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BILL ANALYSIS

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Senate Bill 599 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Tom George
Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 8-15-05

RATIONALE

Michigan provides single business tax (SBT) credits to businesses as an incentive to redevelop or improve facilities on brownfield property--i.e., property that is contaminated, functionally obsolete, or blighted--provided certain conditions are met. Under one set of criteria, a qualified taxpayer may claim a credit against the SBT if the taxpayer has a preapproval letter for the project issued by the Michigan Economic Growth Authority (MEGA) after December 31, 1999, and before January 1, 2008, and the project is completed within five years after the preapproval letter is issued. If the total of credits for a project is $1 million or less, the credit is equal to 10% of the cost of the eligible investment. If the total cost of all credits for a project is over $1 million, a credit is available for a percentage of the cost of eligible investment as determined by MEGA; the credit may exceed 10% of the cost of the eligible investment and the maximum credit is $30 million.

There is a concern that some small businesses fail to apply for the SBT credit for brownfield development because they perceive the application process as difficult and geared toward larger companies with the money to hire outside consultants to assist in applying for the credit. Reportedly, less than 10% of the $30 million in credits allowed every year for projects under $10 million goes to projects under $2 million. Some people believe that more small businesses would take advantage of the brownfield SBT credit to expand their facilities and create jobs if credits were set aside for projects of $2 million or less, and if the process for applying for the credits were simplified.

CONTENT

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

- **Establish procedures and criteria to be used by the Michigan Economic Growth Authority in approving a project for which the total credits would be $200,000 or less (i.e., a project of $2 million or less); and allow MEGA to approve up to 100 of these projects per year.**
- **Require the MEGA chairperson, or a designee, to approve or deny a credit for a project of $2 million or less within 45 days of receiving the application.**
- **For projects of $2 million or less, require the State Tax Commission to review assessors' affidavits that property was functionally obsolete and to provide a written statement that it agreed with an assessor's opinion.**
- **Allow MEGA annually to approve one project, rather than three projects, with credits between $10 million and $30 million.**
- **Allow any qualified taxpayer to assign all or a portion of a MEGA-approved tax credit.**
- **Delete a provision allowing MEGA to consider criteria not listed in the Act in determining whether a project is eligible for tax credits.**
- **Limit MEGA's on-site inspections to projects that cost more than $10 million.**

Project with Credits of $200,000 or Less

Under the Act, in order to claim an SBT credit for investment in brownfield property, a qualified taxpayer must obtain approval of the project from the Michigan Economic Growth Authority. ("Project" means the total of all eligible investment on eligible property.) The Act establishes separate procedures for the approval of projects that will cost 1) $10 million or less, or 2) more than $10 million. The bill would add procedures for the approval of a third category: a project for which the total credits would be $200,000 or less. (Since the total credits for a project may not exceed 10% of eligible investment, this would apply to projects of $2 million or less.) The current procedures for projects that cost $10 million or less would apply to projects costing more than $2 million but not more than $10 million.

If the total of all MEGA credits for a project were $200,000 or less, a qualified taxpayer would have to apply to MEGA for approval of the project on a MEGA-prescribed form. The MEGA chairperson or his or her designee would have to approve or deny the project within 45 days after receiving the application. If the chairperson did not approve or deny the application within that time frame, the application would be considered approved as written.

Receipt of the application would be considered to be the date MEGA received the application. If MEGA considered the application incomplete, it would have to notify the qualified taxpayer in writing, or make the information electronically available, within 14 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 45-day period for approval or denial would be tolled upon notification by MEGA of a deficiency until the date MEGA received the requested information. The determination of the completeness of an application would not operate as an approval of an application or confer eligibility upon an applicant determined otherwise ineligible.

If a project were denied, a taxpayer would not be prohibited from subsequently applying for the same project or another project.

The MEGA chairperson could approve up to 100 projects in each calendar year, and would have to approve first those that were submitted first.

A project could be a multiphase project.

If the MEGA chairperson approved a project, he or she would have to assign a project number to it and issue a preapproval letter stating that the taxpayer was a qualified taxpayer; the maximum total eligible investment for the project on which the credits could be claimed and the maximum total of all credits for the project when it was completed and a certificate of completion was issued; and the project number assigned by MEGA.

