



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 1153, 1154, and 1155 (as introduced 10-20-16)
Sponsor: Senator Jim Stamas (S.B. 1153)
Senator Wayne Schmidt (S.B. 1154)
Senator Steven Bieda (S.B. 1155)
Committee: Economic Development and International Investment

Date Completed: 11-9-16

CONTENT

Senate Bill 1153 would add Chapter 8D to the Michigan Strategic Fund Act to do the following:

- Require the Michigan Strategic Fund (MSF), beginning January 1, 2017, to create and operate the Michigan Business Withholding Abatement Program to provide economic assistance to authorized businesses that provided qualified new jobs in Michigan.
- Allow an eligible business to apply to the MSF to enter into a written agreement that allowed the business to retain a portion of income tax withholdings, i.e., a "withholding abatement".
- Prescribe criteria for an agreement between an eligible business and the MSF, including a minimum number of qualified new jobs the business would create and maintain at a facility in the State.
- Require the MSF to determine the amount and duration of a withholding abatement, which could not exceed 10 years from the date the authorized business created the qualified new jobs.
- Require the MSF to develop a sliding scale to use when determining the duration and the amount of the withholding abatement.
- Require the MSF to issue a certificate to an authorized business each year.
- Require an authorized business to pay 5% of the withholding abatement for that year to the MSF.
- Prohibit the MSF from executing more than 15 new written agreements each year for authorized businesses, and from having in effect written agreements that provided for more than \$250.0 million in combined withholding abatements.

Senate Bill 1154 would amend the Income Tax Act to do the following concerning an employer that was an authorized business under a written agreement entered into with the MSF, as provided in Senate Bill 1153:

- Specify that a portion of the taxes withheld that were attributable to each qualified new job created under the agreement would not accrue to the State but would be retained by the employer.
- Provide that the withholdings retained by the employer would be considered income taxes paid to the State.
- Require the employer to delineate in the return or report required under the Act between the amount deducted or withheld and paid to the State and the amount retained by the employer.

Senate Bill 1155 would amend the revenue Act to allow a person to disclose the information required for a report that the MSF must submit to the Legislature under the Michigan Strategic Fund Act for programs with new written agreements entered into after the bill's effective date for programs operated under the MSF Act.

Senate Bills 1154 and 1155 are tie-barred to Senate Bill 1153.

Senate Bill 1153

Definitions

"Authorized business" would mean an eligible business that has met the requirements of Chapter 8D and with which the MSF has entered into a written agreement for a withholding abatement.

"Eligible business" would mean a business that proposes to create a minimum of 500 qualified new jobs in the State or, if the business proposes to pay a wage that is equal to 125% or more of the average wage paid in the county in which the facility is located, 250 qualified new jobs. An eligible business would not include a retail establishment, professional sports stadium, casino, or that portion of an eligible business used exclusively for retail sales.

"Qualified new job" would mean a full-time job created by an authorized business at a facility in the State that is in excess of the number of full-time jobs that authorized business maintained in the State prior to the expansion or location, as determined by the MSF with an average wage that is equal to or greater than the average wage paid in the county in which the facility is located.

Michigan Business Withholding Abatement Program

Beginning January 1, 2017, the MSF would have to create and operate the Michigan Business Withholding Abatement Program to provide economic assistance to authorized businesses that provided qualified new jobs in the State. The Fund would have to develop and use a detailed application, approval, and compliance process adopted by a resolution of the board of directors of the MSF and published and available on its website. Program standards, guidelines, templates, or any other forms used by the MSF to implement the Program would have to be approved by the board.

Application & Withholding Abatement

An eligible business could apply to the MSF to enter into a written agreement that authorized a withholding abatement.

The Fund could request information, in addition to that contained in an application, as needed to permit the MSF to discharge its responsibilities under Chapter 8D.

After receiving an application, the MSF could enter into an agreement with an eligible business for a withholding abatement if the MSF determined that all of the following were met:

- The eligible business created and maintained a minimum of 500 qualified new jobs at a facility in the State or, if the business proposed to pay a wage that was equal to 125% or more of the average wage paid in the county in which the facility was located, 250 qualified new jobs.
- The eligible business, if already located within the State, agreed to maintain a number of full-time jobs equal to or greater than the number of full-time jobs it maintained in the State before the expansion, as determined by the MSF, in addition to the qualified new jobs.

- The plans for the expansion or location were economically sound.
- The eligible business had not begun construction or occupation of the facility.
- The expansion or location of the eligible business would benefit Michigan residents by increasing opportunities for employment and by strengthening the Michigan economy.
- The withholding abatement offered was an incentive to expand or locate the eligible business in the State and address the competitive disadvantages with sites outside the State.
- A cost/benefit analysis by a third party revealed that authorizing the eligible business to receive the withholding abatement would result in an overall positive fiscal impact on the State.
- The eligible business would create the qualified new jobs within five years of entering into the written agreement as determined by the MSF.
- The eligible business would maintain the number of qualified new jobs throughout the term of the written agreement if the duration of the withholding abatement exceeded five years.

