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BILL ANALYSIS

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House Bill 5511 (Substitute H-1 as passed by the House)
Sponsor: Representative Ed Clemente
House Committee: New Economy and Quality of Life
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 3-12-08

CONTENT

The bill would amend the Michigan Business Tax (MBT) Act do the following in regard to tax credits for brownfield projects:

-- **Increase the maximum amount of a credit for a project for which all credits total $1.0 million or less, and for a project for which all credits total more than $1.0 million but not more than $30.0 million.**
-- **Provide for higher maximum credits for projects designated as urban development area projects.**
-- **Revise the maximum amount of all credits that the Michigan Economic Growth Authority (MEGA) may approve each year for projects costing $2.0 million or less and projects costing more than $2.0 million but not more than $10.0 million.**
-- **Allow MEGA each year to approve 20, rather than 17, projects costing over $10.0 million; and allow all credits for one, rather than two, of those projects to total more than $10.0 million but not more than $30.0 million.**
-- **Permit a taxpayer to choose between carrying forward the amount of a credit in excess of MBT liability (as currently allowed) or receiving a refund for 75% of the excess and foregoing the remainder.**
-- **Extend the time for completion of a multiphase project.**
-- **Specify factors that MEGA or the MEGA chairperson would have to consider when reviewing an application for designation of a project as an urban development area project.**
-- **Allow MEGA or the MEGA chairperson to verify the completion of a component of a multiphase project.**
-- **Delete "certain soft costs", such as bank fees and legal expenses, from the definition of "eligible investment".**

The Act establishes criteria under which qualified taxpayers may claim credits against the MBT for eligible investment in brownfield property (property that is contaminated, functionally obsolete, or blighted). In order to claim a credit, a taxpayer must obtain approval of the project from MEGA, which issues a preapproval letter. Separate procedures for approval apply to projects costing $2.0 million or less, more than $2.0 million but less than $10.0 million, or more than $10 million. These provisions of the MBT Act are equivalent to provisions in Section 38g of the former Single Business Tax (SBT) Act, which was repealed on December 31, 2007.

Eligible Projects

A qualified taxpayer may claim a credit for a brownfield project if the taxpayer has unused credits or has a preapproval letter issued after December 31, 2007, and before January 1, 2013, or the taxpayer received a preapproval letter before January 1, 2008, under Section 38g of the SBT Act and has not received a certificate of completion before the taxpayer's last tax year, provided the project is completed within five years after the preapproval letter is issued.

Under the bill, if the project were a multiphase project, it would have to be completed within 10 years after the preapproval letter was issued.

("Qualified taxpayer" generally refers to a taxpayer that owns or leases eligible property (e.g., brownfield property) and is not responsible for response activity under Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act.)

Credit Amount

Currently, if all credits for a project total $1.0 million or less, the qualified taxpayer may claim a credit equal to 10% of the cost of the taxpayer's eligible investment paid or accrued on eligible property. If all credits for a project total more than $1.0 million but not more than $30.0 million, and the project is located in a qualified local governmental unit, the taxpayer may claim a credit equal to a percentage determined by MEGA, not to exceed 10% of the cost of the taxpayer's eligible investment paid or accrued on eligible property. Under the bill, these provisions would apply to projects approved before 2008.

For a project approved on or after January 1, 2008, for which the total of all credits was $1.0 million or less, the taxpayer could claim a credit up to 12.5% of the cost of the taxpayer's eligible investment on eligible property, or up to 15% if the project were designated as an urban development area project by the MEGA chairperson. As currently provided, the project could not exceed the amount stated in the preapproval letter.

For projects approved on or after January 1, 2008, if the total of all credits for a project were more than $1.0 million but less than $30.0 million, and the project were located in a qualified local governmental unit, the taxpayer could claim a percentage determined by MEGA not to exceed 15% of the costs of the taxpayer's eligible investment paid or accrued on eligible property. The credit could not exceed 12.5%, however, unless the project were designated as an urban development area project by MEGA.

The bill would define "urban development area project" as a project located on eligible property in the downtown or traditional central business district of a qualified local governmental unit or along a historic commercial corridor of a qualified local governmental unit as determined by MEGA or the MEGA chairperson or his or her designee.

("Qualified local governmental unit" means that term as defined in the Obsolete Property Rehabilitation Act (MCL 125.2782). The requirement in the MBT Act and the bill that a project be in a qualified local governmental unit is subject to an exception for a limited number of projects costing more than $10.0 million, as described below.)

In addition, the Act requires MEGA to develop and implement the use of an application form to be used for projects costing less than $2.0 million. Before substantially changing the form, MEGA must adopt the changes by resolution and comply with requirements for notice, publication, a public hearing. The bill would delete these requirements for changing the form.

Total Amount of Approved Credits

Under the Act, for projects costing less than $2.0 million, the total of all credits approved may not exceed $10.0 million in any calendar year. If MEGA approves a total of all credits for all such projects of less than $10.0 million in a year, it may carry forward for one year only the difference between $10.0 million and the total of credits approved in the preceding year.

For projects costing more than $2.0 million but not more than $10.0 million, MEGA may approve total credits of $30.0 million in any calendar year. If MEGA approves a total of all credits for all such projects of less than $30.0 million in a year, it may carry forward for one year only the difference between $30.0 million and the total of credits approved in the preceding year.

