

Act No. 248
Public Acts of 2003
Approved by the Governor
December 23, 2003
Filed with the Secretary of State
December 29, 2003
EFFECTIVE DATE: December 29, 2003

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Reps. Acciavatti, Taub, Emmons, Voorhees, LaJoy, Casperson, Tabor, Shackleton, Palmer, Ehardt, Kooiman, Stahl, Shaffer, Vander Veen, Richardville and Robertson

ENROLLED HOUSE BILL No. 5255

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, 4, 5, 6, 8, and 10 (MCL 207.803, 207.804, 207.805, 207.806, 207.808, and 207.810), section 3 as amended by 2000 PA 428 and sections 6 and 8 as amended by 2000 PA 144, and by adding section 8a.

The People of the State of Michigan enact:

Sec. 3. As used in this act:

- (a) "Affiliated business" means a business that is 100% owned and controlled by an associated business.
- (b) "Associated business" means a business which 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 which 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 which 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 or affiliated 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, or office operations or a business that is a qualified high-technology business. 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 within this state in which an authorized business maintains retained jobs or creates qualified new jobs. A facility does not include a site that was a vaccine laboratory owned by this state on April 1, 1995.

(i) "Full-time job" means a job performed by an individual who is employed by an authorized business or an employee leasing company or professional employer organization on behalf of the authorized business for consideration for 35 hours or more each week and for which the authorized business or an employee leasing company or professional employer organization on behalf of the authorized business withholds income and social security taxes.

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

(k) "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.

(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 that 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.

(l) "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 211.157, on the date the authorized business enters into a written agreement with the authority.

(m) “Qualified high-technology business” means a business that is either of the following:

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

(ii) A business whose primary business activity is high-technology activity.

(n) “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 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.

(o) “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.

(p) “Rural business” means an eligible business located in a county with a population of 75,000 or less.

(q) “Written agreement” means a written agreement made pursuant to section 8.

Sec. 4. (1) The Michigan economic growth authority is created within the Michigan strategic fund. The Michigan strategic fund shall provide staff for the authority and shall carry out the administrative duties and functions as directed by the authority. The budgeting, procurement, and related functions as directed by the authority are under the supervision of the president of the Michigan strategic fund.

(2) The authority consists of the following 8 members:

(a) The director of the department of labor and economic growth, or his or her designee, as chairperson of the authority.

(b) The state treasurer or his or her designee.

(c) The chief executive officer of the Michigan economic development corporation, or his or her designee.

(d) The director of the state transportation department, or his or her designee.

(e) Four other members appointed by the governor by and with the advice and consent of the senate who are not employed by this state and who have knowledge, skill, and experience in the academic, business, local government, labor, or financial fields.

(3) A member shall be appointed for a term of 4 years, except that of the members first appointed by the governor, 2 shall be appointed for a term of 2 years and 2 for a term of 4 years from the dates of their appointments. A vacancy shall be filled for the balance of the unexpired term in the same manner as an original appointment by the governor and by and with the advice and consent of the senate.

(4) Except as otherwise provided by law, a member of the authority shall not receive compensation for services, but the authority may reimburse each member for expenses necessarily incurred in the performance of his or her duties.

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.

(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.

Sec. 6. The authority shall have powers necessary or convenient to carry out and effectuate the purpose of this act, including, but not limited to, the following:

(a) To authorize eligible businesses to receive tax credits to foster job creation in this state.

(b) To determine which businesses qualify for tax credits under this act.

(c) To determine the amount and duration of tax credits authorized under this act.

(d) To issue certificates and enter into written agreements specifying the conditions under which tax credits are authorized and the circumstances under which those tax credits may be reduced or terminated.

(e) To charge and collect reasonable administrative fees.

(f) To delegate to the chairperson of the authority, staff, or others the functions and powers it considers necessary and appropriate to administer the programs under this act.

