HOUSE BILL No. 4203

February 8, 2011, Introduced by Reps. Lindberg, Melton, Lane, Darany, Slavens, Haugh, Townsend, Kandrevas, Smiley, Ananich, Dillon, McCann, Liss, Rutledge, Constan, Barnett, Bauer, Segal, Stapleton, Hovey-Wright, Hobbs, Bledsoe, Geiss, Switalski, Cavanagh, Stallworth, Byrum, Lipton, Durhal, Howze, Santana, Talabi, Brunner, Oakes, Brown and Womack 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 2009 PA 123 and section 10 as amended by 2009 PA 125.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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 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.

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(*ii*) A minimum of 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 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(j), 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 wage paid for each retained job and qualified new job is equal to or greater than 150% of the federal minimum wage. However, if the eligible business is a qualified high-wage activity, then the wage paid for each qualified new job is equal to or greater than 300% of the state minimum wage. However, beginning on August 4, 2008, the authority may include the value of the health care benefit in determining the wage paid for each retained job or qualified new job for an eligible business under this act.

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

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

(g) 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) 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) 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.

(2) If the authority determines that the requirements of subsection (1), (5), (9), or (11) 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. Except as otherwise provided under 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.

(i) The project's effects on other Michigan businesses within the same industry.

(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 plus a penalty equal to 10% of the 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)(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) Through December 31, 2007, after receipt of an application, the authority may enter into a 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), and (h) if the authority considers it in the public interest and if the eligible business would have met the requirements of subsection (1)(g) and (h) 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), and (h) if the authority considers it in the public interest and if the eligible business would have met the requirements of subsection (1)(e), (g), and (h) 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)(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) Through December 31, 2008, each year, the authority shall not execute new written agreements that in total provide for more than 400 yearly credits over the terms of those agreements entered into that year for eligible businesses that are not qualified high-technology businesses, distressed businesses, rural businesses, or an eligible business described in subsection (11). For calendar year 2009, the authority shall not execute new written agreements described in this subsection that in total provide for more than 400 yearly credits over the terms of those agreements entered into that year, plus up to 85 additional yearly credits taken from previously issued credits by the authority. For calendar year 2010 and each year thereafter, the authority shall not execute new written agreements described in this subsection that in total provide for more than 300 yearly credits over the terms of those agreements entered into that year, plus up to 85 additional yearly credits taken from previously issued credits by the authority. As used in this subsection, beginning calendar year 2010, "yearly credit" means the number of years over the term of an agreement multiplied by the percentage amount authorized in the agreement. As used in this subsection, "previously issued credits" means 2/3 of the number of tax credits authorized by the authority for an authorized business beginning in calendar year 1999 that meet all

of the following:

(a) That the authorized business did not use any or a portion of the tax credits authorized under that written agreement.

(b) The authority determined at a meeting upon a vote of the majority of the members present that the credits previously authorized satisfy subdivision (a).

(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. In addition, the authority may execute not more than 25 additional new written agreements each year for eligible businesses that are qualified high-technology businesses that have demonstrated that not less than 10% of the total operating expenses of the eligible business in the immediately preceding 2 years was attributable to research and development. Not more than 35 of the 75 written agreements for businesses that are qualified high-technology businesses or rural business may be executed each year for qualified rural businesses. Not more than 50 of the 75 written agreements for businesses that are qualified high-technology businesses or rural businesses may be executed each year for a high-technology business that engages in a qualified high-wage activity. Not more than 4 of the 75 agreements executed under this subsection may provide for a tax credit with a duration of more than 12 years but not more than 20 years. The authority shall not execute a written agreement for an eligible business that is a qualified high-technology business or rural business under this subsection if that eligible business has claimed a credit under section 455 of the Michigan business tax

act, 2007 PA 36, MCL 208.1455.

(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. The authority shall not execute more than 5 new written agreements each year for eligible businesses described in subsection (11). The authority shall not execute more than 4 new written agreements each year for eligible businesses described in subsection (11) in local governmental units that have a population greater than 16,000.

(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 invest, through construction, acquisition, transfer, purchase, contract, or any other method as determined by the authority, 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 April 28, 2008, 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.

(11) 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 create or retain not fewer than 15 jobs.

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

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

(12) BEGINNING JULY 1, 2011, THE AUTHORITY SHALL NOT ENTER INTO A WRITTEN AGREEMENT WITH AN ELIGIBLE BUSINESS UNLESS THE ELIGIBLE BUSINESS STATES, IN WRITING, THAT THE ELIGIBLE BUSINESS WILL NOT KNOWINGLY HIRE OR CONTRACT WITH ANY BUSINESS ENTITY THAT KNOWINGLY HIRES AN INDIVIDUAL WHO IS NOT AUTHORIZED UNDER FEDERAL LAW TO WORK IN THE UNITED STATES.

