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BILL



ANALYSIS

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Senate Bills 1187 through 1190 (as enacted)
Sponsor: Senator Tony Stamas (S.B. 1187)
Senator Jud Gilbert, II (S.B. 1188)
Senator Hansen Clarke (S.B. 1189)
Senator Tupac A. Hunter (S.B. 1190)
Senate Committee: Commerce and Tourism
House Committee: New Economy and Quality of Life

PUBLIC ACTS 108 through 111 of 2008

Date Completed: 3-2-09

CONTENT

Senate Bill 1187 amended the Michigan Economic Growth Authority (MEGA) Act to do the following:

- Include tourism attraction facilities and qualified lodging facilities in the definition of "eligible business", and redefine "qualified high-technology business".
- Allow MEGA members to attend meetings by use of telecommunication or other electronic equipment, if authorized by MEGA's bylaws.

Senate Bill 1188 amended the Michigan Business Tax (MBT) Act to allow a person or group of people acting collectively to enter into an agreement with MEGA for a tax credit based on qualified new jobs created as a result of winning a procurement contract with the U.S. Department of Defense, Energy, or Homeland Security.

Senate Bill 1189 amended the MEGA Act to:

- Reduce the minimum number of new jobs that a business must create or the number of retained jobs that a business must maintain to qualify for an MBT credit through MEGA.
- Delete certain requirements that applied to the granting of MBT credits.

- Add to the factors MEGA must consider in determining the amount and duration of an MBT credit.
- Allow MEGA to execute new written agreements each year that, in total, provide up to 400 yearly credits over the terms of those agreements entered into that year, rather than up to 25 new agreements each year.
- Create two separate sets of criteria under which MEGA, beginning on January 1, 2008, may enter into written agreements for MBT credits with businesses that do not meet the Act's other requirements for a credit.
- Require a new tax credit agreement to provide for the repayment of credits if the business moves jobs outside of Michigan.

Senate Bill 1190 amended the MBT Act to:

- Allow MBT credits issued by MEGA to include the cost of health care benefits, as well as payroll, attributable to qualified new jobs.
- Specify that, beginning January 1, 2008, a taxpayer that fails to meet requirements for claiming an MBT credit issued by MEGA may have its credit reduced or terminated or added to its tax liability.

All of the bills were tie-barred and took effect on April 28, 2008.

The bills are described in detail below.

Senate Bill 1187

Definitions

The MEGA Act allows the Authority to enter into an agreement with an eligible business for a credit against the tax imposed by the Michigan Business Tax Act. "Eligible business" means a distressed business or business that proposes to maintain retained jobs in Michigan in manufacturing, mining, research and development, wholesale and trade, or office operations or a business that is a qualified high-technology business. The bill included in the definition of "eligible business" a business that is a "tourism attraction facility" or a "qualified lodging facility".

The bill defines "qualified lodging facility" as one or more of the following:

- Lodging facilities that constitute a portion of a tourism attraction facility and represent less than 50% of the total cost of that facility, or the lodging facilities are to be located on recreational property owned or leased by the municipal, State, or Federal government.
- Lodging facilities that involve the restoration or rehabilitation of a structure listed individually in the National Register of Historic Places or are located in a National Register historic district and certified by the State as contributing to the historic significance of the district, if the rehabilitation or restoration project has been approved in advance by the State.

"Tourism attraction facility" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomena or scenic beauty, or an entertainment destination center as determined by MEGA. In making a determination, MEGA must consider all of the following:

- Whether the facility actually will attract tourists.
- Whether 50% or more of the people using the facility reside outside a 100-mile radius.
- Whether 50% or more of the gross receipts are from admissions, food, or nonalcoholic drinks.

- Whether the facility offers a unique experience.

The Authority may not determine any of the following as a tourism attraction facility:

- Facilities, other than an entertainment destination center, that are primarily devoted to the retail sale of goods, a theme restaurant destination attraction, or a tourism attraction where the attraction is a secondary and subordinate component to the sale of goods.
- Recreational facilities that do not serve as a likely destination where individuals who are not Michigan residents would remain overnight in commercial lodging at or near the facility.

Previously, "qualified high-technology business" meant a business or facility that was either of the following:

- A business with at least 25% of its total operating expenses used for research and development in the tax year in which the business files an application under the Act.
- A business or facility whose primary business activity is high-technology activity.

Under the bill, "qualified high-technology business" instead means a business or facility whose primary business activity is high-technology activity or a qualified high-wage activity. "Qualified high-wage activity" means a business that has an average wage, and may include one or more of the following, as long as they have an average wage of 300% or more of the Federal minimum wage:

- Architecture and design, including architectural design, graphic design, interior design, fashion design, and industrial design.
- Advertising and marketing, including advertising and marketing firms and agencies, public relations agencies, and display advertising.

