

Legislative Analysis



EXTENSION OF MEGA CREDITS; COMBINING PROJECTS TO MAXIMIZE CREDITS

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House Bill 4712 (H-2) as passed by the House
Sponsor: Rep. Ryan Berman
Committee: Tax Policy
Complete to 8-18-21

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 93 of 2021)

SUMMARY:

House Bill 4712 would amend section 437 of the Michigan Business Tax Act (MBTA), which deals with brownfield tax credits, to extend the time period within which a development project could be completed and still be eligible, without penalty, for preapproved brownfield tax credits.¹ It also would allow investments to be allocated between two adjacent projects in order to maximize the credits.

The bill would essentially allow a taxpayer who had been awarded a credit for two adjacent development areas to allocate investments between the two areas to maximize the combined credits as long as the sum of the combined credits did not exceed the amount awarded in the preapproval letters.

After an eligible investment was made, the taxpayer could petition the board of the Michigan Strategic Fund (to which were transferred the powers and duties of the Michigan Economic Growth Authority referenced in the law) to further amend the project and the preapproval letter to do the following:

- Increase the maximum total eligible investment for the project on which the credit may be claimed and the maximum total of all credits for the project or allocate eligible investment made from one adjacent development area to the other as long as the amended sum does not exceed that of the original preapproval letters.
- Extend the deadline up to an additional five years (beyond the initial 10 years).

Specifically, the provisions apply to credits approved by Resolutions 2011-154 and 2011-155 and later amended by Resolutions 2019-046 and 2019-047, with all resolutions adopted by the Michigan Economic Growth Authority.

MCL 280.1437

HOUSE FLOOR ACTIVITY:

An H-2 substitute was adopted on the House floor to replace the H-1 substitute that was reported from committee. The H-2 substitute replaced the initial reference to 2011 preapproval letters and 2019 amendments to those letters with specific citations to those documents.

¹ While the Michigan brownfield tax credit program no longer issues new awards, existing credits are still honored; these credits began under the Single Business Tax and were continued under the Michigan Business Tax, and certain “certificated” credits can continue to be claimed under the MBT, even with the advent of the Corporate Income Tax, until they expire. However, the MBTA is repealed effective for tax years beginning after December 31, 2031.

BRIEF DISCUSSION:

Some wondered why a tax credit that had been issued for 10 years required a five-year extension to complete work, and also why it was necessary to combine parcels of land in order to allow the credit to be used over both parcels.

According to committee testimony, the land has changed hands several times during the 10 years since it was awarded the tax credit. A previous owner tore down the existing structure (the Ford Wixom assembly plant) and dumped the debris, PFAs, and other materials into the basement of that structure, essentially creating an open landfill. Accordingly, much of the work since that time has been spent addressing and remediating that contaminated land. This has delayed the timeline substantially.

As for the distribution of credits over the two parcels, the committee heard testimony that the land had been split into Area A and Area B at the time of application in order to maximize the amount of credits available. A previous owner sold approximately 80% of Area B to Menards, General RV, and other retail entities that were not eligible for the tax credit. Therefore, the bill would allow the total amount of credits awarded to Areas A and B to be combined and used across both parcels at the owner's discretion.

FISCAL IMPACT:

The bill likely would allow MBT credits to be claimed that would not be claimed but for the provisions of the bill due to the current status of the projects and the existing timeline for credit qualification. The credits, if claimed, would reduce general fund revenues by approximately \$12.8 million in the year they were claimed. If the bill was not adopted and the projects were not completed by the existing due date, the MBT credits could not be claimed, thereby removing a potential revenue liability for the state. Whether the projects would be completed absent access to the MBT credits is unknown.

POSITIONS:

A representative of Industrial Commercial Properties testified in support of the bill. (6-16-21)

The Michigan Economic Development Corporation indicated a neutral position on the bill. (6-16-21)

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■ 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.