HOUSE BILL No. 6093

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April 29, 2010, Introduced by Reps. Nerat, Sheltrown, McDowell, Lindberg, Clemente, Lipton, Lahti, Lemmons, Griffin and Liss and referred to the Committee on New Economy and Quality of Life.

A bill to amend 2007 PA 36, entitled

"Michigan business tax act,"

by amending section 437 (MCL 208.1437), as amended by 2009 PA 241.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 437. (1) Subject to the criteria under this section, a qualified taxpayer that has unused credits or has a preapproval letter issued after December 31, 2007 and before January 1, 2014, or a taxpayer that received a preapproval letter prior to January 1, 2008 under section 38g of former 1975 PA 228 and has not received a certificate of completion prior to the taxpayer's last tax year, provided that the project is completed not more than 5 years after the preapproval letter for the project is issued unless extended under subsection (9) or if it is a multiphase project not more than 10 years after the preapproval letter, as amended, if

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applicable, for the project is issued, or an assignee under subsection (20), (21), or (22) may claim a credit that has been approved under section 38g of former 1975 PA 228 or under subsection (2), (3), or (4) against the tax imposed by this act equal to either of the following:

(a) For projects approved before April 8, 2008, if the total of all credits for a project is $1,000,000.00 or less, 10% of the cost of the qualified taxpayer's eligible investment paid or accrued by the qualified taxpayer on an eligible property provided that the project does not exceed the amount stated in the preapproval letter, as amended. For projects approved, or amended, on and after April 8, 2008, if the total of all eligible investments for a project are $10,000,000.00 or less, up to 12.5% of the costs of the qualified taxpayer's eligible investment paid or accrued by the qualified taxpayer on an eligible property or up to 15% of the costs of the qualified taxpayer's eligible investment paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority to the extent that the project does not exceed the amount stated in the preapproval letter, as amended, or, until December 31, 2010, up to 20% of the costs of the qualified taxpayer's eligible investment paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority. If eligible investment exceeds the amount of eligible investment in the preapproval letter, as amended, for that project, the total of all credits for the project shall not exceed the total of all credits on the certificate of completion.

(b) For projects approved before April 8, 2008, if the total of all credits for a project is more than $1,000,000.00 but $30,000,000.00 or less and, except as provided in subsection (6)(b), the project is located in a qualified local governmental unit, a percentage as determined by the Michigan economic growth authority not to exceed 10% of the cost of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property. For projects approved, or amended, on and after April 8, 2008 and before January 1, 2010, if the total of all eligible investments for a project is more than $10,000,000.00 but $300,000,000.00 or less, up to 12.5% of the costs of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property that, except as provided in subsection (6)(b), is located in a qualified local governmental unit, up to 15% of the cost of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority, or, until December 31, 2010, up to 20% of the costs of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority. For projects approved, or amended, on and after January 1, 2010, if the total of all eligible investments for a project is more than $10,000,000.00 but $100,000,000.00 or less, up to 12.5% of the costs of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property that, except as provided in subsection (6)(b), is located in a qualified local governmental unit, up to 15% of the cost of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority, or, until December 31, 2010, up to 20% of the costs of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority. If eligible investment exceeds the amount of eligible investment in the preapproval letter, as amended, for that project, the total of all credits for the project shall not exceed the total of all credits on the certificate of completion.

(2) If the cost of a project will be $2,000,000.00 or less, a qualified taxpayer shall apply to the Michigan economic growth authority for approval of the project under this subsection. An application under this subsection shall state whether the project is a multiphase project. Subject to the limitation provided under subsection (31), the chairperson of the Michigan economic growth authority or his or her designee is authorized to approve an

application or project under this subsection. Only the chairperson of the Michigan economic growth authority is authorized to deny an application or project under this subsection. A project shall be approved or denied not more than 45 days after receipt of the application. If the chairperson of the Michigan economic growth authority or his or her designee does not approve or deny the application within 45 days after the application is received by the Michigan economic growth authority, the application is considered approved as written. If the chairperson of the Michigan economic growth authority or his or her designee approves a project under this subsection, the chairperson of the Michigan economic growth authority or his or her designee shall issue a preapproval letter that states that the taxpayer is a qualified taxpayer; the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when the project is completed and a certificate of completion is issued; and the project number assigned by the Michigan economic growth authority. If a project is denied under this subsection, a taxpayer is not prohibited from subsequently applying under this subsection for the same project or for another project. The Michigan economic growth authority shall develop and implement the use of the application form to be used for projects under this subsection.

(3) If the cost of a project will be for more than $2,000,000.00 but $10,000,000.00 or less, a qualified taxpayer shall apply to the Michigan economic growth authority for approval of the project under this subsection. An application under this subsection shall state whether the project is a multiphase project.