The bill would delete these provisions, and would set a calendar-year limit of $40.0 million on the total of all credits for all approved projects costing less than $2.0

million plus all projects costing more than $2.0 million but not more than $10.0 million. If MEGA approved a total of all credits for all of these projects of less than $40.0 million in a calendar year, it could carry forward for one year only the difference between $40.0 million and the total approved in the preceding year.

Projects Costing over $10.0 Million

The Act authorizes MEGA each year to approve up to 17 projects that will cost more than $10.0 million and be located in a qualified local governmental unit, subject to the following:

-- The total amount of credits for each project may be more than $10.0 million but not more than $30.0 million for up to two projects.
-- Up to three of the 17 projects need not be in a qualified local governmental unit if the property is a facility for which eligible activities are identified in a brownfield plan or, for one of the three, the property is not a facility but is functionally obsolete or blighted.
-- One of the projects allowed under the first provision also may qualify under the second provision.

The bill would increase the total number of projects that may be approved under these provisions from 17 to 20. Only one of these projects, rather than two, could be approved for credits totaling more than $10.0 million but not more than $30.0 million. That single project also could qualify under the provision allowing up to three projects not in a qualified local governmental unit (a limit that the bill would not change).

Multiphase Projects

The Act allows a project to be a multiphase project, which is a project that has more than one component, each of which can be completed separately. A multiphase project may not be divided into more than 20 components. The bill would reduce that limit to 10.

Under the Act, when each component is completed, the taxpayer must submit to MEGA or its designee documentation that the component is completed, an accounting of its cost, and the eligible investment for the component, and a component completion certificate must be issued to the taxpayer when the completion is verified. A component is considered to be completed when a certificate of occupancy has been issued by the local municipality in which the project is located for all of the buildings or facilities that comprise the completed component and a completion certificate is issued.

Under the bill, a project also would be considered to be completed when the MEGA chairperson or his or her designee, for projects costing less than $2.0 million and projects costing more than $2.0 million but not more than $10.0 million, or the Authority, for projects costing more than $10 million, verified that the component was complete.

Urban Redevelopment Area Project

The bill would require MEGA, for projects costing more than $10.0 million, or the chairperson of MEGA or his or her designee, for projects costing less than $2.0 million and projects costing more than $2.0 million but not more than $10.0 million, when reviewing an application for a project for designation as an urban development area project, to consider whether the project would do the following:

-- Increase the density of the area by promoting multistory development.
-- Promote mixed-use development and walkable communities.
-- Promote sustainable redevelopment.
-- Address area-wide redevelopment and include multiple parcels of property.

The Authority or its chairperson or his or her designee also would have to consider any of the criteria determined by MEGA or the chairperson.

Credit Carry-Forward or Refund

Currently, if the brownfield credit allowed for a tax year and any unused carryforward of the credit exceed the qualified taxpayer's or assignee's MBT liability for the tax year, the excess may not be refunded but may be carried forward to offset tax liability for up to 10 subsequent tax years or until used up, whichever occurs first.

Under the bill, beginning on January 1, 2008, if the credit allowed for a tax year exceeded the taxpayer's MBT liability for the tax year, the taxpayer could elect to have the excess refunded at a rate equal to 75% of the excess portion of the credit, and forego the remaining 25% of the credit and any carryforward.

Credit Assignment

A taxpayer may assign all or part of a credit under the MBT Act for projects for which a certificate of completion is issued before January 1, 2006. A taxpayer also may assign all or part of a credit for projects approved under Section 38g of the former SBT Act, for which a certificate of completion is issued on and after January 1, 2006; the bill would extend this provision to projects approved under the MBT Act.

Currently, an assignment of a credit allowed under the SBT Act may not be made after 10 years following the first tax year in which that credit may be claimed. The bill would delete this provision.

The MBT Act requires a credit assignment or subsequent reassignment to be made on a form prescribed by MEGA. The bill would retain this provision but delete a requirement that the qualified taxpayer send a copy of the completed form to MEGA in the tax year for which the assignment or reassignment is made. Under the bill, MEGA or its designee would have to review and issue a completed assignment or reassignment certificate to the assignee or reassignee.

Eligible Investment

The bill would amend the definition of "eligible investment" to exclude "certain soft costs" as determined by MEGA, for projects approved after January 1, 2008. These soft costs would include developer fees, appraisals, performance bonds, closing costs, bank fees, loan fees, risk contingencies, financing costs, permanent or construction period interest, legal expenses, leasing or sales commissions, marketing costs, professional fees, shared savings, taxes, title insurance, bank inspection fees, insurance, and project management fees.

Agreements under SBT Act

The MBT Act allows MEGA to certify a credit under that Act based on an agreement entered into before January 1, 2008, pursuant to Section 38g of the former SBT Act. The number of years for which the credit may be claimed under the MBT Act must equal the maximum number of years designated in the agreement reduced by the number of years for which a credit had been claimed or could have been claimed under Section 38g.

The bill would delete these provisions.

MCL 208.1437

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would reduce State General Fund revenue by an unknown amount, depending on the nature of the taxpayers' activities and the credits approved. The bill would change the allocation of credits across projects, as well as the projects that could be eligible to receive credits. The changes would make it more likely that amounts authorized to be distributed in credits would be distributed and claimed. Furthermore, the provisions allowing credits to be refunded would change the timing and the total amount of credits that might be claimed. The refund changes could potentially increase future revenue but decrease short-term revenue by an unknown amount.

Fiscal Analyst: David Zin