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BILL ANALYSIS

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Senate Bill 207 (Substitute S-3 as reported) *(as enrolled)*
Sponsor: Senator Jason E. Allen
Committee: Commerce and Tourism

Date Completed: 7-26-07

RATIONALE

The Michigan Economic Growth Authority (MEGA) Act allows MEGA to enter into an agreement with an eligible business for a single business tax (SBT) credit. After receiving an application for an SBT credit, MEGA may enter into a written agreement with an eligible business that meets one or more of the prescribed criteria. The agreement must include a repayment provision of all or a portion of the SBT credits for a violation of the written agreement. One of the conditions for receiving the tax credits is that the eligible business agrees to maintain 150 retained jobs at a facility, maintain 1,000 or more full-time jobs in Michigan, and make new capital investment in Michigan. Under the Act, if an eligible business qualified for an SBT credit under that provision, and filed a Chapter 11 plan of reorganization with the bankruptcy court, the plan must be confirmed by the bankruptcy court within three years of the date of the agreement or the agreement is rescinded.

The Federal-Mogul Corporation, a manufacturing company founded in 1899 and based in Southfield, entered into an agreement with MEGA for an SBT credit at the end of 2004. The company is in Chapter 11 bankruptcy proceedings, so its deadline for court confirmation of its reorganization plan under the MEGA Act is at the end of 2007. Federal-Mogul's plan has been submitted to the bankruptcy court, but it has no control over the court's schedule. It has been suggested that the time frame allowed in the MEGA Act for court confirmation of a Chapter 11 reorganization plan be extended to allow Federal-Mogul to continue to benefit from its MEGA SBT credit.

CONTENT

The bill would amend the MEGA Act to allow confirmation of a Chapter 11 plan of reorganization for an eligible business receiving an SBT credit under the Act within six years of the date of the written agreement between MEGA and the business, rather than within three years.

MCL 207.803 & 207.808

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

Federal-Mogul is a Michigan-based global corporation with about 1,800 employees in various Michigan locations. The company currently has an SBT credit that was awarded under the MEGA Act in 2004. According to testimony before the Senate Committee on Commerce and Tourism by a Federal-Mogul official, the company currently is experiencing some profitability and has expanded operations in Michigan. The MEGA SBT credit evidently has helped the company offset higher labor costs, enabling it to bring back to Michigan some jobs that had been exported to facilities in Mexico.

Since Federal-Mogul is in Chapter 11 bankruptcy proceedings, its reorganization plan must be approved by the bankruptcy court by the end of 2007 or the tax-credit agreement it entered into with MEGA at the end of 2004 is rescinded. Although the company has submitted its reorganization plan to the bankruptcy court, it is unclear when the court will confirm the plan. The SBT credit awarded under the agreement with MEGA apparently has helped Federal-Mogul to retain and increase jobs in Michigan, so the company should be allowed to continue to receive the credit. Since there is a danger that the court may not confirm Federal-Mogul's reorganization plan by the end of the year, or may even return the plan to the company for revisions, the MEGA Act's deadline for confirmation of a reorganization plan should be extended.

Supporting Argument

Granting the additional time for an eligible business to obtain Chapter 11 reorganization plan confirmation not only would help Federal-Mogul to retain its business tax credit, but also could provide some assistance to an eligible business that found itself in the same situation in the future.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would reduce State revenue by an unknown and likely minimal amount, depending on the credits authorized (and the characteristics of the firms receiving them) as a result of the changes. The bill would change the time frame for the bankruptcy court to confirm a reorganization plan for firms using such a plan to demonstrate financial soundness as required by current law. If the bankruptcy plan is not confirmed within the specified time, the agreement is rescinded and the firm will not receive any tax credits. Consequently, the bill likely would affect a limited number of firms because the change would apply only to those firms in bankruptcy that used a reorganization plan to establish their financial soundness and needed the additional time before the bankruptcy court approved the plan. To the extent that the changes would affect a firm, it would prevent an agreement from being rescinded and thus allow the firm to claim a tax credit to which it would otherwise not be entitled, thus reducing revenue relative to current law.

Credits granted under the MEGA Act are expected to reduce single business tax revenue by approximately $62.1 million FY 2006-07.

Fiscal Analyst: David Zin