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BILL



ANALYSIS

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Senate Bills 820 and 821 (as enrolled)

House Bill 5246 (as enrolled)

House Bill 5255 (as enrolled)

Sponsor: Senator Jim Barcia (S.B. 820)

Senator Valde Garcia (S.B. 821)

Representative David Farhat (H.B. 5246)

Representative Daniel J. Acciavatti (H.B. 5255)

Senate Committee: Commerce and Labor

House Committee: Commerce

PUBLIC ACTS 250 & 251 of 2003

PUBLIC ACT 249 of 2003

PUBLIC ACT 248 of 2003

Date Completed: 5-5-05

CONTENT

Senate Bills 820 and 821 and House Bill 5246 amended the Single Business Tax (SBT) Act to do the following:

- Extend to December 31, 2009, the ability of the Michigan Economic Growth Authority (MEGA) to award certain tax credits.
- Require a taxpayer who claims a credit to verify the actual number of new jobs created, if requested by MEGA.
- Allow a "distressed business" (as defined in House Bill 5255) to claim an SBT credit based on the business's unemployment tax paid.
- Transfer some powers pertaining to SBT credits from the Department of Treasury to MEGA and from the State Treasurer to the MEGA chairperson.

House Bill 5255 amended the Michigan Economic Growth Authority Act to do the following:

- Codify the Authority's transfer to the Michigan Strategic Fund, and designate the Director of the Department of Labor and Economic Growth (DLEG) as chairperson of MEGA.
- Require that the gubernatorial appointees to MEGA be appointed

with the advice and consent of the Senate.

- Extend eligibility for an SBT credit based on capital investment and job retention criteria added by the bill.
- Include in the Act's definition of "authorized business" a business not required to create new jobs or maintain retained jobs, if jobs are created or retained by an associated or affiliated business.
- Allow an additional SBT credit for a "distressed business".
- Establish separate job creation criteria for a "rural business" to qualify for an SBT credit.
- Revise the number of SBT credits MEGA may award annually.
- Include tool and die manufacturing in the definition of "high technology activity".
- Prohibit MEGA from requiring an eligible business to pay an unreasonable fee to, or make a donation to the Michigan Economic Development Corporation (MEDC) or an associated foundation or fund.
- Require that a written agreement between an eligible business and MEGA encourage the eligible business to make a good-faith effort to use Michigan-based suppliers and vendors.

-- Expand the information that must be in MEGA's annual report to the Legislature.

Senate Bills 820 and 821 and House Bill 5246 were tie-barred to House Bill 5255. All of the bills took effect on December 29, 2003.

Under the SBT Act, an authorized business may claim credits against the SBT for engaging in certain business activities, creating qualified new jobs, or maintaining retained jobs in Michigan, if the authorized business has a certificate issued under the MEGA Act.

An "authorized business" is an eligible business that has entered into an agreement with MEGA for an SBT credit under the MEGA Act (and otherwise fits the definition under House Bill 5255). That Act defines "eligible business" as a business that proposes to maintain retained jobs after December 31, 1999, or to create qualified new jobs in Michigan after April 18, 1995, in manufacturing, mining, research and development, wholesale and trade, or office operations, or a business that is a qualified high-technology business; the term does not include retail establishments, professional sports stadiums, or that portion of an eligible business used exclusively for retail sales. (House Bill 5255 includes a distressed business in that definition.)

"Qualified new job" means either of the following:

- A full-time job created by an authorized business at a facility that exceeds the number of full-time jobs the authorized business maintained in Michigan before the expansion or location, as determined by MEGA.
- For jobs created after July 1, 2000, a full-time job at a facility created by an eligible business that exceeds the number of full-time jobs maintained by that eligible business in Michigan 120 days before it became an authorized business, as determined by MEGA.

"Retained jobs" means the number of full-time jobs at a facility of an authorized business maintained in Michigan on a specific date, as that date and number of jobs are determined by MEGA.

