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Senate Bill 773 (Substitute S-1)
Senate Bill 774 (Substitute S-1)
House Bill 4922 (Substitute S-1)
Sponsor: Senator Nancy Cassis (S.B. 773 & 774)
Representative Ed Clemente (H.B. 4922)
Senate Committee: Finance
House Committee: New Economy and Quality of Life (H.B. 4922)

Date Completed: 8-26-09

CONTENT

Senate Bill 773 (S-1) and House Bill 4922 (S-1) would amend the Michigan Economic Growth Authority (MEGA) Act to do the following:

- **Require MEGA to determine that, except for a qualified high-technology business, an eligible business's expansion, retention, or location in Michigan would not occur without the Michigan Business Tax (MBT) credits offered under the MEGA Act.**
- **Prohibit MEGA from advocating one Michigan location over another.**
- **Provide for a financial penalty for a business's misrepresentation in its application to MEGA for an MBT credit.**
- **Revise the annual limits on new agreements for MBT credits under the MEGA Act.**
- **Prohibit MEGA from entering into an agreement for MBT credits under the limit for high-technology or rural businesses if the business had claimed a film tax credit.**
- **Revise and expand the requirements for MEGA's annual report to the Legislature.**
- **Require the Auditor General to audit and comment on the annual report before MEGA submitted it.**

Senate Bill 774 (S-1) would amend the Michigan Business Tax Act to establish a limit, based on forecasted State revenue growth, on the total amount of MBT credits certified by MEGA that could be claimed annually.

Senate Bill 773 (S-1) is tie-barred to Senate Bills 70 and 774. Senate Bill 774 (S-1) is tie-barred to Senate Bills 70, 71, and 773 and House Bill 4922. House Bill 4922 (S-1) is tie-barred to Senate Bills 70, 71, and 774.

(Senate Bill 70 (S-1), as passed by the Senate, would amend the revenue Act to require the State Treasurer to divulge certain information concerning the MBT Act to the chairpersons of the Senate and House standing committees with jurisdiction over matters relating to taxation and finance, and to the directors of the Senate and House Fiscal Agencies. Senate Bill 71 (S-1), as passed by the Senate, would amend the MEGA Act to revise and expand the

requirements for MEGA's annual report to the Legislature and require the Auditor General to audit and comment on the report before MEGA submitted it.)

Senate Bill 773 (S-1) and House Bill 4922 (S-1)

The MEGA Act allows the Michigan Economic Growth Authority to enter into an agreement with an eligible business for a credit against the tax imposed by the MBT Act. "Eligible business" means a distressed business or business that proposes to maintain retained jobs or create qualified new jobs in Michigan in manufacturing, mining, research and development, wholesale and trade, film and digital media production, or office operations or a business that is a qualified high-technology business, a tourism attraction facility, or a qualified lodging facility.

Requirements for Tax Credit

After receiving an application, MEGA may enter into an agreement with an eligible business for a tax credit if the Authority determines that certain requirements are met. Under the bills, MEGA also would have to determine that, except for a qualified high-technology business, the expansion, retention, or location of the eligible business in Michigan would not occur without the tax credits offered under the Act.

The bills also would prohibit MEGA from advocating one location over another if both locations were in Michigan.

Among other things, a written agreement between an eligible business and MEGA must include a statement by the business that a misrepresentation in its application may result in the revocation of the designation as an authorized business and the refund of credits received under the Act. Under the bills, the penalty could be revocation and the refund of credits received plus a penalty equal to 10% of those credits.

Maximum Annual Credits Allowed

General Limit. The Act prohibits MEGA from executing new written agreements each year that, in total, provide for more than 400 yearly credits over the terms of those agreements entered into that year for eligible business that are not qualified high-technology businesses, distressed businesses, rural businesses, or other specified businesses. Under the bill, that limit would apply through December 31, 2008.

For 2009, MEGA could not execute new written agreements that, in total, provided for more than 400 yearly credits over the terms of the agreements entered into that year, plus up to 85 additional yearly credits previously issued by the Authority. For 2010 and subsequent calendar years, MEGA could not execute new written agreements that, in total, provided for more than 300 yearly credits over the terms of the agreements entered into that year, plus up to 85 additional yearly credits previously issued by the Authority.

"Credits previously issued" would mean two-thirds of the number of tax credits authorized by MEGA for an authorized business beginning in 1999 that met all of the following:

- The authorized business did not use any of the tax credits authorized under the written agreement.
- The authorized business no longer qualified as an authorized business under a specific written agreement, as determined by MEGA.
- The Authority determined at a meeting upon a majority vote of members present that the credits previously authorized satisfied both criteria described above.

