Legislative Analysis

MICHIGAN EMPLOYMENT OPPORTUNITY PROGRAM

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House Bill 5425 as introduced
Sponsor: Rep. Angela Witwer

House Bill 5426 as introduced
Sponsor: Rep. Mark Tisdel

Committee: Commerce and Tourism
Complete to 1-24-22

SUMMARY:

House Bills 5425 and 5426 would amend the Income Tax Act and the Michigan Strategic Fund Act, respectively, to create the Michigan Employment Opportunity Program in the Michigan Strategic Fund (MSF) and a related fund in the state treasury. The program would allow eligible businesses to keep all or a portion of state income taxes withheld from certified new employees, subject to MSF authorization, as an incentive to create new jobs in Michigan. The program would be nearly identical to the former Good Jobs for Michigan program,[1] which expired at the end of 2019, except that certain program requirements (e.g., the number of new jobs required to be created, the duration and amount of the tax capture, an annual maximum for approved agreements) would be based on the population of the county where the eligible business is located. The program would be capped at $300.0 million in aggregate. MSF could not enter into new written agreements on or after December 31, 2026.

House Bill 5426 would amend the Michigan Strategic Fund Act to require the Michigan Strategic Fund to create and operate the Michigan Employment Opportunity Program. The program would authorize the transfer of the dedicated portion of ***withholding tax capture revenues*** to ***eligible businesses*** that have entered into a written agreement with MSF (and thus become ***authorized businesses***) and that provide ***certified new jobs*** in Michigan.

An ***eligible business*** could not be a retail establishment, professional sports stadium, or casino or include that part of an otherwise eligible business used exclusively for retail sales. To be eligible under the bill, a business would have to propose to create one or more of the following:

If located in a county with a population of 250,000 or more,[2] one of the following:

- At least 3,000 certified new jobs in Michigan with an average annual wage that is equal to or greater than the ***prosperity region average wage***.
- At least 500 certified new jobs in Michigan with an average annual wage that is equal to or greater than the prosperity region average wage.
- At least 250 certified new jobs in Michigan with an average annual wage that is equal to 125% or more of the prosperity region average wage.

[1] https://www.michiganbusiness.org/reports-data/good-jobs-for-michigan/
HFA analysis of 2017 PAs 109 to 111 (SBs 242 to 244), which created the Good Jobs for Michigan program:
https://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0242-A21AB8A8.pdf
[2] Genesee, Ingham, Kalamazoo, Kent, Macomb, Oakland, Ottawa, Washtenaw, or Wayne County.

If located in a county with a population of more than 90,000 but less than 250,000,[3] one of the following:

- At least 500 certified new jobs in Michigan with an average annual wage that is equal to or greater than the prosperity region average wage.
- At least 250 certified new jobs in Michigan with an average annual wage that is equal to or greater than the prosperity region average wage.
- At least 100 certified new jobs in Michigan with an average annual wage that is equal to 125% or more of the prosperity region average wage.

If located in a county with a population of 90,000 or less,[4] one of the following:

- At least 250 certified new jobs in Michigan with an average annual wage that is equal to or greater than the prosperity region average wage.
- At least 100 certified new jobs in Michigan with an average annual wage that is equal to or greater than the prosperity region average wage.
- At least 50 certified new jobs in Michigan with an average annual wage that is equal to 125% or more of the prosperity region average wage.

[Note that the bill uses the terms *tier 1 county* (population over 250,000), *tier 2 county* (90,001 to 249,999), and *tier 3 county* (90,000 or less).]

Prosperity region average wage would mean the average annual wage for the ***prosperity region***[5] where the facility is located, based on the most recent data made available by the Michigan Bureau of Labor Market Information and Strategic Initiatives.[6]

Certified new job would mean 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 the business maintained in Michigan before the expansion or location and the number of full-time jobs the business acquired through a merger or acquisition that were located in Michigan before the expansion or location, as determined by MSF. In addition, as determined by MSF and authorized under a written agreement, certified new jobs for an authorized business located in a county with a population of over 250,000 could include the number of those new jobs created by the ***primary supplier*** of that business as a result of the new or increased business activity with that business.

