

# HOUSE BILL No. 4137

February 2, 1999, Introduced by Reps. Jansen, Garcia, Mans and Scranton and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
(MCL 208.1 to 208.145) by adding section 39c.

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

1        SEC. 39C. (1) SUBJECT TO THE CONDITIONS IN THIS SECTION, A  
2 TAXPAYER MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY THIS ACT  
3 EQUAL TO 125% OF THE CONTRIBUTED CAPITAL INVESTED BY THE TAXPAYER  
4 IN A CERTIFIED CAPITAL COMPANY.

5        (2) FOR PURPOSES OF THIS SECTION, THE TOTAL MAXIMUM AMOUNT  
6 OF QUALIFIED INVESTMENT IN A QUALIFIED MICHIGAN BUSINESS ALLOWED  
7 FOR ALL CERTIFIED CAPITAL COMPANIES IS \$100,000,000.00.

8        (3) THE MICHIGAN JOBS COMMISSION SHALL ACCEPT APPLICATIONS  
9 FROM CAPITAL COMPANIES TO ENGAGE IN QUALIFIED INVESTMENT. THE  
10 MICHIGAN JOBS COMMISSION SHALL CERTIFY A CERTIFIED CAPITAL

1 COMPANY IF, BASED ON THE COMPANY'S APPLICATION, THE COMPANY MEETS  
2 THE CRITERIA IN THIS SECTION.

3 (4) THE MICHIGAN JOBS COMMISSION SHALL ALLOCATE THE INVEST-  
4 MENT AMOUNT AVAILABLE UNDER SUBSECTION (2). APPLICATIONS FROM  
5 CERTIFIED CAPITAL COMPANIES THAT MEET ALL OF THE CRITERIA IN THIS  
6 SECTION SHALL BE CERTIFIED IN THE ORDER IN WHICH APPLICATIONS ARE  
7 RECEIVED BY THE MICHIGAN JOBS COMMISSION AND IN THE AMOUNT  
8 REQUESTED IF, BY ALLOCATING THE REQUESTED AMOUNT, THE MAXIMUM  
9 AMOUNT UNDER SUBSECTION (2) IS NOT EXCEEDED. IF 2 OR MORE APPLI-  
10 CATIONS ARE RECEIVED ON THE SAME DAY, THEY ARE CONSIDERED TO HAVE  
11 BEEN RECEIVED SIMULTANEOUSLY. IF THE TOTAL MAXIMUM AMOUNT UNDER  
12 SUBSECTION (2) WILL BE EXCEEDED BY CERTIFYING APPLICATIONS THAT  
13 ARE RECEIVED SIMULTANEOUSLY, THE AMOUNT REQUESTED SHALL BE ALLO-  
14 CATED ON A PRO RATA BASIS BETWEEN THOSE APPLICANTS.

15 (5) IF THE APPLICATION OF A CERTIFIED CAPITAL COMPANY IS  
16 CERTIFIED BY THE MICHIGAN JOBS COMMISSION, THE COMPANY MAY  
17 SOLICIT INVESTORS FOR THE 18-MONTH PERIOD THAT BEGINS ON THE DATE  
18 OF CERTIFICATION. A CERTIFIED CAPITAL COMPANY SHALL FORFEIT ANY  
19 PORTION OF ITS ALLOCATION UNDER SUBSECTION (4) THAT IS NOT FUNDED  
20 WITHIN 18 MONTHS AFTER ALLOCATION BY THE MICHIGAN JOBS  
21 COMMISSION.

22 (6) A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SECTION  
23 FOR INVESTMENT IN A CERTIFIED CAPITAL COMPANY IF THE TAXPAYER  
24 EXERCISES CONTROL OVER OR CONTROLS THE QUALIFIED MICHIGAN BUSI-  
25 NESS IN WHICH THE CERTIFIED CAPITAL COMPANY IS INVESTING.  
26 OWNERSHIP OF MORE THAN 50% OF THE QUALIFIED MICHIGAN BUSINESS IS  
27 CONSIDERED CONTROL OF THE QUALIFIED MICHIGAN BUSINESS.

1       (7) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE AMOUNT  
2 OF CONTRIBUTED CAPITAL THAT CAN BE USED BY A TAXPAYER TO CALCU-  
3 LATE A CREDIT UNDER THIS SECTION SHALL BE DETERMINED BY THE  
4 AMOUNT INVESTED IN A CERTIFIED CAPITAL COMPANY LIMITED TO THE  
5 INVESTMENT LIMIT FOR THAT CERTIFIED CAPITAL COMPANY AS CERTIFIED  
6 BY THE MICHIGAN JOBS COMMISSION.

