

SENATE BILL No. 207

February 20, 2007, Introduced by Senator ALLEN 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 3 and 8 (MCL 207.803 and 207.808), section 3 as amended by 2006 PA 281 and section 8 as amended by 2006 PA 484.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

2 (a) "Affiliated business" means a business that is 100% owned
3 and controlled by an associated business.

4 (b) "Associated business" means a business that owns at least
5 50% of and controls, directly or indirectly, an authorized
6 business.

7 (c) "Authorized business" means 1 of the following:

8 (i) A single eligible business with a unique federal employer

1 identification number that has met the requirements of section 8
2 and with which the authority has entered into a written agreement
3 for a tax credit under section 9.

4 (ii) A single eligible business with a unique federal employer
5 identification number that has met the requirements of section 8,
6 except as provided in this subparagraph, and with which the
7 authority has entered into a written agreement for a tax credit
8 under section 9. An eligible business is not required to create
9 qualified new jobs or maintain retained jobs if qualified new jobs
10 are created or retained jobs are maintained by an associated or
11 affiliated business.

12 (iii) A single eligible business with a unique federal employer
13 identification number that has met the requirements of section 8,
14 except as provided in this subparagraph, and with which the
15 authority has entered into a written agreement for a tax credit
16 under section 9. An eligible business is not required to create
17 qualified new jobs or maintain retained jobs if qualified new jobs
18 are created or retained jobs are maintained by a subsidiary
19 business that withholds income and social security taxes, or an
20 employee leasing company or professional employer organization that
21 has entered into a contractual service agreement with the
22 authorized business in which the employee leasing company or
23 professional employer organization withholds income and social
24 security taxes on behalf of the authorized business.

25 (d) "Authority" means the Michigan economic growth authority
26 created under section 4.

27 (e) "Business" means proprietorship, joint venture,

1 partnership, limited liability partnership, trust, business trust,
2 syndicate, association, joint stock company, corporation,
3 cooperative, limited liability company, or any other organization.

4 (f) "Distressed business" means a business that meets all of
5 the following as verified by the Michigan economic growth
6 authority:

7 (i) Four years immediately preceding the application to the
8 authority under this act, the business had 150 or more full-time
9 jobs in this state.

10 (ii) Within the immediately preceding 4 years, there has been a
11 reduction of not less than 30% of the number of full-time jobs in
12 this state during any consecutive 3-year period. The highest number
13 of full-time jobs within the consecutive 3-year period shall be
14 used in order to determine the percentage reduction of full-time
15 jobs in this subparagraph.

16 (iii) Is not a seasonal employer as defined in section 27 of the
17 Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.27.

18 (g) "Eligible business" means a distressed business or
19 business that proposes to maintain retained jobs after December 31,
20 1999 or to create qualified new jobs in this state after April 18,
21 1995 in manufacturing, mining, research and development, wholesale
22 and trade, or office operations or a business that is a qualified
23 high-technology business. An eligible business does not include
24 retail establishments, professional sports stadiums, or that
25 portion of an eligible business used exclusively for retail sales.
26 Professional sports stadium does not include a sports stadium in
27 existence on June 6, 2000 that is not used by a professional sports

1 team on the date that an application related to that professional
2 sports stadium is filed under section 8.

3 (h) "Facility" means a site or sites within this state in
4 which an authorized business or subsidiary business maintains
5 retained jobs or creates qualified new jobs.

6 (i) "Full-time job" means a job performed by an individual for
7 35 hours or more each week and whose income and social security
8 taxes are withheld by 1 or more of the following:

9 (i) An authorized business.

10 (ii) An employee leasing company.

11 (iii) A professional employer organization on behalf of the
12 authorized business.

13 (iv) Another person as provided in section 8(1)(c).

14 (v) A business that sells all or part of its assets to an
15 eligible business that receives a credit under section 8(1) or (5).

16 (j) "Local governmental unit" means a county, city, village,
17 or township in this state.

18 (k) "High-technology activity" means **THE MANUFACTURE, TESTING,**
19 **ASSEMBLY, DEVELOPMENT, OR DESIGN OF** 1 or more of the following:

20 (i) Advanced computing, which is any technology used in the
21 design and development of any of the following:

22 (A) Computer hardware and software.

23 (B) Data communications.

24 (C) Information technologies.

25 (ii) Advanced materials, which are materials with engineered
26 properties created through the development of specialized process
27 and synthesis technology.

1 (iii) Biotechnology, which is any technology that uses living
2 organisms, cells, macromolecules, microorganisms, or substances
3 from living organisms to make or modify a product, improve plants
4 or animals, or develop microorganisms for useful purposes.
5 Biotechnology does not include human cloning as defined in section
6 16274 of the public health code, 1978 PA 368, MCL 333.16274, or
7 stem cell research with embryonic tissue.

