Legislative Analysis

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MEGA & MBT CREDITS

Senate Bill 1187 as passed the Senate
Sponsor: Sen. Tony Stamas

Senate Bill 1188 as passed the Senate
Sponsor: Sen. Jud Gilbert, II

Senate Bill 1189 as passed the Senate
Sponsor: Sen. Hansen Clarke

Senate Bill 1190 as passed the Senate
Sponsor: Sen. Tupac A. Hunter

House Committee: New Economy and Quality of Life
Senate Committee: Commerce and Tourism

Complete to 4-9-08

A SUMMARY OF SENATE BILLS 1187 - 1190 AS PASSED BY THE SENATE 3-26-08

The bills are tie-barred to each other so that none could go into effect unless all were enacted into law.

Senate Bill 1187 (S-4 as amended)

The bill would revise the Michigan Economic Growth Authority (MEGA) Act (MCL 207.803 & 207.805) to include tourism attraction facilities and qualified lodging facilities in the definition of "eligible business," and add a "qualified high-wage activity" to the definition of "qualified high-technology business."

The act allows MEGA to enter into an agreement with an eligible business (including a high-technology business) for a credit against the Michigan business tax.

Qualified High Wage Activity. Under the bill, "qualified high-wage activity" would mean a business that has an average wage of 300 percent or more of the federal minimum wage. Under the definition, "qualified high-wage activity" may also include one or more of the following, as long as they have an average wage of 300 percent or more of the federal minimum wage: a business that engages in architecture and design, including architectural design, graphic design, interior design, fashion design, and industrial design; and/or advertising and marketing, including advertising and marketing firms and agencies, public relations agencies, and display advertising.

Affiliated Business. The bill would amend the current definition of "affiliated business" to mean a business that is at least 50 percent owned and controlled, directly or indirectly by an associated business. Currently an "affiliated business" is one that is 100 percent owned and controlled by an associated business.

Further and under the bill, the definition of "authorized business" would be revised. Currently the law specifies that an eligible business is not required to create qualified new jobs or maintain retained jobs if the qualified new jobs or retained jobs are created or maintained by an associated or affiliated business. Senate Bill 1187 (S-4) as amended would modify this provision to say that an eligible business would not be required to create qualified new jobs or maintain jobs, if the new or retained jobs are maintained by an associated *"subsidiary, affiliated business, or an employee leasing company or professional employee organization that has entered into a contractual service agreement with the authorized business in which the employee leasing company or professional employer organization withholds income and social security taxes on behalf of the authorized business."*

Qualified Lodging Facility. The bill also would add a definition of "qualified lodging facility" to mean one ore more of the following: lodging facility that constitute a portion of a tourism attraction facility and represent less than 50 percent of the total cost of the tourism attraction facility, or the lodging facilities are to be located on recreational property owned or leased by the municipal, state, or federal government; and/or the lodging facilities involve the restoration or rehabilitation of a structure that is listed individually in the national register of historic places or are located in a national register historic district and certified by this state as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by the state.

Tourism Attraction Facility. In addition, the bill would add a definition of "tourism attraction facility" to mean a cultural or historical site, a creation or entertainment facility, an area of natural phenomena or scenic beauty, or an entertainment destination center as determined by the Michigan Economic Growth Authority.

In making a determination, MEGA would have to consider all of the following: (a) whether the facility will actually attract tourists; (b) whether 50 percent or more of the people using the facility reside outside a 100-mile radius; (c) whether 50 percent or more of the gross receipts are from admissions, food, or non-alcoholic drinks; and (d) whether the facility offers a unique experience.

MEGA could not determine any of the following as a tourism attraction facility: (a) facilities that were primarily devoted to the retail sale of goods, other than an entertainment destination center, a theme restaurant destination attraction, or a tourism attraction where the sale of goods was a secondary and subordinate component of the attraction; or (b) recreational facilities that do not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the facility.

Distance Meetings. Finally, the bill also would allow MEGA members to attend meetings by use of telecommunication or other electronic equipment, if authorized by MEGA's bylaws.

Senate Bill 1188 (S-2)

The bill would amend the Michigan Business Tax Act (MCL 208.1431b) to allow a person or group of people acting collectively to enter into an agreement with MEGA for a tax credit based on qualified new jobs created as a result of winning a procurement contract offered by the U.S. Department of Defense, Department of Energy, or Department of Homeland Security. A recipient of the credit would have to create a minimum of 25 qualified new jobs.

A taxpayer could not claim a credit under the bill unless MEGA had issued the taxpayer a certificate of designation as a qualified taxpayer. Specifically, a qualified taxpayer could claim a credit against the business tax in an amount up to 100 percent of the taxpayer's payroll attributable to employees who perform new jobs created as a result of being awarded a federal procurement contract, multiplied by the tax rate, for a period of up to seven years or the term of the contract, whichever is less. A credit could not be provided for a tax year before the tax year during which certification was made. If the credit exceeded the taxpayer's tax liability, the taxpayer could elect to have that amount refunded, or have it carried forward to offset tax liability in subsequent years for 10 years, or until it is used up.

Under the bill, MEGA could not execute more than 10 new written agreements each year; however, any subsequent credits awarded to a taxpayer already certified would not be included in determining the yearly limit of 10 new agreements.

The bill sets out the factors that must be considered before awarding the tax credit; a description of the agreement to be entered into; and a description of the certificate of designation that would be issued to a qualified taxpayer.