The bill also redefined "affiliated business" (a term used in the definition of "authorized business"). Previously, "affiliated business" meant a business that is 100% owned and controlled by an associated business. Under the bill, "affiliated business" means a business that is at least 50% owned and

controlled, directly or indirectly, by an associated business. ("Associated business" means a business that owns at least 50% of and controls, directly or indirectly, an authorized business, i.e., a business that meets the Act's requirements for a tax credit and has entered into an agreement with MEGA.)

Attendance at MEGA Meetings

The bill specifies that MEGA members may be present either in person at a meeting of the Authority or, if authorized by MEGA's bylaws, by use of telecommunications or other electronic equipment.

Senate Bill 1188

The bill allows a person or group of people acting collectively to enter into an agreement with MEGA for a tax credit. In determining whether to enter into an agreement, MEGA must consider the following factors:

- The number of qualified new jobs or products, or both, to be created or maintained as a result of winning a Federal procurement contract offered by the U.S. Department of Defense, Department of Energy, or Department of Homeland Security.
- The potential impact of the expansion, retention, or location on Michigan's economy if the person or group is awarded the Federal contract.
- The number of out-of-State people bidding against the person or group for the Federal contract.
- The total capital investment or new capital investment the person or group will make to win and maintain the Federal contract.

An agreement under the bill must include all of the following:

- A description of the Federal contract for which the person or group intends to bid.
- A description of the person's or group's expansion, retention, or location that is necessary if awarded the Federal contract.
- Conditions upon which the person or group is designated a qualified taxpayer under the bill.
- A statement by the person or group that a violation of the agreement may result

in the revocation of the designation as a qualified taxpayer and the loss or reduction of future credits.

- A statement by the person or group that a misrepresentation in the application may result in the revocation of the designation as a qualified taxpayer and the refund of credits received.
- A method for measuring qualified new jobs before and after the award of a Federal contract and the expansion, retention, or location of the person or group in Michigan as a result of winning the Federal contract.

A qualified taxpayer may claim an MBT credit in an amount up to 100% of the taxpayer's payroll attributable to employees who perform qualified new jobs created as a result of the person's or group's being awarded a Federal procurement contract by the U.S. Department of Defense, Energy, or Homeland Security as determined by MEGA, multiplied by the tax rate for the tax year for a period of up to seven years or the term of the contract, whichever is less, as determined by MEGA.

If the qualified taxpayer is a group of people acting collectively, MEGA must determine the amount of the credit each person is allowed to claim by multiplying the amount of the credit by a fraction, the numerator of which is the person's payroll attributable to employees who perform qualified new jobs and the denominator of which is 100% of the taxpayer's payroll attributable to employees who perform qualified new jobs, and then certifying the amount of the credit that each person is allowed to claim respectively.

If the credit exceeds the taxpayer's liability for the tax year, the taxpayer may elect to have the excess refunded or to have it carried forward to offset tax liability in subsequent years for 10 years or until it is used up, whichever occurs first.

The Authority may not execute more than 10 new written agreements each year. If a qualified taxpayer is awarded a credit under the bill, any subsequent credits awarded to that taxpayer may not be included in determining the yearly limit of 10 new agreements.

A taxpayer may not claim a credit under the bill unless MEGA has issued the taxpayer a

Senate Bill 1189

certificate of designation as a qualified taxpayer. A credit may not be provided for a tax year before the tax year during which certification is made. The taxpayer must attach the certificate to the annual return on which the credit is claimed. The certificate must state all of the following:

- The taxpayer is a qualified taxpayer.
- The amount of the credit for the qualified taxpayer for the designated tax year or, if the taxpayer is a group of people, the percentage of the amount of the credit that the taxpayer is allowed to claim for the designated tax year.
- The taxpayer's Federal employer identification number or the Michigan Department of Treasury number assigned to the taxpayer.

The bill defines "qualified taxpayer" as a person that individually satisfies each of the following or a group of one or more people that enter into a cooperative or informal agreement to act collectively and satisfy each of the following:

- Has entered into an agreement with MEGA as described in the bill.
- Has submitted a competitive bid for a Federal procurement contract offered by the U.S. Department of Defense, Department of Energy, or Department of Homeland Security.
- Has been awarded the Federal contract for which the person or group of people submitted a bid.
- Has created a minimum of 25 qualified new jobs.

"Qualified new job" means a full-time job created by a qualified taxpayer at a facility or facilities that is in excess of the number of full-time jobs the taxpayer maintained in Michigan or at a facility before being awarded the Federal procurement contract and the expansion or location, as determined by MEGA. "Full-time job" means a job performed by an individual for 35 hours or more each week and whose income and Social Security taxes are withheld by a taxpayer, an employee leasing company on behalf of a taxpayer, or a professional employer organization on behalf of a taxpayer.