Subject to the limitation provided under subsection (31), the chairperson of the Michigan economic growth authority or his or her designee is authorized to approve an application or project under this subsection. Only the chairperson of the Michigan economic growth authority is authorized to deny an application or project under this subsection. A project shall be approved or denied not more than 45 days after receipt of the application. If the chairperson of the Michigan economic growth authority or his or her designee does not approve or deny an application within 45 days after the application is received by the Michigan economic growth authority, the application is considered approved as written. The criteria in subsection (7) shall be used when approving projects under this subsection. When approving projects under this subsection, priority shall be given to projects on a facility. The total of all credits for an approved project under this subsection shall not exceed the amounts authorized under subsection (1)(a). A taxpayer may apply under this subsection instead of subsection (4) for approval of a project that will be for more than $10,000,000.00, but the total of all credits for that project shall not exceed the amounts authorized under subsection (1)(a). If the chairperson of the Michigan economic growth authority or his or her designee approves a project under this subsection, the chairperson of the Michigan economic growth authority or his or her designee shall issue a preapproval letter that states that the taxpayer is a qualified taxpayer; the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when the project is completed and a certificate of completion is issued; and the project number assigned by the Michigan economic growth authority. If a project is denied under this subsection, a taxpayer is not prohibited from subsequently applying under this subsection or subsection (4) for the same project or for another project.

(4) If the cost of a project will be for more than $10,000,000.00 and, except as provided in subsection (6)(b), the project is located in a qualified local governmental unit, a qualified taxpayer shall apply to the Michigan economic growth authority for approval of the project. An application under this subsection shall state whether the project is a multiphase project. The Michigan economic growth authority shall approve or deny the project not more than 65 days after receipt of the application. A project under this subsection shall not be approved without the concurrence of the state treasurer. If the Michigan economic growth authority does not approve or deny the application within 65 days after it receives the application, the Michigan economic growth authority shall send the application to the state treasurer. The state treasurer shall approve or deny the application within 5 days after receipt of the application. If the state treasurer does not deny the application within 5 days after receipt of the application, the application is considered approved. The Michigan economic growth authority shall approve a limited number of projects under this subsection during each calendar year as provided in subsection (6). The Michigan economic growth authority shall use the criteria in subsection (7) when approving projects under this subsection, when determining the total amount of

eligible investment, and when determining the percentage of eligible investment for the project to be used to calculate a credit. The total of all credits for an approved project under this subsection shall not exceed the amount designated in the preapproval letter, as amended, for that project. If the Michigan economic growth authority approves a project under this subsection, the Michigan economic growth authority shall issue a preapproval letter that states that the taxpayer is a qualified taxpayer; the percentage of eligible investment for the project determined by the Michigan economic growth authority for purposes of subsection (1)(b); the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when the project is completed and a certificate of completion is issued; and the project number assigned by the Michigan economic growth authority. The Michigan economic growth authority shall send a copy of the preapproval letter to the department. If a project is denied under this subsection, a taxpayer is not prohibited from subsequently applying under this subsection or subsection (3) for the same project or for another project.

(5) If the project is on property that is functionally obsolete, the taxpayer shall include with the application an affidavit signed by a level 3 or level 4 assessor, that states that it is the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion.

(6) The Michigan economic growth authority may approve not more than 20 projects each calendar year through December 31, 2009,

not more than 19 projects for the 2010 calendar year, and, except as otherwise provided under subdivision (d), not more than 17 projects for each calendar year after December 31, 2010 under subsection (4), and the following limitations apply:

(a) Of the projects allowed under this subsection, the total of all credits for each project may be more than $10,000,000.00 but $30,000,000.00 or less for only 1 project before December 31, 2009.

(b) Of the projects allowed under this subsection, up to 3 projects may be approved for projects that are not in a qualified local governmental unit if the property is a facility for which eligible activities are identified in a brownfield plan or, for 1 of the 3 projects, if the property is not a facility but is functionally obsolete or blighted, property identified in a brownfield plan. For purposes of this subdivision, a facility includes a building or complex of buildings that was used by a state or federal agency and that is no longer being used for the purpose for which it was used by the state or federal agency.

(c) The project allowed under subdivision (a) may also qualify under subdivision (b).

(d) If the Michigan economic growth authority determines that there are previously issued credits authorized under section 434(6) available, the Michigan economic growth authority may approve 2 additional projects for each calendar year after December 31, 2010. As used in this subdivision, "previously issued credits" means the total amount of credits authorized by the Michigan economic growth authority for a taxpayer under section 434(6) that meets all of the following:

(*i*) The taxpayer did not use any or a portion of the credits authorized under the written agreement under section 434(6).

