Legislative Analysis

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"GOOD JOBS FOR MICHIGAN" PROGRAM

Senate Bill 242 (reported from House committee with amendments)
Public Act 109 of 2017
Sponsor: Sen. Jim Stamas

Senate Bill 243 (reported from House committee w/o amendments)
Public Act 110 of 2017
Sponsor: Sen. Wayne Schmidt

Senate Bill 244 (reported from House committee w/o amendments)
Public Act 111 of 2017
Sponsor: Sen. Steven Bieda

House Committee: Tax Policy
Senate Committee: Economic Development and International Investment
Complete to 10-9-17

BRIEF SUMMARY:

Senate Bills 242–244 would create the **"Good Jobs for Michigan Program"** within the Michigan Strategic Fund (MSF) and create a related fund within the Department of Treasury (Treasury). Key elements of this proposal, most of which are found in Senate Bill 242, include:

- Authorized businesses would be able to "capture" state income taxes withheld from certified new employees, subject to approval by the Michigan Strategic Fund, as an incentive to create new jobs in Michigan "and address the competitive disadvantages with sites outside this state." This would apply both to businesses already operating in Michigan and those newly locating in the state. A business location or expansion project would require a resolution of approval from the local governing body.

- A business could enter into a withholding tax capture agreement only if it proposed one or more of the following:

  - ✓ Creating **3,000** or more certified new jobs in Michigan, with an average annual wage that is equal to or greater than the prosperity region average wage. These firms could capture up to **100%** of withholding tax captures for up to **ten years**.

  - ✓ Creating **500** or more certified new jobs in Michigan, with an average annual wage that is equal to or greater than the prosperity region average

wage. These firms could capture up to **50%** of withholding tax capture revenues for up to **five years**.

✓ Creating **250** or more certified new jobs in Michigan, with an average annual wage that is equal to 125% or more of the prosperity region average wage. These firms could capture up to **100%** of withholding tax captures for up to **ten years**.

[To implement this, the Program would use 10 "prosperity regions" identified by the Department of Technology, Management and Budget (DTMB). The "prosperity region average wage" is the average annual wage for the prosperity region where a facility is located based on the most recent data made available by the Michigan Bureau of Labor Market Information and Strategic Initiatives.][1]

- The MSF could enter into no more than **15** such agreements each year and could not disburse more than **$200 million** in total withholding tax capture revenues over the life of the program. No new agreements could be entered into after **December 31, 2019**.

- The "capture" would occur by the Department of Treasury directing income tax revenue each fiscal year to the Good Jobs for Michigan Fund in an amount equal to that portion of the withholding tax capture revenues attributable to certified new jobs; then those amounts would be paid from the Fund, based on written agreements, to authorized businesses in the Program. The Treasury would disburse the amounts upon receipt of a withholdings certificate from the Fund and upon the request for payment by an authorized business.

- Tax capture would begin and the capture duration measured <u>from the date the authorized business creates the certified new jobs</u> as provided in the written agreement. To enter such an agreement with a business, the Fund must determine that the business will create the requisite number of jobs <u>within five years after entering the agreement</u>.

- Professional sports stadiums, casinos, retail businesses, and those portions of eligible businesses used exclusively for retail sales would <u>not</u> be eligible to participate.

<u>Senate Bill 242</u> would amend the Michigan Strategic Fund Act, and **<u>Senate Bill 243 and Senate Bill 244</u>** would make complementary amendments to the Income Tax Act and Revenue Act, respectively.

The bills would take effect 30 days after being enacted into law.

[1] For Prosperity Regions, see: http://www.michigan.gov/documents/dmb/Prosperity_Map1_430346_7.pdf

FISCAL IMPACT:

To the extent that any new job created as a result of the bills would not have been otherwise created (an outcome which is technically impossible to determine), there would be no direct loss of income tax revenue, although the overall revenue via income tax withholding would be less than under current law. However, if some degree of job creation would have occurred in absence of the bills, then there will be a net loss of income tax revenue, the magnitude of which cannot be determined.

