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House Bill 4712 (Substitute H-2 as passed by the House)
Sponsor: Representative Ryan Berman
House Committee: Tax Policy
Senate Committee: Economic and Small Business Development

Date Completed: 9-30-21

CONTENT

The bill would amend the Michigan Business Tax Act to do the following:

- Specify that, for credits approved by Resolutions 2011-154 and 2011-155 adopted by the Michigan Economic Growth Authority (MEGA) and subsequently amended by Resolutions 2019-046 and 2019-047 adopted by MEGA, the taxpayer could allocate eligible investments made for one development area to the other development area to maximize the combined credits for both the development areas as long as the sum of the credits for both did not exceed the sum of the credits approved under Resolutions 2019-046 and 2019-047.**
- Allow the taxpayer, after making an eligible investment, to petition MEGA to further amend the project and preapproval letter for an increase in the maximum total eligible investment and the maximum total of all credits and to extend the duration of time for up to five additional years to complete the project.**

Subject to the Act, a taxpayer that received a preapproval letter prior to January 1, 2008, under Section 38g of former Public Act 228 of 1975 and has not received a certificate of completion before the taxpayer's last tax year, provided that the project is completed within five years after the preapproval letter for the project is issued unless otherwise extended by the Act, or not more than 10 years after the preapproval letter for a multiphase project, may claim a credit that has been approved under Section 38g of former Public Act 228 of 1975 against the tax imposed by the Michigan Business Tax Act equal to certain percentages of the cost of the qualified taxpayer's eligible investment paid or accrued by the taxpayer on an eligible property. The bill specifies that a taxpayer could claim a credit as described above for a project that was extended as described below.

(Section 38g of former Public Act 228 of 1975 offered similar tax credits under the Single Business Tax Act, which was repealed by Public Act 325 of 2006.)

The Act specifies that 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 may not exceed the total of all credits on the certificate of completion. The bill would exempt from this provision credits for a project as described below.

(Generally, the Act defines "eligible investment" as any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property when made after the approval date of a brownfield plan but in any event no earlier than 90 days prior to the date of the preapproval letter.)

The Act requires the chairperson of MEGA, or his or her designee, to consider the following criteria to the extent reasonably applicable to the type of project proposed when considering an amendment to a project under the Act:

- The overall benefit to the public.
- The extent of reuse of vacant buildings and redevelopment of blighted property.
- Creation of jobs.
- Whether the eligible property is in an area of high unemployment.
- The level and extent of contamination alleviated by the qualified taxpayer's eligible activities to the extent known to the qualified taxpayer.
- The level of private sector contributions.
- The cost gap that exists between the site and a similar greenfield site as determined by MEGA.
- If the qualified taxpayer is moving from another location in the State, whether the move will create a brownfield.
- Whether the project is financially and economically sound.
- Any other criteria that MEGA or the chairperson of MEGA, as applicable, considers appropriate for the determination of eligibility under the Act.

Under the bill, the chairperson of MEGA, or his or her designee, would have to consider the criteria described above to the extent reasonably applicable when considering an amendment to a project as described below.

Under the Act, 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 MEGA 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. Amendments to the project or preapproval letter may include extending the duration of time provide to complete the project, as long as that extension does not exceed 10 years from the date of the preapproval letter or as otherwise extended under the Act. The bill specifies that these provisions would not apply to a project otherwise authorized as described below.

When a project is completed, the Act requires a taxpayer to submit documentation specifying such, among other information. The Michigan Economic Growth Authority must verify that the project is completed and issue a certificate of completion at that time. The certificate of completion must state the total amount of all credits for the project and that total must not exceed the maximum total of all credits listed in the preapproval letter or as amended under the Act. The certificate also must state certain information as prescribed by the Act. The bill specifies the total amount of all credits could not exceed the maximum total of all credits as amended for a project as described below.

Under the bill, for credits approved by Resolutions 2011-154 and 2011-155 adopted by MEGA and subsequently amended by Resolutions 2019-046 and 2019-047 adopted by MEGA, the taxpayer could allocate eligible investments made for one development area to the other development area to maximize the combined credits for both development areas as long as the sum of the credits for both development areas did not exceed the sum of the credits approved under Resolutions 2019-046 and 2019-047, and the taxpayer, after an eligible investment was made, could petition MEGA to further amend the project and the preapproval letter to do the following:

- Increase the maximum total eligible investment for the project on which the credit could be claimed and the maximum total of all credits for the project or allocate eligible

investment made from one adjacent development area to the other as long as the subsequent amendment to the project and preapproval letter did not exceed the sum of the maximum eligible investment or total credits approved for each of the adjacent development areas under Resolutions 2019-046 and 2019-047.

- Extend the duration of time for up to five additional years to complete the project beyond the 10 years from the date of the original preapproval letter.

MCL 208.1437

Legislative Analyst: Tyler VanHuysse

FISCAL IMPACT

Depending on whether the taxpayer would be able to claim the full credit currently authorized absent the bill, the bill either would have no fiscal impact or would shift a currently forecasted revenue loss into a future fiscal year. The affected credit is estimated to total \$12.8 million, so if the taxpayer did not claim the credit under existing law, Michigan Business Tax revenue would be \$12.8 million higher than forecast in the year the credit was not claimed. However, under the bill, if the taxpayer were able to claim the credit, Michigan Business Tax revenue would be reduced by \$12.8 million reduction in a later fiscal year.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.