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Senate Bills 1187 through 1190 (as introduced 3-5-08)

Sponsor: Senator Tony Stamas (S.B. 1187)  
Senator Jud Gilbert, II (S.B. 1188)  
Senator Hansen Clarke (S.B. 1189)  
Senator Tupac A. Hunter (S.B. 1190)

Committee: Commerce and Tourism

Date Completed: 3-6-08

### **CONTENT**

**Senate Bill 1187** would amend the Michigan Economic Growth Authority (MEGA) Act to do the following:

- Include tourism attraction facilities and qualified lodging facilities in the definition of "eligible business", and redefine "qualified high-technology business".
- Allow MEGA members to attend meetings by use of telecommunication or other electronic equipment, if authorized by MEGA's bylaws.

**Senate Bill 1188** would amend the Michigan Business Tax (MBT) Act 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 with the U.S. Department of Defense, Department of Energy, or Department of Homeland Security.

**Senate Bill 1189** would amend the MEGA Act to:

- Reduce the minimum number of new jobs that a business must create or the number of retained jobs that a business must maintain to qualify for an MBT credit through MEGA.
- Delete certain requirements for an MBT credit granted by MEGA.

- Add to the factors MEGA must consider in determining the amount and duration of an MBT credit.
- Allow MEGA to execute new written agreements each year that, in total, provided up to 500 yearly credits over the terms of those agreements entered into that year, rather than up to 25 new agreements each year.
- Beginning on January 1, 2008, allow MEGA to enter into a written agreement for an MBT credit with a business that did not meet the criteria for a credit, if the business met certain requirements regarding retention of jobs, new capital investment, and other factors.
- Require a new tax credit agreement to provide for the repayment of credits if the business moved jobs outside of Michigan.

**Senate Bill 1190** would amend the MBT Act to:

- Allow MBT credits issued by MEGA to include the cost of health care benefits, as well as payroll, attributable to qualified new jobs.
- Specify that, beginning January 1, 2008, 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.

Senate Bills 1188 and 1190 are tie-barred to each other, to Senate Bills 1187 and 1189, and to Senate Bill 1115, which would amend the MBT Act to allow an "anchor company" to claim an MBT credit of up to 100% of a qualified supplier's or customer's payroll attributable to employees who performed certain jobs. (An "anchor company" would be a qualified high-technology business that is an integral part of a high-technology activity and that has the authority or potential authority to dictate business decisions and site location of qualified suppliers and customers.)

Senate Bills 1187 through 1190 are described in detail below.

### **Senate Bill 1187**

#### Definitions

The MEGA Act allows the Authority to enter into an agreement with an eligible business for a credit against the tax imposed by the Michigan Business Tax Act. "Eligible business" means a distressed business or business that proposes to maintain retained jobs in Michigan in manufacturing, mining, research and development, wholesale and trade, or office operations or a business that is a qualified high-technology business. The bill would include in the definition of "eligible business" a business that is a "tourism attraction facility" or a "qualified lodging facility".

Currently, "qualified high-technology business" means a business or facility that is either of the following:

- A business with at least 25% of the total operating expenses of the business used for research and development in the tax year in which the business files an application under the Act, as determined under generally accepted accounting principles and verified by MEGA.
- A business or facility whose primary business activity is high-technology activity.

Under the bill, "qualified high-technology business" instead would mean a business or facility whose primary business activity is high-technology activity or a "qualified high-wage activity". "Qualified high-wage activity" would mean a business that has an

average wage of 300% or more of the Federal minimum wage.

"Qualified lodging facility" would refer to one or more of the following:

- Lodging facilities that constitute a portion of a tourism attraction facility and represent less than 50% of the total cost of that facility, or the lodging facilities are to be located on recreational property owned or leased by the municipal, state, or Federal government.
- Lodging facilities that involve the restoration or rehabilitation of a structure listed individually in the national Register of Historic Places or are located in a national register historic district and certified by the State as contributing to the historic significance of the district, if the rehabilitation or restoration project has been approved in advance by the State.