High-Tech & Rural Businesses. Under the Act, MEGA may not execute more than 50 new written agreements each year for eligible businesses that are qualified high-technology businesses or rural businesses. Only 25 of those agreements may be executed each year for qualified rural businesses. Under the bill, MEGA could not execute more than 75 new written agreements each year for qualified high-technology or rural businesses, and only 35 of them could be for rural businesses.

Also, only 50 of the written agreements for businesses that were qualified high-technology businesses or rural businesses could be executed each year for a high-technology business that engaged in a qualified high-wage activity. Only four of the 75 agreements could provide for a tax credit with a duration of more than 12 years but not more than 20 years.

In addition, MEGA could not execute a written agreement for an eligible business that was a qualified high-technology business or rural business under the 75-agreement limit if that eligible business had claimed a credit under Section 455 of the MBT Act (which allows the Michigan Film Office, with the concurrence of the State Treasurer, to enter into an agreement for tax credits with an eligible production company).

Report to the Legislature

The Act requires MEGA to report to both the Senate and the House annually, by October 1, on its activities. Under Senate Bill 773 (S-1), beginning on October 1, 2009, and each subsequent year, MEGA also would have to report to the chairpersons of the Senate and House Appropriations Committees, the chairperson of the Senate Finance Committee, the chairperson of the House Tax Policy Committee, and the directors of the Senate Fiscal Agency and House Fiscal Agency. The Authority also would have to report to those chairpersons or directors upon their written request.

The Act specifies information that must be included in the annual report. This includes the total number of new written agreements entered into and, of those written agreements, the number in which MEGA determined that it was in the public interest to waive one or more of the general requirements for entering into an agreement. The bill would require the report also to include the total capital investment for the credit under new written agreements entered into under the Act.

Under the bill, the report also would have to include all of the following:

- The amount of capital investment required under the Act, or otherwise anticipated, and the number of jobs required under written agreements to be created or retained for each authorized business to be eligible for the tax credits under the agreements.
- A copy of each tax credit certificate issued under the MBT Act for credits authorized by MEGA.
- The identity of each authorized business and the number of yearly credits identified as "credits previously issued" under the bill's formula for determining the number of credits allowed annually.

The bill also would require the report to include the following for each written agreement with each authorized business:

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

In addition, before MEGA submitted the report, the bill would require the Auditor General to audit it and include comments about the audit with the report.

Senate Bill 774 (S-1)

Section 431 of the MBT Act allows a taxpayer that is an authorized business to claim an MBT credit equal to the amount certified each year by MEGA, for up to 20 years as determined by MEGA, for all or a portion of the business's payroll and, in some cases, payroll and health care benefits.

Under the bill, for 2010 and each subsequent calendar year, the total amount of all credits allowed to be claimed in the first year of all agreements approved under Section 431 could not exceed the sum of the total amount of credits claimed under that section during the immediately preceding calendar year plus \$95.0 million, if there were a forecast of an increase in State revenue of more than 3% for the current fiscal year over the immediately preceding fiscal year at the May revenue estimating conference conducted under the Management and Budget Act, or plus \$75.0 million if the forecast were for an increase of 3% or less.

MCL 207.808 & 207.810 (S.B. 773)
208.1431 (S.B. 774)
207.808 (H.B. 4922)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 773 (S-1) and House Bill 4922 (S-1)

The bills would reduce General Fund revenue from the Michigan Business Tax by an unknown amount. The amount of reduction would depend upon the specific characteristics of the credits granted to affected taxpayers, as well as the specific characteristics of their performance. The penalties in the bills would increase revenue by an unknown amount, depending on how many taxpayers were penalized. That increase, however, is expected to be more than offset by the increased number of credits authorized under the bills. Credits authorized under the section affected by the bills are expected to total \$94.6 million during fiscal year 2008-09.

Senate Bill 774 (S-1)

The bill would limit the growth in credits authorized under the statute. The growth in awarded credits (which results in a reduction in revenue) would be limited to the amount of credits claimed in the immediately preceding year plus a specified amount. That amount would total \$95.0 million in years in which State revenue was forecasted to grow more rapidly than 3%, and \$75.0 million in other years. The growth in revenue apparently refers to total State revenue to the General Fund and the School Aid Fund, from all sources. The limit would apply only to the value of credits in the first year the agreements were approved and apparently would not apply to later years. As a result, revenue would be expected to decline, and could decline by more than \$95.0 million in an individual 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.