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Senate Bill 1342 (as enacted) **PUBLIC ACT 359 of 2008**
House Bill 6185 (as enacted) **PUBLIC ACT 360 of 2008**
Sponsor: Senator Mark C. Jansen (S.B. 1342)
Representative Richard Hammel (H.B. 6185)
Senate Committee: Commerce and Tourism
House Committee: Education

Date Completed: 1-22-09

CONTENT

Senate Bill 1342 added Chapter 13 (New Jobs Training Programs) to the Community College Act, to do all of the following:

- **-- Allow a community college district to enter into an agreement with an employer, until December 31, 2018, to provide training for new jobs.**
- **-- Allow training program costs to be paid to the community college from income taxes withheld by employers on the new jobs created.**
- **-- Specify the requirements for an agreement, including that the employer provide money to the community college if the withholding amount is insufficient to pay program costs, and pay an administrative fee to the community college district of 15% of the aggregate amount to be paid under the agreement.**
- **-- If program costs are to be paid from income tax withholding, require the employer to pay the amount to be withheld to the community college in the same manner it pays income tax withholding to the Department of Treasury.**
- **-- Allow a community college district, by resolution of its board of trustees, to sell revenue bonds to finance costs of the new jobs training programs, in anticipation of payments under an agreement with an employer.**
- **-- Allow a community college district to pay for a new jobs training program out of the district's funds, including self-funding methods.**
- **-- Provide that bonds and notes issued under Chapter 13 are tax exempt.**
- **-- Set a limit of $50.0 million per year on the aggregate outstanding obligation of all agreements under Chapter 13.**

House Bill 6185 amended the Income Tax Act to provide for income taxes withheld pursuant to an agreement entered into under Senate Bill 1342 to be paid to community colleges. House Bill 6185 also requires the Department of Treasury to make an annual report concerning the operation and effectiveness of new jobs training programs and the corresponding income tax withholding requirements.

The bills were tie-barred, and took effect on December 23, 2008.

Senate Bill 1342

Agreement with Employers

Under Chapter 13, a community college district may enter into an agreement to establish a project with an employer engaged in business activities anywhere in Michigan. An agreement must meet all of the following:

-- Provide for program costs that may be paid from a new jobs credit from withholding, to be received or derived from new employment resulting from the project, or from tuition, student fees, or special charges fixed by the community college's board of trustees to defray program costs in whole or in part.
-- Contain an estimate of the number of new jobs to be created by the employer.
-- Include a provision that fixes, on a quarterly basis, the minimum amount of new jobs credit from withholding to be paid for program costs.
-- Provide that, if the amount received from the new jobs credit from withholding is insufficient to pay program costs, the employer agrees to provide money, at least quarterly, to make up the shortfall, so that the community college district receives for each quarter the minimum amount of new jobs credit from withholding that is provided in the agreement.
-- Include the employer's agreement to mortgage, assign, pledge, or place a lien on any real or personal property as required by the community college district, as security for obligations under the agreement.
-- Provide for payment of an administrative fee to the community college district in an amount equal to 15% of the aggregate amount to be paid under the agreement.
-- Contain other provisions the community college district considers appropriate or necessary.

Any payments required to be made by an employer under an agreement will be a lien on the employer's real and personal business property, until paid; have equal precedence with property taxes; and may not be divested by a judicial sale. Property subject to the lien may be sold for sums due and delinquent at a tax sale, with the same forfeitures, penalties, and consequences as for the nonpayment of property taxes. The purchaser at a tax sale will obtain the property subject to the remaining payments required under the agreement.

A community college district must file a copy of an agreement with the Department of Treasury promptly after its execution.

A community college district may not enter into any new agreements after December 31, 2018.

Chapter 13 defines "new jobs training program" as the project or projects established by a community college district for the creation of jobs by providing education and training or retraining of workers for new jobs.

"New job" means a full-time job in Michigan that meets all of the following:

-- Except as provided below, is a new, existing, or expanding business of an employer.
-- Is not a job of a recalled worker, a replacement job, or any other job that existed in the employer's business within the one-year period preceding the date of an agreement.
-- Is not a job that is part of an employer's business operation located in a municipality in Michigan, if that job existed in a business operation or a substantially similar business operation of the employer formerly located in another Michigan municipality, the employer moved that business operation to its current location, and the employer closed or substantially reduced that former business operation.
-- Results in a net increase in employment in Michigan for that employer.

In addition, the wage paid for the job must be at least 175% of the State minimum wage established under the Minimum Wage Law.

