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BILL ANALYSIS

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Senate Bills 350 and 351
Sponsor: Senator Joanne Emmons
Committee: Economic Development, International Trade, and Regulatory Affairs

Date Completed: 3-8-95

SUMMARY OF SENATE BILLS 350 and 351 as introduced 3-1-95:

Senate Bill 351 would create the "Michigan Economic Growth Authority Act" and establish the Michigan Economic Growth Authority (MEGA) within the Michigan Jobs Commission to determine which businesses would be eligible to receive single business tax (SBT) credits based on the number of new jobs they created. Senate Bill 350 would amend the Single Business Tax Act to provide for single business tax credits for businesses authorized by MEGA to receive the credits.

Following is a detailed description of the bills.

Senate Bill 351

Authorized Business Designation

The bill would allow an eligible business to apply to MEGA for designation as a authorized business if it created a minimum of 75 qualified new jobs if it were expanding in this State, or 150 qualified new jobs if it were locating in this State, within 12 months of opening the facility. ("Eligible business" would mean a business that created new jobs in Michigan after the effective date of the bill in manufacturing, research and development, wholesale and trade, or office operations. An eligible business would not include a retail establishment or that portion of an eligible business used exclusively for retail sales. "Qualified new job" would mean a full-time equivalent employment position created by an authorized business in excess of the number of full-time equivalent employment positions in existence in the calendar year immediately preceding the calendar year in which the eligible business opened the facility. "Facility" would mean a site within this State in which an authorized business created new jobs.) An eligible business also would have to meet all of the following criteria:

-- The eligible business agreed to maintain a minimum of 75 qualified new jobs if it were expanding in this State, or a minimum of 150 qualified new jobs if it were locating in this State for each year that it received an SBT credit.
-- The eligible business, if expanding, agreed to maintain a number of employees greater than the number maintained in the year immediately preceding the opening of the facility by the eligible business.
-- The average wage paid for all qualified new jobs equaled or exceeded the average wage paid by private entities within that county.
-- The eligible business certified that the expansion or location would not have occurred in this State without the incentives offered under the bill.
-- The local governmental unit in which the eligible business was located would make a financial or economic commitment to the eligible business for the expansion or location.
-- The eligible business, if already located within this State, committed to retain current employees in addition to the new jobs created in the expansion or relocation.
-- The eligible business had not begun construction or publicly announced a specific location of the facility.

Upon receiving the application of an eligible business, MEGA would have to determine whether the eligible business met the requisite criteria and whether:

-- The expansion or relocation would benefit the people of this State by increasing employment opportunities and by strengthening the State's economy.
-- The incentives granted under the bill were needed due to a significant cost disparity, including economic incentives offered by a competing state, between this State and the competing state.
-- The eligible business had a sound financial record based on the financial statements of the last three years.

Before an eligible business could be designated an authorized business, MEGA and the eligible business would have to enter into a written agreement that addressed, but was not necessarily limited to, the conditions upon which the designation was made, and a statement by the eligible business that a misrepresentation in the application or a violation of the written agreement could result in the revocation of the designation and the loss or reduction of the credit.

If an eligible business met the authorization criteria and entered into the requisite written agreement, it would be an authorized business and would be eligible for the SBT credit. The Authority would have to determine the length of the SBT credits, not to exceed 20 years, and the percentage amount for the credits that the authorized business could receive.

If an eligible business did not meet the eligibility criteria to become an authorized business, MEGA would have to notify it within 30 days after the determination, in writing, of the reasons for the adverse determination. The eligible business could appeal the adverse determination to MEGA within 60 days after receiving it.

MEGA Membership and Duties

The seven-member Authority would consist of the Director of the Michigan Jobs Commission, who would be the chairperson, the State Treasurer, the Directors of the Departments of Management and Budget and Transportation, or their designees, and three other members, appointed by the Governor with the advice and consent of the Senate, who had knowledge, skill, and experience in the academic, business, local government, labor, or financial field.

Members would be appointed for four-year terms, except that one of the members first appointed by the Governor would serve a two-year term. A vacancy would have to be filled for the balance of the unexpired term in the same manner as an original appointment. Except as otherwise provided by law, MEGA members could not be compensated for services, but MEGA could reimburse each member for expenses necessarily incurred in the performance of his or her duties.

The powers of MEGA would be vested in its members in office. Regardless of the existence of a vacancy, a majority of the members would constitute a quorum necessary for the transaction of business at a meeting or for the exercise of a power or function of MEGA. Action could be taken by MEGA at a meeting upon a vote of the majority of the members present. The Authority would have to meet at the call of the chairperson or as provided in its bylaws. Meetings could be held anywhere within this State.

