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BILL ANALYSIS

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Senate Bills 242, 243, and 244 (as introduced 3-15-17)
Sponsor: Senator Jim Stamas (S.B. 242)
Senator Wayne Schmidt (S.B. 243)
Senator Steven Bieda (S.B. 244)
Committee: Economic Development and International Investment

Date Completed: 3-20-17

CONTENT

Senate Bill 242 would add Chapter 8D to the Michigan Strategic Fund Act to do the following:

-- Require the Michigan Strategic Fund (MSF) to create and operate the Good Jobs for Michigan Program, to authorize the transfer of dedicated portions of withholding tax capture revenue to authorized businesses that provided certified new jobs in the State.
-- Create the "Good Jobs for Michigan Fund" and require money in the Fund to be used for distributions to authorized businesses and MSF administrative expenses.
-- Allow an eligible business to apply to the MSF to enter into a written agreement that authorized the payment of withholding tax capture revenue to the business.
-- Prescribe criteria for an agreement between an eligible business and the MSF, including a minimum number of certified new jobs the business would create and maintain at a facility in the State.
-- Provide that an eligible business would be an authorized business, and the payment of withholding tax capture revenue would be binding on the State, when an agreement was executed.
-- Provide that the maximum duration of withholding capture tax revenue would be five or 10 years, and the maximum amount would be 50% or 100%, depending on the average annual wage of the certified new jobs.
-- Require the MSF to determine the duration and amount of the withholding tax capture revenue by comparing the average annual wage paid by an eligible business with the prosperity region average wage.
-- Specify the provisions to be included in an agreement between an eligible employer and the MSF for withholding tax capture revenue payments.
-- Require the State Treasurer to calculate the amount of withholding tax capture revenue collected as a result of certified new jobs and the percentage of that amount to be deposited into the Good Jobs for Michigan Fund for payments.
-- Prohibit the MSF and the Department of Treasury from executing more than 15 new written agreements each year for authorized businesses, and from committing more than $250.0 million in total withholding tax capture revenues.
-- Require the MSF to issue a certificate to an authorized business each year.
-- Specify that if an authorized business failed to satisfy and maintain the minimum number of certified new jobs, or any other condition required under Chapter 8D or the written agreement, the authorized business would forfeit its payment for that calendar year.

The bill also would amend Section 9 of the Act to require the MSF's annual report to the Legislature to include certain information pertaining to written agreements executed under the Good Jobs for Michigan Program.

<u>Senate Bill 243</u> would amend the Income Tax Act to do the following:

- **-- Require an amount of income tax revenue equal to the portion of withholding tax capture revenue attributable to certified new jobs to be deposited into the Good Jobs for Michigan Fund for payment to an authorized business participating in the Good Jobs for Michigan Program.**
- **-- Require the employer to delineate in its tax return or report the portion of taxes withheld and paid to the State that were attributable to certified new jobs.**

<u>Senate Bill 244</u> would amend the revenue Act to allow a person to disclose the information required for a report under Section 9 of the Michigan Strategic Fund Act for programs with new written agreements entered into after the bill's effective date, for programs operated under the MSF Act.

Each bill would take effect 180 days after its enactment.

<u>Senate Bill 242</u>

<u>Definitions</u>

"Authorized business" would mean an eligible business that has met the requirements of Chapter 8D and with which the Fund has entered into a written agreement for withholding tax capture revenue under Chapter 8D and Section 51f of the Income Tax Act (which Senate Bill 243 would add).

"Certified new job" would mean a full-time job created by an authorized business at a facility in the State that is in excess of the number of full-time jobs that authorized business maintained in the State before the expansion or location, as determined by the Fund.

"Eligible business" would mean a business that proposes to create a minimum of 500 certified new jobs in the State with an average annual wage that is equal to or greater than the prosperity region average wage or, if the business proposes to pay an average annual wage that is equal to 125% or more of the prosperity region average wage, 250 certified new jobs. The term would not include retail establishments, professional sports stadiums, casinos, or that portion of an eligible business used exclusively for retail sales.

"Facility" would mean a site or sites in the State in which an authorized business creates certified new jobs.

"Full-time job" would mean a full-time job as determined by the Fund performed by an individual whose income and Social Security taxes are withheld by one or more of the following: a) an authorized business, b) an employee leasing company, or c) a professional employer organization on behalf of the authorized business.

"Prosperity region" would mean each of the 10 prosperity regions identified by the Department of Technology, Management, and Budget on the bill's effective date.

