

Legislative Analysis



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House Bill 5780 (Substitute H-1)
Sponsor: Rep. Fred Miller

House Bill 5785 (Substitute H-1)
Sponsor: Rep. Mike Simpson

House Bill 5781 (Substitute H-1)
Sponsor: Rep. Andy Meisner

House Bill 5786 (Substitute H-1)
Sponsor: Rep. Terry Brown

House Bill 5782
Sponsor: Rep. Mark Meadows

House Bill 5787 (Substitute H-3)
Sponsor: Rep. Marc Corriveau

House Bill 5783 (Substitute H-1)
Sponsor: Rep. Kate Ebli

House Bill 5788 (Substitute H-1)
Sponsor: Richard LeBlanc

House Bill 5784
Sponsor: Rep. Robert Dean

House Bill 5789 (Substitute H-1)
Sponsor: Rep. Bob Constan

Committee: Labor

House Bill 5790 (Substitute H-1)
Sponsor: Rep. Bettie Cook Scott

House Bill 5791 (Substitute H-1)
Sponsor: Rep. Marie Donnigan

Committee: Commerce

First Analysis (4-10-08)

BRIEF SUMMARY: The bills would amend a number of state purchasing and contracting statutes and economic development statutes to require that preference be given to Michigan residents, and to disqualify firms from eligibility unless they agree not to knowingly hire individuals who are not authorized under federal law to work in the United States. The bills also require state agencies and local governments to report annually; compliance with the prevailing-wage-on-state-projects requirements; and remedy provisions that could result in the repayment of benefits and the disqualification for future participation in state or local programs. Most of the provisions apply as of July 1, 2008.

FISCAL IMPACT: These bills in general would have an indeterminate fiscal impact on the State of Michigan, state agencies, and local units of government. Any fiscal impact would be related to increased administrative workload due to the provisions of the bills, such as the additional report requirements that include a yearly accounting of the number of Michigan residents employed in new jobs and the number of new jobs created from programs. House Bill 5783 would have no fiscal impact on the State of Michigan. On

House Bill 5787, because the number of taxpayers that would qualify for the credit is not known, the fiscal impact cannot be determined. All MBT revenue accrues to the General Fund. Thus, any credits awarded would decrease GF/GP revenue.

THE APPARENT PROBLEM:

In February 2008 Michigan's unemployment rate was 7.2 percent, the highest rate in the United States--a rate that has often ranked at or near the top during the past two years. According to the Department of Labor and Economic Growth, there are 350,000 unemployed people in Michigan, and another estimated 100,000 residents are marginally employed.

On average, unemployment rates track years of schooling--the less schooling the higher the rate. For example, according to 2006 U.S. Census Bureau statistics for Michigan workers age 25 to 64, those without high school diplomas had a 17.4 percent jobless rate. Those with a high school diploma had a 10.1 percent unemployment rate. Those with some college or an associate degree had a 6.9 percent unemployment rate.

The Department of Labor and Economic Growth also reports there are 23,000 jobs unfilled in Michigan. Helping employers find work-ready employees is the central mission of that agency's education and retraining program called "No Worker Left Behind."

In order to match Michigan jobs with Michigan residents, 12 bills have been introduced to require recipients of state contracts and economic development incentives to hire Michigan residents first whenever possible, and not to knowingly hire those workers who are in the United States illegally.

THE CONTENT OF THE BILLS:

The bills would amend a number of state purchasing and contracting statutes and economic development statutes, generally speaking, to require that preference be given to residents of Michigan and to disqualify firms from eligibility unless they agree not to knowingly hire individuals who are not authorized under federal law to work in the United States. The bills also require state agencies and local units of government to report annually on their compliance with hiring and contracting requirements and with the impact of their activities on Michigan jobs.

The bills that address state purchasing and contracting and the bills that address the state funding of projects also contain provisions requiring compliance with the prevailing-wage-on-state-projects requirements of Public Act 166 of 1965.

In some cases the bills require the written agreements between firms and the state or local government to contain remedy provisions that could result in the repayment of benefits and the disqualification for future participation in state or local programs.