Senate Bill 820

Section 37d of the SBT Act allows an authorized business to claim a business activity credit against the SBT in an amount equal to its tax liability attributable to authorized business activity for tax years beginning after 1994, and for up to 20 years plus any carryforward years allowed under the Act, if MEGA has issued a certificate to the taxpayer. Previously, a taxpayer could not claim the credit if the taxpayer's initial certification were issued after December 31, 2003. Under the bill, a credit may not be claimed if the taxpayer's initial certification is issued after December 31, 2009.

Senate Bill 821

Under Section 37c of the Single Business Tax Act, an authorized business may claim a payroll credit against the SBT in an amount certified each year by MEGA. Previously, the credit could not be claimed if the taxpayer's initial certification were issued after December 31, 2003. Under the bill, a credit may not be claimed if the taxpayer's initial certification is issued after December 31, 2009.

The bill also provides for an SBT credit for tax years beginning after December 31, 2003, and before January 1, 2007, for a taxpayer that is both an authorized business and a "distressed business" under the MEGA Act, in addition to the credit allowed for an authorized business. To receive the distressed business credit, a business must have an initial certification under the MEGA Act issued after December 31, 2003, and before January 1, 2005. The credit may be equal to the sum of the following:

- Up to 50% of the tax paid in the tax year under the Michigan Employment Security Act, based on qualified new jobs.
- Up to 25% of the tax paid in the tax year under the Michigan Employment Security Act, based on all jobs other than qualified new jobs.

A distressed business must apply to MEGA, which must determine the percentage for that business. Within 30 days after receiving the application, MEGA must issue a certificate to the business stating the percentage amount and the tax years to which the percentage applies. If the distressed business credit for the tax year

and any unused carryforward exceed the taxpayer's tax liability for the tax year, the excess may not be refunded but may be carried forward as an offset to the tax liability in subsequent tax years for 10 years or until the excess credit is used up, whichever occurs first.

The bill also specifies that, if MEGA or a MEGA designee requests a taxpayer claiming a payroll credit or a distressed business credit to get a statement prepared by a certified public accountant verifying that the actual number of new jobs created is the same number of new jobs used to calculate the credit, the taxpayer must get the statement and attach it to the taxpayer's annual return.

House Bill 5246

Section 38g of the SBT Act allows an eligible taxpayer to claim a job retention credit against the SBT in an amount certified each year by MEGA for tax years that begin after 1999, for a period not to exceed 20 years as determined by the Authority. Previously, a credit could not be claimed if the eligible taxpayer's initial certification under the MEGA Act were issued after December 31, 2003. Under the bill, the credit may not be claimed if the eligible taxpayer's initial certification is issued after December 31, 2009.

The bill also specifies that, if MEGA or a MEGA designee requests a taxpayer claiming a job retention credit to get a statement prepared by a certified public accountant verifying that the actual number of new jobs created is the same number of new jobs used to calculate the credit, the taxpayer must get the statement and attach it to the taxpayer's annual return.

House Bill 5255

MEGA Structure

The Michigan Economic Growth Authority Act created MEGA in 1995 within the former Michigan Jobs Commission and required the Commission to provide staff for MEGA and carry out its administrative duties and functions as directed by the Authority. The budgeting, procurement, and related functions as directed by MEGA were under the supervision of the Commission. Executive Reorganization Order (ERO) 1999-

1 abolished the Michigan Jobs Commission and transferred MEGA to the Michigan Strategic Fund (MSF). That ERO also authorized the MSF to enter into an interlocal agreement with one or more local public agencies under the Urban Cooperation Act to provide for the creation of the MEDC, and gave the MEDC shared power, privilege, or authority of the MSF and the local agencies to perform economic development programs and functions. Pursuant to that authority, MEGA has operated under the MEDC.

The bill deleted references to the Michigan Jobs Commission and provides, instead, that MEGA is within the MSF and the budgeting, procurement, and related functions as directed by MEGA are under the supervision of the MSF president.