"Prosperity region average wage" would mean the average annual wage for the prosperity region where the facility is located based on the most recent data made available by the Michigan Bureau of Labor Market Information and Strategic Initiatives.

"Withholding tax capture revenues" would be defined as the amount for each calendar year by which the income tax withheld under Part 3 of the Income Tax Act from individuals employed within certified new jobs exceeds the initial withholding tax value (the amount of income tax withheld from individuals employed by the authorized business for the calendar year in which a written agreement was entered). To calculate withholding tax capture revenue for a calendar year, the State Treasurer would have to develop the methods and processes necessary to report the amount of withholding under Part 3 of the Income Tax Act from individuals employed within certified new jobs.

Good Jobs for Michigan Program & Fund

The MSF would have to create and operate the Good Jobs for Michigan Program to authorize the transfer of the dedicated portion of withholding tax capture revenue to authorized businesses that provided certified new jobs in the State. The MSF would have to develop and use a detailed application, approval, and compliance process published and available on its website.

The Good Jobs for Michigan Fund would be created within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, and would have to direct the investment of the Fund. The State Treasurer would have to credit all amounts deposited under Section 51f of the Income Tax Act to the Fund and any interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund.

The Fund could be used for only one or more of the following purposes: a) to make withholding tax capture revenue payments under a written agreement to an authorized business within 90 days of receiving a request for payment and a copy of a withholding certificate; or b) to distribute an amount equal to 5% of the withholding tax capture revenue payments to the MSF to pay for administrative expenses.

Application & Withholding Tax Capture Revenue

An eligible business could apply to the MSF to enter into a written agreement that authorized the payment of withholding tax capture revenue.

The MSF could request information, in addition to that contained in an application, as needed to permit it to discharge its responsibilities under Chapter 8D.

After receiving an application, the MSF could enter into an agreement with an eligible business for withholding tax capture revenue if the MSF determined that all of the following were met:

-- The eligible business proposed to create and maintain a minimum of 500 certified new jobs at a facility in the State with an average annual wage that was equal to or greater than the prosperity region average wage or, if the business proposed to pay an average annual wage that was equal to 125% or more of the prosperity region average wage, 250 certified new jobs.
-- The eligible business, if already located within the State, agreed to maintain a number of full-time jobs equal to or greater than the number of full-time jobs it maintained in the State before the expansion, as determined by the MSF, in addition to the certified new jobs.
-- The plans for the expansion or location were economically sound.
-- The expansion or location of the eligible business would benefit Michigan residents by increasing opportunities for employment and by strengthening the Michigan economy.
-- The withholding tax capture revenue offered was an incentive to expand or locate the eligible business in the State and address the competitive disadvantages with sites outside the State.

-- An industry-recognized regional economic model cost/benefit analysis revealed that payment of withholding tax capture revenue to an eligible business would result in an overall positive fiscal impact on the State.
-- The eligible business would create the certified new jobs within five years of entering into the written agreement as determined by the MSF.
-- The eligible business would maintain the number of certified new jobs throughout the period of time that the business received withholding tax capture revenue payments.

The eligible business also would have to receive a letter of support for the expansion or new location from the chief executive official, or his or her designee, of the municipality with jurisdiction over the location of the facility. A regional development agency promoting economic development in the region where the facility was located could be appointed as the designee.

If the Fund determined that the requirements described above had been met, it would have to determine the amount and duration of the withholding tax capture revenue to be authorized and enter into a written agreement. The duration of the withholding tax capture revenue could not exceed five or 10 years, whichever was applicable based on the average annual wage of the certified new jobs, from the date the authorized business created the new jobs.

In determining the maximum amount and duration of the withholding tax capture revenue authorized, the MSF would have to consider the following factors:

-- The number of certified new jobs to be created.
-- The degree to which the average annual wage of the certified new jobs exceeded the prosperity region average wage.
-- Whether there would be a disadvantage to the eligible business if it were to expand or locate in the State versus a site outside the State.
-- The potential impact of the expansion or location on the State's economy.
-- The estimated cost of the reimbursement of withholding tax capture revenue, 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.
-- Whether the expansion or location would occur in the State without the withholding tax capture revenue payment.