Primary supplier would mean an entity that creates at least 25 new jobs in Michigan and provides both of the following to an authorized business under a written agreement:

- At least $5.0 million in tangible personal property annually as determined by MSF.
- At least 10% of the tangible personal property annually used by the authorized business as determined by MSF.

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[3] Allegan, Bay, Berrien, Calhoun, Eaton, Grand Traverse, Jackson, Lenawee, Livingston, Monroe, Muskegon, Saginaw, or St. Clair County.

[4] Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Clinton, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Lapeer, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Midland, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, St. Joseph, Sanilac, Schoolcraft, Shiawassee, Tuscola, Van Buren, or Wexford County.

[5] There are 10 ***prosperity regions***: https://www.michigan.gov/documents/dmb/Prosperity_Map1_430346_7.pdf

[6] https://milmi.org/index

Full-time job would mean a full-time job as determined by MSF performed by an individual whose income and Social Security taxes are withheld by one or more of the following:

- An authorized business.
- A professional employer organization on behalf of the authorized business.
- An employee leasing company.

Withholding tax capture revenues would mean the amount of income tax withheld under Part 3 of the Income Tax Act each calendar year that is attributable to individuals employed in certified new jobs. The state treasurer would have to develop methods and processes necessary for each authorized business to report the amount of withholding from individuals employed in certified new jobs.

<u>Application process and approval criteria</u>
MSF would have to develop and use a detailed application, approval, and compliance process and make it available on its website. An eligible business could apply to MSF to enter into a written agreement authorizing the payment of withholding tax capture revenues. MSF could request any additional information it needed to discharge its responsibilities under the bill.

MSF could enter into an agreement with an eligible business for withholding tax capture revenues if all of the following conditions are met, as determined by MSF:

- The eligible business proposes to create and maintain the minimum number of certified new jobs at a facility in Michigan and pay an average annual wage as described above.
- If the business is already located in Michigan, it agrees to maintain a number of full-time jobs at least equal to the number it maintained in Michigan before the expansion, as determined by MSF, in addition to the jobs described above.
- The plans for the expansion or location of the eligible business are economically sound.
- The expansion or location will increase opportunities for employment in Michigan and strengthen the economy of Michigan.
- The withholding tax capture revenues are an incentive to expand or locate the business in Michigan and address competitive disadvantages with sites outside Michigan.
- An industry-recognized regional economic model cost-benefit analysis reveals that the payment of withholding tax capture revenues to <u>an</u> eligible business will result in an overall positive fiscal impact to the state.
- The business will create the required number of certified new jobs within five years after entering into the written agreement as determined by MSF.
- The eligible business will maintain the number of certified new jobs throughout the period the authorized business receives withholding tax capture revenues paid from the Employment Opportunity Fund. (If the authorized business fails to maintain the number of certified new jobs as provided in the written agreement, it will forfeit the withholding tax capture revenues for that calendar year.)
- The local governing body of the ***municipality*** where the facility is located approves the expansion or new location by resolution. (***Municipality*** means a county, city, village, township, port district, development organization, institution of higher education, community or junior college, or subdivision or instrumentality of any of those entities.)

Amount and duration of tax capture revenues

If, as determined by MSF, the eligible business satisfies all of the above requirements, MSF would have to determine the amount and duration of the withholding tax capture revenues to be authorized and enter into a written agreement as described below. The amount of withholding tax capture revenues certified to be paid to an authorized business would have to be reduced by 5%, to be retained by MSF for additional administrative expenses as described in "Administrative amount and distribution," below.

Based on the size of the county and average annual wage of the certified new jobs, the duration of the withholding tax capture revenues could not exceed either 5 years or 10 years, determined as described below, from the date the authorized business creates the certified new jobs as provided in the written agreement.