The bill refers to the DLEG Director, rather than the Michigan Jobs Commission Director, in the list of MEGA members, and replaced the Department of Management and Budget (DMB) Director with the chief executive officer of the MEDC. (Under Executive Order (EO) 2003-18, which established DLEG, the position as MEGA member designated for the Director of the Michigan Jobs Commission was transferred to the president and chief executive officer of the MEDC; the position as MEGA member designated for the DMB Director was transferred to the DLEG Director; and the position as MEGA chair designated for the Director of the Jobs Commission was transferred to the DLEG Director. The EO also transferred the Michigan Strategic Fund from the DMB to DLEG.)

The Authority also includes the State Treasurer, the Director of the Department of Transportation, and four members appointed by the Governor to staggered terms who are not State employees and who have knowledge, skill, and experience in the academic, business, local government, labor, or financial field. Under the bill, the gubernatorial appointments are subject to the advice and consent of the Senate.

Eligibility

Criteria. The Act allows MEGA to enter into a written agreement for SBT credits with an eligible business that meets certain capital investment and job retention criteria. Under these provisions, MEGA may grant credits to

an eligible business that meets either of the following:

- It is located in Michigan on the date of application, makes new capital investment of \$250 million in Michigan, and maintains 500 retained jobs, as determined by MEGA.
- It relocates production of a product to Michigan after the date of application, makes capital investment of \$500 million in Michigan, and maintains 500 retained jobs, as determined by MEGA.

The bill includes an eligible business that makes capital investment of \$100 million between three years before and two years after becoming an authorized business, and agrees to maintain at least 1,500 jobs at the facility without a permanent reduction in full-time employment except through attrition or retirement. The credit available under this provision may be granted only as part of a package of incentives that address international competition and include a negotiated labor contribution.

The bill also allows MEGA to enter into an SBT credit agreement with an eligible business that is a distressed business.

"Full-time job" means a job performed by an individual who is employed by an authorized business for consideration for 35 hours or more each week and for which the authorized business withholds income and Social Security taxes. The bill includes in that definition an individual employed by an employee leasing company or professional employer organization on behalf of an authorized business.

Authorized Business. Previously, "authorized business" meant an eligible business with which MEGA had entered into a written agreement for an SBT credit under the MEGA Act. The bill defines "authorized business", instead, as a single eligible business with a unique Federal employer identification number that meets the Act's requirements for entering into an agreement with MEGA (subject to exceptions for associated and affiliated businesses) and with which MEGA enters into an agreement for an SBT credit. Under the bill, an eligible business is not required to create qualified new jobs or maintain retained jobs, if qualified new jobs are created or retained

jobs are maintained by an "associated business" or "affiliated business".

The bill defines "associated business" as a business that owns at least 50% of and controls, directly or indirectly, an authorized business. An "affiliated business" is a business that is 100% owned and controlled by an associated business.

Distressed Business. The bill defines "distressed business" as a business that meets all of the following criteria, as verified by the Department of Treasury:

- The business had 150 or more full-time jobs in Michigan four years immediately preceding its MEGA application.
- Within the immediately preceding four years, the business had a reduction of at least 30% of the number of full-time jobs in Michigan during any consecutive three-year period. (The highest number of full-time jobs within the consecutive three-year period must be used to determine the percentage reduction.)
- The business is not a seasonal employer.

For a distressed business, a "qualified new job" is a full-time job at a facility that exceeds the number of full-time jobs maintained by that eligible business in Michigan on the date the eligible business became an authorized business.

If MEGA awards SBT credits to an authorized business, the duration of the tax credits generally may not exceed 20 years. For an authorized business that is a distressed business, however, the duration of the SBT credits may not exceed three years.