Because the total amount of the tax capture for all eligible employers is capped at $200 million, it sets an upper bound on the potential net revenue loss, although in all likelihood it will be significantly less.

Under current law, the School Aid Fund receives approximately 23.8% of gross income tax revenue, which includes withholding. Because the bills require that the impact of the withholding capture be fully absorbed by the General Fund, in the case of a 50% capture the General Fund would only receive about 26% of the withholding attributable to a new job. However, in the event of a 100% capture, the General Fund would be required to reimburse the School Aid Fund for the foregone revenue, which would actually reduce General Fund revenue.

The bills would increase administrative costs to the Department of Talent and Economic Development (DTED) and the Department of Treasury by an unknown amount. Under the provisions of the bill, DTED would be able to cover their administrative costs with the allowable capture of 5% of all withholding tax revenues dedicated to the Good Jobs for Michigan Fund. The bills include no direct appropriation to fund Treasury administrative costs.

THE APPARENT PROBLEM:

According to the bill's supporters, Michigan has made great strides in reforming and improving the state's business climate, including an update of the corporate tax structure and a phase-out of the tax on manufacturing personal property. The state has also focused economic development efforts on attracting and growing small and medium-sized companies through cash incentives and related business development programs. While these reforms and efforts have helped to reduce Michigan's unemployment rate and increased incomes, business promoters say that more needs to be done to attract businesses to the state and create jobs for Michigan residents. Specifically, the state currently lacks a tool to attract and compete for large-scale business expansions and locations in Michigan. Numerous economic development professionals speak to the need for a "closer," a set of incentives that can be used to bring these large-scale projects to Michigan, and one that will "level the playing field" when Michigan competes with other states for business locations and expansions.

DETAILED SUMMARY OF THE BILLS:

Following is a detailed description of the "Good Jobs for Michigan" legislation, most of which is contained in Senate Bill 242, which would create a new Chapter 8D in the Michigan Strategic Fund Act.

Program Management and Process

The Michigan Strategic Fund would be required to develop and use an application, approval, and compliance process published and available online to allow eligible businesses to participate in the Program. The Department of Treasury would be required to create and direct the Good Jobs for Michigan Fund (Fund). The State Treasurer would be required to receive money and assets from any source for deposit into the Fund, direct the investment of the fund, and credit all amounts deposited pursuant to the Program. Money in the Fund would remain in the Fund at the close of a fiscal year. The Fund would only be used to make payments in accordance with written agreements in the Program, and to distribute 5% of payments to the MSF for administrative expenses.

Eligible Businesses

An eligible business could apply to MSF to enter into a written agreement to authorize the payment of **withholding tax capture revenues**.

- "Eligible business" is defined as one or more of the following:
    - A business that proposes to create a minimum of **3,000 certified new jobs** in Michigan with an average annual wage that is **equal to or greater than the prosperity region average wage**
    - A business that proposes to create a minimum of **500 certified new jobs** in Michigan with an average annual wage that is **equal to or greater than the prosperity region average wage**
    - A business that proposes to create a minimum of **250 certified new jobs** in Michigan with an average annual wage that is **equal to 125% or more of the prosperity region average wage**

- "Certified new job" is defined as a full-time job created by an authorized business at a facility in Michigan that is in excess of the number of full-time jobs that authorized business maintained in Michigan prior to the expansion or location and the number of full-time jobs that the authorized business acquired through a merger or acquisition that were located in Michigan prior to the expansion or location, as determined by MSF.

  In the case of an authorized business proposing to create at least **3,000 certified new jobs**, the number of certified new jobs may include those new jobs created by the primary supplier of that authorized business as a result of the new or increased business activity with that authorized business, as determined by MSF. The authorized business, primary supplier, and MSF would have to include this arrangement in a written agreement.
    - "Primary supplier" is defined as an entity that creates at least 25 new jobs in Michigan and that provides both to an authorized business:

    - A minimum of $5 million in tangible personal property annually, as determined by MSF.
    - A minimum of 10% of the tangible personal property used by the authorized business annually, as determined by MSF.