7       (8) A TAXPAYER SHALL NOT CLAIM MORE THAN 12.5% OF THE AMOUNT  
8 DETERMINED UNDER SUBSECTION (7), EXCLUSIVE OF ANY CARRYFORWARD  
9 ALLOWED UNDER SUBSECTION (12), IN ANY 1 TAX YEAR, AND THE CREDIT  
10 ALLOWED UNDER THIS SECTION FOR ANY TAX YEAR SHALL NOT EXCEED 25%  
11 OF THE TAXPAYER'S TAX LIABILITY FOR THE TAX YEAR.

12       (9) THE MICHIGAN JOBS COMMISSION SHALL REVOKE THE CERTIFICA-  
13 TION OF A CAPITAL COMPANY THAT DOES NOT MEET THE INVESTMENT  
14 SCHEDULE UNDER SUBSECTION (10) OR ANY OTHER CRITERIA OR CONDITION  
15 REQUIRED UNDER THIS SECTION, AS PROVIDED IN THIS SUBSECTION. THE  
16 MICHIGAN JOBS COMMISSION SHALL NOTIFY A CERTIFIED CAPITAL COMPANY  
17 IN WRITING OF ANY NONCOMPLIANCE WITH THIS SECTION. IF THE COM-  
18 PANY FAILS TO RECTIFY THE NONCOMPLIANCE BEFORE THE EXPIRATION OF  
19 120 DAYS, THE MICHIGAN JOBS COMMISSION SHALL REVOKE THE COMPANY'S  
20 CERTIFICATION. IF CERTIFICATION IS REVOKED, THE MICHIGAN JOBS  
21 COMMISSION SHALL SPECIFY IN WRITING TO THE COMPANY THE BASIS FOR  
22 THE REVOCATION. IF CERTIFICATION IS REVOKED UNDER THIS SECTION,  
23 ANY CREDIT AMOUNT OF A TAXPAYER NOT CLAIMED IN THE TAX YEAR OF  
24 THE REVOCATION OR A TAX YEAR PRIOR TO THE REVOCATION THAT IS  
25 BASED ON THAT CERTIFICATION IS REVOKED AND THE TAXPAYER SHALL NOT  
26 CLAIM ANY CREDIT AFTER THE CREDIT CLAIMED IN THE TAX YEAR OF THE  
27 REVOCATION.

1       (10) EXCEPT AS PROVIDED IN SUBSECTION (11), EACH CERTIFIED  
2 CAPITAL COMPANY THAT RECEIVES AN ALLOCATED AMOUNT UNDER THIS SEC-  
3 TION SHALL DO BOTH OF THE FOLLOWING TO MAINTAIN CERTIFICATION:

4       (A) ADHERE TO THE FOLLOWING INVESTMENT SCHEDULE:

5       (i) CUMULATIVE INVESTMENT OF CERTIFIED CAPITAL BY THE END OF  
6 THE THIRD YEAR AFTER ALLOCATION, 25%.

7       (ii) CUMULATIVE INVESTMENT OF CERTIFIED CAPITAL BY THE END  
8 OF THE FOURTH YEAR AFTER ALLOCATION, 40%.

9       (iii) CUMULATIVE INVESTMENT OF CERTIFIED CAPITAL BY THE END  
10 OF THE FIFTH YEAR AFTER ALLOCATION, 50%.

11       (B) UNTIL THE CERTIFIED CAPITAL COMPANY REACHES THE 50%  
12 INVESTMENT LEVEL REQUIRED UNDER SUBDIVISION (A), ANNUALLY SUBMIT  
13 A FINANCIAL AND PERFORMANCE REPORT TO THE MICHIGAN JOBS COMMIS-  
14 SION THAT INCLUDES INFORMATION ON NET CONTRIBUTED CAPITAL,  
15 INVESTMENT COMPLIANCE, AND A LIST OF ALL INVESTORS. THE MICHIGAN  
16 JOBS COMMISSION MAY AUDIT ANY DATA USED TO SUPPORT THE REPORT.