"Tourism attraction facility" would mean a cultural or historical site, a recreation or entertainment facility, an area of natural phenomena or scenic beauty, or an entertainment destination center as determined by MEGA. In making a determination, MEGA would have to consider all of the following:

- Whether the facility would actually attract tourists.
- Whether 25% or more of the people using the facility resided outside a 100-mile radius.
- Whether 50% or more of the gross receipts were from admissions, food, or nonalcoholic drinks.
- Whether the facility offered a unique experience.

The Authority could not determine any of the following as a tourism attraction facility:

- 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.
- Recreational facilities that did not serve as a likely destination where individuals who were not Michigan residents would remain overnight in commercial lodging at or near the facility.

The bill also would redefine "affiliated business" (a term used in the definition of "authorized business"). Currently, "affiliated business" means a business that is 100% owned and controlled by an associated business. Under the bill, "affiliated business" would mean a business that is at least 50% owned and controlled, directly or indirectly, by an associated business. ("Associated business" means a business that owns at least 50% of and controls, directly or indirectly, an authorized business, i.e., a business that meets the Act's requirements for a tax credit and has entered into an agreement with MEGA.)

#### Attendance at MEGA Meetings

The bill specifies that MEGA members could be present either in person at a meeting of the Authority or, if authorized by MEGA's bylaws, by use of telecommunications or other electronic equipment.

#### **Senate Bill 1188**

The bill would allow a person or group of people acting collectively to enter into an agreement with MEGA for a tax credit. In determining whether to enter into an agreement, MEGA would have to consider the following factors:

- The number of qualified new jobs or products, or both, to be created or maintained as a result of winning a Federal procurement contract offered by the U.S. Department of Defense, Department of Energy, or Department of Homeland Security.
- The potential impact of the expansion, retention, or location on Michigan's economy if the person or group were awarded the Federal contract.
- The number of out-of-State people bidding against the person or group for the Federal contract.
- The total capital investment or new capital investment the person or group would make to win and maintain the Federal contract.

An agreement under the bill would have to include all of the following:

- A description of the Federal contract for which the person or group intended to bid.

- A description of the person's or group's expansion, retention, or location that was necessary if awarded the Federal contract that was the subject of the agreement.
- Conditions upon which the person or group was designated a qualified taxpayer under the bill.
- A statement by the person or group that a violation of the written agreement could result in the revocation of the designation as a qualified taxpayer and the loss or reduction of future credits under the bill.
- A statement by the person or group that a misrepresentation in the application could result in the revocation of the designation as a qualified taxpayer and the refund of credits received under the bill.
- A method for measuring qualified new jobs before and after the award of a Federal contract and the expansion, retention, or location of the person or group in Michigan as a result of winning the Federal contract.

A qualified taxpayer could claim an MBT credit in an amount up to 100% of the qualified taxpayer's payroll attributable to employees who performed qualified new jobs created as a result of the person's or group's being awarded a Federal procurement contract by the U.S. Department of Defense, Energy, or Homeland security as determined by MEGA, multiplied by the tax rate for the tax year for a period of up to seven years or the term of the contract, whichever was less, as determined by MEGA.

If the qualified taxpayer were a group of people acting collectively, MEGA would have to determine the amount of the credit each person was allowed to claim by multiplying the amount of the credit by a fraction, the numerator of which was the person's payroll attributable to employees who performed qualified new jobs and the denominator of which was 100% of the qualified taxpayer's payroll attributable to employees who performed qualified new jobs, and then certifying the amount of the credit that each person was allowed to claim respectively.

If the credit exceeded the taxpayer's liability for the tax year, the taxpayer could elect to have the excess refunded or to have it carried forward to offset tax liability in subsequent years for 10 years or until it was used up, whichever occurred first.

The Authority could not execute more than 10 new written agreements each year. If a qualified taxpayer were awarded a credit under the bill, any subsequent credits awarded to that taxpayer could not be included in determining the yearly limit of 10 new agreements.

