

# HOUSE BILL No. 4406

March 6, 2001, Introduced by Reps. Jansen, Vear, Julian, Gosselin, Raczkowski, Richardville and Lemmons and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
(MCL 208.1 to 208.145) by adding section 39d.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 39D. (1) SUBJECT TO THE CONDITIONS IN THIS SECTION, A  
2 TAXPAYER MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY THIS ACT  
3 EQUAL TO 125% OF THE CONTRIBUTED CAPITAL INVESTED BY THE TAXPAYER  
4 IN A CERTIFIED CAPITAL COMPANY.

5 (2) FOR PURPOSES OF THIS SECTION, THE TOTAL MAXIMUM AMOUNT  
6 OF QUALIFIED INVESTMENT IN A QUALIFIED MICHIGAN BUSINESS ALLOWED  
7 FOR ALL CERTIFIED CAPITAL COMPANIES IS \$100,000,000.00.

8 (3) THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION SHALL  
9 ACCEPT APPLICATIONS FROM CAPITAL COMPANIES TO ENGAGE IN QUALIFIED  
10 INVESTMENT. THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION SHALL

1 CERTIFY A CERTIFIED CAPITAL COMPANY IF, BASED ON THE COMPANY'S  
2 APPLICATION, THE COMPANY MEETS THE CRITERIA IN THIS SECTION.

3       (4) THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION SHALL  
4 ALLOCATE THE INVESTMENT AMOUNT AVAILABLE UNDER SUBSECTION (2).  
5 APPLICATIONS FROM CERTIFIED CAPITAL COMPANIES THAT MEET ALL OF  
6 THE CRITERIA IN THIS SECTION SHALL BE CERTIFIED IN THE ORDER IN  
7 WHICH APPLICATIONS ARE RECEIVED BY THE MICHIGAN ECONOMIC DEVELOP-  
8 MENT CORPORATION AND IN THE AMOUNT REQUESTED IF, BY ALLOCATING  
9 THE REQUESTED AMOUNT, THE MAXIMUM AMOUNT UNDER SUBSECTION (2) IS  
10 NOT EXCEEDED. IF 2 OR MORE APPLICATIONS ARE RECEIVED ON THE SAME  
11 DAY, THEY ARE CONSIDERED TO HAVE BEEN RECEIVED SIMULTANEOUSLY.  
12 IF THE TOTAL MAXIMUM AMOUNT UNDER SUBSECTION (2) WILL BE EXCEEDED  
13 BY CERTIFYING APPLICATIONS THAT ARE RECEIVED SIMULTANEOUSLY, THE  
14 AMOUNT REQUESTED SHALL BE ALLOCATED ON A PRO RATA BASIS BETWEEN  
15 THOSE APPLICANTS.

16       (5) IF THE APPLICATION OF A CERTIFIED CAPITAL COMPANY IS  
17 CERTIFIED BY THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION, THE  
18 COMPANY MAY SOLICIT INVESTORS FOR THE 18-MONTH PERIOD THAT BEGINS  
19 ON THE DATE OF CERTIFICATION. A CERTIFIED CAPITAL COMPANY SHALL  
20 FORFEIT ANY PORTION OF ITS ALLOCATION UNDER SUBSECTION (4) THAT  
21 IS NOT FUNDED WITHIN 18 MONTHS AFTER ALLOCATION BY THE MICHIGAN  
22 ECONOMIC DEVELOPMENT CORPORATION.

23       (6) A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SECTION  
24 FOR INVESTMENT IN A CERTIFIED CAPITAL COMPANY IF THE TAXPAYER  
25 EXERCISES CONTROL OVER OR CONTROLS THE QUALIFIED MICHIGAN BUSI-  
26 NESS IN WHICH THE CERTIFIED CAPITAL COMPANY IS INVESTING.

1 OWNERSHIP OF MORE THAN 50% OF THE QUALIFIED MICHIGAN BUSINESS IS  
2 CONSIDERED CONTROL OF THE QUALIFIED MICHIGAN BUSINESS.

3 (7) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE AMOUNT  
4 OF CONTRIBUTED CAPITAL THAT CAN BE USED BY A TAXPAYER TO CALCU-  
5 LATE A CREDIT UNDER THIS SECTION SHALL BE DETERMINED BY THE  
6 AMOUNT INVESTED IN A CERTIFIED CAPITAL COMPANY LIMITED TO THE  
7 INVESTMENT LIMIT FOR THAT CERTIFIED CAPITAL COMPANY AS CERTIFIED  
8 BY THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION.

