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BILL ANALYSIS

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Senate Bill 599 (as enrolled) **PUBLIC ACT 113 of 2006**
House Bills 4733 and 4734 (as enrolled) **PUBLIC ACTS 111 & 112 of 2006**
Sponsor: Senator Tom George (S.B. 599)
Representative Rick Baxter (H.B. 4733)
Representative Kevin Elsenheimer (H.B. 4734)
Senate Committee: Economic Development, Small Business and Regulatory Reform
House Committee: Commerce

Date Completed: 4-9-07

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--if certain conditions are met. Under one set of criteria, a qualified taxpayer may claim a credit if the taxpayer has a preapproval letter for its 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 amount 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 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 not exceed 10% of the cost of the eligible investment and the maximum credit is $30 million.

There was a concern that some small businesses failed to apply for the SBT credit for brownfield development because they perceived 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 went to projects under $2 million. Some people suggested 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

House Bill 4733 amended the Single Business Tax Act to set an annual maximum of $10 million on the amount of credits that the Michigan Economic Growth Authority chairperson may issue for projects for which total SBT credits are $200,000 or less (pursuant to House Bill 4734); and require the MEGA chairperson to issue a preapproval letter for those projects.

House Bill 4734 amended the SBT Act to do the following:

- **Establish procedures and criteria for MEGA to use in approving a project for which the total credits are $200,000 or less (i.e., a project of $2 million or less).**
- **Require the MEGA chairperson, or a designee, to approve a credit for a project of $2 million or less within 45 days of receiving the application and issue a preapproval letter.**
- **Provide that the total credits issued for projects with $200,000 or less in credits may not exceed $10 million in one year.**
- **Allow MEGA to carry forward unissued credits for projects of $2 million or less, and for projects of more than $2 million but not more**

than $10 million, for one year when the total credits for all such projects approved in the preceding year are less than the maximums permitted by the Act.

-- Establish a procedure for MEGA to follow when developing or changing the application form for projects with $200,000 or less in credits.

-- Allow MEGA annually to approve two, rather than three, projects with credits between $10 million and $30 million.

-- Limit MEGA's on-site inspections to projects that cost more than $10 million.

-- Allow multiphase projects to be divided into a maximum of 20, rather than three, components.

-- Define "eligible property" for the purposes of a brownfield tax credit.

<u>Senate Bill 599</u> amended the SBT Act to govern the assignment, and allow the reassignment, of credits for projects for which a certificate of completion is issued on or after January 1, 2006.

The House bills took effect on April 10, 2006. The Senate bill took effect on March 30, 2007. The three bills were tie-barred to each other.

<u>House Bill 4733</u>

The bill provides that, for the purposes of approving projects for a credit allowed under Section 38g(33) of the SBT Act (which, under House Bill 4734, provides for projects for which total credits are $200,000 or less), the MEGA chairperson or his or her designee is subject to both of the following:

-- The total of all credits for all projects approved under Section 38g(33) may not exceed $10 million in any calendar year.

-- If the MEGA chairperson or his or her designee approves a project under Section 38g(33), he or she must issue a preapproval letter.

The preapproval letter must state that the taxpayer is a qualified taxpayer; the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when it is completed and a certificate of completion is issued; and the project number assigned by MEGA.

<u>House Bill 4734</u>

<u>Project with Credits of $200,000 or Less</u>

The Act establishes criteria under which eligible and qualified taxpayers may claim credits against the SBT for investment in brownfield property. In order to claim an SBT credit, a qualified taxpayer must obtain approval of the project from MEGA. 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 added Section 38(g)(33) to establish procedures for the approval of a third category: a project for which the total credits are $200,000 or less. (Since the total credits for a project may not exceed 10% of eligible investment, this applies to projects of $2 million or less.) The existing procedures for projects that cost $10 million or less apply under the bill to projects costing more than $2 million but not more than $10 million.

If the total of all credits for a project is $200,000 or less, a qualified taxpayer must apply to MEGA for approval of the project. An application must state whether the project is a multiphase project.

The bill authorizes the MEGA chairperson or his or her designee to approve an application or project, subject to Section 35c (which House Bill 4733 added). Only the MEGA chairperson may deny an application or project.

A project must be approved or denied within 45 days after MEGA receives the application. If the MEGA chairperson or his or her designee does not approve or deny the application within 45 days, it will be considered approved as written.