Additionally, the MSF would have to determine that the wage paid for each qualified new job was equal to or greater than the average wage paid in the county in which the facility was located. The Fund could include the value of the health care benefit in determining the wage paid for each qualified new job for an eligible business.

If the Fund determined that the requirements described above had been met, it would have to determine the amount and duration of the withholding abatement to be authorized and would have to enter into a written agreement. The duration of the withholding abatement could not exceed 10 years from the date the authorized business created the qualified new jobs as provided in the agreement.

In determining the amount and duration of the withholding abatement authorized, the MSF would have to consider the following factors:

- The number of qualified new jobs to be created.
- The degree to which the average wage and health care benefit level of the qualified new jobs exceeded the average wage and health care benefit paid by private entities in the county in which the facility was located.
- The cost differential to the business between expanding or locating new jobs in Michigan and a site outside of the State.
- The potential impact of the expansion or location on the economy of the State.
- The cost of the withholding abatement, the staff, financial, or economic assistance provided by the local governmental unit, or local economic development corporation or similar entity, and the value of assistance otherwise provided by the State.
- Whether the expansion or location would occur in the State without the withholding abatement.

The Fund would have to develop a sliding scale in determining the duration and amount of the withholding abatement. The sliding scale of the duration would have to provide a duration of five years for eligible businesses that paid a wage that was equal to the average wage paid in the county in which the facility was located and up to a duration of 10 years for eligible businesses that paid a wage that was equal to 125% or more of the average wage paid in the county in which the facility was located. The sliding scale of the amount would have to provide an amount of 50% of the withholding abatement for an eligible business that paid a wage that was equal to the average wage paid in the county in which the facility was located and an amount of up to 100% of the withholding abatement for an eligible business that paid a wage that was equal to 125% or more of the average wage paid in the county in which the facility was located.

Written Agreement

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

- A description of the business expansion or location that was the subject of the agreement.
- Conditions upon which the authorized business designation was made.
- A statement that the eligible business would not have added qualified new jobs without the withholding abatement.
- A statement by the eligible business that a violation of the written agreement could result in the revocation of the designation as an authorized business, the loss or reduction of future withholding abatement, or a refund of the withholding abatement.
- A statement by the eligible business that a misrepresentation in the application could result in the revocation of the designation as an authorized business and the refund of the withholding abatement plus a penalty equal to 10% of the abatement.
- A method for measuring and verifying full-time jobs before and after an expansion or location of an authorized business in the State.
- A provision that the withholdings abatement would have to be based on salary and wages paid to employees of the authorized business in the qualified new jobs.
- A provision that, for each employee in a qualified new job, the authorized business could retain that portion of the amount required to be deducted and withheld by the authorized business under Section 703 of the Income Tax Act, would have to certify to the Department of Treasury the amount that had been retained under a written agreement, and would have to provide any other information reasonably requested by the Department.
- A maximum amount of the withholding abatement that the authorized business could claim.

(Section 703 of the Income Tax Act prescribes tax withholding requirements for flow-through entities, employers, and others. Section 703 is described in further detail below.)

Upon execution of a written agreement, an eligible business would be an authorized business.

Additional Provisions

The MSF could not execute more than 15 new written agreements each year for authorized businesses, and could not have in effect written agreements that provided for more than \$250.0 million in combined withholding abatements.

Subject to the maximum number of new written agreements each year for authorized businesses, an authorized business would be eligible for the withholding abatement.

Each year, the Fund would have to issue to an authorized business a certificate that stated the following:

- That the eligible business was an authorized business.
- The amount of the withholding abatement for the designated tax year.
- The taxpayer's Federal employer identification number or the Michigan Treasury number assigned to the taxpayer.

As a condition of being an authorized business, the business would have to pay a fee of 5% of the withholding abatement for that year to the MSF, which the board would have to use for administration expenses. The business also would have to authorize the MSF to identify it and disclose the amount and duration of the withholding abatement. The MSF would have to publish this information on its website.

Senate Bill 1154

Section 703 of the Income Tax Act prescribes tax withholding requirements for employers that are required by the Internal Revenue Code to withhold a tax on individuals' compensation; people who disburse pension or annuity payments; casino licensees, race meeting licensees and track licensees; and eligible production companies.

Except as otherwise provided, all of the taxes withheld under Section 703 accrue to the State on the last day of the month in which the taxes are withheld but must be returned and paid to the Department of Treasury by the employer, eligible production company, casino licensee, or race meeting licensee or track licensee within 15 days after the end of any month or as otherwise provided under the Act. (The Act contains separate provisions for an employer that has entered into an agreement with a community college under the Michigan New Jobs Training Program, which allows a community college to be reimbursed for certain training expenses from income tax withholding payments made by the employer, which otherwise would be paid to the State. For the purposes of the Act, payments made by an employer to a community college must be considered income taxes paid to the State.)