(*ii*) The authority determined at a meeting upon a vote of the majority of the members present that the credits previously authorized satisfy subparagraph (*i*).

(7) The Michigan economic growth authority shall review all applications for projects under subsection (4) and, if an application is approved, shall determine the maximum total of all credits for that project. Before approving a project for which the total of all credits will be more than $10,000,000.00 but $30,000,000.00 or less only, the Michigan economic growth authority shall determine that the project would not occur in this state without the tax credit offered under subsection (4). The Michigan economic growth authority shall consider the following criteria to the extent reasonably applicable to the type of project proposed when approving a project under subsection (4), and the chairperson of the Michigan economic growth authority or his or her designee shall consider the following criteria to the extent reasonably applicable to the type of project proposed when approving a project under subsection (2) or (3) or when considering an amendment to a project under subsection (9):

(a) The overall benefit to the public.

(b) The extent of reuse of vacant buildings and redevelopment of blighted property.

(c) Creation of jobs.

(d) Whether the eligible property is in an area of high unemployment.

(e) The level and extent of contamination alleviated by the qualified taxpayer's eligible activities to the extent known to the qualified taxpayer.

(f) The level of private sector contribution.

(g) The cost gap that exists between the site and a similar greenfield site as determined by the Michigan economic growth authority.

(h) If the qualified taxpayer is moving from another location in this state, whether the move will create a brownfield.

(i) Whether the project is financially and economically sound.

(j) Any other criteria that the Michigan economic growth authority or the chairperson of the Michigan economic growth authority, as applicable, considers appropriate for the determination of eligibility under subsection (3) or (4).

(8) A qualified taxpayer may apply for projects under this section for eligible investment on more than 1 eligible property in a tax year. Each project approved and each project for which a certificate of completion is issued under this section shall be for eligible investment on 1 eligible property.

(9) If, after a taxpayer's project has been approved and the taxpayer has received a preapproval letter but before the taxpayer has made an eligible investment, other than soft costs, at the property, the taxpayer determines that the project cannot be completed as preapproved, the taxpayer may petition the Michigan economic growth authority to amend the project and the preapproval letter to increase the maximum total eligible investment for the project on which credits may be claimed and the maximum total of

all credits for the project. A taxpayer may petition the Michigan economic growth authority to make any other amendments to the project or preapproval letter at any time before a certificate of completion is issued. Amendments to the project or preapproval letter may include, but are not limited to, extending the duration of time provided to complete the project, as long as that extension does not exceed 10 years from the date of the preapproval letter.

(10) A project may be a multiphase project. If a project is a multiphase project, when each component of the multiphase project is completed, the taxpayer shall submit documentation that the component is complete, an accounting of the cost of the component, and the eligible investment for the component of each taxpayer eligible for a credit for the project of which the component is a part to the Michigan economic growth authority or the designee of the Michigan economic growth authority, who shall verify that the component is complete. When the completion of the component is verified, a component completion certificate shall be issued to the qualified taxpayer which shall state that the taxpayer is a qualified taxpayer, the credit amount for the component, the qualified taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer, and the project number. The taxpayer may assign all or part of the credit for a multiphase project as provided in this section after a component completion certificate for a component is issued. The qualified taxpayer may transfer ownership of or lease the completed component and assign a proportionate share of the credit for the entire project to the qualified taxpayer that is the new owner or lessee.

A multiphase project shall not be divided into more than 10 components. A component is considered to be completed when a certificate of occupancy has been issued by the local municipality in which the project is located for all of the buildings or facilities that comprise the completed component and a component completion certificate is issued or the chairperson of the Michigan economic growth authority or his or her designee, for projects approved under subsection (2) or (3), or the Michigan economic growth authority, for projects approved under subsection (4), verifies that the component is complete. A credit assigned based on a multiphase project shall be claimed by the assignee in the tax year in which the assignment is made. The total of all credits for a multiphase project shall not exceed the amount stated in the preapproval letter, as amended, for the project under subsection (1). If all components of a multiphase project are not completed by 10 years after the date on which the preapproval letter, as amended, if applicable, for the project was issued, the qualified taxpayer that received the preapproval letter for the project shall pay to the state treasurer, as a penalty, an amount equal to the sum of all credits claimed and assigned for all components of the multiphase project and no credits based on that multiphase project shall be claimed after that date by the qualified taxpayer or any assignee of the qualified taxpayer. The penalty under this subsection is subject to interest on the amount of the credit claimed or assigned determined individually for each component at the rate in section 23(2) of 1941 PA 122, MCL 205.23, beginning on the date that the credit for that component was claimed or assigned. As used in this subsection, "proportionate share" means the same percentage of the total of all credits for the project that the qualified investment for the completed component is of the total qualified investment stated in the preapproval letter, as amended, for the entire project.

