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BILL ANALYSIS

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Senate Bills 981 through 983 (as introduced 3-24-22)
Sponsor: Senator Ken Horn (S.B. 981)
Senator Wayne A. Schmidt (S.B. 982)
Senator Mark Huizenga (S.B. 983)
Committee: Economic and Small Business Development

Date Completed: 6-8-22

CONTENT

Senate Bill 981 would amend the Michigan Strategic Fund Act to do the following:

- **Require a qualified business to report certain tax information (i.e., construction period tax capture revenue, withholding tax capture revenue, and income tax capture revenue) concerning the improvement and use of a qualified project.**
- **Require an eligible applicant to report certain tax information concerning the improvement and use of a strategic site or a mega-strategic site.**
- **Require the Department of Treasury to develop the methods and processes necessary for a qualified business and an eligible applicant to report the tax information.**
- **Require an owner of a strategic site or mega-strategic site to notify the Department if there were a change of ownership or if an end user commenced or terminated occupancy of the site.**

Senate Bill 983 would amend the Income Tax Act to require an amount equal to the construction period tax capture revenue, withholding tax capture revenue, and income tax capture revenue for a qualified project and an eligible project to be deposited each State fiscal year into the Strategic Outreach and Attraction Reserve (SOAR) Fund.

Senate Bill 982 would amend the Michigan Trust Fund Act to require any amount of money exceeding $2.5 billion in the SOAR Fund at the close of a fiscal year to revert to the General Fund, not including money in the Fund that was restricted, obligated, or committed.

The bills are tie-barred.

Senate Bill 981

Critical Industry Program Reporting

The Michigan Strategic Fund Act requires the Michigan Strategic Fund (MSF) to create and operate the Critical Industry Program, which operates to provide qualified investments to qualified businesses for deal-closing, gap financing, and other economic assistance for the retention of qualified jobs at the qualified business and in the State. (The Act defines "qualified investment" as a grant, loan, or other economic assistance for a project subject to a written agreement with a qualified business. "Qualified business" means a business that is located in or operates in the State or will locate or operate in the State.)

After making certain considerations, if the MSF determines to award a qualified investment to a qualified business, the MSF must enter into a written agreement with the qualified business that includes all the terms and conditions relating to the qualified investment as prescribed by the Act. Among other things, the agreement must include the specific time frames and benchmarks to be met before the qualified business receives a disbursement in installments and a provision that the qualified business will provide the data described in the written agreement that are necessary for the MSF to report to the Legislature. The bill would require the written agreement to include a provision that the qualified business would provide the information described below, in the manner prescribed by the Department.

Under the bill, the Department would have to develop methods and processes that were necessary for each qualified business to report all the following:

-- Total taxable wages paid to individuals for the construction, renovation, or other improvement of the project location as part of the qualified project.
-- The total taxable income of the qualified business that was attributable to the qualified project.
-- The amount of withholding under Part 3 of the Income Tax Act from individuals employed with qualified jobs.
-- Any other information needed by the Department to calculate the construction period tax capture revenue, the income tax capture revenue, or the withholding tax capture revenue.

(Part 3 of the Income Tax Act requires every employer in the State to withhold a tax on the compensation of an individual, except as otherwise provided, by applying the individual income tax rate of 4.25% to the compensation of an individual.)

In addition, the bill would require the MSF to provide the Department with the information needed to determine each qualified project for which construction period tax capture revenue, income tax capture revenue, and withholding tax capture revenue would have to be captured under Section 51f(2) of the Income Tax Act and the tax capture limit for each qualified project. (See Senate Bill 983, which would add Section 51f(2) to the Income Tax Act).

The bill would define "qualified project" as a project subject to a written agreement with a qualified business for which a qualified investment is made under the Program.

"Tax capture limit" would mean, with respect to each qualified project, an amount equal to the qualified investment multiplied by 1.05. "Wages" would mean that term as defined in 26 USC 3401: all remuneration for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash. "Withholding tax capture revenues" would mean, with respect to each qualified project, the amount of income tax withheld under Part 3 of the Income Tax Act each calendar year that is attributable to individuals employed within qualified jobs. The term would not include construction period tax capture revenue.