In determining the duration of the withholding tax capture revenue, the MSF would have to provide a duration of up five years for eligible businesses that paid an average annual wage that was equal to or greater than the prosperity region average wage, and up to 10 years for eligible businesses that paid an average annual wage that was equal to 125% or more of the prosperity region average wage. In determining the amount of the payments, the Fund could approve a maximum payment of 50% of the withholding tax capture revenue for an eligible business that paid an average annual wage that was equal to or more than the prosperity region average wage, and a payment of up to 100% of the withholding tax capture revenue for an eligible business that paid an average annual wage that was equal to 125% or more than the prosperity region average wage. The amounts certified to be paid to an authorized business would have to be reduced by 5%, which the Fund would have to retain and use for additional administrative expenses.

Written Agreement

A written agreement between an eligible business and the MSF would have to include at least all of the following:

-- A description of the business expansion or location that was the subject of the agreement.
-- Conditions upon which the authorized business designation was made.

-- A statement that the eligible business would not have added certified new jobs without the withholding tax capture revenue payments.
-- An estimate of the amount of withholding tax capture revenue expected to be generated for each calendar year of the written agreement.
-- A statement by the eligible business that a violation of the written agreement could 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 revenue received.
-- A statement by the eligible business that a misrepresentation in the application could result in the revocation of the designation as an authorized business and the repayment of withholding tax capture revenue received plus a penalty equal to 10% of the payments received.
-- A method for measuring and verifying full-time jobs before and after an expansion or location of an authorized business in the State.
-- A provision that the authorized business that is certified for a payment from the Good Jobs for Michigan Fund would have to file the returns and reports required under Chapter 8D of the MSF Act and Part 3 of the Income Tax Act with the Department of Treasury, and would have to provide any other information reasonably requested by the Fund or the Department.
-- A maximum amount of withholding tax capture revenue that the authorized business could claim before reduction of the 5% payment for administrative expenses.

Upon execution of a written agreement, an eligible business would be an authorized business, and the transfer and payment of withholding tax capture revenue as specified in Chapter 8D and in the agreement would be binding on the State.

The Fund would have to provide a copy of each written agreement to the Department of Treasury. The State Treasurer would have to calculate, based on the written agreement, the amount of withholding tax capture revenue collected as a result of the certified new jobs created under those written agreements for each calendar year and the percentage of that amount that would need to be transferred from the General Fund and deposited pursuant to Section 51f of the Income Tax Act into the Good Jobs for Michigan Fund, where the Fund would have to issue payments to the authorized business.

The MSF could not execute more than 15 new written agreements each calendar year for authorized businesses. The MSF could not commit, and the Department of Treasury could not disburse, more than $250.0 million in total withholding tax capture revenue, including the 5% payment for administrative expenses. If the Fund approved fewer than 15 agreements in a calendar year or if an authorized business forfeited any portion of the withholding tax capture revenue, and the amount committed or disbursed were less than $250.0 million, then the unused approval authority would carry forward into future calendar years. "Total withholding tax capture revenues" would mean the aggregate amount of withholding tax capture revenue that could be distributed to authorized businesses under all written agreements.

<u>Withholdings Certificate; Forfeiture</u>

Subject to the maximum number of new written agreements each calendar year for authorized businesses, an authorized business would be eligible for withholding tax capture revenue payments.

Each year, the MSF would have to issue to an authorized business a withholdings certificate that stated the following:

-- That the eligible business was an authorized business.
-- The amount of the withholding tax capture revenue to be paid for the designated calendar year.

-- The authorized business's Federal employer identification number or the Michigan Treasury number assigned to the business.

The MSF would have to give the Department of Treasury a copy of each withholdings certificate issued. Upon receiving a certificate, an authorized business could request a payment from the Good Jobs for Michigan Fund by filing a copy of the certificate with the MSF. The MSF would have to issue the withholding tax capture revenue payment from the Good Jobs for Michigan Fund within 90 days of receiving the request for payment.

If an authorized business subsequently failed to satisfy and maintain the minimum number of certified new jobs, or any other condition required under Chapter 8D or the written agreement, the authorized business would forfeit its payment for that calendar year. The forfeiture would not extend the duration of the original agreement. Accordingly, if the written agreement had not expired, an authorized business that satisfied all of the terms of the agreement after a forfeiture would be entitled to certification for withholding tax capture revenue payment for those subsequent calendar years.

Change of Ownership

In the event of a proposed reorganization, merger, or other change of ownership of the authorized business for which reimbursement would continue under a written agreement, the approval of the MSF would be required before the agreement was assigned or transferred.

