

HOUSE BILL NO. 5187

October 24, 2023, Introduced by Reps. Hood, Hoskins, Rogers, Martus and Puri and referred to the Committee on Economic Development and Small Business.

A bill to create a research and development tax credit program; to provide for the administration of the research and development tax credit program; to encourage research and development in this state; to determine eligibility and enter into agreements for certain tax credits; to prescribe the powers and duties of certain state agencies, boards, and departments; to assess and collect certain fees.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "research and development

1 tax credit program act".

2 Sec. 3. As used in this act:

3 (a) "Authorized business" means an eligible business that has
4 met the requirements of this act and with which the department has
5 entered into a written agreement for a research and development tax
6 credit.

7 (b) "Base amount" means the average annual amount of research
8 and development expenses incurred by the eligible business in this
9 state during the 3 tax years immediately preceding the first tax
10 year for which the research and development credit is being claimed
11 under the written agreement. An eligible business with no prior
12 research and development spending in this state has a base amount
13 of zero. The base amount remains the same for the duration of a
14 written agreement.

15 (c) "Certificate of tax credit" means the certificate issued
16 to an authorized business by the department under section 9 to
17 verify that the authorized business is eligible for a research and
18 development tax credit.

19 (d) "Department" means the department of treasury.

20 (e) "Eligible business" means a business that proposes to
21 increase research and development spending in this state through
22 projects that have the potential for significant technological
23 advancements, job creation, and positive economic impact as
24 follows:

25 (i) For a business with 250 or more employees, an increase of
26 at least \$500,000.00 per year above the base amount.

27 (ii) For a business with less than 250 employees, an increase
28 of at least \$100,000.00 per year above the base amount.

29 (f) "Qualified research" means that term as defined in 26 USC

1 41.

2 (g) "Qualified research services" means qualified services as
3 that term is defined in 26 USC 41.

4 (h) "Qualified research supplies" means supplies as that term
5 is defined in 26 USC 41 that are used in the conduct of qualified
6 research.

7 (i) "Research and development expenses" means qualified
8 research expenses as that term is defined in 26 USC 41.

9 (j) "Research and development spending" means spending for
10 research and development expenses.

11 (k) "Research and development tax credit" means a research and
12 development tax credit allowed under section 277, 277a, 277b, 677,
13 677a, or 677b of the income tax act of 1967, 1967 PA 281, MCL
14 206.277, 206.277a, 206.277b, 206.677, 206.677a, and 206.677b.

15 (l) "Research and development tax credit program" means the
16 research and development tax credit program created under section
17 5.

18 (m) "Written agreement" means a written agreement made between
19 the eligible business and the department under this act.

20 Sec. 5. (1) The department shall create and administer a
21 research and development tax credit program to authorize the
22 receipt of research and development tax credits by authorized
23 businesses. The department shall develop and use a detailed
24 application, approval, compliance, and certification process
25 published and available on the department's website.

26 (2) An eligible business may apply to the department, in the
27 form and manner prescribed by the department, to enter into a
28 written agreement under section 7 that authorizes the receipt of a
29 research and development tax credit.

1 (3) The department may request information, in addition to
2 that contained in an application, if needed to permit the
3 department to discharge its responsibilities under this act.

4 Sec. 7. (1) After receipt of an application under section 5,
5 the department may enter into a written agreement with an eligible
6 business for research and development tax credits if the department
7 determines that all of the following are met:

8 (a) The eligible business proposes to invest in and maintain
9 research and development spending in this state that is above the
10 base amount as follows:

11 (i) For a business with 250 or more employees, an increase of
12 at least \$500,000.00 per year above the base amount.

13 (ii) For a business with less than 250 employees, an increase
14 of at least \$100,000.00 per year above the base amount.

15 (b) The eligible business's plans for investment in research
16 and development in this state are economically sound.

17 (c) The investment in research and development by the eligible
18 business will benefit the people of this state by increasing
19 opportunities and strengthening the economy of the state.

20 (2) If the department determines that the eligible business
21 satisfies all of the requirements under subsection (1), subject to
22 section 13, the department shall determine the amount and duration
23 of the research and development tax credit to be authorized under
24 this act and shall enter into a written agreement as provided in
25 this section.

26 (3) A written agreement between an eligible business and the
27 department must include, but is not limited to, all of the
28 following:

29 (a) A description of the business location that is the subject

1 of the agreement.

2 (b) Conditions on which the authorized business designation is
3 made.