Most of the provisions apply as of July 1, 2008. Following is a description of each bill. The bills contain similar, but not identical, provisions and so there is repetition.

House Bill 5780 (H-1) would amend the Michigan Strategic Fund Act (MCL 125.2011) to specify that the board of the Michigan Strategic Fund could not approve a request for assistance for a project on an economic development project, or a loan or grant under Chapter 8A—the 21st Century Jobs Program—unless the applicant agrees in writing not to knowingly hire, or contract with any business entity that knowingly hires, an individual who is not authorized under federal law to work in the United States and that the applicant will comply in good faith with the verification requirement of federal law to ensure that all employees hired by the applicant or employees of any contractors hired by the applicant are authorized to work in the U.S.

The board also could not approve a request for assistance for a project or an economic development project, or a loan or grant under Chapter 8A, unless the applicant agrees in writing to hire only residents of Michigan to work on projects, economic development projects, or facilities that are constructed with a loan or grant provided under Chapter 8A, unless the board determined that they could not be accomplished using only state residents for one or more of the following: (1) to the extent necessary to comply with federal law or regulation concerning the use of federal funds or (2) to the extent that key management personnel or individuals with special skills, who are not residents of this state, are needed.

The written agreements would have to contain a remedy provision that provides for all of the following: (1) a requirement that the applicant's financing, loan, or grant is revoked if the applicant is in violation; and (2) a requirement that the applicant may be required to repay some or all of the benefits received if the applicant is determined to be in violation.

Not later than February 1 each year, the MSF board would have to report to each house of the Legislature on the activities of the preceding fiscal year, with the report to contain (1) the number of Michigan residents employed in new jobs from projects, economic development projects, or facilities constructed with a loan or grant provided under Chapter 8A in the immediately preceding year; (2) the number of Michigan residents employed in new jobs and the number of new jobs created from other economic development initiatives required to be reported to the board; (3) the specific reasons for each exemption determination regarding the state-resident-job requirement made by the board and the number of jobs related to each determination; and (4) any other information the board determines necessary.

House Bill 5781 (H-1) would amend the Brownfield Redevelopment Financing Act (MCL 125.2665), which allows the use of tax increment financing revenues to engage in cleanup and development activities at contaminated sites. It would prohibit a brownfield authority from using tax increment revenues to pay or reimburse a business entity for eligible activities on eligible properties unless the business agrees in writing that it will not knowingly hire or contract with any business entity that hires an individual who is not authorized under federal law to work in the United States and that the eligible business will comply in good faith with the verification requirement of federal law to ensure that all employees knowingly hired by the applicant or employees of any contractors knowingly hired by the applicant are authorized to work in the U.S.

An authority could not use tax increment revenues to pay or reimburse a business for eligible activities on eligible property unless the business agrees in writing to hire only residents of Michigan to perform eligible activities on eligible properties unless the authority determines that they could not be performed using only state residents for one or more of the following: (1) to the extent necessary to comply with federal law or regulation concerning the use of federal funds or, (2) to the extent that key management personnel or individuals with special skills, who are not residents of this state, are needed.

The written agreements would have to contain a remedy provision that provides that the business may be required to repay some or all of the benefits received if the business is determined to be in violation.

Each brownfield authority would have to report to the board of the Michigan Strategic Fund on its activities, with the report to include the number of Michigan residents employed in new jobs related to the use of TIF revenues, the number of new jobs created overall related to the use of TIF revenues, and the specific reasons for each determination of an exemption from the hiring of Michigan residents.

House Bill 5782 would amend the Management and Budget Act (MCL18.1241a) so that the DMB would have to require each contract entered into for construction, alteration, repair, or rebuilding of a state building or other state property to contain a clause requiring that 100 percent of the persons working on the project and employed by the contractor and subcontractors be Michigan residents for one year before beginning work. (The current requirement is 50 percent). The percentage could be reduced or the clause omitted to the extent that residents are not available or to the extent necessary to comply with regulations attached to federal funds. (The requirement does not apply to employers who are parties to collective bargaining agreements that allow for the portability of employees on an interstate basis.)