If the MEGA chairperson or his or her designee approves a project, he or she must issue a preapproval letter stating that the taxpayer is a qualified taxpayer; the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when it is completed and a certificate of completion is issued; and the project number assigned by MEGA.

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

The total of all credits for all projects under Section 38(g)(33) may not exceed $10 million in any calendar year (although MEGA may carry forward unused credits, as described below).

The Authority must use the criteria used for reviewing projects of more than $10 million to approve a project for which the total of all credits is $200,000 or less.

("Project" means the total of all eligible investment on eligible property, except as discussed below.)

Section 38(g)(33) Application

The bill requires MEGA to develop and implement the use of the application form to be used for projects with total credits of $200,000 or less. Before the form is first used and if MEGA substantially changes it, the Authority must adopt the form or changes by resolution.

Before it substantially changes the application form, MEGA must give notice of the proposed resolution to the Secretary of the Senate and the Clerk of the House of Representatives, as well as each person who requested from MEGA in writing or electronically to be notified regarding proposed resolutions. The notice and proposed resolution and all attachments must be published on the MEGA website.

The notice must include the following:

-- A copy of the proposed resolution and all attachments.
-- A statement that any person may express any data, views, or arguments regarding the resolution.
-- The address to which written comments may be sent and the date by which comments must be mailed or electronically transmitted, which date may not be restricted to only before the date of the public hearing.
-- The date, time, and place of the public hearing.

The Authority must hold a public hearing between 14 days and 30 days after the date notice of a proposed resolution is given, and offer an opportunity for people to present data, views, questions, and arguments. Authority board members or one or more people designated by MEGA with knowledge of the subject matter of the proposed resolution must to be present at the public hearing and participate in the discussion.

The Authority must produce a final decision document that describes the basis for its decision. The final resolution and all attachments and the decision document must be provided to the Secretary of the Senate and the Clerk of the House and be published on the MEGA website.

One-Year Carry Forward of Credits

After the first full calendar year following the bill's effective date, if MEGA approves less than $10 million for all credits for all projects of $2 million or less in a calendar year, the Authority may carry forward, for one year only, the difference between $10 million and the total of all credits for all such projects approved in the immediately preceding calendar year. Additionally, after the first full calendar year following the bill's effective date, if MEGA approves less than $30 million in total credits in a calendar year for projects of more than $2 million but not over $10 million, the Authority may carry forward, for one year only, the difference between $30 million and the total of all credits for all such projects approved in the preceding year.

Credits between $10 Million & $30 Million

Under the Act, MEGA may approve a limited number of projects costing more than $10 million each year. The bill increased the maximum number of these projects from 15 to 17, and requires an application for these credits to state whether the project is a multiphase project.

Under the bill, the total of all credits for each project may be more than $10 million but not more than $30 million for up to two projects. That number previously was three.

As previously provided, up to three of the projects costing over $10 million 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. Also, under the bill, one of these three projects may be approved if the property is not a facility but is functionally obsolete or blighted and is identified in a brownfield plan.

For purposes of these three projects, the term "project" means all eligible investment on property not in a qualified local governmental unit that is a facility or, under the bill, all eligible investment on property that is not a facility but is functionally obsolete or blighted.

Assignments

Under Section 38g(18) of 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, Section 38g(18) applies only to credits for which a certificate of completion was issued before January 1, 2006, except that an assignment based on a credit for a component of a multiphase project that is completed before January 1, 2006, must be made under Section 38g(18). A credit assignment based on a credit for a component of a multiphase project completed on or after that date may be made under that section or Section 35e (added by Senate Bill 599).

Also, under Section 38g(17), if a qualified taxpayer pays or accrues eligible investment on or to eligible property that is leased for at least 10 years or sold to another taxpayer for use in a business activity, the qualified taxpayer may assign all or a portion of the credit based on that eligible investment to the lessee or purchaser of that property. Under the bill, this section applies only to credits for which a certificate of completion was issued before January 1, 2006.