(11) When a project under this section is completed, the taxpayer shall submit documentation that the project is completed, an accounting of the cost of the project, the eligible investment of each taxpayer if there is more than 1 taxpayer eligible for a credit for the project, and, if the taxpayer is not the owner or lessee of the eligible property on which the eligible investment was made at the time the project is completed, that the taxpayer was the owner or lessee of, or was a party to an agreement to purchase or lease, that eligible property when all eligible investment of the taxpayer was made. The chairperson of the Michigan economic growth authority or his or her designee, for projects approved under subsection (2) or (3), or the Michigan economic growth authority, for projects approved under subsection (4) **OR (32)**, shall verify that the project is completed. The Michigan economic growth authority shall conduct an on-site inspection as part of the verification process for projects approved under subsection (4). When the completion of the project is verified, a certificate of completion shall be issued to each qualified taxpayer that has made eligible investment on that eligible property. The certificate of completion shall state the total amount of all credits for the project and that total shall not exceed the maximum total of all credits listed in the

preapproval letter for the project under subsection (2), (3), ~~or~~ (4)**, OR (32)** as applicable and as amended under subsection (9) and shall state all of the following:

(a) That the taxpayer is a qualified taxpayer.

(b) The total cost of the project and the eligible investment of each qualified taxpayer.

(c) Each qualified taxpayer's credit amount.

(d) The qualified taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer.

(e) The project number.

(f) For a project approved under subsection (4) for which the total of all credits is more than $10,000,000.00 but $30,000,000.00 or less, the total of all credits and the schedule on which the annual credit amount shall be claimed by the qualified taxpayer.

(g) For a multiphase project under subsection (10), the amount of each credit assigned and the amount of all credits claimed in each tax year before the year in which the project is completed.

(H) FOR A PROJECT APPROVED UNDER SUBSECTION (32), THE TOTAL AMOUNT OF THE CREDIT ALLOWED TO BE CLAIMED BY THE QUALIFIED TAXPAYER.

(12) Except as otherwise provided in this section, qualified taxpayers shall claim credits under this section in the tax year in which the certificate of completion is issued. For a project approved under subsection (4) for which the total of all credits is more than $10,000,000.00 but $30,000,000.00 or less, the qualified taxpayer shall claim 10% of its approved credit each year for 10 years. A credit assigned based on a multiphase project shall be

claimed in the year in which the credit is assigned.

(13) The cost of eligible investment for leased machinery, equipment, or fixtures is the cost of that property had the property been purchased minus the lessor's estimate, made at the time the lease is entered into, of the market value the property will have at the end of the lease. A credit for property described in this subsection is allowed only if the cost of that property had the property been purchased and the lessor's estimate of the market value at the end of the lease are provided to the Michigan economic growth authority.

(14) Credits claimed by a lessee of eligible property are subject to the total of all credits limitation under this section.

(15) Each qualified taxpayer and assignee under subsection (20), (21), or (22) that claims a credit under this section shall attach a copy of the certificate of completion and, if the credit was assigned, a copy of the assignment form provided for under this section to the annual return filed under this act on which the credit under this section is claimed. An assignee of a credit based on a multiphase project shall attach a copy of the assignment form provided for under this section and the component completion certificate provided for in subsection (10) to the annual return filed under this act on which the credit is claimed but is not required to file a copy of a certificate of completion.

(16) Except as otherwise provided in this subsection or subsection (10), (18), (20), (21), or (22), a credit under this section shall be claimed in the tax year in which the certificate of completion is issued to the qualified taxpayer. For a project

described in subsection (11)(f) for which a schedule for claiming annual credit amounts is designated on the certificate of completion by the Michigan economic growth authority, the annual credit amount shall be claimed in the tax year specified on the certificate of completion.

(17) Except as otherwise provided under this subsection, the credits approved under this section shall be calculated after application of all other credits allowed under this act. The credits under this section shall be calculated before the calculation of the credits under sections 413, 423, 431, and 450.

(18) Except as otherwise provided under this subsection, if the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the qualified taxpayer's or assignee's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. Except as otherwise provided in this subsection, the maximum time allowed under the carryforward provisions under this subsection begins with the tax year in which the certificate of completion is issued to the qualified taxpayer. If the qualified taxpayer assigns all or any portion of its credit approved under this section, the maximum time allowed under the carryforward provisions for an assignee begins to run with the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year. The maximum time allowed under the carryforward provisions for an annual credit

amount for a credit allowed under subsection (4) **OR (32), IF APPLICABLE,** begins to run in the tax year for which the annual credit amount is designated on the certificate of completion issued under this section. A credit carryforward available under section 38g of former 1975 PA 228 that is unused at the end of the last tax year may be claimed against the tax imposed under this act for the years the carryforward would have been available under former 1975 PA 228. Beginning on and after April 8, 2008, if the credit allowed under this section for the tax year exceeds the qualified taxpayer's tax liability for the tax year, the qualified taxpayer may elect to have the excess refunded at a rate equal to 85% of that portion of the credit that exceeds the tax liability of the qualified taxpayer for the tax year and forgo the remaining 15% of the credit and any carryforward.