The Michigan Jobs Commission would have to provide staff for MEGA and would have to carry out the administrative duties and functions as directed by MEGA. The budgeting, procurement, and related functions as directed by MEGA would be under the supervision of the Director of the Michigan Jobs Commission.

The Authority would have to report to both houses of the Legislature yearly on October 1 on its activities and provide a listing of all authorized businesses.

In addition to other powers and duties provided for in the bill, MEGA would have the power and responsibility to:

-- Determine which eligible businesses met the criteria established in the bill for designation as an authorized business and, therefore, were eligible for an SBT credit.
-- Assist an eligible business to obtain the benefits of an incentive or inducement program provided by law, and the benefits of the bill.
-- Promulgate rules necessary to implement the bill.

Senate Bill 350

The bill specifies that for tax years beginning after December 31, 1994, and for a period of up to 20 years as determined by MEGA, a taxpayer that was an authorized business could claim an SBT credit equal to the income tax withheld that was attributable to wages paid by the authorized business to qualified new employees as determined by MEGA. The amount of income tax withheld by an authorized business would be determined by multiplying the average salary of a qualified new employee by the number of qualified new employees and multiplying that product by the percentage of the effective tax rate as determined by MEGA for that authorized business. If the SBT credit exceeded the tax liability of the taxpayer for the tax year, the excess would have to be refunded to the taxpayer. In addition, an affiliated group, a controlled group of corporations as defined by the Internal Revenue Code, or an entity under common control as defined by the Internal Revenue Code would be entitled to only one SBT credit regardless of whether a combined return or a consolidated return was filed.

The bill specifies further that, for the same tax years plus any carryforward years allowed, an authorized business could claim an SBT credit equal to the tax liability attributable to authorized business activity. If the credit allowed for the tax year and any unused carryforward of the credit exceeded the taxpayer's tax liability for the tax year, the excess amount could not be refunded, but could be carried forward to offset tax liability in subsequent tax years for 10 years or until it was exhausted, whichever occurred first. The tax liability attributable to authorized business activity would be the tax liability imposed by the Act after the calculation of the small business, charitable contributions, public utility, and unincorporated and Subchapter S credits multiplied by a fraction whose numerator was the ratio of the value of the facility to all property located in this State plus the ratio of payroll attributable to qualified new jobs to all payroll in this State, and whose denominator was two.

The bill would prohibit a taxpayer from claiming either of the proposed SBT credits until MEGA certified that the taxpayer was an authorized business and had opened the facility at which the qualified new employees were employed. The taxpayer would have to attach a copy of the certification to any return on which an SBT credit was claimed. Neither credit could be claimed by a taxpayer if the taxpayer's initial certification were issued after December 31, 1998.

"Average salary of a qualified employee" would mean the total payroll of an authorized business for all full-time equivalent (FTE) qualified employees divided by the number of FTE qualified employees of the authorized business. "Payroll" would mean the total salaries and wages before deducting any personal or dependency exemptions.

"Qualified employee" would mean a FTE employee who was employed by an authorized business. "Qualified new employees" would mean the average number of FTE qualified employees employed in the tax year by an authorized business in excess of the average number of qualified employees employed by the authorized business in the tax year immediately preceding the tax year in which the business was determined to be an authorized business under Senate Bill 351.

"Effective tax rate" would mean the gross tax liability after credits of all taxpayers with adjusted gross income within the next lower and next higher integral multiple of $5,000 of the average salary of a qualified employee divided by the aggregate adjusted gross income of all taxpayers with adjusted gross income within the next lower and next higher integral multiple of $5,000 of the average salary of a qualified employee.

Proposed MCL 208.37c & 208.37d (S.B. 350) Legislative Analyst: L. Burghardt

FISCAL IMPACT

It is not possible to estimate the direct impact these bills would have on State revenue with any degree of confidence because it is not known how many businesses would apply and qualify for the tax credits proposed in these bills. However, to help put into perspective the potential revenue impact these bills would have, it is possible to estimate the revenue impact based on some assumed number of firms qualifying for these new credits. For instance, if 30 firms were to qualify for these proposed tax credits (15 existing in-state businesses and 15 out-of-state businesses), then it is estimated that these credits would reduce Single Business Tax revenue by an estimated $6 million in FY 1995-96. If it is assumed that 60 firms would qualify for these new credits, then the cost would increase to an estimated $12 million.

These bills also would have an impact on local governments because a portion of SBT collections is shared with local governments as part of the revenue sharing program. A $6 million reduction in SBT collections in FY 1995-96, would reduce SBT revenue sharing payments by $0.9 million in FY 1996-97.

Fiscal Analyst: J. Wortley

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