

Act No. 108
Public Acts of 2008
Approved by the Governor
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Stamas, Clarke, Gilbert and Hunter

ENROLLED SENATE BILL No. 1187

AN ACT to amend 1995 PA 24, entitled "An act to promote economic growth and job creation within this state; to create and regulate the Michigan economic growth authority; to prescribe the powers and duties of the authority and of state and local officials; to assess and collect a fee; to approve certain plans and the use of certain funds; and to provide qualifications for and determine eligibility for tax credits and other incentives for authorized businesses and for qualified taxpayers," by amending sections 3 and 5 (MCL 207.803 and 207.805), section 3 as amended by 2008 PA 87 and section 5 as amended by 2003 PA 248.

The People of the State of Michigan enact:

Sec. 3. As used in this act:

(a) "Affiliated business" means a business that is at least 50% owned and controlled, directly or indirectly, by an associated business.

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

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

(i) A single eligible business with a unique federal employer identification number that has met the requirements of section 8 and with which the authority has entered into a written agreement for a tax credit under section 9.

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

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

(e) "Business" means proprietorship, joint venture, partnership, limited liability partnership, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, limited liability company, or any other organization.

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

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

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

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

(g) "Eligible business" means a distressed business or business that proposes to maintain retained jobs after December 31, 1999 or to create qualified new jobs in this state after April 18, 1995 in manufacturing, mining, research and development, wholesale and trade, film and digital media production, or office operations or a business that is a qualified high-technology business or a business that is a tourism attraction facility or a qualified lodging facility. Except for a retail establishment that meets the criteria in section 8(11), an eligible business does not include retail establishments, professional sports stadiums, or that portion of an eligible business used exclusively for retail sales. Professional sports stadium does not include a sports stadium in existence on June 6, 2000 that is not used by a professional sports team on the date that an application related to that professional sports stadium is filed under section 8.

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

(i) "Film and digital media production" means the development, preproduction, production, postproduction, and distribution of single media or multimedia entertainment content for distribution or exhibition to the general public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website. Film and digital media production also includes the development, preproduction, production, postproduction, and distribution of a trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in a film or digital media production. Film or digital media production does not include the production of any of the following:

(i) A production for which records are required to be maintained with respect to any performer in the production under 18 USC 2257.

(ii) A production that includes obscene matter or an obscene performance as described in 1984 PA 343, MCL 752.361 to 752.374.

(iii) A production that primarily consists of televised news or current events.

(iv) A production that primarily consists of a live sporting event.

(v) A production that primarily consists of political advertising.

(vi) A radio program.

(vii) A weather show.

(viii) A financial market report.

(ix) A talk show.

(x) A game show.

(xi) A production that primarily markets a product or service.

(xii) An awards show or other gala event production.

(xiii) A production with the primary purpose of fund-raising.

(xiv) A production that primarily is for employee training or in-house corporate advertising or other similar production.

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

(i) An authorized business.

(ii) An employee leasing company.

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

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

- (v) A business that sells all or part of its assets to an eligible business that receives a credit under section 8(1) or (5).
- (k) “Local governmental unit” means a county, city, village, or township in this state.
- (l) “High-technology activity” means 1 or more of the following:
 - (i) Advanced computing, which is any technology used in the design and development of any of the following:
 - (A) Computer hardware and software.
 - (B) Data communications.
 - (C) Information technologies.
 - (D) Film and digital media production.
 - (ii) Advanced materials, which are materials with engineered properties created through the development of specialized process and synthesis technology.
 - (iii) Biotechnology, which is any technology that uses living organisms, cells, macromolecules, microorganisms, or substances from living organisms to make or modify a product, improve plants or animals, or develop microorganisms for useful purposes. Biotechnology does not include human cloning as defined in section 16274 of the public health code, 1978 PA 368, MCL 333.16274, or stem cell research with embryonic tissue.
 - (iv) Electronic device technology, which is any technology that involves microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.
 - (v) Engineering or laboratory testing related to the development of a product.
 - (vi) Technology that assists in the assessment or prevention of threats or damage to human health or the environment, including, but not limited to, environmental cleanup technology, pollution prevention technology, or development of alternative energy sources.
 - (vii) Medical device technology, which is any technology that involves medical equipment or products other than a pharmaceutical product that has therapeutic or diagnostic value and is regulated.
 - (viii) Product research and development.
 - (ix) Advanced vehicles technology, which is any technology that involves electric vehicles, hybrid vehicles, or alternative fuel vehicles, or components used in the construction of electric vehicles, hybrid vehicles, or alternative fuel vehicles. For purposes of this act:
 - (A) “Electric vehicle” means a road vehicle that draws propulsion energy only from an on-board source of electrical energy.
 - (B) “Hybrid vehicle” means a road vehicle that can draw propulsion energy from both a consumable fuel and a rechargeable energy storage system.
 - (x) Tool and die manufacturing.
 - (xi) Competitive edge technology as defined in section 88a of the Michigan strategic fund act, 1984 PA 270, MCL 125.2088a.
 - (xii) Digital media, including internet publishing and broadcasting, video gaming, web development, and entertainment technology.
 - (xiii) Music production, including record production and development, sound recording studios, and integrated high-technology record production and distribution.
 - (xiv) Film and video, including motion picture and video production and distribution, postproduction services, and teleproduction and production services.
- (m) “New capital investment” means 1 or more of the following:
 - (i) New construction. As used in this subparagraph:
 - (A) “New construction” means property not in existence on the date the authorized business enters into a written agreement with the authority and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to section 27(2)(a) to (o) of the general property tax act, 1893 PA 206, MCL 211.27.
 - (B) “Replacement construction” means that term as defined in section 34d(1)(b)(v) of the general property tax act, 1893 PA 206, MCL 211.34d.
 - (ii) The purchase of new personal property. As used in this subparagraph, “new personal property” means personal property that is not subject to or that is exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, on the date the authorized business enters into a written agreement with the authority.
- (n) “Qualified high-technology business” means a business or facility whose primary business activity is high-technology activity or a qualified high-wage activity.