Under the bill, a *"full-time job"* is defined to mean 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: a taxpayer; an employee leasing company on behalf of a taxpayer; and/or a professional employer organization on behalf of a taxpayer.

A "*qualified new job"* is defined to mean a full-time job created by a qualified taxpayer at a facility or facilities that is in excess of the number of full-time jobs that qualified taxpayer maintained in Michigan or at a facility prior to being awarded the federal procurement contract and the expansion or location, as determined by the authority.

Finally, the bill defines *"qualified taxpayer"* to mean a person that individually satisfied each of the following or a group of one or more people that enter into a cooperative or informal agreement to act collectively and satisfy each of the following: has entered into an agreement with the authority as described; has submitted a competitive bid for a federal procurement contract offered by the U.S. Department of Defense, Department of Energy, or Department of Homeland Security; has been awarded the federal contract for which the person or group of people acting collectively submitted a bid; and has created a minimum of 25 qualified new jobs.

Senate Bill 1189 (S-4)

The bill would amend the Michigan Economic Growth Authority Act (MCL 207.806 & 207.808) to:

- Reduce, from 100 to 50, the minimum number of new jobs that a business must create or the number of retained jobs that business must maintain to qualify for a Michigan Business Tax (MBT) credit through the Michigan Economic Growth Authority (MEGA).

- Delete requirements for an MBT credit granted by MEGA, relating to a determination that expansion, retention, or location of a business in Michigan will not occur without tax credits; local unit commitments to an eligible business for its expansion, retention, or location; and the reuse or redevelopment of property that was previously used for an industrial or commercial purpose.

- Require MEGA, in determining the amount and duration of an MBT credit, to consider whether business expansion, retention, or location in Michigan would occur without tax credits and whether an authorized business reused or redeveloped industrial or commercial property, in addition to other factors.

- Require that the authority consider, among other factors, the average wage "and health care benefit level" of the qualified new or retained jobs relative to both the average wage "and health care benefit" paid by private entities in the county in which the facility is located. (Currently, the authority considers only the average wage.)

- Allow MEGA to execute new written agreements each year that, in total, provided up to 400 yearly credits over the terms of those agreements entered into that year, rather than up to 25 new agreements each year. However, the bill also sets limits as to where the authority can execute agreements. Specifically, not more than four new written agreements can be written each year for eligible businesses located in local governmental units that have a population greater than 16,000, nor could more than five new agreements be executed each year for eligible businesses that occupied a historic resource located in a downtown district.

- Beginning on January 1, 2008, allow MEGA to enter into an agreement for an MBT credit with a business that did <u>not</u> meet the criteria for a credit, if the business met certain requirements regarding job retention (50 or more jobs); new capital investment ($50,000 per retained job); and other factors (for example, the facility is at risk of closing or moving out-of-state or there is a long-term commitment by both management and the workforce to improvement); or the business agreed to occupy a "historic resource" that was located in a downtown district and met certain job creation or retention and wage level standards.

- In addition, Senate Bill 1189 (S-4) also specifies that beginning January 1, 2008, after receipt of an application, the authority may enter into a written agreement with an eligible business that does not meet the criteria described in the act, if the eligible business meets all of the following:

  - Agrees to create or retain not fewer than 15 jobs.
  - Agrees to occupy property that is a historic resource as that term is defined in the Michigan Business Tax Act, and that is located in a downtown district.
  - The average wage paid for each retained job and full-time job is equal to or greater than 150 percent of the federal minimum wage.

- Require a new tax credit agreement to provide for the repayment of credits if the business moved jobs outside of Michigan during the term of the written agreement, and for a period of years after that term, as determined by the authority.

<u>Senate Bill 1190 (S-3)</u>

The bill would amend the Michigan Business Tax Act (MCL 208.1431) to:

- Allow certain MBT credits issued by MEGA to include the cost of health care benefits, as well as payroll (not to exceed the sum of the two), attributable to qualified new jobs, or in some cases, retained jobs.

- Allow a tax credit for a qualified high-technology business, for up to seven years, of up to 200 percent of the sum of payroll and health care benefits attributable to employees who performed qualified new jobs, multiplied by the tax rate, for the first three years of the credit, and up to 100 percent of the sum of payroll and health care benefits attributable to those jobs, multiplied by the tax rate, for each remaining year of the tax credit.

- Allow a tax credit to be issued to authorized businesses that otherwise did not meet the criteria for an MBT credit issued by MEGA, but met criteria in Senate Bill 1189 (S-3).

- Specify that a taxpayer that failed to meet requirements for claiming an MBT credit issued by MEGA could have its credit reduced or terminated or added to its tax liability.

Under the bill, *"health care benefits"* would be defined to mean all costs paid for a self-funded health care benefit plan; for an expense-incurred hospital, medical, or surgical policy or certificate; for a non-profit health care corporation certificate (as issued by Blue Cross and Blue Shield); or for a health maintenance organization (HMO) contract. Health care benefit does not include accident-only, credit, dental, or disability income insurance; long-term care insurance; coverage issued as a supplement to liability insurance; coverage only for a specified disease or illness; worker's compensation or similar insurance; or automobile medial payment insurance.

FISCAL IMPACT:

These bills would reduce MBT revenue by an indeterminate amount depending on 1) how many businesses meet the new eligibility requirements for MEGA tax credits, 2) the level of business activity of these firms, and or 3) the total of net new credits MEGA actually grants. All MBT revenue accrues to the General Fund.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.