"Construction period tax capture revenues" would mean the amount of income tax levied and imposed in a calendar year on wages paid to individuals, other than employees of the qualified business, who are physically present and working within the project location for the construction, renovation, or other improvement of the project location as part of the qualified project. The Department would have to calculate the amount of construction period tax capture revenue by multiplying the wages reported under the bill by the effective rate at which the income tax was levied on an individual in the State, as determined by the

Department after considering the effect of any exemptions, additions, subtractions, and credits allowable under Part 1 of the Income Tax Act.

"Income tax capture revenue" would mean, with respect to each qualified project, the amount of income tax levied and imposed in a tax year on the qualified business that is attributable to the qualified project. In calculating income tax capture revenue, the Department would have to subtract, from the amount of income tax levied and imposed, credits allowed against the tax under the Income Tax Act. "Income tax" would mean the tax levied and imposed under Parts 1, 2, 3, and 4 of the Income Tax Act.

Strategic Site Readiness Program

The Act requires the MSF to create and operate the Michigan Strategic Site Readiness Program to provide grants, loans, and other economic assistance for eligible applicants to conduct eligible activities to create investment-ready sites that attract and promote investment in the State for eligible activities.

("Eligible applicant" means an applicant that is a political subdivision of the State, a local economic development corporation, a person who is the owner of the site for which the improvements are proposed, or the person that will be the end user of the site. "Eligible activities" means, with respect to a site that is subject of an application, one or more of the following: 1) land acquisition and assembly; 2) site preparation and improvement; 3) infrastructure improvements that directly benefit certain infrastructure; 4) any demolition, construction, alteration, rehabilitation, or improvement of buildings on the site; 5) environmental remediation; and 6) architectural, engineering, surveying, and similar professional fees.)

After making certain considerations, if the MSF determines to provide a grant, loan, or other economic assistance to an eligible applicant, the MSF must enter into a written agreement with the eligible applicant that includes all of the terms and conditions related to the grant, loan, or other economic assistance. Among other things, the agreement must include the specific dates and benchmarks for the eligible applicant to receive a grant, loan, or other economic assistance and an audit provision that requires the MSF to verify that the established benchmarks for the project have been met.

The bill would require the agreement to include provisions that the eligible applicant would provide all the following in the manner prescribed by the Department:

-- If the eligible applicant were the owner of the strategic site or mega-strategic site, the notice required by the bill (described below).
-- That the eligible applicant would have to require each end user and each owner of the strategic site or mega-strategic site that was not an eligible applicant to comply with the applicable reporting and notice requirements described below through a contract requirement, lease requirement, or other similar means.
-- The information described below.

Under the bill, the Department would have to develop methods and processes that were necessary for all the following:

-- For each eligible applicant to report the total taxable wages paid to individuals for the construction, renovation, or other improvement of a strategic site or mega-strategic site that was an eligible activity.
-- For each end user of a strategic site or a mega-strategic site to report the total taxable income of the end user that was attributable to the site and the amount of withholding

under Part 3 of the Income Tax Act from individuals employed within qualified jobs by the end user.

-- For each owner of a strategic site or a mega-strategic site to report the total taxable income of the owner that was attributable to the site and the amount of withholding under Part 3 of the Income Tax Act from individuals employed within qualified jobs by the owner.
-- For each eligible applicant, end user, or owner of a strategic site or mega-strategic site to report any other information that was necessary for the Department to calculate the construction period tax capture revenue, the income tax capture revenue, or the withholding tax capture revenue.

In addition, the bill would require an owner of the strategic site or mega-strategic site to notify the Department in the manner prescribed it if any of the following occurred not [more] than 10 days after the occurrence:

-- Ownership of the strategic site or mega-strategic site was transferred or otherwise changed.
-- An end user commenced or terminated occupancy within the strategic site or mega-strategic site.

The bill would require the MSF to provide the Department with the information necessary to determine each eligible project for which construction period tax capture revenue, income tax capture revenue, and withholding tax capture revenue would have to be captured under Section 51f(2) of the Income Tax Act and the tax capture limit for each eligible project.

The bill would define "eligible project" as a project for which a grant, loan, or other economic assistance is awarded under the program.

"Tax capture limit" would mean, with respect to each eligible project, an amount equal to the grant, loan, or other economic assistance awarded under the program multiplied by 1.05. "Wages" would mean that term as defined in 26 USC 3401. "Withholding tax capture revenues" would mean, with respect to each eligible project, the amount of income tax withheld under Part 3 of the Income Tax Act each calendar year that is attributable to individuals employed within qualified jobs. The term would not include construction period tax capture revenue.