- "Facility" is defined as a site or sites within Michigan in which an authorized business creates certified new jobs.
- "Full-time job" is defined as a full-time job as determined by the MSF, performed by an individual whose income and social security taxes are withheld by an authorized business, an employee leasing company, or a professional employer organization on behalf of the authorized business.
- "Prosperity Region Average Wage" is defined as the average annual wage for the prosperity region (identified by the Department of Technology, Management, and Budget) where the facility is located, based on the most recent data from the Michigan Bureau of Labor Market Information and Strategic Initiatives.
- "Withholding tax capture revenues" is defined as the amount of income tax withheld under the Income Tax Act each calendar year that is attributable to individuals employed within certified new jobs. The State Treasurer would be required to develop methods and processes that are necessary for each authorized business to report the amount of withholding from individuals employed in certified new jobs.
- Eligible businesses <u>do not include</u> retail establishments, professional sports stadiums, casinos, or the portion of an eligible business used exclusively for retail sales.

<u>MSF Determination</u>

MSF could request information, in addition to the application, as needed to permit the MSF to operate the Program. After receiving an application, MSF could enter into an agreement with an eligible business for withholding tax capture revenues, <u>if MSF determines **all**</u> of the following are met:

1. The eligible business proposes to create and maintain the required jobs and wages under the **"eligible business"** definition.
2. The eligible business, if already located in Michigan, agrees to maintain a number of full-time jobs equal to or greater than the number it maintained prior to the expansion, as determined by MSF.
3. The plans for expansion or location are economically sound.
4. The expansion or location of the eligible business will benefit the people of Michigan by increasing opportunities for employment and by strengthening the state economy.
5. The withholding tax capture revenues authorized by the Program is an incentive to expand or locate the eligible business in Michigan and address the competitive disadvantages with sites outside of Michigan.
6. An industry-recognized regional economic model cost-benefit analysis reveals that the payment of withholding tax capture revenues to an eligible business will result in an overall positive fiscal impact to the state.

7. The eligible business will create the requisite number of certified new jobs within five years after entering into the written agreement, as determined by MSF.
8. The eligible business will maintain the number of certified new jobs throughout the time period that the authorized business receives withholding tax capture revenues. However, if the business fails to maintain the adequate number of certified new jobs as provided in the written agreement, the business will forfeit the withholding tax capture revenues for that calendar year.
9. The local governing body has approved the project by resolution.

<u>**Capture Duration and Amount**</u>
If MSF determines that the above nine items are satisfied, MSF would be required to determine the amount and duration of withholding tax capture revenue, and enter into a written agreement with the eligible business. In determining the maximum amount and maximum duration of the tax capture, MSF would be required to consider **all** of following factors, if applicable:

1. The number of certified new jobs to be created.
2. The degree to which the average annual wage of the new jobs exceeds the prosperity region average wage.
3. Whether there is a disadvantage to the eligible business if it were to expand or locate in Michigan versus another state.
4. The potential impact of the expansion or location on the Michigan economy;
5. The estimated cost of reimbursement of tax capture revenues; the staff, financial, or economic assistance provided by the municipality, or local economic development corporation or similar entity; and the value of assistance otherwise provided by the state.
6. Whether the expansion or location will occur in Michigan without the payment of withholding tax capture revenue offered by the Program.
7. Whether the eligible business has made a written commitment to fund some portion of costs for applicable training for the individuals that will perform the full-time jobs that leads to a certification for these individuals.
8. That the eligible business will make a good-faith effort to employ, if qualified, Michigan residents at the facility.