(Under Sections 38g(17) and 38g(18), a credit assignment is irrevocable and, except for a credit based on a multiphase project, must be made in the tax year in which the certificate of completion is issued (unless the assignee under Section 38g(17) is an unknown lessee). A taxpayer may claim a portion of a credit and assign the remaining credit amount. As a rule, a taxpayer who does so must claim its portion in the tax year in which the certificate of completion issued. Under Section 38g(17), a lessee may not assign a credit or any portion of a credit assigned under these provisions, but a purchaser may subsequently assign to a lessee a credit or any portion of a credit assigned to the purchaser. A credit assigned under Section 38g(18) may not be reassigned.)

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 property when all eligible investment of the taxpayer was made.

Under the bill, MEGA must conduct an on-site inspection as part of the verification process for approved projects of more than $10 million (rather than all projects, as previously required).

Multiphase Projects

Previously, a project of less than $10 million could be a multiphase project, but only if the project was an industrial or manufacturing project. A multiphase project could not be divided into more than three components.

Under the bill, a project of more than $2 million but not more than $10 million, or one of more than $10 million, may be a multiphase project but, for projects for which MEGA issued a preapproval letter before January 1, 2006, only if the project is an industrial or manufacturing project. A multiphase project may not be divided into more than 20 components.

Previously, "multiphase project" referred a project for which the total of all credits was $1 million or less for a project costing $10 million or less that had more than one component, each of which could be completed separately. Under the bill, "multiphase project" refers to a project approved under the category for projects costing $2 million of less, projects costing more than $2 million but not more than $10 million, and projects costing more than $10 million, that has more than one component, each of which can be completed separately.

Eligible Property

Under the bill, "eligible property" means that term as defined in the Brownfield Redevelopment Financing Act, except that, for the purposes of projects costing $2 million or less, all of the following apply.

Eligible property means property identified under a brownfield plan that was used or currently is used for commercial, industrial, or residential purposes and that is one of the following:

-- Property for which eligible activities are identified in a brownfield plan, that is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted.
-- Property that is not in a qualified local governmental unit but is within a downtown development district established under the downtown development authority Act, and is functionally obsolete or blighted, if a component of the project on that eligible property is: a) infrastructure improvements that directly benefit the eligible property; b) demolition of structures that is not response activity under Section 20101 of the Natural Resources and Environmental Protection Act (NREPA); c) lead or asbestos abatement; and/or d) site preparation that is not response activity.
-- Property for which eligible activities are identified under the brownfield plan, that is not in a qualified local governmental unit and is a facility.

Eligible property includes parcels that are adjacent or contiguous to the eligible property if the development of the adjacent or contiguous parcels is estimated to increase the captured taxable value of the property or tax reverted property owned or under the control of a land bank fast track authority, pursuant to the Land Bank Fast Track Authority Act.

Eligible property also includes, to the extent included in the brownfield plan, personal property located on the eligible property.

Eligible property does not include qualified agricultural property exempt under the General Property Tax Act from the tax levied by a local school district for school operating purposes to the extent provided under the Revised School Code.

(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.

Section 20101 of NREPA defines "response activity" as evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health , safety, or welfare, or the environment or natural resources. The term includes health assessments or health effect studies and enforcement actions related to any response activity.)

Senate Bill 599

The bill provides that, for approved projects for which a certificate of completion is issued on and after January 1, 2006, a qualified taxpayer may assign all or a portion of an approved credit under Section 35e (the section added by the bill). A credit assignment is irrevocable and, except for a credit assignment based on a multiphase project, must be made in the tax year in which a certificate of completion is issued.

A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. If the taxpayer both claims and assigns portions of the credit, the taxpayer must claim the portion it claims in the tax year in which a certificate of completion is issued. An assignee may subsequently assign a credit or any portion of a credit assigned under Section 35e to one or more assignees.

An assignment may not be made more after 10 years following the first tax year in which the credit may be claimed. A credit assignment or reassignment must be made on a form prescribed by MEGA. The qualified taxpayer must send a copy of the completed assignment form to MEGA in the tax year in which the assignment or reassignment is made. An assignee or reassignee must attach a copy of the completed form to its annual SBT return for the tax year in which the assignment or ressignment is made and the assignee or reassignee first claims a credit, which must be the same tax year.

A credit assignment based on a credit for a component of a multiphase project that is completed before January 1, 2006, must be made under Section 38g(18) (amended by House Bill 4734). A credit assignment based on a credit for a component of a multiphase project that is completed on or after that date may be made under Section 38e.