Rural Business. Under the bill, to qualify for an SBT credit, an eligible business that is a rural business must create at least five qualified new jobs at an expanded or relocated facility within 12 months of the expansion or location, as determined by MEGA. In addition, a rural business must agree to maintain at least five qualified new jobs at the facility for each year the credit is awarded and maintain at least 25 qualified new jobs at the facility within five years after the date of the expansion or location, as determined by MEGA. The bill defines "rural business" as an eligible business located in a county with a population of 75,000 or less.

Limit on Tax Credits Awarded

Previously, MEGA could not execute more than 25 new written agreements each year for eligible businesses that were not qualified high-technology businesses. Under the bill, that limit applies to eligible businesses that are not qualified high-technology businesses, distressed businesses, or rural businesses.

Previously, MEGA could not execute more than 50 new written agreements each year for eligible businesses that were qualified high-technology business. Under the bill, that limit applies to qualified high-technology businesses or rural businesses. Only five of the 50 agreements may be executed each year for rural businesses.

The Act's definition of "qualified high-technology business" includes a business whose primary business activity is high-technology activity; the bill includes tool and die manufacturing in the Act's definition of "high-technology activity".

The bill also specifies that MEGA may not execute more than 20 new written agreements each year for eligible businesses that are distressed businesses. Not more than five of those written agreements may be for distressed businesses that had 1,000 or more full-time jobs at a facility four years immediately preceding their MEGA application.

Annual Report

The Act requires MEGA to report on its activities to the Senate and the House of Representatives annually, on October 1. The report must contain information specified in the Act, including the name and location of all authorized businesses. The bill also requires the report to include the names and addresses of all of the following:

- The corporate directors and officers of an authorized business that is a corporation.
- The partners of an authorized business that is a partnership or limited liability partnership.
- The members of an authorized business that is a limited liability company.

In addition, the bill requires the report to include the amount of any fee, donation, or other payment of any kind from an authorized business to the MEDC or a

foundation or fund associated with the MEDC paid or made in the previous reporting year or, if it is the business's first reporting year, for the immediately preceding three calendar years.

Confidentiality of Documents

The Act exempts from disclosure under the Freedom of Information Act a record, material, or other data received, prepared, used, or retained by MEGA in connection with an application for a tax credit that relates to financial or proprietary information submitted by the applicant and that is considered by the applicant and acknowledged by MEGA as confidential. The bill requires a designee of the Authority, rather than the MEGA chairperson, to make the determination as to whether MEGA acknowledges the information as confidential, and if he or she makes such a determination, to release a written statement stating all of the following:

- The name and business location of the person requesting confidentiality.
- That the MEGA designee determined the information to be confidential.
- A broad nonspecific overview of the confidential information.

Other Provisions

Beginning on the bill's effective date, MEGA may not require an eligible business, as a condition of becoming an authorized business, to pay an unreasonable fee to or make a donation to the MEDC or a foundation or fund associated with the Authority.

The Act requires a written agreement between an eligible business and MEGA to contain certain information, including a certification from the business regarding certain matters. Under the bill, the eligible business also must certify that it is encouraged to make a good-faith effort to use Michigan-based suppliers and vendors when purchasing goods and services.

The bill deleted MEGA's power to promulgate rules.

MCL 208.37d (S.B. 820)
208.37c (S.B. 821)
208.38g (H.B. 5246)
207.803 et al. (H.B. 5255)

FISCAL IMPACT

These bills will reduce single business tax revenue by an unknown and potentially significant amount. In addition to extending the sunset on existing single business tax credits intended to help qualifying businesses, the bills expand the businesses that qualify for these special tax reductions, as described above. It is not possible to provide a meaningful and reasonable estimate of the fiscal impact of the bills because there are too many unknown factors. Some of the key unknown factors include the number of businesses that will apply for and be granted these tax credits, the size of the credits and the tax liability of those that will receive the credits, the amount of the new credits designed to provide tax relief to specific companies, and the extent to which the business activity for which these credits will be given would have occurred absent the tax credits.

The Michigan Economic Development Corporation is already providing staff support to the MEGA program; therefore, House Bill 5255 will have no fiscal impact on the agency.

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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.