



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bills 70 and 71 (as enacted)  
Sponsor: Senator Nancy Cassis  
Senate Committee: Finance  
House Committee: Tax Policy (S.B. 70)  
New Economy and Quality of Life (S.B. 71)

**PUBLIC ACTS 124 & 125 of 2009**

Date Completed: 11-4-09

**CONTENT**

**Senate Bill 70 amended the revenue Act to do the following:**

- Require the Department of Treasury to prepare an annual report containing statistics on specified information related to the Michigan Business Tax (MBT).
- Require the Department to give a copy of the report to the chairpersons of the Senate and House committees concerned with taxation and finance, and to the directors of the Senate and House Fiscal Agencies.
- Prescribe a civil fine for the unauthorized disclosure of information about certain MBT credits granted by the Michigan Economic Growth Authority (MEGA).

**Senate Bill 71 amended the Michigan Economic Growth Authority Act to:**

- Require MEGA's annual report to the Legislature to include information about jobs required, jobs created or retained, capital investment required or anticipated, and total capital investment, under tax credit agreements.
- Require the report to include a copy of certificates issued for certain MBT credits.
- Require MEGA to report to the chairpersons of the Senate and House Appropriations Committees, the Senate Finance Committee, and

**the House Tax Policy Committee, and the directors of the Senate and House Fiscal Agencies.**

- Require the Auditor General's postaudit of MEGA to include a review and comments concerning the annual report.

The bills took effect on October 27, 2009. They were tie-barred to each other and to Senate Bill 774 (Public Act 126 of 2009) and House Bill 4922 (Public Act 123 of 2009). (Senate Bill 774 amended the MBT Act to establish a limit of \$95.0 million on the total amount of all credits that may be claimed in the first year of new tax credit agreements approved by MEGA, beginning with the 2010 calendar year. House Bill 4922 amended the MEGA Act to set a new limit on the number of tax credit agreements MEGA may execute in 2009, and revise the annual limit for subsequent years.)

**Senate Bill 70**Treasury Report

Under the revenue Act, except as otherwise provided, an employee, authorized representative, or former employee or authorized representative of the Department of Treasury or anyone connected with the Department may not divulge any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the Department's audit selection or processing criteria for a tax administered by

the Department. The bill makes an exception to this prohibition, as described below.

The bill requires the Department of Treasury annually to prepare a report containing statistics concerning the MBT Act, for the most recent tax year for which reliable revenue data have been processed and cleared in the ordinary course of return processing by the Department. The Department must report the following information broken down by business sector and, provided that no grouping consists of fewer than 10 taxpayers, by firm size in compliance with the limitations described above, and in a manner that does not result in the disclosure of information regarding any specific taxpayer:

- Apportioned business income tax base.
- Apportioned modified gross receipts tax base.
- Business income tax liability.
- Use of credits.
- Modified gross receipts tax liability.
- Total final liability.
- Total liability before credits.

A copy of the report must be given to the chairpersons of the Senate and House of Representatives standing committees that have jurisdiction over taxation and finance matters, and the directors of the Senate and House Fiscal Agencies.

#### MEGA Certificate Disclosure

As required by Senate Bill 71, MEGA must give the Legislature, particular Senate and House committee chairpersons, and the Fiscal Agency directors, certain information about MBT credit agreements as well as copies of certificates issued to businesses for various credits.

Under Senate Bill 70, a person who is required to disclose the certificates may do so only to the designated individuals.

A person who receives the certificate information may not willfully disclose it for any purpose other than the proper administration of his or her legislative duties or disclose the information to anyone other than an employee of the Legislature, who also is bound by the same restrictions. A person who violates this provision is

responsible for and subject to a maximum civil fine of \$5,000 per violation.

#### Senate Bill 71

The MEGA Act authorizes the Authority to enter into agreements with eligible businesses for MBT credits, and requires the Authority to report on its activities to the Legislature annually. The report must include the total amount of capital investment attracted under the Act; the total number of qualified new jobs created under the Act; the total number of new agreements; the amount and duration of the tax credit for each authorized business; and other specified information.

Previously, the report had to include the total number of new agreements entered into under Section 8(5) and the total number in which the MEGA board determined that it was in the public interest to waive one or more of the requirements of Section 8(1). (Section 8(1) authorizes MEGA to enter into a written agreement for an MBT credit with an eligible business that meets criteria related to the location of the business, capital investment, and jobs created or retained by the business, as determined by MEGA. Section 8(5) authorized MEGA, through December 31, 2007, to enter into agreements with eligible businesses that met other criteria for new capital investment and retained jobs or were distressed businesses.)

Under the bill, the report must the total number of agreements and the total capital investment required or otherwise anticipated for the credit under agreements entered into under Section 8(5) or Section 8(9) and, of them, the number in which the board determined that it was in the public interest to waive one or more of the requirements of Section 8(1). (Section 8(9) prescribes a separate set of criteria that an eligible business must meet to enter into an agreement, beginning January 1, 2008.)

Also, under the bill, the report must include the number of jobs required under a tax credit agreement to be created or retained for each authorized business to be eligible for the credits, including the maximum number of jobs that can be used to calculate the credit for each authorized business under the agreement.

In addition, for each written agreement with each authorized business, the bill requires the report to include the following:

- The actual number of jobs created or retained for the most recent period that information is available and all previous years under the agreement.
- The total capital investment at that facility for tax credits authorized under Section 8(5) or (9) for that year and all previous years under the agreement.
- The total value of the tax credits received for that year and all previous years under the written agreement.

The bill also requires the report to include a copy of each certificate issued under Section 431, 431a, 431b, or 431c of the MBT Act. (Under Section 431, a taxpayer that is an authorized business, as defined in the MEGA Act, may claim an MBT credit based on payroll and health care benefits. Under Sections 431a and 431c, a qualified taxpayer that MEGA has designated as an anchor company may claim an MBT credit for payroll attributable to employees of a qualified supplier or customer, and for a percentage of the taxable value of a qualified supplier's or customer's property. Section 431b allows a payroll-based MBT credit for a qualified taxpayer that has been awarded a Federal procurement contract by the U.S. Department of Defense, Energy, or Homeland Security.)

Under the bill, in addition to reporting to the Legislature, beginning October 1, 2009, and each subsequent year, MEGA must report to the chairpersons of the Senate Appropriations and Finance Committees, the chairpersons of the House Appropriations and Tax Policy Committees, and the directors of the Senate and House Fiscal Agencies. The Authority also must report to the chairperson or director upon his or her written request.

A review and comments concerning the report must be included in the Auditor General's postaudit of MEGA.

MCL 205.28 (S.B. 70)  
207.810 (S.B. 71)

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

### **Senate Bill 70**

The bill will have an indeterminate fiscal impact on State government. There may be additional staff time costs associated with the new reporting requirements. Current appropriations should be sufficient to support the requirements; however, additional appropriations might become necessary if the reporting becomes too cumbersome for the Department of Treasury's current staffing level.

The bill also establishes a civil fine for improper disclosure of MEGA certificates by report recipients. Any civil fine revenue received pursuant to this provision will be deposited in the General Fund.

### **Senate Bill 71**

The additional reporting requirements will increase the administrative responsibilities of the Michigan Strategic Fund. It is likely that these costs can be absorbed within the agency's existing appropriations.

The Legislative Auditor General may incur additional costs associated with the postaudit of MEGA. Depending on the staff time needed to perform the audit, additional appropriations might be required to hire additional personnel.

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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.