Minimum Job Creation/Retention

The MEGA Act allows the Authority to enter into an agreement with certain businesses for a tax credit for creating and maintaining minimum numbers of new jobs. Except as otherwise provided, an eligible business must meet certain job creation standards. Under the bill, the standards include creating a minimum of 50 qualified new jobs at the facility, if locating in Michigan, and maintaining a minimum of 50 qualified new jobs at the facility for each year the credit is authorized. These minimums previously were 100 qualified new jobs. The bill also deleted a requirement that the job creation occur within 12 months of an expansion or location in Michigan.

Wage Requirement

Except as otherwise provided, the average wage paid for all retained jobs and qualified new jobs previously had to be at least 150% of the Federal minimum wage. If the eligible business was a qualified high-technology business, however, the average wage paid for all qualified new jobs had to be at least 300% of the Federal minimum wage.

Under the bill, except as otherwise provided, the wage paid for *each* retained job and qualified new job must be at least 150% of the Federal minimum wage. If the eligible business is a qualified high-wage activity, the wage paid for *each* qualified new job must be at least 300% of the Federal minimum wage.

Deleted Requirements

Except for a qualified high-technology business, MEGA previously could award MBT credits for job creation and maintenance only if the expansion, retention, or location of an eligible business in Michigan would not occur without the tax credits. The bill deleted that limitation.

Also, except for an MBT credit for a particular eligible business, the local unit in which an eligible business would expand, be located, or maintain retained jobs, or a local economic development corporation or similar entity, had to make a staff, financial, or economic commitment to the eligible

business for the expansion, retention, or location. The bill deleted that requirement.

In addition, if feasible as determined by MEGA, in locating the facility, an authorized business had to reuse or redevelop property that was previously used for an industrial or commercial purpose. The bill deleted that requirement.

Determination of Credit Amount & Duration

Under the Act, if MEGA determines that the requirements for being awarded an MBT credit have been met, the Authority must determine the amount and duration of the tax credits to be authorized and enter into an agreement. The duration of the tax credits may not exceed 20 years or, for an authorized business that is a distressed business, three years. The Act lists factors that MEGA must consider in determining the amount and duration of tax credits. These include the average wage level of the qualified new jobs or retained jobs relative to the average wage paid by private entities in the county in which the facility is located. Under the bill, MEGA also must consider the average health care benefit level of the new or retained jobs relative to the average health care benefit in the county.

The bill also requires MEGA to consider whether the expansion, retention, or location will occur in Michigan without the tax credits offered under the Act and whether the authorized business will reuse or redevelop property that was previously used for an industrial or commercial purpose in locating the facility.

In addition, the bill authorizes MEGA to determine the eligibility of and issue certificates to certain taxpayers for credits allowed under Sections 431a and 431b of the MBT Act. (Section 431a allows credits for certain anchor companies. Section 431b is the section added by Senate Bill 1188.)

Maximum Annual Credits Awarded

The MEGA Act previously prohibited MEGA from executing more than 25 new written MBT credit agreements each year for eligible businesses that were not qualified high-technology business, distressed businesses, or rural businesses. The bill, instead, prohibits MEGA each year from executing new written agreements that, in total,

provide for more than 400 yearly credits over the terms of those agreements entered into that year for eligible businesses that are not qualified high-technology businesses, distressed businesses, or rural businesses.

The bill deleted a provision under which MEGA could carry forward for one year the difference between 25 and a smaller number of new agreements executed in the immediately preceding year.

Separate Sets of Criteria

Under the bill, beginning on January 1, 2008, after receiving an application, MEGA may enter into a written agreement with an eligible business that does not meet the other criteria described in the Act for an MBT credit, if the eligible business does all of the following:

- Agrees to retain at least 50 jobs.
- Agrees to make new capital investment at a facility equal to \$50,000 or more per retained job maintained at the facility.
- Certifies to MEGA that, without the credits and without the new capital investment, the facility is at risk of closing and the work and jobs would be removed to a location outside of Michigan.
- Certifies to MEGA that the management or ownership is committed to improving the long-term viability of the facility in meeting the national and international competition facing the facility through better management techniques, best practices, including state-of-the-art lean manufacturing practices, and market diversification.
- Certifies to MEGA that it will make best efforts to keep jobs in Michigan when making plant location and closing decisions.
- Certifies to MEGA that the workforce at the facility demonstrates its commitment to improving productivity and profitability at the facility through various means.