House Bill 5784 is a complementary bill that would require that no later than February 1 of each year, the DMB must report to the board of the MSF on these contracts, with the report to contain (1) the number of Michigan residents employed in new jobs from the construction, alteration, repair, or rebuilding of a state building or other state property in the immediately preceding year; (2) the number of new jobs created from the construction, alteration, repair, or rebuilding of a state building or other state property; and (3) the specific reason for each extension or omission granted to the residency requirement.

House Bill 5783 (H-1) would amend the Management and Budget Act (MCL 18.1264) to allow the DMB to debar a vendor from participating in the bidding process and from the award of contracts if the department received notice that a federal agency had found the vendor to have violated federal law as to employees performing work under the contract, or that the vendor has violated the prevailing wage in state contracts law.

The DMB would have to include a contract clause requiring the contractor to allow only individuals authorized to work in the U.S. to perform services under the contract and a clause stating that the contractor will not violate prevailing wage laws, if applicable, in each contract it enters into that includes services.

The contract would have to provide the following remedies for violations if a contractor or subcontractor knowingly permitted a non-authorized person to work who failed to comply in good faith: (1) the department may withhold further payments under the contract; (2) the contractor may be required to return payments already received; (3) the department could cancel the contract and hold the contractor responsible for any additional costs incurred in re-bidding the contract; and (4) the contractor could be debarred from receiving future state contracts.

House Bill 5785 (H-1) would amend the Michigan Renaissance Zone Act (MCL 125.2695 and 2696) to require the State Administrative Board or the MSF (whichever was applicable) when designating a renaissance zone to give preference to an applicant for renaissance zone status (if all other considerations are equal) if the applicant agrees in writing to hire only residents of Michigan to operate a facility in a renaissance zone, unless the board or MSF determines the facility cannot be operated using only state residents for one or more of the following: (1) to the extent necessary to comply with federal law or regulation concerning the use of federal funds or (2) to the extent that key management personnel or individuals with special skills, who are not residents of this state, are needed.

If the SAB or the MSF designates a zone, a taxpayer could not claim an exemption, deduction, or credit under the act unless the taxpayer enters into a contract that provides that, for any work in the zone, the taxpayer will not knowingly hire or contract with a business entity that knowingly hires an individual who is not authorized under federal law to work in the U.S. and that the taxpayer will comply with federal verification requirements to ensure employees are authorized to work in the U.S.

The contract would also have to contain a remedy provision providing (1) a requirement that the taxpayer is not eligible to claim any future exemptions, deductions, or credits if the taxpayer is determined to have violated these provisions; and (2) a requirement that the taxpayer could be required to repay some or all of the exemptions, deductions, or credits received if determined to be in violation.

The existing annual report on renaissance zones by DLEG to MSF would have to include information on the number of Michigan residents employed in new jobs in the immediately preceding year; the total number of new jobs created in the immediately preceding year; and the specific reasons for each determination of an exemption from these requirements by the SAB or the MSF and the number of jobs related to each determination.

The existing report made annually to the Legislature by a state research university on renaissance zones would also have to include that information.

House Bill 5786 (H-1) would amend the Michigan Economic Growth Authority Act (MCL 207.808 and 810) to prohibit MEGA from entering into a written agreement with an eligible business unless the eligible business states in writing that it will not hire or contract with any business entity that knowingly hires an individual who is not authorized under federal law to work in the United States and that the eligible business will comply in good faith with the verification requirement of federal law to ensure that all employees knowingly hired by the applicant or employees of any contractors hired by the applicant are authorized to work in the U.S.

When determining which qualifying businesses qualify for tax credits under the act, if all considerations are equal, MEGA would give preference to an eligible business that states in writing that it will hire only residents of Michigan to construct, rehabilitate, develop, or renovate the facility under the act, unless MEGA determines that they could not be accomplished using only state residents for one or more of the following: (1) to the extent necessary to comply with federal law or regulation concerning the use of federal funds or (2) to the extent that key management personnel or individuals with special skills, who are not residents of this state, are needed.

