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BILL ANALYSIS

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House Bills 5138 and 5139 (as passed by the House)
Sponsor: Representative Tim Melton (H.B. 5138)
Representative Brenda Clack (H.B. 5139)
House Committee: Education
Senate Committee: Finance

Date Completed: 12-12-07

CONTENT

Senate Bill 5138 would amend the Michigan Education Savings Program (MESP) Act to do the following:

- **Allow the program to consist of one or more savings plans providing different investment strategies and allowing account distributions.**
- **Authorize the State Treasurer to use the program revenue to maintain or enhance the State's qualified tuition programs.**
- **Include as a "qualified withdrawal" a withdrawal made because a beneficiary attended a service academy.**

Senate Bill 5139 would amend the Income Tax Act to specify that a deduction based on contributions to education savings accounts would be calculated on a per education savings account basis, and that the amount calculated for each education savings account could not be less than zero.

The bills are described below.

Senate Bill 5138

The MESP Act created the Michigan Education Savings Program to allow individuals to open one or more education savings accounts to save money for the qualified higher education expenses of one or more designated beneficiaries. The contributions to and interest earned on an educations savings account are exempt from taxation as provided under the Income Tax Act.

Under the bill, the MESP could consist of one or more savings plans. "Savings plan" or "plans" would mean a plan that provides different investment strategies and allows account distributions for qualified higher education expenses.

The MESP Act requires the State Treasurer to administer the MESP. Under the bill, the Treasurer could use the program revenue to maintain or enhance the State's qualified tuition programs.

The bill would replace references in the Act to the "program" or "savings plan" with references to "savings plan", "savings plans", or "plans offered under the program", as applicable.

Program Manager

The Act requires the State Treasurer to enter into a contract with the program manager, and defines "program manager" as the entity selected by the Treasurer to act as the manager of the program. The bill would require the State Treasurer to enter into a contract with "each" program manager, and would define "program manager" as an entity selected by the Treasurer to act as a manager of one or more of the savings plans offered under the program.

The contract must address the respective authority and responsibility of the Treasurer and the program manager to do certain things. These include developing and implementing the program. Under the bill, this responsibility would be to develop and implement the savings plan or plans offered by the program.

The contract also must address the responsibility to charge, impose, and collect annual administrative fees and service in connection with any agreements, contracts, and transactions relating to individual accounts, which may not exceed 1.5% of the average daily net assets of the account. Under the bill, these amounts would be exclusive of initial sales charges.

Qualified Withdrawal

"Qualified withdrawal" means a distribution that is not subject to a penalty or an excise tax under Section 529 of the Internal Revenue Code, a penalty under the MESP Act, or taxation under the Income Tax Act, and that is any of the following:

-- A withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary incurred after the account is established.
-- A withdrawal made as the result of the death or disability of the designated beneficiary of an account.
-- A withdrawal made because a beneficiary received a scholarship that paid for all or part of his or her qualified higher education expenses to the extent the amount of the withdrawal does not exceed the amount of the scholarship.
-- A transfer of funds due to the termination of the management contract as provided in the Act.
-- A transfer of funds as provided in the Act.

Under the bill, "qualified withdrawal" would include a withdrawal made because a beneficiary attended a service academy to the extent that the amount of the withdrawal does not exceed the costs of the advanced education attributable to the beneficiary's attendance in the service academy. "Service academy" would mean the United States Military Academy, Naval Academy, Air Force Academy, Coast Guard Academy, or Merchant Marine Academy.

Senate Bill 5139

Under the Income Tax Act, "taxable income" means, for a person other than a corporation, estate, or trust, adjusted gross income as defined in the Internal Revenue Code subject to certain adjustments. The adjustments include a deduction, to the extent not deducted in determining adjusted gross income, the total of all contributions made on and after October 1, 2000, by the taxpayer in the tax year less qualified withdrawals made in the tax year from education savings accounts, pursuant to the MESP Act, not to exceed $5,000 for a single return or $10,000 for a joint return per tax year.

Under the bill, contributions made by the taxpayer less qualified withdrawals from education savings accounts would be calculated on a per education savings account basis, and could not exceed a "total" deduction of $5,000 for a single return or $10,000 for a joint return per tax year. The amount calculated for each education savings account could not be less than zero.

MCL 390.1472 et al. (H.B. 5138)
206.30 (H.B. 5139)

Legislative Analyst: Craig Laurie

FISCAL IMPACT

A reasonable estimate of the fiscal impact of the bill is not possible at this time because there are many unknown factors. There is no way to know at this time how many people would participate in a new type of qualified tuition program or how much the participants would contribute to the savings program. Participation in the current Michigan Education Savings Program will reduce income tax revenue an estimated $14.2 million in FY 2007-08. Any loss in income tax revenue through additional contributions to a qualified tuition program would reduce General Fund and School Aid Fund revenue. The bills would not have a direct impact on local units of government.

Fiscal Analyst: Jay Wortley