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BILL ANALYSIS

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House Bill 4733 (Substitute H-1 as passed by the House)
House Bill 4734 (Substitute H-3 as passed by the House)
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: 11-9-05

**CONTENT**

**House Bill 4733 (H-1) would amend the Single Business Tax (SBT) Act to set an annual maximum of $10 million on the amount of credits that the Michigan Economic Growth Authority (MEGA) could issue for projects for which total SBT credits would be $200,000 or less (pursuant to House Bill 4734 (H-3)); and require MEGA to issue a preapproval letter for approved projects with credits of $200,000 or less.**

**House Bill 4734 (H-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.**
- **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.**
- **Allow MEGA annually to approve two projects, rather than three projects, with credits between $10 million and $30 million.**
- **Revise the provisions governing the assignment of all or a portion of a MEGA tax credit.**
- **Limit MEGA's on-site inspections to only those projects that cost more than $10 million.**
- **Allow multiphase projects to be divided into a maximum of 20, rather than three, components.**

The bills are tie-barred to each other.

**House Bill 4733 (H-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 (H-3), would provide for projects for which total credits were $200,000 or less), MEGA 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 it approved a project under Section 38g(33), MEGA 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 (H-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 (property that is contaminated, functionally obsolete, or blighted). 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. 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 that stated 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 the same project or for another project.

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.

The total of all credits for all projects under Section 38(g)(33) could not exceed $10 million in any calendar year. On June 30 of each year, if the total of all credits for all approved projects were less than $10 million, MEGA could use the difference between $10 million and the amount approved to fund credits for projects of between $2 million and $10 million. (Currently, the total of all credits for these projects may not exceed $30 million in a calendar year. Under the bill, the maximum would be $30 million plus any amount available under Section 38(g)(33).)

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. 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.

Under the bill, for projects for which a preapproval letter was issued after December 31, 2005, an eligible taxpayer could assign all or a portion of an allowed credit. A credit assignment would be irrevocable and would have to be made in the tax year in which the credit could first be claimed by the eligible taxpayer.

An eligible taxpayer could claim a portion of the credit and assign a portion of the remaining credit amount. If the taxpayer both claimed and assigned portions of the credit, the taxpayer would have to claim the portion it claimed in the first tax year in which the credit could be claimed.

An assignee could subsequently assign a credit or any portion of a credit to one or more assignees.

An assignment of an allowed credit could not be made after 10 years following the first tax year in which the credit could be claimed. A credit assignment would have to be made on a form prescribed by the Department of Treasury.

The eligible taxpayer or subsequent assignee would have to send a copy of the completed assignment form to the Department of Treasury in the tax year in which the assignment was made. The assignee would have to attach a copy of the completed form to its annual return required under the Act, 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.

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 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 manufacturing project. A multiphase project could not be divided into more than 20 components.

Proposed MCL 208.35c (H.B. 4733) Legislative Analyst: J.P. Finet
MCL 208.38g (H.B. 4734)

**FISCAL IMPACT**

The impact of the bills would depend upon whether the MEDC would issue all three of the credits currently authorized for amounts between $10 million and $30 million each year absent the bill. If the MEDC did not 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 MEDC otherwise would grant the credit no longer allowed under the bills 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.

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).

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