(13) BEGINNING JULY 1, 2011, WHEN DETERMINING WHICH ELIGIBLE BUSINESSES QUALIFY FOR THE TAX CREDITS UNDER THIS ACT, IF ALL OTHER CONSIDERATIONS ARE EQUAL, THE AUTHORITY SHALL GIVE PREFERENCE TO AN ELIGIBLE BUSINESS THAT STATES, IN WRITING, THE ELIGIBLE BUSINESS WILL DO ALL OF THE FOLLOWING:

(A) HIRE ONLY RESIDENTS OF THIS STATE OR INDIVIDUALS WHO PLAN ON BECOMING RESIDENTS OF THIS STATE TO CONSTRUCT, REHABILITATE, DEVELOP, OR RENOVATE THE FACILITY UNDER THIS ACT UNLESS THE AUTHORITY DETERMINES THAT THE FACILITY CANNOT BE CONSTRUCTED, REHABILITATED, DEVELOPED, OR RENOVATED BY USING ONLY RESIDENTS OF THIS STATE OR INDIVIDUALS WHO PLAN ON BECOMING RESIDENTS OF THIS STATE FOR 1 OR MORE OF THE FOLLOWING:

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

(*ii*) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE

NEEDED.

(*iii*) HOWEVER, FOR FACILITIES LOCATED IN A COUNTY THAT BORDERS ON ANOTHER STATE, IF THE AUTHORITY DETERMINES THAT THE USE OF NONRESIDENTS FOR THE CONSTRUCTION, REHABILITATION, DEVELOPMENT, OR RENOVATION WILL NOT HAVE A SIGNIFICANT ADVERSE EFFECT ON THE EMPLOYMENT OF RESIDENTS IN THIS STATE.

(B) CONTRACT WITH BUSINESSES THAT AGREE TO HIRE ONLY RESIDENTS OF THIS STATE OR INDIVIDUALS WHO PLAN ON BECOMING RESIDENTS OF THIS STATE TO CONSTRUCT, REHABILITATE, DEVELOP, OR RENOVATE THE FACILITY UNDER THIS ACT UNLESS THE AUTHORITY DETERMINES THAT THE FACILITY CANNOT BE CONSTRUCTED, REHABILITATED, DEVELOPED, OR RENOVATED BY USING ONLY RESIDENTS OF THIS STATE OR INDIVIDUALS WHO PLAN ON BECOMING RESIDENTS OF THIS STATE FOR 1 OR MORE OF THE FOLLOWING:

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

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

(*iii*) HOWEVER, FOR FACILITIES LOCATED IN A COUNTY THAT BORDERS ON ANOTHER STATE, IF THE AUTHORITY DETERMINES THAT THE USE OF NONRESIDENTS FOR THE CONSTRUCTION, REHABILITATION, DEVELOPMENT, OR RENOVATION WILL NOT HAVE A SIGNIFICANT ADVERSE EFFECT ON THE EMPLOYMENT OF RESIDENTS IN THIS STATE.

(14) BEGINNING JULY 1, 2011, A WRITTEN AGREEMENT ENTERED INTO WITH THE ELIGIBLE BUSINESS SHALL ALSO CONTAIN A REMEDY PROVISION THAT PROVIDES FOR ALL OF, BUT NOT LIMITED TO, THE FOLLOWING:

(A) A REQUIREMENT THAT THE ELIGIBLE BUSINESS'S CREDITS ARE

REVOKED UNDER THIS ACT IF THE ELIGIBLE BUSINESS IS DETERMINED TO BE IN VIOLATION OF THE PROVISIONS OF SUBSECTION (12) OR, IF APPLICABLE, SUBSECTION (13), AS DETERMINED BY THE AUTHORITY.

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

Sec. 10. (1) The authority shall report to both houses of the legislature yearly on October 1 on the activities of the authority. Beginning October 1, 2009, and each year thereafter, the authority shall also report to the chairperson of the senate appropriations committee, the chairperson of the senate finance committee, the chairperson of the house of representatives appropriations committee, the chairperson of the house of representatives tax policy committee, and the directors of the senate and house fiscal agencies. The authority shall also report to the chairperson or director upon written request from the chairperson or director. The report shall include, but is not limited to, all of the following:

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

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

(c) The total number of new written agreements.

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

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

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

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

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

(f) The number of jobs required under the written agreement to be created or retained for each authorized business to be eligible for the tax credits under the written agreement including the maximum number of jobs which can be utilized to calculate the credit for each authorized business under the written agreement.

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

(h) The total number of written agreements and the total capital investment required or otherwise anticipated for the credit under written agreements entered into under section 8(5) or (9) and, of those written agreements, the number in which the board determined that it was in the public interest to waive 1 or more of the requirements of section 8(1).

(i) For each written agreement with each authorized business, the actual number of jobs created or retained for the most recent period that information is available and all previous years under the written agreement, the total capital investment at that facility for tax credits authorized under section 8(5) or (9) for that year and all previous years under the written agreement, and the total value of the tax credits received under that written agreement for that year and all previous years under the written agreement.

(j) A copy of each certificate issued under section 431, 431a, 431b, or 431c of the Michigan business tax act, 2007 PA 36, MCL 208.1431, 208.1431a, 208.1431b, and 208.1431c.

(K) THE NUMBER OF MICHIGAN RESIDENTS EMPLOYED IN QUALIFIED NEW JOBS THAT WERE CREATED OR RETAINED IN THE IMMEDIATELY PRECEDING YEAR.

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

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

(2) A review and comments concerning the report shall be included in the auditor general's postaudit of the authority.