The bill provides that, for an employer that was an authorized business under a written agreement entered into with the MSF under Chapter 8D of the Michigan Strategic Fund Act, a portion of the taxes withheld that were attributable to each qualified new job created under the agreement would not accrue to the State but would be retained by the employer in accordance with the terms of the written agreement. For purposes of the Income Tax Act and the revenue Act, the withholdings retained by the employer would have to be considered income taxes paid to the State.

Under the Income Tax Act, a person required by Section 703 to deduct and withhold taxes on income holds the amount of tax withheld as a trustee for the State and is liable for the payment of the tax to the State and is not liable to any individual for the amount of the payment. The bill specifies that an employer that was an authorized business under a written agreement entered into with the MSF for a withholding abatement under Chapter 8D of the Michigan Strategic Fund Act that was required to deduct and withhold taxes on compensation would not hold that portion of the withholdings tax attributable to those qualified new jobs as a trustee for the State, and would not be liable for the payment of that tax to the State or to any individual for the amount of the payment.

Under the Income Tax Act, every person required to deduct or withhold taxes must make a return or report as prescribed by the Department. The bill would require an employer that was an authorized business under a written agreement entered into with the MSF for a withholding abatement under Chapter 8D of the Michigan Strategic Fund Act to delineate in the return or report between the amount deducted or withheld and paid to the State and that amount retained by the employer for a period of time provided in the written agreement (as currently required for an employer that has entered into an agreement with a community college under the Michigan New Jobs Training Program).

Senate Bill 1155

The revenue Act generally prohibits Department of Treasury officials from divulging facts or information obtained in connection with the administration of a tax. A violation is a felony punishable by a maximum fine of \$5,000, imprisonment for up to five years, or both.

Under the bill, a person could disclose the information required for the report described in Section 9 of the Michigan Strategic Fund Act for programs with new written agreements entered into after the bill's effective date for programs operated under that Act.

(Section 9 of the Michigan Strategic Fund Act requires the MSF to transmit to each member of the State Legislature, the Governor, the Clerk of the House of Representatives, the Secretary of the Senate, and the Senate and House Fiscal Agencies an annual report of its activities; and prescribes the information that must be included in the report.)

Proposed MCL 125.2090g-125.2090i
MCL 206.703 & 206.711 (S.B. 1154)
205.28 (S.B. 1155)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

General Fund/School Aid Fund Impact

The bills would reduce both General Fund and School Aid Fund revenue by a maximum of \$250.0 million per year, which would consist of a \$190.5 million reduction in General Fund revenue and a \$59.5 million reduction in School Aid Fund revenue. The actual revenue reduction would depend on the number of jobs affected by the bills, as well as the salary and health benefits for each job, and the terms of any abatement agreements approved as a result of the bills.

Based on data from the Bureau of Labor Statistics, the average annual private-sector wage and salary income in 2015 was almost \$50,000. Retail jobs would not qualify for a withholding abatement, and removing retail positions from the wage and salary data results in an estimated nonretail annual income of approximately \$53,000. These figures vary by county; for example, in Wayne County the estimated nonretail wage income is approximately \$61,700. In order to capture 100% of withholding, the bills would require affected jobs to pay at least 125% of the county average (an average that includes retail pay). In Wayne County, qualified jobs allowed to capture 100% of the withholding would need to pay approximately \$72,600 per year (which could include the value of health care benefits). The actual amount of withholding for any given job depends on the characteristics of the employee, including the existence of other nonwage income, number of dependents, and eligibility for credits. As a result, it is impossible to predict how much withholding for each job would be subject to abatement. However, the bills would limit the total amount of withholding subject to capture to \$250.0 million per year.

Department of Talent and Economic Development

The bills would result in additional expenses and revenue to the Department of Talent and Economic Development, which houses the Michigan Strategic Fund. The Department would incur initial administration expenses from developing and adopting the process for implementing the Michigan Business Withholding Abatement Program and the sliding scale for determining the amount and duration of an abatement. The Department also would have administrative expenses from processing applications, determining whether the Fund would enter into an agreement with a business, determining the amount and duration of an abatement, and ensuring that the business met its obligations under the agreement.

These additional expenses would be significant; however, capping the total number of agreements that the Fund could enter into for a single year would limit the potential for excessive processing of applications which otherwise could result in considerable expense and volatility.

The Department also would receive additional revenue under the bills. The Department would receive 5% of the total amount withheld to pay for the additional administrative expenses. With the total withholding the State could allow being \$250.0 million, the Department could have up to \$12.5 million available to administer the Program. In addition, the Department could receive revenue if an eligible business made a misrepresentation in its

application and had its abatement revoked. The Department could issue a penalty of 10% of the withholding abatement, which also could be used for administering the Program.

If the Department's administration of the Program required not more than 10 additional FTEs, the revenue generated under the bills would be sufficient to administer the Program and the Department would not require additional appropriations from the Legislature.

Local Impact

The bills would have no fiscal impact on local government.

Fiscal Analyst: Cory Savino
David Zin

S1516\15153sa

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.