The bill also allows MEGA, beginning January 1, 2008, after receiving an application, to enter into a written agreement with an eligible business that does not meet the other criteria described in the Act for an MBT credit, if the eligible business does all of the following:

- Agrees to create or retain at least 15 jobs.
- Agrees to occupy property that is a historic resource and that is located in a downtown district.
- Pays an average wage for each retained job and full-time job that is at least 150% of the Federal minimum wage.

The Authority may not execute more than five new agreements under the second set of criteria each year. Not more than four each year may be for businesses in local units with a population of more than 16,000.

Credit Repayment

Beginning on the bill's effective date, if MEGA enters into a written agreement with an eligible business, the agreement must include a provision for the repayment of all or a portion of the credits received by the eligible business for a facility if the business moves full-time jobs outside of Michigan during the term of the agreement and for a period of years after the term of the agreement, as determined by MEGA.

Senate Bill 1190

Credit for Health Care Benefits

Under the MBT Act, for a period of up to 20 years as determined by MEGA, an authorized business may claim an MBT credit equal to the amount certified each year by MEGA for the payroll of the business attributable to employees who perform qualified new jobs multiplied by the tax rate. Under the bill, an authorized business may claim a credit in an amount up to the sum of its payroll and health care benefits attributable to employees who perform qualified new jobs, as determined by MEGA, multiplied by the tax rate.

Also, for up to seven years as determined by MEGA, the bill allows an authorized business that is a qualified high-technology business to claim an amount not to exceed 200% of the sum of its payroll and health care benefits attributable to employees who perform qualified new jobs as determined under the MEGA Act, for the first three tax years of the credit, multiplied by the tax rate and, for each of the remaining tax years of the credit, an amount not to exceed 100% of the sum of the payroll and health care benefits attributable to employees who

perform qualified new jobs, multiplied by the tax rate.

An authorized business that enters into an agreement with MEGA under one set of criteria added by Senate Bill 1189 (retains at least 50 jobs, makes new capital investment at a facility equal to \$50,000 or more per retained job there, etc.) may claim a credit up to 100% of the sum of its payroll and health care benefits attributable to employees who perform retained jobs multiplied by a fraction whose numerator is the amount of new capital investment made at the facility and whose denominator is the product of the number of retained jobs multiplied by \$100,000 and then multiplied by the tax rate for the tax year.

An authorized business that enters into an agreement with MEGA under the other set of criteria added by Senate Bill 1189 (creates or retains at least 15 jobs, occupies a historic resource in a downtown district, etc.), may claim a credit up to 100% of the sum of its payroll and health care benefits attributable to employees who perform new full-time jobs and retained jobs as determined under the MEGA Act, multiplied by the tax rate for the tax year.

Senate Bill 1190 defines "health care benefits" as all costs paid for a self-funded health care benefit plan or for an expense-incurred hospital, medical, or surgical policy or certificate, nonprofit health care corporation certificate, or health maintenance organization contract. The term does not include accident-only, credit, dental, or disability income insurance; long-term care insurance; coverage issued as a supplement to liability insurance; coverage only for a specified disease or illness; workers' compensation or similar insurance; or automobile medical payment insurance.

Violation of Agreement

Under the MBT Act, if a taxpayer claims a credit for an amount determined by MEGA, has an agreement with MEGA based on qualified new jobs, and removes from Michigan 51% or more of those jobs within three years after the first year in which the taxpayer claims a credit, the taxpayer must pay to the Department of Treasury, within 12 months after those jobs are removed from Michigan, an amount equal to the total

of all of those credits claimed by the taxpayer.

Beginning on the bill's effective date, if a taxpayer that claims a credit and subsequently fails to meet the conditions included in an agreement entered into with MEGA in order to obtain the credit or removes any of the qualified new jobs from Michigan during the term of the written agreement and for a period of years after the term of the agreement, as determined by MEGA, the taxpayer's credit may be reduced or terminated or a percentage of the credit previously claimed may be added back to the taxpayer's tax liability in the tax year that it fails to comply with the agreement.

MCL 207.803 & 207.805 (S.B. 1187)
208.1431b (S.B. 1188)
207.806 & 207.808 (S.B. 1189)
208.1431 (S.B. 1190)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

These bills will reduce Michigan Business Tax revenue, but it is not possible to make a reasonable estimate of the magnitude of the loss in revenue at this time because there is no way to know: 1) how many businesses meet these various new eligibility requirements for MEGA tax credits, 2) the level of business activity these new qualifying companies will have, or 3) the amount of net new credits that MEGA actually will grant. The General Fund/General Purpose budget will experience the loss in Michigan Business Tax revenue that will occur under these bills. The bills will not directly affect local government.

Fiscal Analyst: Jay Wortley

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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.