8 (iv) Electronic device technology, which is any technology that
9 involves microelectronics, semiconductors, electronic equipment,
10 and instrumentation, radio frequency, microwave, and millimeter
11 electronics, and optical and optic-electrical devices, or data and
12 digital communications and imaging devices.

13 (v) Engineering or laboratory testing related to the
14 development of a product.

15 (vi) Technology that assists in the assessment or prevention of
16 threats or damage to human health or the environment, including,
17 but not limited to, environmental cleanup technology, pollution
18 prevention technology, or development of alternative energy
19 sources.

20 (vii) Medical device technology, which is any technology that
21 involves medical equipment or products other than a pharmaceutical
22 product that has therapeutic or diagnostic value and is regulated.

23 (viii) Product research and development.

24 (ix) Advanced vehicles technology, which is any technology that
25 involves electric vehicles, hybrid vehicles, or alternative fuel
26 vehicles, or components used in the construction of electric
27 vehicles, hybrid vehicles, or alternative fuel vehicles. For

1 purposes of this act:

2 (A) "Electric vehicle" means a road vehicle that draws
3 propulsion energy only from an on-board source of electrical
4 energy.

5 (B) "Hybrid vehicle" means a road vehicle that can draw
6 propulsion energy from both a consumable fuel and a rechargeable
7 energy storage system.

8 (x) Tool and die manufacturing.

9 (xi) Competitive edge technology as defined in section 88a of
10 the Michigan strategic fund act, 1984 PA 270, MCL 125.2088a.

11 (l) "New capital investment" means 1 or more of the following:

12 (i) New construction. As used in this subparagraph:

13 (A) "New construction" means property not in existence on the
14 date the authorized business enters into a written agreement with
15 the authority and not replacement construction. New construction
16 includes the physical addition of equipment or furnishings, subject
17 to section 27(2)(a) to (o) of the general property tax act, 1893 PA
18 206, MCL 211.27.

19 (B) "Replacement construction" means that term as defined in
20 section 34d(1)(b)(v) of the general property tax act, 1893 PA 206,
21 MCL 211.34d.

22 (ii) The purchase of new personal property. As used in this
23 subparagraph, "new personal property" means personal property that
24 is not subject to or that is exempt from the collection of taxes
25 under the general property tax act, 1893 PA 206, MCL 211.1 to
26 211.157, on the date the authorized business enters into a written
27 agreement with the authority.

1 (m) "Qualified high-technology business" means a business or
2 facility that is either of the following:

3 (i) A business with not less than 25% of the total operating
4 expenses of the business used for research and development in the
5 tax year in which the business files an application under this act
6 as determined under generally accepted accounting principles and
7 verified by the authority.

8 (ii) A business or facility whose primary business activity is
9 high-technology activity.

10 (n) "Qualified new job" means 1 of the following:

11 (i) A full-time job created by an authorized business at a
12 facility that is in excess of the number of full-time jobs the
13 authorized business maintained in this state prior to the expansion
14 or location, as determined by the authority.

15 (ii) For jobs created after July 1, 2000, a full-time job at a
16 facility created by an eligible business that is in excess of the
17 number of full-time jobs maintained by that eligible business in
18 this state up to 120 days before the eligible business became an
19 authorized business, as determined by the authority.

20 (iii) For a distressed business, a full-time job at a facility
21 that is in excess of the number of full-time jobs maintained by
22 that eligible business in this state on the date the eligible
23 business became an authorized business.

24 (o) "Retained jobs" means the number of full-time jobs at a
25 facility of an authorized business maintained in this state on a
26 specific date as that date and number of jobs is determined by the
27 authority.

1 (p) "Rural business" means an eligible business located in a
2 county with a population of 90,000 or less.

3 (q) "Subsidiary business" means a business that is directly or
4 indirectly controlled or at least 80% owned by an authorized
5 business.

6 (r) "Written agreement" means a written agreement made
7 pursuant to section 8. A written agreement may address new jobs,
8 qualified new jobs, full-time jobs, retained jobs, or any
9 combination of new jobs, qualified new jobs, full-time jobs, or
10 retained jobs.

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

15 (a) Except as provided in subsection (5), the eligible
16 business creates 1 or more of the following within 12 months of the
17 expansion or location as determined by the authority:

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

20 (ii) A minimum of 100 qualified new jobs at the facility if
21 locating in this state.

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

1 rural enterprise community, or enterprise community.

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

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

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

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

11 (ii) A minimum of 100 qualified new jobs at the facility if
12 locating in this state.

13 (iii) A minimum of 25 qualified new jobs at the facility if the
14 facility is located in a neighborhood enterprise zone as determined
15 under the neighborhood enterprise zone act, 1992 PA 147, MCL
16 207.771 to 207.786, is located in a renaissance zone under the
17 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
18 125.2696, or is located in a federally designated empowerment zone,
19 rural enterprise community, or enterprise community.

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

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

23 (B) A minimum of 25 qualified new jobs at the facility within
24 5 years after the date of the expansion or location as determined
25 by the authority and a minimum of 25 qualified new jobs at the
26 facility each year thereafter for which a credit is authorized
27 under this act.