MSF Annual Report

The MSF Act requires the Fund to send to each member of the Legislature, the Governor, the Clerk of the House of Representatives, the Secretary of the Senate, and the Senate and House Fiscal Agencies an annual report of its activities. The report must include certain information, including, for example, a list of entities that received financial assistance, the type of project or product being financed, and the amount and type of financial assistance. Under the bill, the report also would have to include at least the following information for all written agreements related to the Good Jobs for Michigan Program:

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

As a condition of being an authorized business, a business would have to authorize the MSF to identify it and disclose the amount and duration of the withholding tax capture revenue payments. The MSF would have to publish this information on its website, and include it in the annual report.

Senate Bill 243

Under Part 1 of the Income Tax Act, for receiving, earning, or otherwise acquiring income from any source, a tax is levied on the taxable of income of every person, except a corporation, at 4.25%. The collections from this tax must be credited to the State's General Fund. A percentage must be deposited in the State School Aid Fund, and distributions must be made to the Agricultural Preservation Fund and the Michigan Transportation Fund.

Under the bill, in addition to those distributions, from the revenue collected from the income tax under Part 1, an amount equal to the portion of the withholding tax capture revenue attributable to certified new jobs and due to be paid to an authorized business pursuant to a written agreement entered into under Chapter 8D of the Michigan Strategic Fund Act, would have to be deposited each State fiscal year into the Good Jobs for Michigan Fund (which Senate Bill 242 would create).

As used in the bill, "authorized business", "certified new job", "withholding tax capture revenues", and "written agreement" would mean those terms as defined in Senate Bill 242.

Under Part 3 of the Income Tax Act, every person required to deduct or withhold taxes must make a return or report as prescribed by the Department of Treasury. The bill would require an employer that had entered into an agreement under the Good Jobs for Michigan Program, for as long as the agreement was in effect, to delineate in its return or report the portion of those taxes withheld and paid to the State that were attributable to certified new jobs (as currently required for an employer that has entered into an agreement with a community college under the Michigan New Jobs Training Program).

Senate Bill 244

The revenue Act generally prohibits Department of Treasury officials from divulging facts or information obtained in connection with the administration of a tax. A violation is a felony punishable by a maximum fine of $5,000, imprisonment for up to five years, or both.

Under the bill, a person could disclose the information required for the annual report described in Section 9 of the Michigan Strategic Fund Act for programs with new written agreements entered into after the bill's effective date, for programs operated under that Act.

MCL 125.2009 et al. (S.B. 242)
206.711 et al. (S.B. 243)
205.28 (S.B. 244)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Revenue Impact

Relative to current law, the bills would reduce revenue to the State General Fund by an unknown amount that would depend on the number of agreements that the Michigan Strategic Fund entered into, the specific terms of those agreements, and the location of the activities covered by the agreements. However, the net impact of the bills on the General Fund is indeterminate and would depend on the tax capture rates approved under any agreements. While the bills would require the MSF to determine that an agreement would result in an "overall positive fiscal impact to the state", the bills would not require agreements to exhibit a net positive impact on the General Fund; thus, any net positive impact could include increased revenue to funds other than the General Fund. Without considering any overall net positive impact on State revenue, the bills would not limit the reduction in General Fund revenue in any given year but would provide a $250.0 million limit on the total reduction over the life of all agreements entered into under the bills.

The specific withholding capture under an agreement would depend on the average wage in the area covered by the agreement, as well as the wage for any certified new job. Statewide, private sector wages averaged $24.09 per hour in 2016, although that average varied from $18.57 per hour in Muskegon to $27.77 per hour in Ann Arbor. In the State's two largest metropolitan areas, the hourly wage averaged $26.10 in the Detroit-Warren-Dearborn area and $23.24 per hour in the Grand Rapids area. Using the statewide average, and assuming working 2,080 hours per year with an effective 3.25% withholding rate after accounting for personal exemptions, the minimum annual withholding subject to the bills would total $1,628 per employee. For firms required to provide at least 500 certified new jobs, the minimum withholding subject to the bills would total approximately $814,240 per year (or $4.1 million over the maximum five-year life of the agreement); while for firms required to provide at least 250 certified new jobs, the minimum withholding subject to the bills would total approximately $508,900 per year (or $5.1 million over the maximum 10-year life of the agreement). Assuming 15 new agreements per year, the impact of the bills would increase over time until the $250.0 million cap had been reached (suggesting the maximum of number of agreements would be 61).