(19) If a project or credit under this section is for the addition of personal property, if the cost of that personal property is used to calculate a credit under this section, and if the personal property is disposed of or transferred from the eligible property to any other location, the qualified taxpayer that disposed of that property, or transferred the personal property shall add the same percentage as determined under subsection (1) of the federal basis of the personal property used for determining gain or loss as of the date of the disposition or transfer to the qualified taxpayer's tax liability under this act after application of all credits under this act for the tax year in which the disposition or transfer occurs. If a qualified taxpayer has an unused carryforward of a credit under this section, the

amount otherwise added under this subsection to the qualified taxpayer's tax liability may instead be used to reduce the qualified taxpayer's carryforward under subsection (18).

(20) For credits under this section for projects for which a certificate of completion is issued before January 1, 2006 and except as otherwise provided in this subsection, if a qualified taxpayer pays or accrues eligible investment on or to an eligible property that is leased for a minimum term of 10 years or sold to another taxpayer for use in a business activity, the qualified taxpayer may assign all or a portion of the credit under this section based on that eligible investment to the lessee or purchaser of that eligible property. A credit assignment under this subsection shall only be made to a taxpayer that when the assignment is complete will be a qualified taxpayer. All credit assignments under this subsection are irrevocable and, except for a credit based on a multiphase project, shall be made in the tax year in which the certificate of completion is issued, unless the assignee is an unknown lessee. If a qualified taxpayer wishes to assign all or a portion of its credit to a lessee but the lessee is unknown in the tax year in which the certificate of completion is issued, the qualified taxpayer may delay claiming and assigning the credit until the first tax year in which the lessee is known. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. Except as otherwise provided in this subsection, if the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which the certificate of

completion is issued or, for a credit assigned and claimed for a multiphase project before a certificate of completion is issued, the taxpayer shall claim the credit in the year in which the credit is assigned. If a qualified taxpayer assigns all or a portion of the credit and the eligible property is leased to more than 1 taxpayer, the qualified taxpayer shall determine the amount of credit assigned to each lessee. A lessee shall not subsequently assign a credit or any portion of a credit assigned under this subsection. A purchaser may subsequently assign a credit or any portion of a credit assigned to the purchaser under this subsection to a lessee of the eligible property. The credit assignment under this subsection shall be made on a form prescribed by the Michigan economic growth authority. The qualified taxpayer shall send a copy of the completed assignment form to the Michigan economic growth authority in the tax year in which the assignment is made. The assignee shall attach a copy of the completed assignment form to its annual return required to be filed under this act, for the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year. In addition to all other procedures under this subsection, the following apply if the total of all credits for a project is more than $10,000,000.00 but $30,000,000.00 or less:

(a) The credit shall be assigned based on the schedule contained in the certificate of completion.

(b) If the qualified taxpayer assigns all or a portion of the credit amount, the qualified taxpayer shall assign the annual credit amount for each tax year separately.

(c) More than 1 annual credit amount may be assigned to any 1 assignee and the qualified taxpayer may assign all or a portion of each annual credit amount to any assignee.

(d) The qualified taxpayer shall not assign more than the annual credit amount for each tax year.

(21) Except as otherwise provided in this subsection, for projects for which a certificate of completion is issued before January 1, 2006, and except as otherwise provided in this subsection, if a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or a portion of a credit under this section to its partners, members, or shareholders, based on their proportionate share of ownership of the partnership, limited liability company, or subchapter S corporation or based on an alternative method approved by the Michigan economic growth authority. A credit assignment under this subsection is irrevocable and, except for a credit assignment based on a multiphase project, shall be made in the tax year in which a certificate of completion is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. Except as otherwise provided in this subsection, if the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which a certificate of completion is issued or for a credit assigned and claimed for a multiphase project, before the component completion certificate is issued, the taxpayer shall claim the credit in the year in which the credit is assigned. A partner, member, or shareholder that is

an assignee shall not subsequently assign a credit or any portion of a credit assigned under this subsection. The credit assignment under this subsection shall be made on a form prescribed by the Michigan economic growth authority. The qualified taxpayer shall send a copy of the completed assignment form to the Michigan economic growth authority in the tax year in which the assignment is made. A partner, member, or shareholder who is an assignee shall attach a copy of the completed assignment form to its annual return required under this act, for the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year. A credit assignment based on a credit for a component of a multiphase project that is completed before January 1, 2006 shall be made under this subsection. In addition to all other procedures under this subsection, the following apply if the total of all credits for a project is more than $10,000,000.00 but $30,000,000.00 or less:

(a) The credit shall be assigned based on the schedule contained in the certificate of completion.