Written agreements between MEGA and eligible businesses would have to contain a remedy provision that provides for both of the following: (1) a requirement that the business's credits are revoked if the applicant is in violation; and (2) a requirement that the business may be required to repay some or all of the benefits received if the applicant is determined to be in violation.

The MEGA annual report to the Legislature and the MSF board would have to include (1) the number of Michigan residents employed in qualified new jobs created or retained in the immediately preceding year; (2) the specific reasons for each determination of exemption from the residence requirements made by MEGA and the number of jobs related to each determination; and (3) the details of the good faith efforts required by existing provisions about the hiring of Michigan residents and the use of Michigan firms for construction work and for supplies of goods and services.

House Bill 5787 (H-3) would amend the Michigan Business Tax Act (MCL 208.1435) to require the Michigan Historical Center to give preference to an applicant for an historic preservation credit if the applicant agrees in writing to hire only residents of Michigan to assist in the rehabilitation of a historic resource, unless the Center determines that it cannot be completed using only state residents for one or more of the following: (1) to the extent necessary to comply with federal law or regulation concerning the use of federal funds or (2) to the extent that key management personnel or individuals with special skills, who are not residents of this state, are needed.

A qualified business taxpayer could not claim a credit unless the taxpayer enters into a contract with the Center that provides that, for any work on the rehabilitation plan, the taxpayer will not knowingly hire or contract with a business entity that knowingly hires an individual who is not authorized under federal law to work in the U.S. and that the taxpayer will comply with applicable federal verification requirements.

The contract would also have to contain a remedy provision providing (1) a requirement that the taxpayer is not eligible to claim any future credits if the taxpayer is determined to have violated these provisions; and (2) a requirement that the taxpayer could be required to repay some or all of the credits received if determined to be in violation.

The annual report to the Legislature and the Board of the Michigan Strategic Fund by the Center would have to contain information on the number of Michigan residents employed in new jobs in the immediately preceding year; the total number of new jobs created in the immediately preceding year; and the specific reasons for each determination of exemption from Michigan-based hiring requirements, and the number of jobs related to each determination.

House Bill 5788 (H-1) would amend the Obsolete Property Rehabilitation Act (MCL 125.2788) to prohibit a local unit of government from approving an application for an obsolete property exemption certificate (for a property tax abatement) unless the applicant promises in writing not to knowingly hire or contract with any business entity that knowingly hires an individual who is not authorized under federal law to work in the U.S. and promises that the eligible business will comply with federal verification requirements to ensure that all employees are authorized to work in the U.S.

A local unit would be prohibited from approving an application for an exemption certificate unless the applicant promises in writing to (1) make a good faith effort to employ, if qualified, Michigan residents; (2) make a good faith effort to employ or contract with Michigan residents and Michigan firms to construct, rehabilitate, develop, or renovate the facility; and (3) make a good faith effort to use Michigan-based suppliers and vendors when purchasing goods and services.

The written agreement would also have to contain a remedy provision that provides for (1) a requirement that the applicant's exemption certificate is to be revoked if the applicant is determined to be in violation of the hiring or contracting requirements and (2) a requirement that the applicant might be required to repay some or all of the benefits received under the act if found in violation.

A local legislative body would have to report no later than February 1 each year to the MSF board on its activities for the previous year under the act, with the report to contain the number of Michigan residents employed in new jobs from facilities granted exemption certificates in the immediately preceding year, the number of new jobs created related to those facilities, and the details of the good faith efforts required by existing provisions about the hiring of Michigan residents and the use of Michigan firms for construction work and for supplies of goods and services.

House Bill 5789 (H-1) would amend the Industrial Development Revenue Bond Act (MCL 125.1255a) to prohibit a municipality from issuing bonds to construct, improve, or finance improvements to industrial buildings unless the applicant agrees in writing not to knowingly hire or contract with any business entity that knowingly hires an individual who is not authorized under federal law to work in the U.S. and promises that the eligible business will comply with federal verification requirements to ensure that all employees are authorized to work in the U.S.