In determining the maximum amount and duration of the withholding tax capture revenues authorized, 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 exceeds the prosperity region average wage.
- Whether there is a disadvantage to the eligible business if it were to expand or locate in Michigan instead of outside of Michigan.
- The potential impact of the expansion or location on the Michigan economy.
- The estimated cost of the reimbursement of withholding tax capture revenues; the staff, financial, or economic assistance provided by the municipality or a local economic development corporation or similar entity; and the value of assistance otherwise provided by the state.
- Whether the expansion or location will occur in Michigan without the payment of withholding tax capture revenues.
- Whether the eligible business has made a written commitment to fund some portion of costs for training the individuals who will perform the full-time jobs that leads to a professional or technical certification for them.
- That the eligible business will make a good-faith effort to employ qualified Michigan residents at the facility.

MSF would have to provide a duration of up to 10 years, and could approve a payment of up to 100% of the withholding tax capture revenues, for the following eligible businesses:

- A business located in a county with a population of 250,000 or more (tier 1 county) that proposes to create either of the following:
    - At least 3,000 certified new jobs with an average annual wage at least equal to the prosperity region average wage.
    - At least 250 certified new jobs with an average annual wage that is at least 125% of the prosperity region average wage.
- A business located in a county with a population of more than 90,000 but less than 250,000 (tier 2 county) that proposes to create either of the following:
    - At least 500 certified new jobs with an average annual wage at least equal to the prosperity region average wage.
    - At least 100 certified new jobs with an average annual wage that is at least 125% of the prosperity region average wage.

- A business located in a county with a population of 90,000 or less (tier 3 county) that proposes to create either of the following:
    - At least 250 certified new jobs with an average annual wage at least equal to the prosperity region average wage.
    - At least 50 certified new jobs with an average annual wage that is at least 125% of the prosperity region average wage.

MSF would have to provide a duration of up to 5 years, and could approve a payment of up to 50% of the withholding tax capture revenues, for the following eligible businesses:

- A business in a county with a population of 250,000 or more (tier 1 county) that proposes to create at least 500, but less than 3,000, certified new jobs with an average annual wage that is at least equal to the prosperity region average wage.
- A business in a county with a population of more than 90,000 but less than 250,000 (tier 2 county) that proposes to create at least 250, but less than 500, certified new jobs with an average annual wage at least equal to the prosperity region average wage.
- A business in a county with a population of 90,000 or less (tier 3 county) that proposes to create at least 100, but less than 250, certified new jobs with an average annual wage at least equal to the prosperity region average wage.

Table 1, below, shows the maximum duration and amount of the withholding tax capture revenues that could be authorized for eligible businesses meeting various criteria under the bill.

Table 1. Maximum duration and amount of withholding tax capture revenues

County population	Certified new jobs created ...	... at an average annual wage that is	Maximum duration	Maximum amount
250,000 or more (tier 1 county)	250 or more	125% or more of the prosperity region average wage	10 years	100% of withholding tax capture revenues
	3,000 or more	at least equal to the prosperity region average wage		
	500 to 2,999	at least equal to the prosperity region average wage	5 years	50% of withholding tax capture revenues
90,001 to 249,999 (tier 2 county)	100 or more	125% or more of the prosperity region average wage	10 years	100% of withholding tax capture revenues
	500 or more	at least equal to the prosperity region average wage		
	250 to 499	at least equal to the prosperity region average wage	5 years	50% of withholding tax capture revenues
up to 90,000 (tier 3 county)	50 or more	125% or more of the prosperity region average wage	10 years	100% of withholding tax capture revenues
	250 or more	at least equal to the prosperity region average wage		
	100 to 249	at least equal to the prosperity region average wage	5 years	50% of withholding tax capture revenues