9 (8) A TAXPAYER SHALL NOT CLAIM MORE THAN 12.5% OF THE AMOUNT  
10 DETERMINED UNDER SUBSECTION (7), EXCLUSIVE OF ANY CARRYFORWARD  
11 ALLOWED UNDER SUBSECTION (12), IN ANY 1 TAX YEAR, AND THE CREDIT  
12 ALLOWED UNDER THIS SECTION FOR ANY TAX YEAR SHALL NOT EXCEED 25%  
13 OF THE TAXPAYER'S TAX LIABILITY FOR THE TAX YEAR.

14 (9) THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION SHALL  
15 REVOKE THE CERTIFICATION OF A CAPITAL COMPANY THAT DOES NOT MEET  
16 THE INVESTMENT SCHEDULE UNDER SUBSECTION (10) OR ANY OTHER CRI-  
17 TERIA OR CONDITION REQUIRED UNDER THIS SECTION, AS PROVIDED IN  
18 THIS SUBSECTION. THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION  
19 SHALL NOTIFY A CERTIFIED CAPITAL COMPANY IN WRITING OF ANY NON-  
20 COMPLIANCE WITH THIS SECTION. IF THE COMPANY FAILS TO RECTIFY  
21 THE NONCOMPLIANCE BEFORE THE EXPIRATION OF 120 DAYS, THE MICHIGAN  
22 ECONOMIC DEVELOPMENT CORPORATION SHALL REVOKE THE COMPANY'S  
23 CERTIFICATION. IF CERTIFICATION IS REVOKED, THE MICHIGAN ECO-  
24 NOMIC DEVELOPMENT CORPORATION SHALL SPECIFY IN WRITING TO THE  
25 COMPANY THE BASIS FOR THE REVOCATION. IF CERTIFICATION IS  
26 REVOKED UNDER THIS SECTION, ANY CREDIT AMOUNT OF A TAXPAYER NOT  
27 CLAIMED IN THE TAX YEAR OF THE REVOCATION OR A TAX YEAR PRIOR TO

1 THE REVOCATION THAT IS BASED ON THAT CERTIFICATION IS REVOKED AND  
2 THE TAXPAYER SHALL NOT CLAIM ANY CREDIT AFTER THE CREDIT CLAIMED  
3 IN THE TAX YEAR OF THE REVOCATION.

4 (10) EXCEPT AS PROVIDED IN SUBSECTION (11), EACH CERTIFIED  
5 CAPITAL COMPANY THAT RECEIVES AN ALLOCATED AMOUNT UNDER THIS SEC-  
6 TION SHALL DO BOTH OF THE FOLLOWING TO MAINTAIN CERTIFICATION:

7 (A) ADHERE TO THE FOLLOWING INVESTMENT SCHEDULE:

8 (i) CUMULATIVE INVESTMENT OF CERTIFIED CAPITAL BY THE END OF  
9 THE THIRD YEAR AFTER ALLOCATION, 25%.

10 (ii) CUMULATIVE INVESTMENT OF CERTIFIED CAPITAL BY THE END  
11 OF THE FOURTH YEAR AFTER ALLOCATION, 40%.

12 (iii) CUMULATIVE INVESTMENT OF CERTIFIED CAPITAL BY THE END  
13 OF THE FIFTH YEAR AFTER ALLOCATION, 50%.

14 (B) UNTIL THE CERTIFIED CAPITAL COMPANY REACHES THE 50%  
15 INVESTMENT LEVEL REQUIRED UNDER SUBDIVISION (A), ANNUALLY SUBMIT  
16 A FINANCIAL AND PERFORMANCE REPORT TO THE MICHIGAN ECONOMIC  
17 DEVELOPMENT CORPORATION THAT INCLUDES INFORMATION ON NET CONTRIB-  
18 UTED CAPITAL, INVESTMENT COMPLIANCE, AND A LIST OF ALL  
19 INVESTORS. THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION MAY  
20 AUDIT ANY DATA USED TO SUPPORT THE REPORT.

21 (11) AFTER THE DATE ON WHICH A CERTIFIED CAPITAL COMPANY  
22 REACHES THE 50% INVESTMENT LEVEL REQUIRED UNDER SUBSECTION (10),  
23 THE COMPANY IS NOT SUBJECT TO REVOCATION UNDER SUBSECTION (9) OR  
24 THE REPORTING REQUIREMENTS UNDER SUBSECTION (10).

