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BILL ANALYSIS

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House Bill 4733 (Substitute S-1 as reported)
House Bill 4734 (Substitute S-3 as reported)
Sponsor: Representative Rick Baxter (H.B. 4733)
Representative Kevin Elsenheimer (H.B. 4734)
House Committee: Commerce
Senate Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 12-6-05

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 not 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

House Bill 4733 (S-1) would amend 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 could issue for projects for which total SBT credits would be \$200,000 or less (pursuant to House Bill 4734 (S-3)); and require the MEGA chairperson to issue a preapproval letter for approved projects with credits of \$200,000 or less.

House Bill 4734 (S-3) would amend the SBT Act to do the following:

- Establish procedures and criteria to be used by MEGA in approving a project for which the total credits would be \$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 could 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 were 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 projects, rather than three projects, with credits between \$10 million and \$30 million.**
- **Limit MEGA's on-site inspections to those 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 MEGA tax credit.**

The bills are tie-barred to each other and to Senate Bill 599 (which also would establish procedures and criteria to be used by MEGA in approving a project for which the total credits would be \$200,000 or less).

House Bill 4733 (S-1)

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 (S-3), would provide for projects for which total credits were \$200,000 or less), the MEGA chairperson would be subject to both of the following:

- The total of all credits for all projects approved under Section 38g(33) could not exceed \$10 million in any calendar year.
- If the MEGA chairperson approved a project under Section 38g(33), he or she would have to issue a preapproval letter stating that the taxpayer was a qualified taxpayer; the maximum total eligible investment for the project on which 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.

House Bill 4734 (S-3)

Project with Credits of \$200,000 or Less

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. ("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 Section 38(g)(33) to establish 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 credits for a project were \$200,000 or less, a qualified taxpayer would have to apply to MEGA for approval of the project. An application would have to state whether the project was a multiphase project.

The MEGA chairperson or his or her designee would be authorized to approve an application or project, subject to Section 35c (which House Bill 4733 (S-1) would add). Only the MEGA chairperson could deny an application or project.

A project would have to be approved or denied within 45 days after MEGA received the application. If the chairperson of MEGA or his or her designee did not approve or deny the application within 45 days, it would be considered approved as written.

If the MEGA chairperson or his or her designee approved a project, the chairperson or designee would have to issue a preapproval letter stating that the taxpayer was a qualified taxpayer; the maximum total eligible investment for the project on which 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.

If a project were denied, a taxpayer would 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) could not exceed \$10 million in any calendar year (although MEGA could carry forward unused credits, as described below).

The Authority would have to use the criteria currently used to review projects of more than \$10 million to approve a project for which the total of all credits was \$200,000 or less.

Section 38(g)(33) Application

Under the bill, MEGA would have 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 application form was first used and if MEGA substantially changed the form, the Authority would have to adopt the form or changes by resolution.

After March 1, 2006, and before it substantially changed the application form, MEGA would have to give notice of the proposed resolution to the Secretary of the Senate, to the Clerk of the House of Representatives, and to each person who requested from MEGA in writing or electronically to be notified regarding proposed resolutions. The notice and proposed resolution and all attachments would have to be published on the MEGA website.

The Authority would have to hold a public hearing not sooner than 14 days and not later than 30 days before the date notice of a proposed resolution was given and offer an opportunity for people to present data, views, questions, and arguments. Board members of the Authority or one or more people designated by MEGA with knowledge of the subject matter of the proposed resolution would have to be present at the public hearing and would have to participate in the discussion.

The Authority would have to produce a final decision document that described the basis for its decision. The final resolution and all attachments and the decision document would have to be provided to the Secretary

of the Senate and the Clerk of the House and would have to be published on the MEGA website. The notice would have to include the following:

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

One-Year Carry Forward of Credits

After the first full calendar year following the bill's effective date, if MEGA approved less than \$10 million for all credits for all projects of \$2 million or less in a calendar year, the Authority could 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 approved 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 could carry forward for one year only the difference between \$30 million and the total of all credits for all such projects approved in the immediately preceding calendar year.

Credits between \$10 Million & \$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. The bill would allow MEGA to approve two projects with credits over \$10 million but not more than \$30 million.

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. Also, 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, these provisions would apply only to credits for which a preapproval letter had been issued before January 1, 2006.

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.

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 of more than \$10 million.

Multiphase Projects

Under the Act, a project of less than \$10 million may be a multiphase project, but only if the project is an industrial or manufacturing project. A multiphase project may 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, could be a multiphase project but, for projects for which a preapproval letter had been issued by MEGA before January 1, 2006, only if the project were an industrial or manufacturing project. A multiphase project could not be divided into more than 20 components

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 projects of \$2 million or less, all of the following would apply:

- Eligible property would mean property for which eligible activities are identified under a brownfield plan that was used or currently is used for commercial, industrial, or residential purposes that is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted; is not in a qualified local governmental unit but is within a downtown development district established under Public Act 197 of 1975 (which provides for downtown development authorities), and is a facility, functionally obsolete, or blighted; or is not in a qualified local governmental unit and is a facility.
- Eligible property would include 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 would include, to the extent included in the brownfield plan, personal property located on the eligible property.
- Eligible property would 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.)

Proposed MCL 208.35c (H.B. 4733)

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 a total of \$10 million of these credits each year. 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, 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.

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.

Opposing Argument

By requiring that MEGA issue the proposed credits 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. 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.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The impact of the bills would depend upon whether the MEDC would issue all three of the credits presently authorized for amounts between \$10 million and \$30 million each year absent the bill. If the MEDC were not to issue all three credits of that magnitude, the bills would reduce single business tax revenue to the State General Fund by \$10 million per year if all credits authorized by the bills were granted. If the credit no longer allowed under the bills otherwise were to be granted for \$10 million, then the bills would have no fiscal impact, assuming all of the credits authorized by the bills were granted. If the credit no longer allowed

under the bills were for more than \$10 million, then the bills would represent a revenue increase equal to the difference between the credit that would not be provided and \$10 million, assuming all of the credits authorized by the bill were granted. Because the bill would allow certain amounts authorized for credits to be carried over to the next year, in some fiscal years the \$10 million figure could be greater or less than indicated, depending on the amount carried over from one year to the next.

This estimate is preliminary and will be revised as new information becomes available.

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

Fiscal Analyst: David Zin
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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.