Requirements for written agreements

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

- A description of the business expansion or location that is the subject of the agreement.
- Conditions upon which the authorized business designation is made.
- A statement from the business that the business would not have added certified new jobs without the authorized withholding tax capture revenue payments.
- An estimate of the amount of withholding tax capture revenues expected to be generated for each calendar year of the written agreement.
- A statement by the business that a violation of the written agreement may result in the revocation of the authorized business designation, the loss or reduction of future withholding tax capture revenue payments, or a repayment of withholding tax capture revenues received.
- A statement by the business that a misrepresentation in the application may result in the revocation of the authorized business designation and the repayment of withholding tax capture revenues 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 Michigan.
- A provision that the authorized business that is certified for a payment from the Employment Opportunity Fund as described below must file the required returns and reports with the Department of Treasury and provide any other information reasonably requested by MSF or the Department of Treasury.
- A maximum amount of withholding tax capture revenues that the authorized business may claim before reduction of the 5% payment for administrative expenses.

Executed written agreements

An eligible business would become an authorized business upon execution of a written agreement. MSF would have to provide a copy of each written agreement to the Department of Treasury. Upon execution of the written agreement, the transfer and payment of withholding tax capture revenues as specified in the bill and in the agreement would be binding on the state. The state treasurer would have to calculate, based on the written agreements, the amount of withholding tax capture revenues collected as a result of the certified new jobs created under the agreements for each calendar year and the percentage of that amount that must be deposited into the Employment Opportunity Fund in accordance with the Income Tax Act (see HB 5425). MSF would issue payments to the authorized business as described below.

If there were a proposed reorganization, merger, or other change of ownership of an authorized business for which reimbursement would continue under a written agreement, the approval of MSF would be required before the written agreement could be assigned or transferred.

Limitations and sunset

MSF could not commit an aggregate amount of withholding tax capture revenues that may be distributed to authorized businesses under all written agreements that exceeds $300.0 million, including the 5% payment for administrative expenses as described below. The Department of Treasury also could not disburse more than that amount. In addition, MSF could not execute more than 40 new written agreements each calendar year for authorized businesses—but if it approved fewer than 40 in a calendar year, unused written agreements would carry forward into future calendar years and be added to the otherwise applicable annual limit. The following limitations also would apply:

- MSF could not approve more than 10 written agreements each year for authorized businesses in a county with a population of 250,000 or more (tier 1 county) that total more than $125.0 million.
- MSF could not approve more than 15 written agreements each year for authorized businesses in a county with a population over 90,000 but less than 250,000 (tier 2 county) that total more than $100.0 million.
- MSF could not approve more than 15 written agreements each year for authorized businesses in a county with a population of 90,000 or less (tier 3 county) that total more than $75.0 million.

As noted above, MSF could not designate an authorized business or enter into a new written agreement on or after December 31, 2026.

Withholdings certificate

Subject to the limitations described above, an authorized business would be eligible to receive withholding tax capture revenue payments. Each calendar year, MSF would have to issue a withholdings certificate 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 Employment Opportunity Fund for the designated calendar year.
- The authorized business's federal employer identification number or Michigan treasury number.

MSF would have to provide a copy of each withholdings certificate to the Department of Treasury. Upon receiving a certificate, an authorized business could request a payment from the Employment Opportunity Fund by filing a copy of the withholdings certificate with MSF, which would have to issue the payment within 90 days of receiving the request.

Employment Opportunity Fund

The bill would create the Employment Opportunity Fund in 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 and credit to the fund any interest and earnings from those investments. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund.

The fund could be used only for the following purposes:

- To make withholding tax capture revenue payments in accordance with a written agreement to an authorized business within 90 days after receiving a request for payment and a copy of the withholding certificate issued as described above.
- To distribute an amount equal to 5% of the withholding tax capture revenue payments certified as described above to the MSF to pay for administrative expenses as provided in the bill.

Administrative amount and distribution

MSF would have to retain an amount equal to 5% of the withholding tax capture revenue payments authorized for that year. The board of MSF would have to use this amount to pay for additional administrative expenses under the program.