1 (v) If the eligible business is a rural business, all of the
2 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.

7 (c) Except as provided in subsection (5) and as otherwise
8 provided in this subdivision, in addition to the jobs specified in
9 subdivision (b), the eligible business, if already located within
10 this state, agrees to maintain a number of full-time jobs equal to
11 or greater than the number of full-time jobs it maintained in this
12 state prior to the expansion, as determined by the authority. After
13 an eligible business has entered into a written agreement as
14 provided in subsection (2), the authority may adjust the number of
15 full-time jobs required to be maintained by the authorized business
16 under this subdivision, in order to adjust for decreases in full-
17 time jobs in the authorized business in this state due to the
18 divestiture of operations, provided a single other person continues
19 to maintain those full-time jobs in this state. The authority shall
20 not approve a reduction in the number of full-time jobs to be
21 maintained unless the authority has determined that it can monitor
22 the maintenance of the full-time jobs in this state by the other
23 person, and the authorized business agrees in writing that the
24 continued maintenance of the full-time jobs in this state by the
25 other person, as determined by the authority, is a condition of
26 receiving tax credits under the written agreement. A full-time job
27 maintained by another person under this subdivision, that otherwise

1 meets the requirements of section 3(i), shall be considered a full-
2 time job, notwithstanding the requirement that a full-time job be
3 performed by an individual employed by an authorized business, or
4 an employee leasing company or professional employer organization
5 on behalf of an authorized business.

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

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

15 (f) Except for an eligible business described in subsection
16 (5)(b)(ii), the local governmental unit in which the eligible
17 business will expand, be located, or maintain retained jobs, or a
18 local economic development corporation or similar entity, will make
19 a staff, financial, or economic commitment to the eligible business
20 for the expansion, retention, or location.

21 (g) The financial statements of the eligible business
22 indicated that it is financially sound or has submitted a chapter
23 11 plan of reorganization to the bankruptcy court and that its
24 plans for the expansion, retention, or location are economically
25 sound.

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

1 facility.

2 (i) 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 (j) 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 (k) 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 (l) If feasible, as determined by the authority, in locating
14 the facility, the authorized business reuses or redevelops property
15 that was previously used for an industrial or commercial purpose.

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

21 (2) If the authority determines that the requirements of
22 subsection (1) or (5) have been met, the authority shall determine
23 the amount and duration of tax credits to be authorized under
24 section 9, and shall enter into a written agreement as provided in
25 this section. The duration of the tax credits shall not exceed 20
26 years or for an authorized business that is a distressed business,
27 3 years. In determining the amount and duration of tax credits

1 authorized, the authority shall consider the following factors:

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

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

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

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

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

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

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

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

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

25 (c) A statement by the eligible business that a violation of
26 the written agreement may result in the revocation of the
27 designation as an authorized business and the loss or reduction of

1 future credits under section 9.

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

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

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

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

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

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

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

25 (g) A condition that if the eligible business qualified under
26 subsection (5) (b) (ii) and met the subsection (1) (g) requirement by
27 filing a chapter 11 plan of reorganization, the plan must be

1 confirmed by the bankruptcy court within 3 years of the date of the
2 agreement or the agreement is rescinded.

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

5 (5) After receipt of an application, the authority may enter
6 into a written agreement, which shall include a repayment provision
7 of all or a portion of the credits under section 9 for a violation
8 of the written agreement, with an eligible business that meets 1 or
9 more of the following criteria:

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

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

14 (i) Relocates production of a product to this state after the
15 date of the application, makes capital investment of
16 \$500,000,000.00 in this state, and maintains 500 retained jobs, as
17 determined by the authority.

18 (ii) Maintains ~~150~~100 retained jobs at a facility, maintains
19 ~~1,000~~750 or more full-time jobs in this state, and makes new
20 capital investment in this state.

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

27 (iv) Maintains 300 retained jobs at a facility; the facility is

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

21 (v) Maintains 100 retained jobs at a facility; is a rural
22 business, unless otherwise provided in this subparagraph; the
23 facility is at risk of being closed and if it were to close, the
24 work would go to a location outside this state, as determined by
25 the authority; new management or new ownership is proposed for the
26 facility that is committed to improve the viability of the
27 facility; and the tax credits offered under this act are necessary

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

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

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

27 (viii) Is located in this state on the date of the application,

1 makes new capital investment of \$250,000,000.00 or more in this
2 state, and makes that capital investment at a facility located
3 north of the 45th parallel.

4 (c) Is a distressed business.

5 (6) The authority shall not execute more than 25 new written
6 agreements each year for eligible businesses that are not qualified
7 high-technology businesses, distressed businesses, or rural
8 businesses. If the authority executes less than 25 new written
9 agreements in a year, the authority may carry forward for 1 year
10 only the difference between 25 and the number of new agreements
11 executed in the immediately preceding year.

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

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