25 (12) IF THE CREDIT ALLOWED UNDER THIS SECTION FOR THE TAX  
26 YEAR AND ANY UNUSED CARRYFORWARD OF THE CREDIT ALLOWED BY THIS  
27 SECTION EXCEED 25% OF THE TAXPAYER'S TAX LIABILITY FOR THE TAX

1 YEAR, THAT PORTION THAT EXCEEDS 25% OF THE TAXPAYER'S TAX  
2 LIABILITY FOR THE TAX YEAR SHALL NOT BE REFUNDED BUT MAY BE CAR-  
3 RIED FORWARD TO OFFSET TAX LIABILITY IN SUBSEQUENT TAX YEARS  
4 UNTIL USED UP.

5 (13) IF THE OWNERSHIP OF A CERTIFIED CAPITAL COMPANY IS  
6 TRANSFERRED, THE ALLOCATED CREDIT AMOUNT AND ANY UNUSED CARRY-  
7 FORWARD IS TRANSFERRED WITH THE OWNERSHIP INTEREST. A TRANSFER  
8 UNDER THIS SUBSECTION SHALL BE IN ACCORDANCE WITH REGULATIONS  
9 ADOPTED BY THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION. A SALE  
10 OR TRANSFER OF A CREDIT DOES NOT AFFECT ANY OTHER PROVISION OF  
11 THIS SECTION. IF THE CREDIT ALLOWED UNDER THIS SECTION IS TRANS-  
12 FERRED, THE LIMITATIONS AND BENEFITS UNDER THIS SECTION THAT  
13 APPLIED TO THE TRANSFEROR APPLY TO THE TRANSFEREE.

14 (14) A QUALIFIED MICHIGAN BUSINESS SHALL BE DETERMINED BY  
15 TREATING ALL MEMBERS OF AN AFFILIATED GROUP, ALL MEMBERS OF A  
16 CONTROLLED GROUP OF CORPORATIONS, AND ALL TRADES OR BUSINESSES  
17 UNDER COMMON CONTROL AS A SINGLE BUSINESS.

18 (15) AS USED IN THIS SECTION:

19 (A) "AFFILIATED GROUP" MEANS THAT TERM AS DEFINED IN SECTION  
20 3.

21 (B) "CERTIFIED CAPITAL COMPANY" OR "COMPANY" MEANS AN ENTITY  
22 THAT MEETS ALL OF THE FOLLOWING CRITERIA AND INCLUDES ALL MEMBERS  
23 OF AN AFFILIATED GROUP TO WHICH THE ENTITY BELONGS:

24 (i) IS A PARTNERSHIP, CORPORATION, S CORPORATION, LIMITED  
25 LIABILITY COMPANY, OR OTHER ENTITY WHETHER ORGANIZED FOR PROFIT  
26 OR NOT FOR PROFIT, THAT IS LOCATED, HEADQUARTERED, AND REGISTERED  
27 TO CONDUCT BUSINESS IN THIS STATE AND HAS AS ITS PRIMARY BUSINESS

1 ACTIVITY THE INVESTMENT OF CASH IN QUALIFIED MICHIGAN  
2 BUSINESSES.

3 (ii) IS CERTIFIED BY THE MICHIGAN ECONOMIC DEVELOPMENT COR-  
4 PORATION AS A CERTIFIED CAPITAL COMPANY.

5 (iii) HAS A MINIMUM OF \$100,000.00 IN EQUITY CAPITAL.

6 (C) "CONSOLIDATED BASIS" MEANS THAT THE BUSINESS OF THE  
7 QUALIFIED MICHIGAN BUSINESS IS DETERMINED BY TREATING ALL MEMBERS  
8 OF AN AFFILIATED GROUP, ALL MEMBERS OF A CONTROLLED GROUP OF COR-  
9 PORATIONS, AND ALL ENTITIES UNDER COMMON CONTROL AS A SINGLE  
10 BUSINESS.