(g) To assist an eligible business to obtain the benefits of a tax credit, incentive, or inducement program provided by this act or by law.

(h) To determine the eligibility of and issue certificates to certain qualified taxpayers for credits allowed under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g, and to develop the application process and necessary forms to claim the credit under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g. The Michigan economic growth authority annually shall prepare and submit to the house of representatives and senate committees responsible for tax policy and economic development issues a report on the credits under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g. The report shall include, but is not limited to, all of the following:

(i) A listing of the projects under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g, that were approved in the previous calendar year.

(ii) The total amount of eligible investment approved under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g, in the previous calendar year.

(i) To approve the capture of school operating taxes and work plans as provided in sections 13 and 15 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2663 and 125.2665.

(j) To approve relocation of public buildings or operations for economic development purposes under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672.

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 within 12 months of the expansion or location as determined by the authority:

(i) A minimum of 75 qualified new jobs at the facility if expanding in this state.

(ii) A minimum of 150 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 207.787, 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 75 qualified new jobs at the facility if expanding in this state.

(ii) A minimum of 150 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 207.787, 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), 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.

(d) Except as otherwise provided in this subdivision, the average wage paid for all retained jobs and qualified new jobs is equal to or greater than 150% of the federal minimum wage. However, if the eligible business is a qualified high-technology business, then the average wage paid for all qualified new jobs is equal to or greater than 400% of the federal minimum wage.

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

(f) The local governmental unit in which the eligible business will expand, be located, or maintain retained jobs, or a local economic development corporation or similar entity, will make a staff, financial, or economic commitment to the eligible business for the expansion, retention, or location.

(g) The financial statements of the eligible business indicated that it is financially sound and that its plans for the expansion, retention, or location are economically sound.

(h) Except as provided in subsection (5)(c), the eligible business has not begun construction of the facility.

(i) 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.

(j) 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.

(k) 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.

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

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

(2) If the authority determines that the requirements of subsection (1) or (5) 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. 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 level of the qualified new jobs or retained jobs relative to the average wage 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.

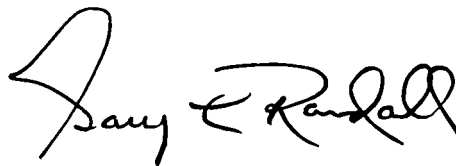
- (d) The cost differential to the business between expanding, locating, or retaining new jobs in Michigan and a site outside of Michigan.
- (e) The potential impact of the expansion, retention, or location on the economy of Michigan.
- (f) The cost of the credit under section 9, the staff, financial, 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.
- (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.
- (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.
- (4) Upon execution of a written agreement as provided in this section, an eligible business is an authorized business.
- (5) 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 either 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) Makes capital investment of \$100,000,000.00 in a time period beginning 3 years prior to and 2 years following becoming an authorized business and agrees to maintain at least 1,500 jobs at the facility without permanent reduction in full-time employment except through attrition or retirement. The credit under this subparagraph can only be granted as part of a package of incentives that addresses international competition and includes a negotiated labor contribution.
- (c) Is a distressed business.
- (6) The authority shall not execute more than 25 new written agreements each year for eligible businesses that are not qualified high-technology businesses, distressed businesses, or rural businesses. If the authority executes less than 25 new written agreements in a year, the authority may carry forward for 1 year only the difference between 25 and the number of new agreements executed in the immediately preceding year.
- (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. Only 5 of the 50 written agreements for businesses that are qualified high-technology businesses or rural business may be executed each year for qualified rural businesses.
- (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.

Sec. 8a. Beginning on the effective date of the amendatory act that added this section, the authority shall not require an eligible business, as a condition of becoming an authorized business, to pay an unreasonable fee to or make a donation to the Michigan economic development corporation or a foundation or fund associated with the Michigan economic development corporation.

Sec. 10. The authority shall report to both houses of the legislature yearly on October 1 on the activities of the authority. 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 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.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor