Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 824 (as enrolled) **PUBLIC ACT 81 of 2004**
House Bill 5445 (as enrolled) **PUBLIC ACT 80 of 2004**
Sponsor: Senator Jason E. Allen (S.B. 824)
Representative Bill Huizenga (H.B. 5445)
Senate Committee: Commerce and Labor
House Committee: Commerce

Date Completed: 4-18-05

CONTENT

Senate Bill 824 amended the Michigan Economic Growth Authority (MEGA) Act to do the following:

- **Exempt an authorized business from the Act's job creation and retention requirements if jobs are created or retained by a subsidiary business.**
- **Exempt certain businesses eligible for specific single business tax (SBT) credits from a requirement that the local governmental unit in which the business will expand, be located, or maintain retained jobs make a staff, financial, or economic commitment to the business.**
- **Allow an eligible business that submitted a Chapter 11 plan of reorganization to the bankruptcy court in order to enter into an agreement for an SBT credit with MEGA.**
- **Create new categories of businesses eligible to enter into an agreement with MEGA.**
- **Require an agreement to provide for the repayment of the tax credits for a violation of the agreement.**

House Bill 5445 amended the SBT Act to require MEGA to report to the Legislature on an SBT credit for qualified jobs with a distressed business; and change citations to a section of the MEGA Act in provisions regarding SBT credits based on qualified new jobs.

Senate Bill 824 was tie-barred to House Bill 5445. The bills took effect April 22, 2004. They are described below in further detail.

Senate Bill 824

Authorized Business

The Act defines "authorized business" as a single eligible business with a unique Federal employer identification number that has met the requirements of the Act related to creating or retaining jobs and with which MEGA has entered into a written agreement for the SBT credit. An eligible business does not have to meet the job creation and retention requirements if qualified new jobs are created or retained jobs are maintained by an associated or affiliated business.

Under the bill, an eligible business is not required to meet the job creation and retention requirements if qualified new jobs are created or retained jobs are maintained by a subsidiary business that withholds income and Social Security taxes, or an employee leasing company or professional employer organization that has entered into a contractual service agreement with the authorized business in which the company or organization withholds income and social security taxes on behalf of the authorized business. The bill defines "subsidiary business" as a business that is directly or indirectly controlled or at least 80% owned by an authorized business.

The term "facility" means a site within this State in which an authorized business maintains retained jobs or creates qualified new jobs. The bill expanded this definition to include multiple sites and to refer to subsidiary businesses as well as an authorized business.

Written Agreement Criteria

Under the Act, after receiving an application for an SBT credit, MEGA may enter into an agreement with an eligible business if it determines that certain criteria related to job creation and retention are met. The Act requires the local governmental unit in which the eligible business will expand, be located, or maintain retained jobs, or a local economic development corporation or similar entity, to make a staff, financial, or economic commitment to the eligible business for the expansion, retention, or location. The bill created an exception to this provision for an eligible business that maintains 150 retained jobs at a facility, maintains at least 1,000 full-time jobs in Michigan, and makes new capital investment in Michigan. (Under the Act, "retained jobs" means the number of full-time jobs at a facility of an authorized business maintained in Michigan on a specific date as that date and number of jobs are determined by MEGA.)

The Act requires an eligible business that is a qualified high-technology business to agree that at least 25% of its total operating expenses will be maintained for research and development for the first three years of the written agreement. Under the bill, this requirement applies to a qualified high-technology business with at least 25% of its total operating expenses used for research and development in the tax year in which the business files an application under the Act as determined under generally accepted accounting principles and verified by MEGA.

In order to enter into a written agreement with MEGA, the Act requires an eligible business's financial statements to indicate that the business is financially sound. Under the bill, the financial statements alternatively may indicate that the business has submitted a Chapter 11 plan of reorganization to the bankruptcy court. As required before, the financial statements also must indicate that the business's plans for the expansion, retention, or location are economically sound.

In addition, under the bill, an agreement must include a condition that if an eligible business maintains 150 retained jobs at a facility and at least 1,000 full-time jobs in Michigan, and makes new capital investment in Michigan, and also filed a Chapter 11 plan of reorganization, the plan must be approved by the bankruptcy court within two years of the agreement date or the agreement is rescinded.

Eligible Business Criteria

The Act allows MEGA to enter into a written agreement with an eligible business that is located in Michigan on the date of application, makes new capital investment of $250.0 million in Michigan, and maintains 500 retained jobs as determined by MEGA; that relocates production of a product to Michigan after the application date, makes capital investment of $500.0 million in Michigan, and maintains 500 retained jobs as determined by MEGA; or that is a "distressed business" (as defined in the Act).

Under the bill, MEGA also may enter into an agreement with an eligible business that meets either of the following criteria:

-- Maintains 150 retained jobs at a facility, maintains at least 1,000 full-time jobs in this State, and makes new capital investment in Michigan.
-- Is located in Michigan on the application date, maintains at least 100 retained jobs at a single facility, and agrees to make new capital investment at the facility equal to the greater of $150,000 per retained job maintained at the facility or $15.0 million to be completed by December 31, 2006.

In addition, under the bill, the written agreement with any of these eligible businesses must include a provision for the repayment of all or a portion of the credits for a violation of the agreement.

House Bill 5445

As amended by Public Act 251 of 2003, the SBT Act provides for a tax credit in tax years beginning after December 31, 2003, and before January 1, 2007, for a distressed business. The SBT credit is for up to 50% of the tax paid under the Michigan Employment Security Act based on qualified new jobs under the MEGA Act and up to 25% of the tax paid under the Michigan Employment Security Act based on all other jobs. The bill required MEGA to report to the Legislature by September 1, 2004, on the status of implementing the distressed business SBT credit, including development of the application form and the standards for determining the percentages for the credits; the number of authorized businesses that applied for the credit; and the number of certificates issued for the credit.

In addition, the SBT Act referred in several places to a taxpayer claiming a credit based on qualified new jobs as defined in Section 3(j) or Section 3(k) of the MEGA Act. The definition of "qualified new jobs", however, appears in Section 3(n). The bill refers to that section.

MCL 207.803 & 207.808 (S.B. 824)
208.37c (H.B. 5445)

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

S0304\s824es
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.