A taxpayer could not claim a credit under the bill unless MEGA had issued the taxpayer a certificate of designation as a qualified taxpayer. The taxpayer would have to attach the certificate to the annual return on which the credit was claimed. The certificate would have to state all of the following:

- The taxpayer was a qualified taxpayer.
- The amount of the credit under the bill for the qualified taxpayer for the designated tax year or, if the qualified taxpayer were a group of people, the percentage of the amount of the credit that the taxpayer was allowed to claim for the designated tax year.
- The taxpayer's Federal employer identification number or the Michigan Department of Treasury number assigned to the taxpayer.

"Qualified taxpayer" would mean a person that individually satisfies 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 MEGA as described in the bill.
- 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 or people acting collectively submitted a bid.
- Has created a minimum of 25 qualified new jobs.

"Qualified new job" would 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 the qualified taxpayer maintained in Michigan or at a facility before being awarded the Federal procurement contract and the expansion or location, as determined by MEGA. "Full-time job" would mean a job performed by an

individual for 35 hours or more each week and whose income and Social Security taxes are withheld by a taxpayer, an employee leasing company on behalf of a taxpayer, or a professional employer organization on behalf of a taxpayer.

### **Senate Bill 1189**

#### Minimum Job Creation/Retention

The MEGA Act allows the Authority to enter into an agreement with certain businesses for a tax credit for creating and maintaining minimum numbers of new jobs. Except as otherwise provided, an eligible business must meet certain job creation standards within 12 months of an expansion or location in Michigan. The standards include creating a minimum of 100 qualified new jobs at the facility, if locating in Michigan, and maintaining a minimum of 100 qualified new jobs at the facility for each year the credit is authorized. The bill would reduce these minimums to 50 qualified new jobs. The bill also would delete the requirement that the job creation occur within 12 months of the expansion or location.

#### Deleted Requirements

Except for a qualified high-technology business, MEGA may award MBT credits for job creation and maintenance only if the expansion, retention, or location of an eligible business in Michigan will not occur without the tax credits. The bill would delete that limitation.

Also, except for an MBT credit for a particular eligible business, the local unit in which an eligible business will expand, be located, or maintain retained jobs, or a local economic development corporation or similar entity, must make a staff, financial, or economic commitment to the eligible business for the expansion, retention, or location. The bill would delete that requirement.

In addition, if feasible as determined by MEGA, in locating the facility, an authorized business must reuse or redevelop property that was previously used for an industrial or commercial purpose. The bill would delete that requirement.

### Determination of Credit Amount & Duration

If MEGA determines that the requirements for being awarded an MBT credit have been met, the Authority must determine the amount and duration of the tax credits to be authorized and enter into an agreement. The duration of the tax credits may not exceed 20 years or, for an authorized business that is a distressed business, three years. The Act lists factors that MEGA must consider in determining the amount and duration of tax credits. These include the average wage level of the qualified new jobs or retained jobs relative to the average wage paid by private entities in the county in which the facility is located. Under the bill, MEGA also would have to consider the average health care benefit level of the new or retained jobs relative to the average health care benefit in the county.

The bill also would require MEGA to consider whether the expansion, retention, or location would occur in Michigan without the tax credits offered under the Act and whether the authorized business reused or redeveloped property that was previously used for an industrial or commercial purpose in locating the facility.

In addition, the bill would authorize MEGA to determine the eligibility of and issue certificates to certain taxpayers for credits allowed under Senate Bills 1115 and 1188.

### Maximum Annual Credits Awarded

The Act prohibits MEGA from executing more than 25 new written MBT credit agreements each year for eligible businesses that are not qualified high-technology business, distressed businesses, or rural businesses. The bill, instead, would prohibit MEGA each year from executing new written agreements that, in total, provided for more than 500 yearly credits over the terms of those agreements entered into that year for eligible businesses that were not qualified high-technology businesses, distressed businesses, or rural businesses.

The bill would delete a provision under which MEGA may carry forward for one year the difference between 25 and a smaller number of new agreements executed in the immediately preceding year.