"Program costs" means all necessary and incidental costs of providing "program services", which include any of the following:

-- Training or retraining for new jobs.
-- Adult basic education and job-related instruction.
-- Developmental, readiness, and remedial education.
-- Vocational and skill-assessment services and testing.
-- Training facilities, equipment, materials, and supplies.
-- Administrative expenses for the new jobs training program.
-- Services subcontracted with public universities and colleges in Michigan, private colleges or universities, or any

- Federal, State, or local departments or agencies.
- Contracted or professional services.

New Jobs Credits

If any part of the program costs of a new jobs training program is to be paid from receipt of money from a new jobs credit from withholding, the agreement must require program costs to be paid from money received from a new jobs credit from withholding, and require the new jobs credit to be based on salary and wages paid to the employer's employees in the new jobs.

The agreement also must provide that, for each employee in a new job, each month the employer must pay the amount required to be deducted and withheld by the Income Tax Act (as amended by House Bill 6185) to the community college district in the same manner as the employer returns and pays withholding payments to the Revenue Division of the Department of Treasury, and the district must pay the amounts received into a special fund to pay program costs and the principal of and interest on any bonds issued by the community college district to finance or refinance the project in whole or in part.

In addition, the agreement must contain the following provisions:

-- The community college district may irrevocably pledge the new jobs credit from withholding, and the special fund into which the withholdings are paid, for the payment of the principal of and interest on bonds issued by a community college district to finance or refinance the project in whole or in part.
-- For each new jobs credit from withholding paid to a community college district, the employer must certify to the Department of Treasury that the payment was made pursuant to an agreement and provide any other information reasonably requested by the Department.
-- Any other provisions required by the community college district.

At the end of each calendar quarter, a community college district receiving money from a new jobs credit from withholding must certify to the Department the amount of credit each employer with which the college has an agreement has remitted to the community college district in that calendar quarter.

By April 1 of each year, each community college district that receives money from a new jobs credit in the preceding calendar year must provide all of the following information to the Department for that calendar year:

-- The name of the community college district.
-- The name of each employer with which the district has an agreement, organized by major industry group under the North American Industry Classification System published by the Office of Management and Budget.
-- The amount of money from a new jobs credit from withholding each employer has remitted to the community college district.
-- The amount of new jobs training revenue bonds the district has authorized, issued, or sold.
-- The total amount of the district's debt related to agreements at the end of the calendar year.
-- The number of degrees or certificates awarded to program participants in the calendar year.
-- The number of individuals who entered a program at the community college district in the calendar year; who completed the program in that year; and who were enrolled in a program at the end of the year.
-- The number of individuals who completed a program and were hired by an employer hired to fill new jobs.
-- Any other information reasonably requested by the Department.

New Jobs Training Revenue Bonds

By resolution of its board of trustees, a community college district may authorize, issue, and sell new jobs training revenue bonds in anticipation of payments to be received pursuant to an agreement with an employer, to finance costs of new jobs training programs and to pay costs of issuing those bonds. The bonds must be payable in the manner and on the terms and conditions determined, or with the parameters specified, by the board in the authorizing resolution.

The resolution must create a lien on the receipts from new jobs credits to be received by the community college district pursuant to agreements with employers. The lien will be a statutory lien and will be a fist lien subject only to liens previously created. As additional security, in the authorizing resolution, the board of trustees also may pledge the limited tax full-faith and credit of the district and may authorize and enter into an insurance contract, agreement for lines of credit, letter of credit, commitment to purchase obligations, remarketing agreement, reimbursement agreement, tender agreement, or any other transaction necessary to provide security to assure timely payment of any bonds.

A community college district may issue bonds with respect to a single project or multiple projects, as determined by the board of trustees in the authorizing resolution. The board may determine to sell the bonds in conjunction with the sale of bonds by another community college district.

Bonds issued under Chapter 13 are not subject to the Revised Municipal Finance Act, except that they are subject to the maximum rate permitted under that Act. The issuance of bonds under Chapter 13 is subject to the Agency Financing Reporting Act.

Bonds issued under Chapter 13 may not be considered to be within any limitation of outstanding debt limit applicable to the community college district, but must be considered as authorized in addition to any limitation of outstanding debt limit applicable to the district.

A community college district may not authorize, issue, or sell any new jobs training revenue bonds after December 31, 2018.

By resolution of its board of trustees, a community college district may refund all or any part of its outstanding bonds issued under Chapter 13 by issuing refunding bonds.

Bonds and notes issued by a community college district under Chapter 13 and the interest on and income from those bonds and notes are exempt from taxation by the State or a political subdivision of the State.