11 (D) "CONTRIBUTED CAPITAL" MEANS THE AMOUNT CONTRIBUTED BY A  
12 TAXPAYER TO A CERTIFIED CAPITAL COMPANY TO MEET THE ALLOCATED  
13 AMOUNT AS PROVIDED UNDER SUBSECTION (4) ON WHICH A CREDIT UNDER  
14 THIS SECTION IS BASED. CONTRIBUTED CAPITAL IS THE NET OF PREMIUM  
15 OR DISCOUNT, AND A MINIMUM CAPITAL CONTRIBUTION AMOUNT OF  
16 \$100,000.00 PER TAXPAYER IS REQUIRED.

17 (E) "CONTROLLED GROUP" MEANS 1 OR MORE CHAINS OF CORPORA-  
18 TIONS CONNECTED THROUGH STOCK OWNERSHIP WITH A COMMON PARENT COR-  
19 PORATION IF A STOCK POSSESSING MORE THAN 50% OF THE TOTAL COM-  
20 BINED VOTING POWER OF ALL CLASSES OF STOCK ENTITLED TO VOTE OR  
21 MORE THAN 50% OF THE TOTAL VALUE OF SHARES OF ALL CLASSES OF  
22 STOCK OF EACH OF THE CORPORATIONS, EXCEPT THE COMMON PARENT COR-  
23 PORATION, IS OWNED BY 1 OR MORE OF THE OTHER CORPORATIONS AND THE  
24 COMMON PARENT CORPORATION OWNS STOCK POSSESSING MORE THAN 50% OF  
25 THE TOTAL COMBINED VOTING POWER OF ALL CLASSES OF STOCK ENTITLED  
26 TO VOTE OR MORE THAN 50% OF THE TOTAL VALUE OF SHARES OF ALL

1 CLASSES OF STOCK OF AT LEAST 1 OF THE OTHER CORPORATIONS  
2 EXCLUDING STOCK OWNED DIRECTLY BY THE OTHER CORPORATIONS.

3 (F) "ENTITY UNDER COMMON CONTROL" MEANS THAT TERM AS DEFINED  
4 IN THE INTERNAL REVENUE CODE.

5 (G) "QUALIFIED INVESTMENT" MEANS INVESTMENT IN A QUALIFIED  
6 MICHIGAN BUSINESS AND INCLUDES BOTH OF THE FOLLOWING:

7 (i) COMMON OR PREFERRED EQUITY, WARRANTS, DEBT CONVERTIBLE  
8 INTO EQUITY OR EQUITY EQUIVALENTS, AND DEBT WITH EQUITY INCEN-  
9 TIVES INCLUDING, BUT NOT LIMITED TO, OPTIONS OR WARRANTS.

10 (ii) SHORT-TERM INVESTMENTS INCLUDING, BUT NOT LIMITED TO,  
11 DEBT INSTRUMENTS ISSUED FOR A PERIOD OF LESS THAN 12 MONTHS.

12 (H) "QUALIFIED MICHIGAN BUSINESS" MEANS A BUSINESS THAT  
13 MEETS ALL OF THE FOLLOWING CRITERIA:

14 (i) IS IN NEED OF VENTURE CAPITAL AND IS LOCATED IN THIS  
15 STATE OR CONDUCTS A MAJORITY OF ITS BUSINESS IN THIS STATE.

16 (ii) IS INVOLVED IN INTERSTATE OR INTRASTATE COMMERCE OR IN  
17 RESEARCH AND DEVELOPMENT.

18 (iii) IS NOT A REAL ESTATE COMPANY, INSURANCE COMPANY, OIL  
19 AND GAS EXPLORATION OPERATION, FINANCIAL INSTITUTION, OR A PRO-  
20 FESSIONAL SERVICES CORPORATION OF ACCOUNTANTS, ATTORNEYS, OR  
21 PHYSICIANS.

22 (iv) HAS ALL OF THE FOLLOWING ON A CONSOLIDATED BASIS:

23 (A) 500 OR FEWER FULL-TIME EQUIVALENT EMPLOYEES AT THE TIME  
24 THE QUALIFIED INVESTMENT IS MADE.

25 (B) A NET WORTH OF \$20,000,000.00 OR LESS IN THE YEAR IMME-  
26 DIATELY PRECEDING THE YEAR IN WHICH THE QUALIFIED INVESTMENT IS  
27 MADE.

1           (C) ANNUAL EARNINGS AS ANNUALIZED OVER THE 2 YEARS  
2 IMMEDIATELY PRECEDING THE YEAR IN WHICH THE QUALIFIED INVESTMENT  
3 IS MADE OF \$5,000,000.00 OR LESS.