The Authority could use only the following criteria to approve a project:

-- The project was for eligible investment.
-- The project was on property that was a facility, was blighted, or was functionally obsolete.
-- The project would receive a local contribution.
-- The project would increase the State equalized valuation of the property involved.

(Under the Act, "qualified taxpayer" means a taxpayer that owns or leases eligible property and certifies that, except as otherwise provided, the Department of Environmental Quality has not sued or issued a unilateral order to the taxpayer pursuant to Part 201 (Environmental Response) of the Natural Resources and Environmental Protection Act.)

Required Affidavit

Under the Act, if a project is on property that is functionally obsolete, the taxpayer must include, with the application, an affidavit signed by a level 3 or level 4 assessor, stating that it is the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion.

Under the bill, for projects with credits of $200,000 or less, the State Tax Commission would have to review the affidavit within 45 days of receiving it. After reviewing the affidavit, the Commission would have to give the taxpayer a written statement that, upon review, the Commission agreed with the assessor's opinion that the property was functionally obsolete and with the basis for that opinion. The taxpayer would have to include the written statement from the State Tax Commission with the assessor's affidavit and the application.

Credits between $10 Million and 30 Million

Under the Act, MEGA may approve up to 15 projects of more than $10 million each year. The total of all credits for each project may be more than $10 million but not more than $30 million, for up to three projects. Of the 15 projects, up to three may be approved for projects that are not in a qualified local governmental unit if the property is a facility for which eligible activities are identified in a brownfield plan. Of the three projects with credits between $10 million and $30 million, one may be among those located outside a qualified local governmental unit.

The bill would allow MEGA to approve one project, rather than three projects, with credits between $10 million and $30 million. That project could be one of the three allowed outside of a qualified local governmental unit.

Assignments

Under the Act, if a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or a portion of a credit to its partners, members, or shareholders based on their proportionate share of ownership or an alternative method approved by MEGA. Under the bill, the current assignment provisions would apply for projects completed before the bill's effective date. A credit assignment based on a credit for a component of a multiphase project that was completed before the bill's effective date would have to be made under the current provisions. An assignment based on a credit for a component of a multiphase project that was completed on or after the bill's effective date could be made under the bill's provisions regarding assignment (which generally reflect the existing requirements).

Under the bill, for projects completed after its effective date, a qualified taxpayer could assign all or a portion of a credit approved by MEGA. A credit assignment would be irrevocable and, except for a credit assignment based on a multiphase project, would have to be made in the tax year in which a certificate of completion was issued. An assignee could not subsequently assign a credit or any portion of a credit.

A qualified taxpayer could claim a portion of a credit and assign the remaining credit amount. If the qualified taxpayer both claimed and assigned portions of the credit, the taxpayer would have to claim the portion it claimed in the tax year in which a certificate of completion was issued.

A credit assignment would have to be made on a form prescribed by MEGA. The qualified taxpayer would have to send a copy of the completed assignment form to MEGA in the tax year in which the assignment was made. An assignee would have to attach a copy of the completed form to its annual SBT return for the tax year in which the assignment was made and the assignee first claimed a credit, which would have to be the same tax year.

Eligibility Criteria

Under the Act, MEGA must consider specific criteria to the extent reasonably applicable to the type of project proposed when approving a project with a cost of more than $10.0 million, and the chairperson of MEGA or his or her designee must consider the criteria to the extent reasonably applicable to the type of project proposed when approving a project with a cost of $10 million or less.

In addition to the listed eligibility criteria, MEGA or the MEGA chairperson, as applicable, may consider any other criteria that MEGA or the chairperson considers appropriate for the determination of eligibility. The bill would delete this provision.

On-Site Inspections

Under the Act, when a project is completed, the taxpayer must submit documentation that it is completed, an accounting of the cost of the project, the eligible investment of each taxpayer (if more than one is eligible for a credit) and, if the taxpayer is not the owner or lessee of the eligible property on which the eligible investment was made at the time the project is completed, that the taxpayer was the owner or lessee of that eligible property when all eligible investment of the taxpayer was made.

As part of the verification process, MEGA must conduct an on-site inspection. Under the bill, MEGA would have to conduct an on-site inspection as part of the verification process for approved projects costing more than $10 million.

Eligible Property

Under the bill, "eligible property" would mean that term as defined in the Brownfield Redevelopment Financing Act, except that, for the purposes of a project for which the total for all credits was $200,000 or less, "eligible property" would not have to be in a qualified local governmental unit.

