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BILL ANALYSIS

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Senate Bill 802 (as enrolled) **PUBLIC ACT 283 of 2006**
House Bill 6035 (as enrolled) **PUBLIC ACT 281 of 2006**
Sponsor: Senator Jason E. Allen (S.B. 802)
Representative Rick Baxter (H.B. 6035)
Senate Committee: Commerce and Labor
House Committee: Commerce

Date Completed: 1-24-07

## CONTENT

**The bills amended the Michigan Economic Growth Authority (MEGA) Act to do all of the following:**

- **-- Reduce the minimum number of jobs an eligible business must create and maintain to receive a single business tax (SBT) credit under the Act.**
- **-- Allow MEGA to adjust the number of full-time jobs an authorized business must maintain, if divestiture of operations results in decreased jobs and another single employer maintains the jobs in Michigan.**
- **-- Reduce the average wage requirement for high-technology businesses that receive an SBT credit through MEGA.**
- **-- Increase from five to 25 the maximum number of MEGA agreements that may be entered into annually with rural businesses.**
- **-- For one type of MEGA agreement, remove a requirement that it be for a rural business, extend the authorization through 2007, and exclude three, rather than one, of that type of agreement from requirements that MEGA make certain determinations.**
- **-- Specify criteria for two new types of MEGA agreements.**
- **-- Require MEGA annually to report certain information to the Legislature.**
- **-- Revise the Act's definitions of "full-time job" and "high technology activity".**

The bills were tie-barred and took effect on July 10, 2006.

### Senate Bill 802

Minimum Number of Qualified New Jobs

Section 8(1) of the Act allows MEGA to enter into agreements with eligible businesses to provide them with SBT credits if they meet certain criteria regarding capital investment and creating or maintaining jobs. Previously, except as otherwise provided in Section 8(5), an eligible business had to create one or both of the following within 12 months of expansion or location in Michigan, as determined by MEGA:

-- At least 75 qualified new jobs at the facility, if expanding within Michigan.
-- At least 150 qualified new jobs at the facility, if locating within Michigan.

Similarly, except as otherwise provided in Section 8(5), an eligible business had to agree to maintain those numbers of qualified new jobs for each year that an SBT credit was authorized.

The bill changed the number of jobs that must be created and maintained to 50 qualified new jobs for an expansion of a facility in Michigan and 100 qualified new jobs for a facility locating within Michigan.

(Section 8(5) authorizes MEGA to enter into written agreements with eligible businesses that meet different sets of criteria.)

The Act provides that, in addition to the jobs specified above, an eligible business already located within Michigan must agree to maintain a number of full-time jobs equal to or greater than the number of full-time jobs it maintained in Michigan before the expansion, as determined by MEGA. Under the bill, however, after an eligible business enters into a written agreement, MEGA may adjust the number of full-time jobs required to be maintained, in order to adjust for decreases in full-time jobs in the authorized business in Michigan due to the divestiture of operations if a single other person continues to maintain those full-time jobs in Michigan. The Authority may not approve a reduction unless it has determined that it can monitor the maintenance of the full-time jobs by the other person, and the authorized business agrees in writing that the continued maintenance of the full-time jobs in Michigan is a condition of receiving tax credits under the written agreement. Under this provision, a full-time job maintained by another person that otherwise meets the Act's definition of "full-time job" is considered a full-time job notwithstanding the Act's requirement that a full-time job be performed by an individual employed by an authorized business, or an employee leasing company or PEO on behalf of an authorized business.

High-Tech Wages

Under Section 8(1), one of the criteria for MEGA to enter into an agreement with an eligible business for an SBT credit is that the average wage paid for all retained jobs and qualified new jobs must be equal to or greater than 150% of the Federal minimum wage. If the eligible business is a qualified high-technology business, however, the average wage paid for all qualified new jobs previously had to be at least 400% of the Federal minimum wage. The bill lowered the wage standard for those high-technology jobs to 300% of the Federal minimum wage.

MEGA Agreements with Rural Businesses

The Act prohibits MEGA from executing more than 50 new written agreements each year for eligible businesses that are qualified high-technology businesses or rural businesses. Previously, only five of those 50 agreements could be executed each year for rural businesses. Under the bill, however, 25 of those 50 agreements may be executed each year for rural businesses. ("Rural business" means an eligible business located in a county with a population of 90,000 or less.)

Other MEGA Agreements

Revised Criteria. Section 8(5) allows MEGA to enter into a written agreement, which must include a provision for the repayment of all or a portion of the SBT credits for a violation of the agreement, with an eligible business that meets certain criteria, even if it does not meet the Section 8(1) job creation and retention criteria for SBT credits. The agreements allowed under Section 8(5) include an agreement with an eligible business that meets the following criteria:

-- The business maintains 300 retained jobs at a facility.
-- The facility is at risk of being closed and, if it were to close, the work would go to a location outside of Michigan, as determined by MEGA.
-- New management or new ownership is proposed for the facility that is committed to improve its viability.
-- The SBT credits offered are necessary for the facility to maintain operations.