<u>**Maximum captures and durations would be limited by the following**</u>:

- For eligible businesses that pay an annual average wage that is <u>equal to or more than</u> the prosperity region average wage, maximum duration of capture is **five years** and maximum payment of capture is **50% of withholding tax capture revenues** for projects creating at least 500 new jobs, or a maximum duration of **ten years** and maximum payment capture of **100% of withholding tax capture revenues** for projects creating at least 3,000 new jobs**.**
- For eligible businesses that pay an annual average wage that is <u>equal to 125% or more</u> of the prosperity region average wage, maximum duration of capture is **ten years** and maximum payment of capture is **100% of withholding tax capture revenues.**

Tax capture duration would be measured from the date the authorized business creates the certified new jobs as provided in the written agreement. The amount of withholding tax capture revenues certified to be paid to an authorized business would be reduced by 5%, to be retained by MSF for administrative expenses of the Program.

Written Agreement

An eligible business and the MSF would be required to enter into a written agreement that includes, but is not limited to, the following:

1. A description of the business expansion or location that is the subject of the agreement.
2. Conditions upon which the authorized business designation is made;
3. A statement from the eligible business that the business would not have added certified new jobs without the withholding tax capture revenue payments authorized by the Program.
4. An estimate of the withholding tax capture revenues expected to be generated for each calendar year of the duration of the agreement.
5. A statement from the eligible business that a violation of the written agreement may result in the revocation of the designation as an authorized business, the loss or reduction of future withholding tax capture revenue payments, or a repayment of tax capture revenues received pursuant to the Program.
6. A statement by the eligible business that a misrepresentation in the application may result in the revocation of the designation as an authorized business and the repayment of withholding tax capture revenues received under the Program plus a penalty equal to 10% of the withholding tax capture revenue payments received.
7. A method for measuring and verifying full-time jobs before and after an expansion or location of an authorized business in Michigan.
8. A provision that the authorized business that is certified for the Program shall file the required returns and reports under the Program and the Income Tax Act (proposed in SB 243) with Treasury, and shall provide any other information reasonably requested by MSF or Treasury.
9. A maximum amount of withholding tax capture revenues that the authorized business may claim before reduction of the 5% payment for administrative expenses.

Upon execution of a written agreement, an "eligible business" would be an "authorized business." MSF would be required to provide a copy of each written agreement to Treasury. Upon execution of the agreement, the transfer and payment of withholding tax capture revenues as specified in the Program and in the written agreement would be binding. The State Treasurer would calculate, based on the written agreements received, the amount of withholding tax capture revenues collected as a result of the Program for each calendar year, and the percentage of that amount that needs to be transferred from the General Fund and deposited into the Good Jobs for Michigan Fund, where the Fund would issue payments to authorized businesses.

Limits

MSF could not execute more than **15** new written agreements each calendar year for authorized businesses. MSF could not commit, and Treasury could not disburse, more than **$200 million** in total withholding tax capture revenues under the Program (including the 5% payment for administrative expenses). "Total withholding tax capture revenues" is defined as the aggregate amount of withholding tax capture revenues that may be distributed to authorized businesses under all written agreements.

If MSF approved fewer than **15** in a calendar year, the unused approval authority would carry forward into future calendar years and be in addition to the 15-plan annual limit.

Withholdings Certificate

Subject to the annual written agreement limit and total monetary limit, an authorized business would be eligible to receive withholding tax capture revenue payments. MSF would be required to issue a withholding certificate each calendar year to an authorized business that states the following:

- That the eligible business is an authorized business;
- The amount of withholding tax capture revenues to be paid from the Fund for the designated calendar year; and
- The authorized business's federal employer identification number, or the Michigan Treasury number.

MSF would be required to provide a copy of each withholding certificate to Treasury. Upon receipt of a certificate, an authorized business could request a payment from the Fund by filing a copy of the certificate with the Fund. The Fund would be required to issue payment within 90 days of the receipt of the request from the authorized business.