(o) “Qualified high-wage activity” means a business that has an average wage. Qualified high-wage activity may also include, but is not limited to, 1 or more of the following as long as they have an average wage of 300% or more of the federal minimum wage:

(i) Architecture and design, including architectural design, graphic design, interior design, fashion design, and industrial design.

(ii) Advertising and marketing, including advertising and marketing firms and agencies, public relations agencies, and display advertising.

(p) “Qualified lodging facility” means 1 or more of the following:

(i) Lodging facilities that constitute a portion of a tourism attraction facility and represent less than 50% of the total cost of the tourism attraction facility, or the lodging facilities are to be located on recreational property owned or leased by the municipal, state, or federal government.

(ii) The lodging facilities involve the restoration or rehabilitation of a structure that is listed individually in the national register of historic places or are located in a national register historic district and certified by this state as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by this state.

(q) “Qualified new job” means 1 of the following:

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

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

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

(r) “Retained jobs” means the number of full-time jobs at a facility of an authorized business maintained in this state on a specific date as that date and number of jobs is determined by the authority.

(s) “Rural business” means an eligible business located in a county with a population of 90,000 or less.

(t) “Subsidiary business” means a business that is directly or indirectly controlled or at least 80% owned by an authorized business.

(u) “Tourism attraction facility” means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomena or scenic beauty, or an entertainment destination center as determined by the Michigan economic growth authority as follows:

(i) In making a determination, the Michigan economic growth authority shall consider all of the following:

(A) Whether the facility will actually attract tourists.

(B) Whether 50% or more of the persons using the facility reside outside a 100-mile radius.

(C) Whether 50% or more of the gross receipts are from admissions, food, or nonalcoholic drinks.

(D) Whether the facility offers a unique experience.

(ii) The Michigan economic growth authority shall not determine any of the following as a tourism attraction facility:

(A) Facilities, other than an entertainment destination center, that are primarily devoted to the retail sale of goods, a theme restaurant destination attraction, or a tourism attraction where the attraction is a secondary and subordinate component to the sale of goods.

(B) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the facility.

(v) “Written agreement” means a written agreement made pursuant to section 8. A written agreement may address new jobs, qualified new jobs, full-time jobs, retained jobs, or any combination of new jobs, qualified new jobs, full-time jobs, or retained jobs.

Sec. 5. (1) The powers of the authority are vested in the authority members in office. Regardless of the existence of a vacancy, a majority of the members of the authority constitutes a quorum necessary for the transaction of business at a meeting or the exercise of a power or function of the authority. Action may be taken by the authority at a meeting upon a vote of the majority of the members present. Members of the authority may be present in person at a meeting of the authority or, if authorized by the bylaws of the authority, by use of telecommunications or other electronic equipment.

(2) The authority shall meet at the call of the chairperson or as may be provided by the authority. Meetings of the authority may be held anywhere within this state.

(3) The business of the authority shall be conducted at a public meeting of the authority held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given as provided by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A record or portion of a record, material, or other data received, prepared, used, or retained by the authority in connection with an application for a tax credit under section 9 that relates to financial or proprietary information submitted by the applicant that is considered by the applicant and acknowledged by the authority as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. A designee of the authority shall make the determination as to whether the authority acknowledges as confidential any financial or proprietary information submitted by the applicant and considered by the applicant as confidential. Unless considered proprietary information, the authority shall not acknowledge routine financial information as confidential. If the designee of the authority determines that information submitted to the authority is financial or proprietary information and is confidential, the designee of the authority shall release a written statement, subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, which states all of the following:

(a) The name and business location of the person requesting that the information submitted be confidential as financial or proprietary information.

(b) That the information submitted was determined by the designee of the authority to be confidential as financial or proprietary information.

(c) A broad nonspecific overview of the financial or proprietary information determined to be confidential.

(4) The authority shall not disclose financial or proprietary information not subject to disclosure pursuant to subsection (3) without consent of the applicant submitting the information.

(5) As used in this section, "financial or proprietary information" means information that has not been publicly disseminated or is unavailable from other sources, the release of which might cause the applicant significant competitive harm. Financial or proprietary information does not include a written agreement under this act.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 1188.

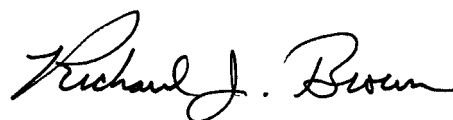
(b) Senate Bill No. 1189.

(c) Senate Bill No. 1190.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor