELY PRECEDING**
21 **YEAR.**

22 **(I) THE SPECIFIC REASONS FOR EACH DETERMINATION OF EXEMPTION**
23 **FROM THE PROVISIONS OF SECTION 8(13) (A) OR (B) MADE BY THE**
24 **AUTHORITY AND THE NUMBER OF JOBS RELATED TO EACH DETERMINATION.**

25 **(J) THE DETAILS OF THE GOOD FAITH EFFORTS REQUIRED UNDER**
26 **SECTION 8(3) (F) (ii), (iii), AND (iv).**

27 Enacting section 1. This amendatory act does not take effect

1 unless Senate Bill No. ____ or House Bill No. 4087(request no.
2 01137'09) of the 95th Legislature is enacted into law.