Penalties

If an authorized business failed to satisfy and maintain the minimum number of certified new jobs as required, the authorized business would forfeit its withholding tax capture revenue for the calendar year in which the authorized business failed to comply with the requirement. Further,

- Forfeiture of tax capture revenue would not extend the duration of the original agreement; and
- If the duration of a written agreement had not expired, an authorized business could satisfy the requirements in a subsequent year, and would be entitled to a certification for withholding tax capture revenue payments in those subsequent years.

Miscellaneous

- In the event of a merger, reorganization, or other change of ownership of an authorized business for which reimbursement will continue, MSF approval would be required prior to the transfer of the written agreement.
- As a condition of being an authorized business, the business would authorize MSF to disclose the name of the business, and the amount and duration of tax capture. The MSF would publish this information online, and in the report described below.

Finally, SB 242 would add reporting requirements to an annual report the MSF currently must send to each member of the Legislature, Governor, the Clerk of House of Representatives, the Secretary of the Senate, and the Senate and House Fiscal Agencies. The following additional information would have to be added related to all written agreements in the Good Jobs for Michigan Program:

- The name of authorized the business
- The number of certified new jobs required to be maintained
- The amount and duration of the withholding tax capture revenue

RELATED BILLS

Senate Bill 243 would amend the Income Tax Act to direct income tax revenue each fiscal year, to the Good Jobs for Michigan Fund in an amount equal to that portion of the withholding tax capture revenues attributable to certified new jobs and due to be paid to an authorized business under a written agreement in the Program.

Further, the bill would require an employer that has entered into a written agreement as part of the Program, for as long as the written agreement remains in effect, to delineate in the tax return or report required, the portion of those taxes withheld and paid to the state that are attributable to certified new jobs.

Senate Bill 244 would amend the Revenue Act to allow a person to disclose the information required in the annual MSF report for programs with new written agreements entered into after the effective date of the bills for programs operated under the MSF Act.

HOUSE COMMITTEE ACTION:

The House Tax Policy Committee adopted a series of 11 amendments to Senate Bill 242 on 6-20-17. The amendments are reflected in the above summary.

DISCUSSION & ARGUMENTS:

Supporters of the legislation say:

- Nothing is more important to the state, and to Michigan residents, than the creation of meaningful, stable, good-paying jobs. The state should be doing everything it can to promote job creation, and this bill package provides the state with another "tool in the toolbox" to attract projects that will bring hundreds of good jobs. This legislation seeks to support Michigan workers and families, and improve communities across the state.

- The legislation builds the highest level of accountability and transparency into the program. Business will only begin to receive payments when new jobs have been created, and the amount and duration of payment is limited in statute. The jobs have an average wage requirement tied to the location in the state and must be retained in order to continue the incentive; with these safeguards, the jobs created will be stable, good-paying jobs. With an overall monetary cap, this is not a program that will turn into a massive fiscal burden to the state, or pay for jobs to remain in the state; it is carefully crafted legislation to target specific companies to locate or expand in Michigan.

- Business incentives are vital to practitioners in the field, who work every day to bring jobs and opportunities to communities across Michigan. When economic development professionals attend conferences, make presentations, and initiate business contacts, it is imperative that they have a robust set of economic development incentives to present. In many cases, when other business location factors are equal—access to talent, quality of infrastructure, and general quality of life—the incentive *is* the factor that sways the final location decision. Michigan needs a larger incentive tool to sway those location decisions.

- Incentives have become embedded in the market and economic development landscape; they are ubiquitous and imperative. States aggressively compete with one another on the incentive packages they offer, and companies actively "shop" their location decisions to the highest bidder. Offering a competitive incentive package is simply the ticket required to play the game, and Michigan does not currently offer a strong enough package. Reportedly, Michigan is only one of two states that offers no tax credit incentive. This policy simply allows Michigan to fairly compete with other states.

