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House Bill 5246 (Substitute H-2 as passed by the House)  
House Bill 5255 (Substitute H-3 as passed by the House)  
Sponsor: Representative David Farhat (House Bill 5246)  
Representative Daniel J. Acciavatti (House Bill 5255)  
House Committee: Commerce  
Senate Committee: Commerce and Labor

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## **CONTENT**

**House Bill 5246 (H-2)** would amend 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 claimed a credit to verify the actual number of new jobs created, if requested by MEGA.
- 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 (H-3)** would amend the Michigan Economic Growth Authority Act to do the following:

- Designate the Director of the Department of Labor and Economic Growth (LEG) as chairperson of MEGA.
- Include in the Authority members appointed by the Governor upon the nomination of the Senate Majority Leader and the Speaker of the House, and require that the other gubernatorial appointees to MEGA be appointed with the advice and consent of the Senate.
- Require that the MEGA members who were nominated by the Majority Leader and Speaker serve on the executive committee that reviews applications under the Act.
- Revise the eligibility requirements for SBT credit based on capital investment and job retention.

- Include in the Act's definition of "authorized business" a business not required to create new jobs or maintain retained jobs, if jobs were created or retained by an associated or affiliated business.
- Include a "distressed business" within the definition of "eligible business" (making it eligible for a tax credit).
- 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 include a certification that the eligible business would 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.

### **House Bill 5246 (H-2)**

Under the SBT Act, an authorized business (as defined in the MEGA Act) may claim credits against the SBT for 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.)

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. A credit may not be claimed if the eligible taxpayer's initial certification under the MEGA Act is issued after December 31, 2003. Under the bill, the credit could not be claimed if the eligible taxpayer's initial certification were issued after December 31, 2009.

(An "eligible taxpayer" is an eligible business that meets criteria under the MEGA Act, as described below.)

The bill also specifies that, if MEGA or a MEGA designee requested a taxpayer who claimed a job retention credit to have a statement prepared by a certified public accountant verifying that the actual number of new jobs created was the same number of new jobs used to calculate the credit, the taxpayer would have to secure such a statement and attach it to the taxpayer's annual return on which the SBT credit was claimed.

The bill is tie-barred to House Bill 5255.

### **House Bill 5255 (H-3)**

#### **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 would delete references to the Michigan Jobs Commission and provide instead that MEGA would be within the MSF and the budgeting, procurement, and related functions as directed by MEGA would be under the supervision of the MSF president.

Under the Act, the Authority consists of the following eight members:

- The Director of the Michigan Jobs Commission, or his or her designee, who serves as the MEGA chairperson (which does not reflect the current status).
- The State Treasurer, or his or her designee.
- The Director of the Department of Management and Budget (DMB), or his or her designee.
- The Director of the Department of Transportation, or his or her designee.
- 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 Authority would consist of 10 members. The bill would refer to the LEG Director rather than the Michigan Jobs Commission Director; would replace the DMB Director with the chief executive officer of the MEDC; and would require six members, rather than four, to be appointed by the Governor. (Under Executive Order (EO) 2003-18, which established LEG, the position as MEGA member designated for the Director of the Michigan Jobs Commission is transferred to the president and chief executive officer of the MEDC; the position as MEGA member designated for the DMB Director is transferred to the LEG Director; and the position as MEGA chair designated for the Director of the Jobs Commission is transferred to the LEG Director.)

Of the six members appointed by the Governor, one would have to be appointed from one or more nominees of the Senate Majority Leader and one would have to be appointed from one or more nominees of the Speaker of the House. The gubernatorial appointments, other than those nominated by the legislative leaders, would be subject to the advice and consent of the Senate.

The members who were the nominees of the Senate Majority Leader and the Speaker of the House would have to serve on the executive committee that reviews SBT credit applications under the Act.