In addition, each year, MSF would have to distribute at least 50% of the amount retained to the economic development organization that assisted the eligible business in obtaining funding under the program.

Penalties

An authorized business that fails to satisfy and maintain the minimum number of certified new jobs as required would forfeit its withholding tax capture revenue payments for that calendar year. This forfeiture would not extend the duration of the original agreement. If the agreement has not expired, the authorized business would be entitled to a certification for withholding tax capture revenue payments for subsequent calendar years in which it satisfies all of the terms of the written agreement.

Disclosure and reporting

The bill would add requirements to an annual report MSF now must send to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature. The following additional information would have to be included for all written agreements under the Michigan Employment Opportunity 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, an authorized business would authorize MSF to identify it and disclose the amount and duration of the withholding tax capture revenue payments. MSF would have to publish this information on its website in addition to including it in the report described above.

MCL 125.2009 and proposed MCL 125.2090t et seq.

House Bill 5425 would amend the Income Tax Act to direct income tax revenue each fiscal year to the Employment Opportunity 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 entered into under the Michigan Employment Opportunity Program proposed by House Bill 5426.

In addition, the bill would require an employer that has entered into a written agreement as part of the program, for as long as that agreement remains in effect, to delineate the portion of taxes withheld and paid to the state that are attributable to certified new jobs in the tax return or report required to be made by those who must deduct or withhold taxes under the act.

The bill is tie-barred to HB 5426, which means that it could not take effect unless HB 5426 were also enacted.

MCL 206.51f and 206.711

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. Moreover, it is estimated that in this scenario the program would increase state revenues, primarily income and sales taxes. However, the structure of the tax capture (discussed below) would result in distributional differences of income tax revenues. That said, if some degree of job creation would have occurred in absence of the bills, then there would 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 businesses is capped at $300.0 million, the bill sets an upper bound on the potential net revenue loss. Moreover, the bill allows awards to be made through December 31, 2026, and the duration for an award may be for up to 10 years. Therefore, the amount of tax capture in any given year will vary depending on the number, size, length, and location of awards.

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 approximately 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 forgone revenue, which would actually reduce general fund revenue. The general fund could realize a net loss even in a situation where it was assumed that the jobs created would not have been created but for the provisions of the bills.

The bills include certain conditions (noted in the legislative analysis above) to be met for the MSF to enter into an agreement with an eligible business. There are a few conditions whereby a term or process is undefined, and how those are treated would have an impact on the overall effectiveness of the incentive. For example, one condition requires the expansion or location of the eligible business to be economically sound, which is neither defined nor explained with additional detail. Additionally, outside of requiring an industry-recognized regional economic model cost-benefit analysis, there is no guidance on the model's inputs or assumptions.

The bills require MSF to consider certain factors (noted in the legislative analysis above) when determining the size and scope of the withholding tax capture. The effectiveness of the factors and how they are evaluated when authorizing the amount of withholding tax capture revenues and the duration of the award for an eligible business would have a direct impact on the fiscal impact of any agreement under the program.

It should be noted that any allocation of funds from the Employment Opportunity Fund would require legislative appropriation. The Good Jobs for Michigan program, which is substantially similar to this program, currently has a boilerplate appropriation that authorizes the distribution of calculated payments to businesses and administrative funds to MSF.

The bills would increase administrative costs to MSF and the Department of Treasury by an unknown amount. Under the provisions of the bills, MSF would be able to cover its administrative costs with the allowable capture of 5% of all withholding tax revenues dedicated to the Employment Opportunity Fund. MSF would be required to distribute at least 50% of the amount retained for administrative expenses to the economic development organization that assisted the eligible business in obtaining funding under the program. The bills include no direct appropriation to fund Treasury administrative costs. Whether the Department of Treasury receives some share of the administrative funds allocated to MSF, absorbs the costs under current appropriations levels, or pursues an appropriation is unknown.

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