4 (c) The duration of the agreement and the amount of the
5 research and development tax credit that may be claimed each tax
6 year for the duration of the agreement, including the calculation
7 of the base amount.

8 (d) A statement by the eligible business that a violation of
9 the written agreement may result in the revocation of the
10 designation as an authorized business or the loss or reduction of
11 the research and development tax credit.

12 (e) A statement by the eligible business that a
13 misrepresentation in the application may result in the revocation
14 of the designation as an authorized business and eligibility to
15 claim the research and development tax credit.

16 (4) On execution of a written agreement, an eligible business
17 is an authorized business. On execution of the written agreement,
18 the research and development tax credit as specified in this act
19 and in the written agreement is binding on this state.

20 (5) If there is a proposed reorganization, merger, or other
21 change of ownership of the authorized business for which
22 reimbursement will continue pursuant to a written agreement, the
23 approval of the department is required before the assignment or
24 transfer of the written agreement.

25 Sec. 9. (1) An authorized business is eligible for a research
26 and development tax credit as provided in the written agreement.

27 (2) The department shall issue a certificate of tax credit
28 each year to an authorized business that is eligible for a research
29 and development tax credit. The certificate of tax credit must

1 state all of the following:

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

3 (b) The amount of the research and development tax credit for
4 the designated tax year.

5 (c) The authorized business's federal employer identification
6 number or the Michigan department of treasury number assigned to
7 the authorized business.

8 Sec. 11. In determining whether qualified research and
9 development expenses are incurred in this state, the department
10 shall consider all of the following factors:

11 (a) The place where the qualified research services are
12 performed or the qualified research is conducted.

13 (b) The residence or business location of the person or
14 persons performing the qualified research services or conducting
15 the qualified research.

16 (c) The place where qualified research supplies are consumed.

17 (d) Any other factors relevant to determining where qualified
18 research occurred.

19 Sec. 13. (1) The department shall not enter into written
20 agreements that authorize more than \$100,000,000.00 in total
21 research and development credits under this act for a single
22 calendar year. To the extent the department receives applications
23 from eligible businesses with less than 250 employees, not less
24 than \$25,000,000.00 of the \$100,000,000.00 each calendar year must
25 be approved for those eligible businesses.

26 (2) In determining the amount of the research and development
27 credit to be authorized under the written agreement, the department
28 shall comply with amounts and limitations established under section
29 277, 277a, 277b, 677, 677a, or 677b of the income tax act of 1967,

1 1967 PA 281, MCL 206.277, 206.277a, 206.277b, 206.677, 206.677a,
2 and 206.677b, whichever is applicable. The department shall not
3 enter into a written agreement under this act with a duration of
4 more than 5 years.

5 Sec. 15. (1) An authorized business shall file any returns and
6 reports required under the written agreement, this act, or the
7 income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.847, and
8 shall provide any other information reasonably requested by the
9 department.

10 (2) The department may charge an authorized business a
11 reasonable fee for administrative expenses. The fee must not exceed
12 5% of the amount of the research and development tax credit
13 received by the authorized business.

14 Sec. 17. (1) After a written agreement expires, the eligible
15 business that was party to the written agreement may reapply under
16 section 5, but the base amount must be recalculated and a new
17 written agreement executed.

18 (2) As used in this section, "expires" means a written
19 agreement terminates on its scheduled expiration date. Expires does
20 not include the termination of a written agreement due to a breach
21 of the written agreement by the authorized business.

22 Sec. 19. By July 1 of each year, the department shall submit
23 to each member of the legislature, the governor, the clerk of the
24 house of representatives, the secretary of the senate, and the
25 senate and house fiscal agencies an annual report concerning the
26 operation and effectiveness of the research and development tax
27 credits program. The report shall include all of the following:

28 (a) A brief assessment of the overall effectiveness of the
29 research and development tax credit program created under this act.

1 (b) The number of eligible business applying to receive a
2 research and development tax credit.

3 (c) The number of eligible businesses that the department has
4 entered into written agreements under this act.

5 (d) The name of the authorized businesses and the amount and
6 duration of the authorized research and development tax credits.

7 (e) A description of the authorized business's investment in
8 research and development in this state that is the basis for the
9 research and development tax credit.

10 (f) The value of all certificate of tax credits issued under
11 this act for the immediately preceding calendar year.

12 Enacting section 1. This act does not take effect unless all
13 of the following bills of the 102nd Legislature are enacted into
14 law:

15 (a) House Bill No. 5100.

16 (b) House Bill No. 5101.

17 (c) House Bill No. 5102.