To the extent that the certified new jobs represented actual new employment that would not have occurred absent the bills (and Senate Bill 242 would require that taxpayers entering into an agreement to state such a condition, and does not appear to allow agreements for "jobs retention"), the bills would likely result in a net positive fiscal impact on the State because the captured portion of withholding could not exceed 50% of the withholding from jobs covered by the agreements. However, the bills would result in a change in the way revenue would be split between funds. Under current law, a new job paying $55,000 (approximately 10% more than the statewide average wage) and subject to an effective 3.25% rate (after exemptions) will increase General Fund revenue by $1,362 and School Aid Fund revenue by $425. Under the bills, a new job covered by an agreement would generate $894 at the 50% capture rate, or $1,788 at the 100% capture rate, in revenue for the Good Jobs for Michigan Fund, to be paid to the taxpayer. However, revenue to the Good Jobs for Michigan Fund would be disbursed after distributions to the School Aid Fund and the Michigan Transportation Fund. As a result, the net impact would be a $425 gain to the School Aid Fund, but either a $468 gain or a $425 loss to the General Fund, depending on whether the wages were subject to capture at a 50% or 100% rate. Excluding most other secondary effects, presumably a portion of the $55,000 in income would be spent on items taxable under the sales tax. If 35% of the income were spent on items subject to the sales tax, it would increase sales tax revenue by $1,155, of which $847 would be directed to the School Aid Fund, $115 to constitutional revenue sharing to local units of government, and the remaining $193 to the General Fund. Accounting for such an increase in sales tax revenue, and combined with the impact on individual income tax revenue, the bills would increase School Aid Fund revenue by $1,272 but the impact on the General Fund would either be a $661 increase or a $232 loss, again depending on the capture rate (although the combined net increase in State revenue of would range from $1,040 to $1,933). In comparison, under current law, the General Fund would increase by $1,555 and the School Aid Fund would increase by $1,272 (a net increase of $2,827). This example serves to illustrate that the expected fiscal impact of the bills on the General Fund could be negative, even if the overall fiscal impact on the State were positive and the jobs were new jobs that would not exist absent the bills.

Senate Bill 242 would place several requirements on proposals covered by the agreements, but some of these requirements lack definitions or details. For example, plans for an expansion would have to be "economically sound", but that term is not defined in the bill. Similarly, the bill would require the use of an industry-recognized regional economic model cost-benefit analysis, but does not indicate who would be responsible for conducting the analysis (the taxpayer, the Michigan Strategic Fund, the Department of Treasury, a disinterested third party, etc.). Also, although a variety of additional assumptions are often required in order for such models to produce accurate results, the bill does not indicate what factors and assumptions should be included in the analysis.

Furthermore, the definition of the term "withholding tax capture revenues" appears to contain an error. Under the bill, the tax capture revenues represent the withholding from certified new jobs in excess of an initial withholding tax value. However, the definition of "initial withholding tax value" calculates the total based on total withholding paid by the business in the year in which the agreement is signed. Assuming the wages for the new jobs would be comparable to the business's existing jobs, unless a business essentially doubled employment, the withholding from the new employees would never exceed the withholding from the employees in the year the agreement was signed. If the definition were modified to simply compare total withholding paid by the business before and after the agreement, then the withholding tax capture revenues also would capture revenue from wage increases to existing employees.

Finally, while the bill would earmark revenue to the Good Jobs for Michigan Fund, any payments from the Fund to businesses participating in agreements would appear to be subject to appropriation.

Administration

The bills would result in the need for additional appropriations for the Department of Treasury and the Department of Talent and Economic Development. The Department of Treasury would incur additional administrative expenses due to administering the Good Jobs for Michigan Fund. Under the current methodology that Treasury uses to calculate administrative costs, the Department would spend at most $125,000 to administer the Fund, assuming it received the full $250.0 million in withholding tax capture revenue. The Department also would have similar one-time costs associated with creating the Fund, which would be minimal. Since the Department would not be guaranteed any of the 5% of the Fund allowed for administration, the Department of Treasury would need to bill the Department of Talent and Economic Development an administrative fee or cover those costs within current appropriations.

The Department of Talent and Economic Development, which houses the Michigan Strategic Fund, also would incur additional expense in order to develop and administer the application, approval, and compliance process. Senate Bill 242 would allow up 5% of the proposed Fundto be used for the MSF's administrative costs; this allocation would equate to $12.5 million if the full $250.0 million were received. This would likely be more than sufficient to cover the administrative costs of the Department of Talent and Economic Development.

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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.