17       (11) AFTER THE DATE ON WHICH A CERTIFIED CAPITAL COMPANY  
18 REACHES THE 50% INVESTMENT LEVEL REQUIRED UNDER SUBSECTION (10),  
19 THE COMPANY IS NOT SUBJECT TO REVOCATION UNDER SUBSECTION (9) OR  
20 THE REPORTING REQUIREMENTS UNDER SUBSECTION (10).

21       (12) IF THE CREDIT ALLOWED UNDER THIS SECTION FOR THE TAX  
22 YEAR AND ANY UNUSED CARRYFORWARD OF THE CREDIT ALLOWED BY THIS  
23 SECTION EXCEED 25% OF THE TAXPAYER'S TAX LIABILITY FOR THE TAX  
24 YEAR, THAT PORTION THAT EXCEEDS 25% OF THE TAXPAYER'S TAX LIABIL-  
25 ITY FOR THE TAX YEAR SHALL NOT BE REFUNDED BUT MAY BE CARRIED  
26 FORWARD TO OFFSET TAX LIABILITY IN SUBSEQUENT TAX YEARS UNTIL  
27 USED UP.

1       (13) IF THE OWNERSHIP OF A CERTIFIED CAPITAL COMPANY IS  
2 TRANSFERRED, THE ALLOCATED CREDIT AMOUNT AND ANY UNUSED CARRY-  
3 FORWARD IS TRANSFERRED WITH THE OWNERSHIP INTEREST. A TRANSFER  
4 UNDER THIS SUBSECTION SHALL BE IN ACCORDANCE WITH REGULATIONS  
5 ADOPTED BY THE MICHIGAN JOBS COMMISSION. A SALE OR TRANSFER OF A  
6 CREDIT DOES NOT AFFECT ANY OTHER PROVISION OF THIS SECTION. IF  
7 THE CREDIT ALLOWED UNDER THIS SECTION IS TRANSFERRED, THE LIMITA-  
8 TIONS AND BENEFITS UNDER THIS SECTION THAT APPLIED TO THE TRANS-  
9 FEROR APPLY TO THE TRANSFEREE.

10       (14) A QUALIFIED MICHIGAN BUSINESS SHALL BE DETERMINED BY  
11 TREATING ALL MEMBERS OF AN AFFILIATED GROUP, ALL MEMBERS OF A  
12 CONTROLLED GROUP OF CORPORATIONS, AND ALL TRADES OR BUSINESSES  
13 UNDER COMMON CONTROL AS A SINGLE BUSINESS.

14       (15) AS USED IN THIS SECTION:

15       (A) "AFFILIATED GROUP" MEANS THAT TERM AS DEFINED IN SECTION  
16 3.

17       (B) "CERTIFIED CAPITAL COMPANY" OR "COMPANY" MEANS AN ENTITY  
18 THAT MEETS ALL OF THE FOLLOWING CRITERIA AND INCLUDES ALL MEMBERS  
19 OF AN AFFILIATED GROUP TO WHICH THE ENTITY BELONGS:

20       (i) IS A PARTNERSHIP, CORPORATION, S CORPORATION, LIMITED  
21 LIABILITY COMPANY, OR OTHER ENTITY WHETHER ORGANIZED FOR PROFIT  
22 OR NOT FOR PROFIT, THAT IS LOCATED, HEADQUARTERED, AND REGISTERED  
23 TO CONDUCT BUSINESS IN THIS STATE AND HAS AS ITS PRIMARY BUSINESS  
24 ACTIVITY THE INVESTMENT OF CASH IN QUALIFIED MICHIGAN  
25 BUSINESSES.

26       (ii) IS CERTIFIED BY THE MICHIGAN JOBS COMMISSION AS A  
27 CERTIFIED CAPITAL COMPANY.

1        (iii) HAS A MINIMUM OF \$100,000.00 IN EQUITY CAPITAL.

2        (C) "CONSOLIDATED BASIS" MEANS THAT THE BUSINESS OF THE  
3 QUALIFIED MICHIGAN BUSINESS IS DETERMINED BY TREATING ALL MEMBERS  
4 OF AN AFFILIATED GROUP, ALL MEMBERS OF A CONTROLLED GROUP OF COR-  
5 PORATIONS, AND ALL ENTITIES UNDER COMMON CONTROL AS A SINGLE  
6 BUSINESS.