"Construction period tax capture revenues" would mean the amount of income tax levied and imposed in a calendar year on wages paid to individuals, other than employees of the owner or end user, who are physically present and working within the strategic site or mega-strategic site for the construction, renovation, or other improvement of the strategic site or mega-strategic site that is an eligible activity. The Department would have to calculate the amount of construction period tax capture revenue by multiplying the wages reported as prescribed by the bill by the effective rate at which the income tax is levied on an individual in the State, as determined by the Department after taking into account the effect of any exemptions, additions, subtractions, and credits allowable under Part 1 of the Income Tax Act.

"Income tax capture revenues" would mean, with respect to each eligible project, the amount of income tax levied and imposed in a tax year on the end user and, if other than the end user, the owner of the strategic site or mega-strategic site that is attributable to the eligible project. In calculating income tax capture revenue, the Department would have to subtract, from the amount of income tax levied and imposed, credits allowed against that tax under the Income Tax Act.

Senate Bill 983

The Income Tax Act levies a tax of 4.25% on the taxable income of every person other than a corporation in the State. The Act also provides for certain distributions of the income tax revenue collected, such as the distribution of the revenue each State fiscal year to the Good Jobs for Michigan Fund in 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 under Michigan Strategic Fund Act.

Under the bill, in addition to all other distributions required by the Income Tax Act, the following amounts from the revenue collected under the Act would have to be deposited each State fiscal year into the SOAR Fund:

-- An amount equal to the construction period tax capture revenue, withholding tax capture revenue, and income tax capture revenue for a qualified project under Section 88s of the Michigan Strategic Fund Act.
-- An amount equal to the construction period tax capture revenue, withholding tax capture revenue, and income tax capture revenue for an eligible project under Section 88t of the Michigan Strategic Fund Act.

The bill would prohibit the total sum of the construction period tax capture revenue, withholding tax capture revenue, and income tax capture revenue for a qualified job or an eligible project from exceeding the tax capture limit. The bill also specifies that "construction period tax capture revenues", "eligible project", "withholding tax capture revenues", "qualified project", "tax capture limit", and "income tax capture revenues" would mean those terms as defined in Section 88s or 88t of the Michigan Strategic Fund Act. (As noted above, Senate Bill 981 would amend the Michigan Strategic Fund Act to provide for these definitions and to provide for the reporting of those tax amounts for a qualified project and eligible project).

Senate Bill 982

The Michigan Trust Fund Act creates the SOAR Fund for the purpose of spending appropriated money on the Critical Industry Program and the Michigan Strategic Site Readiness Program (see Senate Bill 981).

The Act specifies that money in the Fund that is restricted, obligated, or committed at the close of the fiscal year must remain in the Fund and may not lapse to the General Fund. Under the bill, this provision would not apply if the amount of money in the SOAR Fund at the close of the fiscal year exceeded $2.5 billion, in which case the amount exceeding $2.5 billion would have to revert to the General Fund. The bill specifies that "amount of money in the Strategic Outreach and Attraction Reserve Fund" would not include money in the Fund that was restricted, obligated, or committed.

MCL 125.2088s & 125.2088t (S.B. 981)
12.254 (S.B. 982)
206.51f (S.B. 983)

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FISCAL IMPACT

The bills would reduce State General Fund revenue and increase revenue to the SOAR Fund, by an identical and unknown amount that would depend on the timing and characteristics of the relevant projects, and could be significant. The bills effectively would cap the revenue loss at $2.5 billion per year, although the fiscal impact likely would not reach that level in any given year. However, the bills would allow the cumulative impact of any revenue reductions to reach $2.5 billion, even absent any appropriations from the Fund, and would allow additional General Fund reductions if needed to maintain the SOAR Fund at that balance.

Under the terms of the bills, the amount of income tax revenue that could be redirected from the General Fund to the SOAR Fund would depend on the specific characteristics of each project that received investments from the Fund. Those characteristics would include the wages paid to certain workers involved with any construction, renovation or improvements associated with projects, the taxable income of qualified businesses involved with projects, and the wages and associated individual income tax withholding for employees who held qualified jobs. The reduction associated with each project would be limited to an amount 5.0% greater than the amount of SOAR revenue that was invested in a project. As a result, if a qualified investment in a project totaled $100.0 million, then the qualified business could receive $105.0 million in tax capture revenue. The degree to which the SOAR investment and any associated revenue capture would subsidize any given project would depend on the amount of the investments, the amount of the captures, and the other costs associated with a project.

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