(b) If the qualified taxpayer assigns all or a portion of the credit amount, the qualified taxpayer shall assign the annual credit amount for each tax year separately.

(c) More than 1 annual credit amount may be assigned to any 1 assignee and the qualified taxpayer may assign all or a portion of each annual credit amount to any assignee.

(d) The qualified taxpayer shall not assign more than the annual credit amount for each tax year.

(22) For projects approved under this section or section 38g

of former 1975 PA 228 for which a certificate of completion is issued on and after January 1, 2006, a qualified taxpayer may assign all or a portion of a credit allowed under this section or section 38g(2), (3), or (33) of former 1975 PA 228 under this subsection. A credit assignment under this subsection is irrevocable and, except for a credit assignment based on a multiphase project, shall be made in the tax year in which a certificate of completion is issued unless the assignee is an unknown lessee. If a qualified taxpayer wishes to assign all or a portion of its credit to a lessee but the lessee is unknown in the tax year in which the certificate of completion is issued, the qualified taxpayer may delay claiming and assigning the credit until the first tax year in which the lessee is known. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. If the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which a certificate of completion is issued pursuant to this section or section 38g of former 1975 PA 228. An assignee may subsequently assign a credit or any portion of a credit assigned under this subsection to 1 or more assignees. The credit assignment or a subsequent reassignment under this subsection shall be made on a form prescribed by the Michigan economic growth authority. The Michigan economic growth authority or its designee shall review and issue a completed assignment or reassignment certificate to the assignee or reassignee. An assignee or subsequent reassignee shall attach a copy of the completed assignment certificate to its annual return required under this act, for the tax year in which the assignment or reassignment is made and the assignee or reassignee first claims a credit, which shall be the same tax year. A credit assignment based on a credit for a component of a multiphase project that is completed before January 1, 2006 shall be made under section 38g(18) of former 1975 PA 228. A credit assignment based on a credit for a component of a multiphase project that is completed on or after January 1, 2006 may be made under this section. In addition to all other procedures and requirements under this section, the following apply if the total of all credits for a project is more than $10,000,000.00 but $30,000,000.00 or less:

(a) The credit shall be assigned based on the schedule contained in the certificate of completion.

(b) If the qualified taxpayer assigns all or a portion of the credit amount, the qualified taxpayer shall assign the annual credit amount for each tax year separately.

(c) More than 1 annual credit amount may be assigned to any 1 assignee, and the qualified taxpayer may assign all or a portion of each annual credit amount to any assignee.

(23) A qualified taxpayer or assignee under subsection (20), (21), or (22) shall not claim a credit under subsection (1)(a) or (b) based on eligible investment on which a credit claimed under section 38d of former 1975 PA 228 was based.

(24) When reviewing an application for a project for designation as an urban development area project, the Michigan economic growth authority for projects approved under subsection (4) or the chairperson of the Michigan economic growth authority or

his or her designee for projects approved under subsections (2) and (3) shall consider all of the following criteria:

(a) If the project increases the density of the area by promoting multistory development.

(b) If the project promotes mixed-use development and walkable communities.

(c) If the project promotes sustainable redevelopment.

(d) If the project addresses areawide redevelopment and includes multiple parcels of property.

(e) If the project addresses underserved markets of commerce.

(f) Any other criteria determined by the Michigan economic growth authority or the chairperson of the Michigan economic growth authority.

(25) An eligible taxpayer that claims a credit under this section is not prohibited from claiming a credit under section 431. However, the eligible taxpayer shall not claim a credit under this section and section 431 based on the same costs.

(26) Eligible investment attributable or related to the operation of a professional sports stadium, and eligible investment that is associated or affiliated with the operation of a professional sports stadium, including, but not limited to, the operation of a parking lot or retail store, shall not be used as a basis for a credit under this section. Professional sports stadium does not include a professional sports stadium that will no longer be used by a professional sports team on and after the date that an application related to that professional sports stadium is filed under this section.

(27) Eligible investment attributable or related to the operation of a casino, and eligible investment that is associated or affiliated with the operation of a casino, including, but not limited to, the operation of a parking lot, hotel, motel, or retail store, shall not be used as a basis for a credit under this section. As used in this subsection, "casino" means a casino regulated by this state pursuant to the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(28) Eligible investment attributable or related to the construction of a new landfill or the expansion of an existing landfill regulated under part 115 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11501 to 324.11550, shall not be used as a basis for a credit under this section.