- The state, as well as local units, counties, and schools will benefit from the spillover effects of increased economic activity. More people working and spending money means more sales tax revenue for schools and revenue sharing; more facilities located in Michigan means higher property tax revenues for local units. Additionally, with more businesses and facilities located in Michigan, industries like construction and business services will see increased growth. Even if a community does not land a new business as a part of the program, it may benefit from these "multiplier" effects.

Critics of the legislation say:

- A business incentive program like that proposed in the bill is a re-introduction of a failed policy of the past. Michigan has tried tax credits for businesses—the Michigan Economic Growth Authority and "MEGA credits"—and it has damaged the state budget, with little or no apparent benefit. Taxpayers are still paying refundable business tax credits under the Michigan Business Tax that will cost the state over $600 million annually for years to come. Any scheme in which taxpayer money is diverted to certain selected businesses is bad for the state budget and taxpayers.

- Since 2010, Michigan has worked hard to improve its business climate by reducing or eliminating taxes, reducing regulations, while at the same time eliminating most targeted incentive and tax credit programs. The state has enjoyed an economic recovery with these policies. By re-introducing these targeted tax credits, the program undermines those achievements and reduces the state's ability to produce an overall, competitive business climate. Michigan can foster superior and sustainable growth, as it is already proving, if it concentrates on improving its overall business climate, not by re-introducing arbitrary subsidies.

- With a cap on annual agreements and a limitation on the types of businesses that can apply, the program once again puts both elected and unelected officials in the position of "picking winners and losers." This will lead to favoritism for certain companies that have specific businesses, or to those companies that are connected politically. Companies that aren't large enough, or that don't conform to the industry requirements will see no benefit from this policy. Additionally, attracting out-of-state business may actually harm existing companies in Michigan. The state may be subsidizing the competitors of existing businesses, which could have serious negative impacts on employment and revenue for those existing companies and the communities in which they operate. This policy puts the benefits of a few above the costs of many.

- Numerous academic studies, including a recent study by an independent research institute in Michigan, have called into question the supposed benefits of business incentives. Many times the studies find small effects of these incentives on state business output, and research suggests that the incentives actually sway business location decisions in very rare instances. In that sense, these incentives are costly and not effective. Other broad-based policy options, or even a more generalized incentive program, might generate a larger impact on job creation and employment.

- The continuous introduction of ever more generous business incentive legislation, especially when in response to a policy change in a bordering state, only leads to a "race to the bottom" among states. States will constantly be competing for businesses with tax credits, cash, and free land that at some point, they will have nothing left to give. There is no guarantee that with this new incentive, Michigan will win the business location battles with Wisconsin, Ohio, or Indiana; and no guarantee that Michigan won't simply need a new and different incentive policy next year. Where is the end for incentive legislation? How much is enough?

POSITIONS:

Below is a partial list of those who indicated support for or opposition to the bills. For a, see the Tax Policy Committee Minutes (6-14-17):
http://house.mi.gov/SessionDocs/2017-2018/Minutes/TAXP061417.pdf

The following **testified in support** of the bills or provided written support:

Michigan Manufacturers Association
Business Leaders for Michigan
Detroit Regional Chamber of Commerce
Right Place
City of Walker
Upper Peninsula Economic Development Alliance
City of Tecumseh
Michigan Building and Construction Trades Council

Great Lakes Bay Regional Alliance
Lansing Economic Area Partnership
Independence Township
Oakland County
Southwest Michigan First
Michigan Bankers Association
Also indicating support was the IBEW Michigan State Conference.

The following **testified in opposition** to the bills or provided written opposition:

Our America Initiative
Michigan Freedom Fund
Americans for Prosperity
Mackinac Center
National Federation of Independent Business
Also indicating opposition were the Michigan League for Public Policy and AFSCME.

Legislative Analyst: Patrick Morris
Chris Couch
Fiscal Analyst: Ben Gielczyk
Jim Stansell

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.