A municipality also could not issue bonds or notes under the act unless the applicant promises in writing not to violate prevailing wage on state projects requirements (Public Act 166 of 1965).

Moreover, a municipality could not issue bonds or notes unless the applicant agrees in writing to (1) make a good faith effort to employ, if qualified, Michigan residents; (2) make a good faith effort to employ or contract with Michigan residents and Michigan firms to construct or improve industrial buildings; and (3) make a good faith effort to use Michigan-based suppliers and vendors when purchasing goods and services.

The written agreement would also have to contain a remedy provision that provides for (1) a requirement that the applicant's industrial facilities exemption certificate is to be revoked if

the applicant is determined to be in violation of the hiring or contracting requirements and (2) a requirement that the applicant might be required to repay some or all of the benefits received under the act if found in violation.

A municipality would have to report no later than February 1 each year to the MSF board on its activities for the previous year under the act, with the report to contain the number of Michigan residents employed in new jobs from constructing, improving, or financing industrial buildings under the act in the immediately preceding year; the number of new jobs created related to those industrial buildings; and the details of the good faith efforts required by existing provisions about the hiring of Michigan residents and the use of Michigan firms for construction work and for supplies of goods and services.

House Bill 5790 (H-1) would amend the Plant Rehabilitation and Industrial Development Districts Act, commonly referred to as PA 198, (MCL 207.554) so that a local governmental unit could not approve an application for an industrial facilities exemption certificate (a PA 198 certificate for a property tax abatement) unless the applicant promises in writing not to knowingly hire or contract with any business entity that knowingly hires an individual who is not authorized under federal law to work in the U.S. and promises that the eligible business will comply with federal verification requirements to ensure that all employees are authorized to work in the U.S.

A local unit also could not approve an application for an exemption certificate unless the applicant promises in writing to (1) make a good faith effort to employ, if qualified, Michigan residents; (2) make a good faith effort to employ or contract with Michigan residents and Michigan firms to construct, rehabilitate, develop, or renovate the facility; and (3) make a good faith effort to use Michigan-based suppliers and vendors when purchasing goods and services.

The written agreement would also have to contain a remedy provision that provides for (1) a requirement that the applicant's exemption certificate is to be revoked if the applicant is determined to be in violation of the hiring or contracting requirements and (2) a requirement that the applicant might be required to repay some or all of the benefits received under the act if found in violation.

A local legislative body would have to report no later than February 1 each year to the MSF board on its activities for the previous year under the act, with the report to contain the number of Michigan residents employed in new jobs from facilities granted exemption certificates in the immediately preceding year, the number of new jobs created related to those facilities, and the details of the good faith efforts required by existing provisions about the hiring of Michigan residents and the use of Michigan firms for construction work and for supplies of goods and services.

House Bill 5791 (H-1) would amend the Transportation Economic Development Fund Law, PA 231 of 1987, (MCL 247.913) to prohibit the use of any proceeds from the Fund for a project unless the applicant agrees in writing not to knowingly hire or contract with any business entity that knowingly hires an individual who is not authorized under federal law to work in the U.S. and promises that the eligible business will comply in good faith with applicable federal verification requirements. Proceeds from the Fund could also not be used

on a project unless the applicant promises in writing not to violate the prevailing-wage-on-state-projects requirements of Public Act 166 of 1965.

Also, proceeds from the Fund could not be used unless the applicant agrees in writing to (1) make a good faith effort to employ, if qualified, Michigan residents; (2) make a good faith effort to employ or contract with Michigan residents and Michigan firms in any construction, rehabilitation, development, or renovation; and (3) make a good faith effort to use Michigan-based suppliers and vendors when purchasing goods and services.

The written agreement would also have to contain a remedy provision that provides for (1) a requirement that the applicant would not longer be eligible to receive financing if the applicant is determined to be in violation of the hiring or contracting requirements and (2) a requirement that the applicant might be required to repay some or all of the benefits received under the act if found in violation.