Previously, such a business also had to be a rural business. The bill deleted that criterion. In addition, the Act previously prohibited MEGA from entering into such a written agreement after December 31, 2006. Under the bill, MEGA may not enter into this type of agreement after December 31, 2007. Also, the bill excludes three of these agreements, rather than one, from requirements that MEGA make certain determinations regarding a business's operations and the benefits of the tax credits, if MEGA considers it in the public interest and if the business would have met certain of those requirements in the immediately preceding six months.

New Authorizations. The bill authorized two new types of MEGA agreements under Section 8(5).

Under the bill, MEGA may enter into a written agreement with an eligible business that meets the following criteria:

-- The business maintains 100 retained jobs at a facility.

-- The business is a rural business.
-- The facility is at risk of being closed and, if it were to close, the work would go to a location outside of Michigan, as determined by MEGA.
-- New management or new ownership is proposed for the facility that is committed to improve its viability.
-- The SBT credits are necessary for the facility to maintain operations.

The Authority may not enter into such a written agreement after December 31, 2007. Three of these agreements are excluded from requirements that MEGA make certain determinations regarding a business's operations and the benefits of the tax credits, if MEGA considers it in the public interest and if the business would have met certain of those requirements in the immediately preceding six months.

The bill also authorizes MEGA to enter into a written agreement with an eligible business that is located in Michigan on the date of application for a MEGA agreement, maintains at least 675 retained jobs at a facility, agrees to create 400 new jobs, and agrees to make new capital investment of at least $45.0 million to be completed or contracted for by December 31, 2007. One agreement of this type is excluded from the requirement that the eligible business has not begun construction of the new facility, if MEGA considers it in the public interest.

<u>MEGA Reports to the Legislature</u>

The Act requires that MEGA report to the Senate and the House of Representatives annually on October 1 concerning the Authority's activities. The bill requires that the report include the total number of new written agreements entered into under Section 8(5) and, of those agreements, the number in which MEGA determined that it was in the public interest to waive one or more of the requirements under Section 8(1).

## <u>House Bill 6035</u>

The bill specifies that a written agreement under the MEGA Act may address new jobs, qualified new jobs, full-time jobs, retained jobs, or any combination of those jobs.

The bill revised the definition of "full-time job". Previously, "full-time job" meant a job performed by an individual who was employed by an authorized business or an employee leasing company or professional employer organization (PEO) on behalf of the authorized business for consideration for 35 hours or more each week and for which the authorized business or an employee leasing company or PEO on behalf of the authorized business withheld income and Social Security taxes. Under the bill, "full-time job" means a job performed by an individual for 35 hours or more each week and whose income and Social Security taxes are withheld by one or more of the following:

-- An authorized business.
-- An employee leasing company.
-- A PEO on behalf of the authorized business.
-- Another person, as allowed under Senate Bill 802 for jobs transferred to another employer after an authorized business decreased full-time jobs due to the divestiture of operations.
-- A business that sells all or part of its assets to an eligible business that receives an SBT credit under Section 8(1) or (5) of the MEGA Act.

The bill also includes "competitive edge technology", as defined in the Michigan Strategic Fund (MSF) Act, in the MEGA Act's definition of "high technology activity". Under the MSF Act, "competitive edge technology" means one or more of the following, each of which also is a defined term under the MSF Act (MCL 125.2088a):

-- Life sciences technology.
-- Advanced automotive, manufacturing, and materials technology.
-- Homeland security and defense technology.
-- Alternative energy technology.

MCL 207.808 & 207.810 (S.B. 802)
207.803 (H.B. 6035)

Legislative Analyst: Patrick Affholter

## <u>FISCAL IMPACT</u>

The bills will reduce State revenue by an unknown amount, depending on the credits authorized (and the characteristics of the firms receiving them) as a result of the changes. Generally, the bills make it easier for certain taxpayers to qualify for credits under the MEGA Act, particularly in cases where employees were transferred to another employer as a result of a firm's divesting operations. Also, lowering the threshold for computing qualified new jobs and lowering the average wage requirements will enable more jobs at credit recipients to qualify for credits. In addition, the legislation increases the number of credits that may be authorized in a given year and expands the number of cases in which certain requirements are waived in qualifying for credits.

Because credits under the MEGA Act are approved for specific amounts under specified circumstances, the bills likely will not affect any existing credits that have been approved. Similarly, the bills will have no effect on revenue if no MEGA credits are approved for taxpayers meeting the changed requirements or if the approved credits replace another credit that otherwise would have been approved under the Act. However, because the bills expand the number of credits that may be granted in any year, it is expected that the additional credits will be approved and that the bills will not merely redistribute credits (assumed to be for identical amounts) that otherwise would be approved.

Credits granted under the MEGA Act are expected to reduce single business tax revenue by approximately $41.7 million FY 2005-06. If the increased credits allowed under the bills raise the cost of MEGA credits by 10% in a year, the bills will reduce General Fund revenue by an additional $4.2 million per year.

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