

Act No. 24
Public Acts of 1995
Approved by the Governor
April 18, 1995
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

Introduced by Senators Emmons, Schuette and Gougeon

ENROLLED SENATE BILL No. 351

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; and to provide qualifications for incentives for authorized businesses.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "Michigan economic growth authority act".

Sec. 2. The legislature finds that it is in the public interest to promote economic growth and to encourage private investment, job creation, and job upgrading for residents in this state.

Sec. 3. As used in this act:

(a) "Authorized business" means an eligible business with which the authority has entered into a written agreement for a tax credit under section 9.

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

(c) "Eligible business" means a business that proposes to create qualified jobs in this state after the effective date of this act in manufacturing, mining, research and development, wholesale and trade, or office operations. An eligible business does not include retail establishments, professional sports stadiums, or that portion of an eligible business used exclusively for retail sales.

(d) "Facility" means a site within this state in which an authorized business creates new jobs. A facility does not include a site that was a vaccine laboratory owned by this state on April 1, 1995.

(e) "Full-time job" means a job performed by an individual who is employed by an authorized business for consideration for 35 hours or more each week and for which the authorized business withholds income and social security taxes.

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

(g) "Qualified new job" means 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.

(h) "Written agreement" means a written agreement made pursuant to section 8.

Sec. 4. (1) The Michigan economic growth authority is created within the Michigan jobs commission. The Michigan jobs commission 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 director of the Michigan jobs commission.

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

(a) The director of the Michigan jobs commission, or his or her designee, as chairperson of the authority.

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

(c) The director of the department of management and budget, 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 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.

(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, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given as provided by Act No. 267 of the Public Acts of 1976. 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, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The chairperson 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 chairperson of the authority determines that information submitted to the authority is financial or proprietary information and is confidential, the chairperson shall release a written statement, subject to disclosure under Act No. 440 of the Public Acts of 1976, 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 chairperson 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 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 deems necessary and appropriate to administer this program.

(g) To promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, necessary to carry out the purposes of this act.

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

Sec. 7. (1) An eligible business may apply to the authority to enter into a written agreement which authorizes a tax credit under section 9.

(2) The form of the application shall be as specified by the authority from time to time. The authority may request such information, in addition to that contained in an application, as may be needed to permit the authority to discharge its responsibilities under section 8.

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) The eligible business creates a minimum of 75 qualified new jobs at the facility if expanding in this state, 150 qualified new jobs at the facility if locating in this state, or 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, Act No. 147 of the Public Acts of 1992, being sections 207.771 to 207.787 of the Michigan Compiled Laws, or is located in a federally designated empowerment zone, rural enterprise community, or enterprise community, within 12 months of the expansion or location as determined by the authority.

(b) The eligible business agrees to maintain a minimum of 75 qualified new jobs at the facility if expanding in this state, a minimum of 150 qualified new jobs at the facility if locating in this state, or 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, Act No. 147 of the Public Acts of 1992, being sections 207.771 to 207.787 of the Michigan Compiled Laws, or is located in a federally designated empowerment zone, rural enterprise community, or enterprise community, for each year that a credit is authorized under this act.

(c) 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) The average wage paid for all qualified new jobs is equal to or greater than 150% of the federal minimum wage.

(e) The expansion 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 or be located, or a local economic development corporation or similar entity, will make a staff, financial, or economic commitment to the eligible business for the expansion or location.

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

(h) The eligible business has not begun construction of the facility.

(i) The expansion 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 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 company 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) That the expansion or location of the qualified business will not have the effect of transferring employment from 1 or more local governmental units to the local governmental unit in which the facility is to be located unless the legislative body of each local governmental unit from which employment is to be transferred consents by resolution to the transfer.

(2) If the authority determines that the requirements of subsection (1) 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. 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.

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

(c) The total capital investment the eligible business will make.

(d) The cost differential to the business between expanding or locating in Michigan and a site outside of Michigan.

(e) The potential impact of the expansion 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 the 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 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 prior to and after an expansion 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.

(g) If the authority determines that it is necessary to provide infrastructure assistance for the location or expansion of an eligible business within an international tradeport development zone under the international tradeport development authority act, Act No. 325 of the Public Acts of 1994, being sections 125.2521 to 125.2546 of the Michigan Compiled Laws, a statement that if the authorized business locates or expands within that international tradeport development zone, that all or a portion of the tax credit received each year by the authorized business, as determined by the authority, shall be assigned by the authorized business to the international tradeport development authority for infrastructure improvements within the international tradeport development zone under Act No. 325 of the Public Acts of 1994.

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

(5) The authority shall not execute more than 25 new written agreements each year.

Sec. 9. (1) An authorized business is eligible for the credits provided in sections 37c and 37d of the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.37c and 208.37d of the Michigan Compiled Laws.

(2) The authority shall issue a certificate each year to an authorized business that states the following:

(a) That the eligible business is an authorized business.

(b) The amount of the tax credit for the designated tax year.

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.

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

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.