### Business not Meeting Criteria

Beginning on January 1, 2008, after receiving an application, MEGA could enter into a written agreement with an eligible business that did not meet the criteria described in the Act for an MBT credit, if the eligible business did all of the following:

- Agreed to retain at least 50 jobs.
- Agreed to make new capital investment at a facility equal to \$50,000 or more per retained job maintained at the facility.
- Certified to MEGA that, without the credits and without the new capital investment, the facility was at risk of closing and the work and jobs would be removed to a location outside of Michigan.
- Certified to MEGA that the management or ownership was committed to improving the long-term viability of the facility in meeting the national and international competition facing the facility through better management techniques, best practices, including state-of-the-art lean manufacturing practices, and market diversification.
- Certified to MEGA that it would make best efforts to keep jobs in Michigan when making plant location and closing decisions.
- Certified to MEGA that the workforce at the facility demonstrated its commitment to improving productivity and profitability at the facility through various means.

### Credit Repayment

Beginning on the bill's effective date, if MEGA entered into a written agreement with an eligible business, the agreement would have to include a repayment provision of all or a portion of the credits received by the eligible business for a facility if the business moved full-time jobs outside of Michigan during the term of the agreement and for a period of years after the term of the agreement, as determined by MEGA.

### **Senate Bill 1190**

### Credit for Health Care Benefits

Under the MBT Act, for a period of up to 20 years as determined by MEGA, a taxpayer that is an authorized business may claim an MBT credit equal to the amount certified each year by MEGA for all or 50% of the

payroll of the business attributable to employees who perform qualified new jobs or retained jobs (depending on which criteria the business meets). The bill would allow the credit to be awarded for an amount not to exceed all or 50% of the payroll and health care benefits attributable to those employees.

Also, for up to seven years, as determined by MEGA, an authorized business that was a qualified high-technology business, for each of the first three tax years of the credit, could claim an amount not to exceed 200% of the payroll and health care benefits of the high-technology business attributable to employees who performed qualified new jobs as determined under the MEGA Act, multiplied by the tax rate and, for each of the remaining tax years of the credit, an amount not to exceed 100% of the payroll and health care benefits of the high-technology business attributable to employees who performed qualified new jobs as determined under the MEGA Act, multiplied by the tax rate.

"Health care benefits" would mean all costs paid for a self-funded health care benefit plan or for an expense-incurred hospital, medical, or surgical policy or certificate, nonprofit health care corporation certificate, or health maintenance organization contract. It would 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; workers' compensation or similar insurance; or automobile medial payment insurance.

#### Violation of Agreement

Under the MBT Act, if a taxpayer claims a credit for an amount determined by MEGA, has an agreement with MEGA based on qualified new jobs, and removes from Michigan 51% or more of those jobs within three years after the first year in which the taxpayer claims a credit, the taxpayer must pay to the Department of Treasury, within 12 months after those jobs are removed from Michigan, an amount equal to the total of all of those credits claimed by the taxpayer.

Under the bill, beginning January 1, 2008, a taxpayer that claimed a credit and subsequently failed to meet the conditions

included in an agreement entered into with MEGA in order to obtain the credit or removed any of the qualified new jobs from Michigan during the term of the written agreement and for a period of years after the term of the agreement, as determined by MEGA, could have its credit reduced or terminated or have a percentage of the credit previously claimed added back to the taxpayer's tax liability in the tax year that it failed to comply with the agreement.

MCL 207.803 & 207.805 (S.B. 1187)  
Proposed MCL 208.1431b (S.B. 1188)  
MCL 207.806 & 207.808 (S.B. 1189)  
MCL 208.1431 (S.B. 1190)

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

It is not possible to make a reasonable estimate of the fiscal impact of these bills at this time because there is no way to know: 1) how many businesses would meet these various proposed new eligibility requirements for MEGA tax credits, 2) the level of business activity these new qualifying companies would have, or 3) the amount of net new credits that MEGA actually would grant.

Fiscal Analyst: Jay Wortley

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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.