(29) 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 subsections (2), (3), and (4). The report shall include, but is not limited to, all of the following:

(a) A listing of the projects under subsections (2), (3), and (4) that were approved in the calendar year.

(b) The total amount of eligible investment for projects approved under subsections (2), (3), and (4) in the calendar year.

(30) For purposes of this section, taxpayer includes a person subject to the tax imposed under ~~chapters~~ **CHAPTER** 2A and **A PERSON SUBJECT TO THE TAX IMPOSED UNDER CHAPTER** 2B.

(31) For the 2008 calendar year, the total of all credits for all projects approved under subsection (2) or (3) shall not exceed $63,000,000.00. For each calendar year after 2008, the total of all credits for all projects approved under subsection (2) or (3) shall not exceed $40,000,000.00. If the Michigan economic growth authority approves a total of all credits for all projects under subsection (2) or (3) of less than $40,000,000.00 in a calendar year, the Michigan economic growth authority may carry forward for 1 year only the difference between $40,000,000.00 and the total of all credits for all projects under this subsection approved in the immediately preceding calendar year.

(32) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PROJECT ON PROPERTY LOCATED IN A CITY THAT HAS A POPULATION OF MORE THAN 9,000 BUT LESS THAN 10,000 AND IS LOCATED IN A COUNTY WITH A POPULATION OF LESS THAN 30,000, WHICH PROPERTY WAS INCLUDED IN A BROWNFIELD PLAN IN DECEMBER 2005 THAT WAS SUBSEQUENTLY APPROVED BY A RESOLUTION OF THE GOVERNING BODY OF THAT CITY IN FEBRUARY 2006, IS CONSIDERED APPROVED AS REQUIRED UNDER THIS SECTION BEFORE APRIL 8, 2008 AND THE TAXPAYER MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY THIS ACT AS PROVIDED UNDER SUBSECTION (1). TO BE ELIGIBLE FOR THE CREDIT UNDER THIS SUBSECTION, THE TAXPAYER SHALL SUBMIT, WITHIN 14 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, AN AFFIDAVIT TO THE CHAIRPERSON OF THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR HIS OR HER DESIGNEE THAT STATES ALL OF THE FOLLOWING AND SUBSEQUENTLY SHALL RECEIVE A CERTIFICATE OF COMPLETION AS PROVIDED UNDER SUBSECTION (33):

(A) THE LEVEL AND EXTENT OF THE REHABILITATION NECESSARY FOR

THE BLIGHTED AREA OR THE LEVEL AND EXTENT OF CONTAMINATION ALLEVIATED BY THE TAXPAYER'S ELIGIBLE ACTIVITIES TO THE EXTENT KNOWN TO THE TAXPAYER.

(B) THE COST OF THE TAXPAYER'S ELIGIBLE INVESTMENT PAID OR ACCRUED BY THE TAXPAYER FOR THE PROJECT ON THE ELIGIBLE PROPERTY.

(C) ANY OTHER CRITERIA THAT THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR THE CHAIRPERSON OF THE MICHIGAN ECONOMIC GROWTH AUTHORITY, AS APPLICABLE, CONSIDERS APPROPRIATE FOR THE DETERMINATION OF THE AMOUNT OF THE CREDIT TO BE APPROVED.

(33) WITHIN 45 DAYS AFTER RECEIPT OF AN AFFIDAVIT SUBMITTED PURSUANT TO SUBSECTION (32), THE MICHIGAN ECONOMIC GROWTH AUTHORITY SHALL VERIFY THAT THE PROJECT IS COMPLETE AND ISSUE A CERTIFICATE OF COMPLETION TO THE TAXPAYER AS PROVIDED UNDER SUBSECTION (11).

(34) ~~(32)~~ As used in this section:

(a) "Annual credit amount" means the maximum amount that a qualified taxpayer is eligible to claim each tax year for a project for which the total of all credits is more than $10,000,000.00 but $30,000,000.00 or less, as approved under subsection (4).

(b) "Authority" means a brownfield redevelopment authority created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672.

(c) "Blighted", "brownfield plan", "eligible activities", "facility", "functionally obsolete", "qualified local governmental unit", and "response activity" mean those terms as defined in the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672.