7        (D) "CONTRIBUTED CAPITAL" MEANS THE AMOUNT CONTRIBUTED BY A  
8 TAXPAYER TO A CERTIFIED CAPITAL COMPANY TO MEET THE ALLOCATED  
9 AMOUNT AS PROVIDED UNDER SUBSECTION (4) ON WHICH A CREDIT UNDER  
10 THIS SECTION IS BASED. CONTRIBUTED CAPITAL IS THE NET OF PREMIUM  
11 OR DISCOUNT, AND A MINIMUM CAPITAL CONTRIBUTION AMOUNT OF  
12 \$100,000.00 PER TAXPAYER IS REQUIRED.

13        (E) "CONTROLLED GROUP" MEANS 1 OR MORE CHAINS OF CORPORA-  
14 TIONS CONNECTED THROUGH STOCK OWNERSHIP WITH A COMMON PARENT COR-  
15 PORATION IF A STOCK POSSESSING MORE THAN 50% OF THE TOTAL COM-  
16 BINED VOTING POWER OF ALL CLASSES OF STOCK ENTITLED TO VOTE OR  
17 MORE THAN 50% OF THE TOTAL VALUE OF SHARES OF ALL CLASSES OF  
18 STOCK OF EACH OF THE CORPORATIONS, EXCEPT THE COMMON PARENT COR-  
19 PORATION, IS OWNED BY 1 OR MORE OF THE OTHER CORPORATIONS AND THE  
20 COMMON PARENT CORPORATION OWNS STOCK POSSESSING MORE THAN 50% OF  
21 THE TOTAL COMBINED VOTING POWER OF ALL CLASSES OF STOCK ENTITLED  
22 TO VOTE OR MORE THAN 50% OF THE TOTAL VALUE OF SHARES OF ALL  
23 CLASSES OF STOCK OF AT LEAST 1 OF THE OTHER CORPORATIONS EXCLUD-  
24 ING STOCK OWNED DIRECTLY BY THE OTHER CORPORATIONS.

25        (F) "ENTITY UNDER COMMON CONTROL" MEANS THAT TERM AS DEFINED  
26 IN THE INTERNAL REVENUE CODE.

1 (G) "QUALIFIED INVESTMENT" MEANS INVESTMENT IN A QUALIFIED  
2 MICHIGAN BUSINESS AND INCLUDES BOTH OF THE FOLLOWING:

3 (i) COMMON OR PREFERRED EQUITY, WARRANTS, DEBT CONVERTIBLE  
4 INTO EQUITY OR EQUITY EQUIVALENTS, AND DEBT WITH EQUITY INCEN-  
5 TIVES INCLUDING, BUT NOT LIMITED TO, OPTIONS OR WARRANTS.

6 (ii) SHORT-TERM INVESTMENTS INCLUDING, BUT NOT LIMITED TO,  
7 DEBT INSTRUMENTS ISSUED FOR A PERIOD OF LESS THAN 12 MONTHS.

8 (H) "QUALIFIED MICHIGAN BUSINESS" MEANS A BUSINESS THAT  
9 MEETS ALL OF THE FOLLOWING CRITERIA:

10 (i) IS IN NEED OF VENTURE CAPITAL AND IS LOCATED IN THIS  
11 STATE OR CONDUCTS A MAJORITY OF ITS BUSINESS IN THIS STATE.

12 (ii) IS INVOLVED IN INTERSTATE OR INTRASTATE COMMERCE OR IN  
13 RESEARCH AND DEVELOPMENT.

14 (iii) IS NOT A REAL ESTATE COMPANY, INSURANCE COMPANY, OIL  
15 AND GAS EXPLORATION OPERATION, FINANCIAL INSTITUTION, OR A PRO-  
16 FESSIONAL SERVICES CORPORATION OF ACCOUNTANTS, ATTORNEYS, OR  
17 PHYSICIANS.

18 (iv) HAS ALL OF THE FOLLOWING ON A CONSOLIDATED BASIS:

19 (A) 500 OR FEWER FULL-TIME EQUIVALENT EMPLOYEES AT THE TIME  
20 THE QUALIFIED INVESTMENT IS MADE.

21 (B) A NET WORTH OF \$20,000,000.00 OR LESS IN THE YEAR IMME-  
22 DIATELY PRECEDING THE YEAR IN WHICH THE QUALIFIED INVESTMENT IS  
23 MADE.

24 (C) ANNUAL EARNINGS AS ANNUALIZED OVER THE 2 YEARS IMMEDI-  
25 ATELY PRECEDING THE YEAR IN WHICH THE QUALIFIED INVESTMENT IS  
26 MADE OF \$5,000,000.00 OR LESS.