### 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 would include an eligible business that made capital investment of \$100 million between three years before and two years after becoming an authorized business, and agreed to maintain at least 2,000 jobs at the facility without a permanent reduction in full-time employment except through attrition or retirement. The credit available under this provision could be granted only as part of a package of incentives that addressed international competition and included a negotiated labor contribution.

The bill also would allow MEGA to enter into an SBT credit agreement with an eligible business that was a distressed business.

("Eligible business" means 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. "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.)

Authorized Business. The Act defines "authorized business" as an eligible business with which MEGA has entered into a written agreement for an SBT credit under the MEGA Act. The bill would define "authorized business", instead, as a single eligible business with a unique Federal employer identification number that met the Act's requirements for entering into an agreement with MEGA (subject to exceptions for associated and affiliated businesses) and with which MEGA entered into an agreement for an SBT credit. An eligible business would not be required to create qualified new jobs or maintain retained jobs, if qualified new jobs were created or retained jobs were maintained by an "associated business" or "affiliated business".

An "associated business" would be a business that owned at least 50% of and controlled, directly or indirectly, an authorized business. An "affiliated business" would be a business that was 100% owned and controlled by an associated business.

Distressed Business. The bill would include a distressed business in the Act's definition of "eligible business". A "distressed business" would be one that met 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 its number of full-time jobs in Michigan during any consecutive two-year period. (The highest number of full-time jobs within the consecutive two-year period would have to be used to determine the percentage reduction.)

-- The business was not a seasonal employer.

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

"Full-time job" currently 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 would include in that definition an individual employed by an employee leasing company or professional employer organization on behalf of an authorized business.

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

Rural Business. Under the bill, to qualify for SBT credits, an eligible business that was a rural business would have 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 would have to agree to maintain at least five qualified new jobs at the facility for each year the credit was 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 would define "rural business" as an eligible business located in a county with a population of 75,000 or less

#### Limit on Tax Credits Awarded

The Act provides that MEGA may not execute more than 25 new written agreements each year for eligible business that are not qualified high-technology businesses. Under the bill, that limit would apply to eligible businesses that were not qualified high-technology

businesses, distressed businesses, or rural businesses.

Under the Act, MEGA may not execute more than 50 new written agreements each for eligible businesses that are qualified high-technology businesses. Under the bill, that limit would apply to qualified high-technology businesses or rural businesses. Only five of the 50 agreements could 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 would include tool and die manufacturing in the Act's definition of "high-technology activity".

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

#### Annual Report

The Act requires that MEGA 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 would require the report to include the names and addresses of all of the following:

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

In addition, the report would have 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 end or, if it were the first reporting year for the authorized business, 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 MEGA chairperson must make the determination as to whether MEGA acknowledges the information as confidential. If the chairperson makes such a determination, he or she must release a written statement stating all of the following:

- The name and business location of the person requesting that the information be confidential.
- That the MEGA chairperson determined the information to be confidential.
- A broad nonspecific overview of the confidential financial or proprietary information.

Under the bill, a designee of the Authority, not necessarily the chairperson, would have to make the determination that financial or proprietary information was confidential and release the required statement.

## Other Provisions

Beginning on the bill's effective date, MEGA could 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 MEDC.

The Act requires a written agreement between an eligible business and MEGA to include certain information. The bill would include in that requirement a written certification that the eligible business would make a good-faith effort to use Michigan-based suppliers and vendors when purchasing goods and services.

The bill would delete MEGA's power to promulgate rules.

MCL 208.38g (H.B. 5246)  
207.803 et al. (H.B. 5255)

Legislative Analyst: Patrick Affholter

## FISCAL IMPACT

These bills would 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, these bills would expand the businesses that would 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 these bills because there are too many unknown factors. Some of the key unknown factors include the number of businesses that would apply for and be granted these tax credits, the size of the credits and the tax liability of those that would receive the credits, the amount of the proposed new credits designed to provide tax relief to specific companies, and the extent to which the business activity for which these credits would be given would occur absent these tax credits.

The Michigan Economic Development Corporation is already providing staff support to the MEGA program; therefore, this bill would 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.