(Under the Brownfield Redevelopment Financing Act, "eligible property" means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, or residential purposes that is either in a qualified local governmental unit and is a facility, functionally obsolete, or blighted or is not in a qualified local governmental unit and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property or tax reverted property owned or under the control of a land bank fast track authority.)

MCL 208.38g

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would create a new category of brownfield SBT tax credits for projects that were $2 million or less, and create a streamlined process for businesses to claim the credit. Small businesses understand that there is a finite pool of only $30 million in credits that MEGA may issue each year for projects of $10 million or less, and evidently believe that they are often competing for credits against larger projects to which MEGA may give higher priority. The bill would allow MEGA to issue credits of up to $200,000 each for up to 100 qualified taxpayers on a first-come, first-served basis. These credits would be offered in addition to the $30 million in credits currently available for projects of $10 million or less. If small businesses knew that smaller credits were set aside for them and that they were no longer competing against larger projects for the credits, they would be more likely to apply for them.

Currently, all businesses seeking credits of up to $1 million must go through the same application and approval process. Often, a business needs the credit to make the project profitable. The current application process forces businesses to wait months to see whether they will be allowed the credit they need to start work on their project. Under the bill, with some exceptions, the chairperson of MEGA (or a designee) would have to approve an application for a credit of $200,000 or less within 45 days of receiving the application. By putting these projects on the fast track, the bill would allow businesses to move more quickly on their projects and reduce the time spent waiting for approval.

The bill also would allow any qualified taxpayer to assign all or a portion of the brownfield SBT credit received for a project. The assignment procedure would generally reflect the process under which partnerships, limited liability companies, and subchapter S corporations presently may assign credits, but would be relatively simpler for those businesses.

Opposing Argument

By giving MEGA only 45 days to approve brownfield SBT credits for projects of up to $2 million, the bill would almost assure that businesses seeking a credit would receive it, regardless of whether they deserved the credit. It would be difficult for MEGA to review applications properly within the 45-day period, especially if the number of applications for smaller projects increased significantly, which would be expected under the bill. Limiting on-site inspections also would impede MEGA's ability to distinguish between good and bad projects when it came to issuing credits. In addition, there is a concern that businesses would receive credits for "functionally obsolete" buildings where the only problem with the structure was that it did not have high-speed internet access, or that the phone system needed to be upgraded.

Public Act 249 of 2003 moved the authority to review and approve brownfield SBT credits from the Department of Treasury to MEGA, reportedly because the Department did not have the resources to review the applications properly. Apparently, the system was being abused by businesses that were improperly applying for the credits based on the knowledge that the applications were simply being rubber-stamped. By limiting MEGA's ability to review applications, the bill once again would make it easy for ineligible businesses to claim the credit.

Response: In regard to the concern about functionally obsolete property, the bill would require the State Tax Commission to concur in an assessor's finding that property was functionally obsolete, for projects of $2 million or less. This should help prevent the credit from being granted inappropriately.

Opposing Argument

By requiring that MEGA issue the proposed credits on a first-come, first-served basis, and within a 45 day period after an application had been filed, the bill most likely would force the Authority to issue all of its credits early each year, leaving no credits available for deserving businesses that applied later. Additionally, because the credits would be granted on a first-to-file basis, businesses would have an incentive to file early each year. The Authority would be unable to give the high number of applications it would receive early in the year more than the most preliminary of reviews.

Opposing Argument

The bill would limit MEGA's ability to encourage major redevelopment projects in brownfield areas by reducing the number of credits of between $10 million and $30 million that may be awarded. Currently, MEGA has the option of awarding up to three of the credits annually, and issues an average of two each year. Under the bill, that number would be reduced to one annually. There is a concern that this would hurt business growth in the State by denying tax breaks to companies willing to invest more than $10 million simply because they were not the first to apply in a given year.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would reduce single business tax revenue by an estimated $7.0 million in the first full year and $15.0 million by the fifth year. It is assumed that the maximum of 100 credits would be granted each year and the average project would qualify for a credit of $150,000, of which about half would be claimed in the first year. All of this loss in revenue would affect the General Purpose portion of the General Fund.

The bill would have no fiscal impact on the Michigan Economic Development Corporation within the Department of Labor and Economic Growth (which provides staff for MEGA).

Fiscal Analyst: Jay Wortley