The annual report that the Michigan Transportation Commission already must make to the Governor, House and Senate Appropriations Committees, and House and Senate Fiscal Agencies would also have to go to the board of the Michigan Strategic Fund and would have to include, in addition to currently required information, information on the number of Michigan residents employed in projects funded under the act in the immediately preceding year and the details of the good faith efforts to employ or contract with Michigan residents and to use Michigan-based suppliers and vendors when purchasing goods and services.

ARGUMENTS:

For:

Michigan employers can and should increase their efforts to hire qualified Michigan residents, in order to bring down the state's unemployment rate. When Michigan employers benefit from state contracts, tax breaks, and other financial assistance, they should target their employment opportunities to the Michigan taxpayers who make their projects possible. A spokesperson for the National AFL-CIO puts it this way: "Too often, when tax incentives are given to businesses, the advantage accrues to the net profit line; to the corporate headquarters, and to the shareholders--but not to the taxpayers who generated the taxes that allowed for the incentive to occur in the first place." Or, as a spokesperson for the Detroit-based Motor City Electric Company (the 14th largest electrical contractor in the U.S.) says: "it only seems logical that if Michigan is going to recover from the current economic situation that the state must dedicate itself to mandating that Michigan residents and Michigan-based employers have an advantage on projects that are brought about through tax incentives. Our corporate taxes help fund these tax incentives, so we should be allowed an opportunity to reap what we have helped sow."

Against:

Opponents of the bills raise four separate issues. First, some in the business community, including the Michigan Chamber of Commerce, fear that under these bills, Michigan employers would become the "immigration police" not only with respect to their own employees, but also with respect to their contractor's employees. If employers found

these Michigan-only requirements too unreasonable, they could leave the state. Although the legislation has been amended so that only those employers who "knowingly" hire illegal aliens would be penalized, their opposition to the legislation continues, because the verification of legitimate documents used to determine legal work status is a difficult task; documents are susceptible to fraud.

Second, those employers located near Michigan's borders could have difficulty meeting these requirements, since a high percentage of their workforce can come from a nearby state or province (e.g. Indiana, Illinois, Ohio, Wisconsin, or Canada). Indeed, along the border, an employer in Ohio could actually employ more Michigan residents than a Michigan-based employer hiring mostly Ohioans. To avoid these problems, the International Brotherhood of Electrical Workers and the Michigan Municipal League have suggested an exemption for employers located near the state line--limited, perhaps, to those within 15 miles of any Michigan border.

Third, representatives of local government worry that the compliance and reporting requirements in the bills would increase their costs and workload, while shifting responsibility for compliance from employers to local government officials. They suggest an amendment to "take out the middleman," and have employers report directly to state government officials--for example, directly to the board of the Strategic Fund in the case of development projects.

Fourth, a spokesperson for builders and contractors argues that the prevailing-wage-for-state-projects provision in the legislation should be amended so that the sanctions apply only to those employers who knowingly, willingly, and continuously violate the Prevailing Wage Act, and not to those contractors who on a single occasion mistakenly classify the wage of an employee (a distinct possibility since while on the job, employees may pass through differently paying job classifications in a matter of minutes--(e.g., carpenters and painters), and then immediately correct the error.

POSITIONS:

Motor City Electric Company supports the bills. (2-28-08)

Teamsters Joint Council 43 supports the bills. (4-8-08)

The Operating Engineers support the bill. (4-8-08)

International Brotherhood of Electrical Workers (IBEW) Michigan State Conference supports the bills. (4-8-08)

The IBEW Local Union #58 supports the bills. (4-8-08)

The Michigan Laborers' Construction Union supports the bills in concept. (4-8-08)

The National AFL-CIO supports the bills in concept. (4-8-08)

The Michigan Building Trades support the bills. (4-8-08)

The Michigan Municipal League has no position on the bills but testified that there are unresolved "issues." (4-8-08)

The Michigan Chamber of Commerce opposes the bills as currently drafted. (4-8-08)

The Associated Builders and Contractors oppose the prevailing wage component of the bills. (2-26-08)

The Detroit Regional Chamber of Commerce had indicated opposition to House Bills 5785-5791. (4-8-08)

The Michigan Townships Association has indicated opposition to House Bill 5785-5791. (4-8-08)

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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.