(d) "Eligible investment" or "eligible investments" means, when made after the approval date of the brownfield plan but in any event no earlier than 90 days prior to the date of the preapproval letter, any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property and the addition of machinery, equipment, and fixtures to eligible property after the date that eligible activities on that eligible property have started pursuant to a brownfield plan under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, if the costs of the eligible investment are not otherwise reimbursed to the taxpayer or paid for on behalf of the taxpayer from any source other than the taxpayer. The addition of leased machinery, equipment, or fixtures to eligible property by a lessee of the machinery, equipment, or fixtures is eligible investment if the lease of the machinery, equipment, or fixtures has a minimum term of 10 years or is for the expected useful life of the machinery, equipment, or fixtures, and if the owner of the machinery, equipment, or fixtures is not the qualified taxpayer with regard to that machinery, equipment, or fixtures. For projects approved after April 8, 2008, eligible investment does not include certain soft costs of the eligible investment as determined by the Michigan economic growth authority, including, but not limited to, developer fees, appraisals, performance bonds, closing costs, bank fees, loan fees, risk contingencies, financing costs, permanent or construction period interest, legal expenses, leasing or sales commissions, marketing costs, professional fees, shared savings, taxes, title insurance, bank inspection fees, insurance, and project management fees.

Notwithstanding the foregoing, eligible investment does include architectural, engineering, surveying, and similar professional fees.

(e) "Eligible property", except as otherwise provided under subsection ~~(33)~~ **(35)**, means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes, including personal property located on the property, to the extent included in the brownfield plan, and that is 1 or more of the following:

(*i*) Is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

(*ii*) Is not in a qualified local governmental unit and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

(*iii*) Is tax reverted property owned or under the control of a land bank fast track authority.

(f) "Last tax year" means the taxpayer's tax year under former 1975 PA 228 that begins after December 31, 2006 and before January 1, 2008.

(g) "Michigan economic growth authority" means the Michigan economic growth authority created in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(h) "Multiphase project" means a project approved under this section that has more than 1 component, each of which can be completed separately.

(i) "Personal property" means that term as defined in section 8 of the general property tax act, 1893 PA 206, MCL 211.8, except that personal property does not include either of the following:

(*i*) Personal property described in section 8(h), (i), or (j) of the general property tax act, 1893 PA 206, MCL 211.8.

(*ii*) Buildings described in section 14(6) of the general property tax act, 1893 PA 206, MCL 211.14.

(j) "Project" means the total of all eligible investment on an eligible property or, for purposes of subsection (6)(b), 1 of the following:

(*i*) All eligible investment on property not in a qualified local governmental unit that is a facility.

(*ii*) All eligible investment on property that is not a facility but is functionally obsolete or blighted.

(k) "Qualified local governmental unit" means that term as defined in the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.

(*l*) "Qualified taxpayer" means a taxpayer that meets both of the following criteria:

(*i*) Owns, leases, or has entered into an agreement to purchase or lease eligible property.

(*ii*) Certifies that, except as otherwise provided in this subparagraph, the department of natural resources and environment has not sued or issued a unilateral order to the taxpayer pursuant to part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, to compel response activity on or to the eligible property, or expended any state funds for response activity on or to the eligible property and demanded reimbursement for those expenditures from the qualified taxpayer. However, if the taxpayer has completed all response activity required by part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, is in compliance with any deed restriction or administrative or judicial order related to the required response activity, and has reimbursed the state for all costs incurred by the state related to the required response activity, the taxpayer meets the criteria under this subparagraph.

(m) "Urban development area project" means a project located on eligible property in the downtown or traditional central business district of a qualified local governmental unit or county seat or along a traditional commercial corridor of a qualified local governmental unit or county seat as determined by the Michigan economic growth authority or the chairperson of the Michigan economic growth authority or his or her designee.

(35) ~~(33)~~ For purposes of subsection (2), eligible property means that term as defined under subsection ~~(32)(e)~~ **(34)(E)** except that all of the following apply:

(a) Eligible property means property identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes and that is 1 of the following:

(*i*) Property for which eligible activities are identified under the brownfield plan, is in a qualified local governmental unit, and is a facility, functionally obsolete, or blighted.

(*ii*) Property that is not in a qualified local governmental unit but is within a downtown development district established under 1975 PA 197, MCL 125.1651 to 125.1681, and is functionally obsolete or blighted, and a component of the project on that eligible property is 1 or more of the following:

(A) Infrastructure improvements that directly benefit the eligible property.

(B) Demolition of structures that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(C) Lead or asbestos abatement.

(D) Site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(*iii*) Property for which eligible activities are identified under the brownfield plan, is not in a qualified local governmental unit, and is a facility.

(b) Eligible property includes parcels that are adjacent or contiguous to the eligible property if the development of the adjacent or contiguous parcels is estimated to increase the captured taxable value of the property or tax reverted property owned or under the control of a land bank fast track authority pursuant to the land bank fast track act, 2003 PA 258, MCL 124.751

to 124.774.

(c) Eligible property includes, to the extent included in the brownfield plan, personal property located on the eligible property.

(d) Eligible property does not include qualified agricultural property exempt under section 7ee of the general property tax act, 1893 PA 206, MCL 211.7ee, from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.