Self-Funding

A community college district is authorized to pay all or part of the costs of new jobs training programs out of funds of the district, including self-funding methods. The use of district funds and self-funding methods to pay the costs of the new jobs training programs must be considered an authorized expenditure of public funds and may not be construed as an investment.

Annual Limit

The aggregate outstanding obligation of all agreements entered into under Chapter 13 may not exceed $50.0 million in any calendar year.

House Bill 6185

Withheld Taxes

Under the Income Tax Act, every Michigan employer required under the Internal Revenue Code to withhold income taxes and every "flow-through entity" entity in Michigan must withhold taxes at the rate prescribed in the Act, after deducting personal and dependency exemptions allowed under the Act. ("Flow-through entity" means an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company.) Withheld taxes accrue to the State on the last day of the month in which they are withheld, but must be paid to the Department of Treasury within 15 days after the end of any month, except as otherwise allowed under the Act.

Under the bill, for an employer or flow-through entity that has entered into an agreement with a community college pursuant to Chapter 13 of the Community College Act, a portion of the taxes withheld that are attributable to each employee in a new job created pursuant to the agreement must accrue to the community college on the last day of the month in which the taxes are withheld, but must be paid to the community college by the employer or flow-through entity within 15 days after the end of any month or as otherwise provided, for as long as the agreement remains in effect. Payments made by an employer or flow-through entity to a community college under the bill are considered income taxes paid to the State.

Under the Act, if the Department has reasonable grounds to believe that an employer or flow-through entity will not pay withheld taxes to the State as prescribed by the Act, or to provide a more efficient administration, the Department may require the employer or entity to pay withheld taxes at other than monthly periods or from time to time. The Department also may require the employer or flow-through entity to deposit the withheld taxes in an approved bank, in a separate account, in trust for the Department, and payable to the Department, and to keep the amount of the taxes in the account until payment to the Department. The bill refers to payment to the Department or the community college, if applicable, in these provisions, and provides for deposits to be held in trust for the Department or, if applicable, the community college.

The Act requires every employer and flow-through entity required to deduct or withhold taxes from compensation, or share of income available for distribution, to make a return or report in a form and content and at the times prescribed by the Department. The bill requires an employer or flow-through entity that has entered into an agreement with a community college under Chapter 13, and that is required by the agreement to deduct or withhold taxes from compensation and make payments to a community college for a portion of those withheld taxes, to delineate in the return or report between the amount deducted or withheld and paid to the State and the amount paid to a community college.

<u>Annual Report</u>

Under the bill, by July 1 of each year, based on information received from each community college district, the Department of Treasury must submit an annual report to the Governor, the Secretary of the Senate, the Clerk of the House of Representatives, the chairperson of each standing committee with jurisdiction over economic development issues, the chairperson of each legislative budget subcommittee with jurisdiction over economic development issues, and the president of the Michigan Strategic Fund. The report must concern the operation and effectiveness of the new jobs training programs and the corresponding income tax withholding requirements. The report must include all of the following:

-- The number and names of community colleges participating in the new jobs training program.
-- The number of employers that have entered into agreements with community colleges pursuant to the program and the names of those employers, organized by major industry group under the Standard Industrial Classification Code compiled by the U.S. Department of Labor.
-- The total amount of money from a new jobs credit from withholding each employer has remitted to the community college district.
-- The total amount of new jobs training revenue bonds each community college district has authorized, issued, or sold.
-- The total amount of each community college district's debt related to agreements at the end of the calendar year.
-- The number of degrees or certificates awarded to program participants in the calendar year.
-- The number of individuals who entered a program at each community college district in the calendar year; who completed the program in the calendar year; and who were enrolled in a program at the end of the year.
-- The number of individuals who completed a program and were hired by an employer to fill new jobs.

MCL 389.161-389.166 (S.B. 1342)
206.351 et al. (H.B. 6185)

Legislative Analyst: Patrick Affholter

<u>FISCAL IMPACT</u>

These bills will allow community colleges to finance job training programs by capturing the income tax withheld from the wages paid to the workers being trained. This income tax would otherwise be remitted to the Department of Treasury. Assuming it will take community colleges some time to get these training programs up and running in 2009, it is estimated that about $1.0 million of income tax revenue will be diverted to community colleges in FY 2008-09, and then the amount diverted will increase to $5.0 million in FY 2009-10. To help put the potential fiscal impact into perspective, a job created through this job training programming that pays $35,000 annually will generate about $1,210 for a community college. This loss in income tax revenue will reduce the General Fund (76.7%) and the School Aid Fund (23.3%). These bills will have no direct impact on local governments other than community college districts.

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