In addition to all other procedures and requirements under Section 38e, the following apply if the total of all credits for a project is more than $10 million but not more than $30 million:

-- The credit must be assigned based on the schedule contained in the certificate of completion.
-- If the qualified taxpayer assigns all or part of the credit amount, the taxpayer must assign the annual credit amount for each tax year separately.
-- More than one annual credit amount may be assigned to any one assignee and the qualified taxpayer may assign all or part of each annual credit amount to any assignee.

MCL 208.35e (S.B. 599)
208.35c (H.B. 4733)
208.38g (H.B. 4734)

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 bills established a new category of brownfield SBT credits for projects that cost $2 million or less, and created a streamlined process for businesses to claim the credit. Since there is a finite pool of only $30 million in credits that MEGA may issue each year for projects of $10 million or less, the owners of small businesses evidently believed that they were often competing for credits against larger projects to which MEGA might give higher priority. The bills allow MEGA to issue credits of up to $200,000 each for a total of $10 million of these credits each year. The credits may be offered in addition to the $30 million in credits already available for projects of $10 million or less. This may make small businesses more likely to apply for a credit.

Previously, all businesses seeking credits of up to $1 million had to go through the same application and approval process. Often, a business needs the credit to make the project profitable. The application process, however, caused businesses to wait months to see whether they would be allowed the credit they needed to start work on their project. Under the bills, the chairperson of MEGA (or a designee) must 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 bills allow businesses to move more quickly on their projects and spend less time waiting for approval.

Opposing Argument

By giving MEGA only 45 days to approve brownfield SBT credits for projects costing up to $2 million, House Bill 4733 almost assures that businesses seeking a credit will receive it, regardless of whether they deserve the credit. It will be difficult for MEGA to review applications properly within the 45-day period, especially if the number of applications for small projects increases significantly, which can be expected under the bill. Limiting on-site inspections also will impede MEGA's ability to distinguish between projects that are meritorious and those that are not.

Public Act 249 of 2003 moved the responsibility 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 will make it easy for ineligible businesses to claim a credit.

Opposing Argument

By requiring MEGA to issue the new credits within a 45-day period after an application is filed, House Bill 4734 most likely will force the Authority to issue all of the credits early each year, leaving none available for deserving businesses that apply later. The Authority will be unable to give the high number of applications it receives early in the year more than a superficial review.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bills 4733 and 4734

The impact of the bills will depend upon whether the MEDC would have issued all three of the credits previously authorized for amounts between $10 million and $30 million each year absent the bills. If the MEDC would not have issued all three credits of that magnitude, the bills will reduce single business tax revenue to the State's General Fund by $10 million per year if all credits authorized by the bills are granted. If the credit no longer allowed under the bills otherwise would have been granted for $10 million, then the bills will have no fiscal impact, assuming all of the credits authorized by the bills are granted. If the credit no longer allowed would have been for more than $10 million, then the bills represent a revenue increase equal to the difference between the credit that will not be provided and $10 million, assuming all of the credits authorized by the bills are granted. Because House Bill 4734 allows certain amounts authorized for credits to be carried over to the next year, in some fiscal years the $10 million figure may be greater or less than indicated, depending on the amount carried over from one year to the next.

The bills will have no fiscal impact on the Michigan Economic Development Corporation or on the Department of Labor and Economic Growth (which provide staff for MEGA).

Senate Bill 599

This bill will not change the total amount of brownfield tax credits that may be granted in any particular year, but it will accelerate the point in time when some of these credits are claimed. Under the Act, a taxpayer who is granted a brownfield tax credit but is not able to use it in a particular year may carry it forward and use it in some future tax year. Under this bill, a taxpayer will be able to assign some or all of an unused credit to another taxpayer. Therefore, under the bill, credits that are assigned to another taxpayer probably will be claimed earlier than they otherwise would be. Initially, this forward shift in when these credits will be claimed will result in a reduction in single business tax revenue. The magnitude of this reduction depends on how many credits are assigned to other taxpayers, which is difficult to estimate at this time. For example, this loss in revenue could range from a few hundred thousand dollars if only a few credits are transferred to $5 million if half of the credits are assigned to other taxpayers. In the future, these credits will be shifting both out of and into a particular fiscal year and so there will be only a very small fiscal impact, if any. Any loss in revenue from this bill will affect the General Fund/General Purpose budget. The bill will have no direct fiscal impact on local government.

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