



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

BILL ANALYSIS



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

Senate Bill 579 through 581 (as introduced 10-11-23)
Sponsor: Senator Sam Singh (S.B. 579 & 581)
Senator Mary Cavanagh (S.B. 580)
Committee: Economic and Community Development

Date Completed: 10-12-23

INTRODUCTION

Collectively, the bills would revive the Good Jobs for Michigan Program, which sunset in 2019, under a new name, the Michigan Strategic Tax Capture Program. The bills would modify the Program's qualifications for an eligible business and certified new jobs, generally increasing the wage requirements, decreasing the required number of jobs, and requiring those jobs to be permanent, full-time positions. The bills would apply application, agreement, and withholding tax capture revenue requirements of the Good Jobs for Michigan Program to the Michigan Strategic Tax Capture Program, in addition to modifying some requirements. Additionally, Senate Bill 579 would increase, from \$200.0 million in total to \$100.0 million annually, the amount of total withholding tax capture revenue that the Michigan Strategic Fund (MSF) could commit for approved projects under the Michigan Strategic Tax Capture Program. The new Program would sunset five years after the bill's effective date.

FISCAL IMPACT

The bill would revive and reform the Good Jobs for Michigan Program into the Michigan Strategic Tax Capture Program. The previous program was limited to \$200.0 million in tax capture withholding, of which \$188.4 million had already been approved by December 2019. The changes to the program would extend the opening for businesses to enter the program until five years after the bill's effective date and would change the cap to \$100.0 million per year. Under the bill, tax captures could be approved for up to 10 years, and captures could begin up to three years after the first hire (which would have to occur within two years after the start of construction). As a result, the bill could allow captures to occur through 2038. Compared to current law, the maximum reduction in General Fund revenue over the life of the program under the bill would total \$1.3 billion.

While the timing and amount of any specific tax capture would depend on the specific circumstances of the taxpayer and the agreement, all captures would reduce General Fund revenue. As a result, it is impossible to estimate the revenue reduction in any given fiscal year, although the bills would not allow the reduction to exceed \$100.0 million in any given year. Furthermore, the \$100.0 million annual limit on captures would be a calendar year limit and it is unknown how those captures would be allocated across fiscal years.

Indirect benefits to the State or local units of government as a result of bill are indeterminate but possible in the form of local tax revenues and higher wages within the regions where authorized businesses are located. The bill would not change the existing tax capture withholding agreements already agreed to under the Good Jobs for Michigan Program.

MCL 125.2009 et al. (S.B. 579)
125.2090i & 125.2090j (S.B. 580)
206.51f & 206.711 (S.B. 581)

Legislative Analyst: Abby Schneider
Fiscal Analyst: Michael Siracuse

CONTENT

Senate Bill 579 would amend the Michigan Strategic Fund Act to do the following:

- **Rename the Good Jobs for Michigan Program as the Michigan Strategic Tax Capture Program.**
- **Modify the requirements for certified new jobs under the Program.**
- **Modify the requirements that a business would have to meet to be considered as eligible for the Michigan Strategic Tax Capture Program.**
- **Rename the Good Jobs for Michigan Fund as the Michigan Strategic Tax Capture Fund.**
- **Increase, from \$200.0 million in total to \$100.0 million annually, the amount of total withholding tax capture revenue the MSF could commit and the Department of Treasury could disburse.**
- **Eliminate the cap on written agreements the MSF could execute each year.**
- **Create a new sunset that would specify that the MSF could not designate an authorized business or enter into a new written agreement on or after five-years after bill's effective date.**

Senate Bill 580 would amend the Michigan Strategic Fund Act to replace references of the Good Jobs for Michigan Fund to instead refer to the Michigan Strategic Tax Capture Fund and specify that the 5% of the withholding tax capture revenue payments distributed from the Fund for administrative purposes could pay for the periodic evaluation of economic development incentives.

Senate Bill 581 would amend the Income Tax Act to replace references of the Good Jobs for Michigan Fund to instead refer to the Michigan Strategic Tax Capture Act.

Senate Bill 579 and Senate Bill 580 are tie-barred. Senate Bill 581 is tie-barred to Senate Bill 579 and Senate Bill 580.

Senate Bill 579 is described in greater detail below.

Senate Bill 579

Modified Definitions

The Michigan Strategic Fund Act creates the Good Jobs for Michigan Fund within the State Treasury and allows it to be used for only one or more of the following purposes: a) to make withholding tax capture revenue payments in accordance with a written agreement to an authorized business; or b) to distribute an amount equal to 5% of the withholding tax capture revenue payments to the MSF to pay for administrative expenses.

The bill would rename the Good Jobs for Michigan Fund as the Michigan Strategic Tax Capture Fund and specify that it could be used only for one or more of the following purposes: a) to make withholding tax capture revenue payments in accordance with a written agreement to an authorized business; or b) to distribute an amount equal to 5% of the withholding tax capture revenue payments to the MSF to pay for administrative expenses *and to pay for the periodic evaluation of economic development incentives in compliance with the Economic Development Incentives Evaluation Act* as proposed by Senate Bill 480.¹ The bill would replace

¹ Generally, the Economic Development Incentive Act requires the Department of Technology, Management, and Budget to contract for the periodic evaluation of abatements, tax credits, exemptions, grants, loans, or loan guarantees related to economic development activities in the State.

references to the Good Jobs for Michigan Fund with references to the Michigan Strategic Tax Capture Fund throughout the Act, the reasoning for which is further described in Michigan Strategic Tax Capture Program.

Currently, "certified new job" means a full-time job created by an authorized business at a facility in the State that is more than the number of full-time jobs that the authorized business maintained in the State prior to the expansion or location and the number of full-time jobs that the authorized business acquired through a merger or acquisition that were located in the State prior to the expansion or location as determined by the MSF.

Pursuant to a written agreement between the business, the MSF, and the primary supplier, the term may include, for a business that proposed to create a minimum of 3,000 new jobs in the State with an average annual wage that is equal to or greater than the prosperity region average wage, the number of those jobs created by the primary supplier of that business as a result of new or increase business activity with that business. The bill would delete this provision and modify the definition of "certified new job" as described below.

Under the bill, "certified new job" would mean a *permanent* full-time job created by an authorized business at a facility in the State that is in excess of the number of *permanent* full-time jobs that the authorized business maintained in the State prior to the expansion or location and the number of *permanent* full-time jobs that the authorized business acquired through a merger or acquisition that were located in the State prior to the expansion or location as determined by the MSF.

"Prosperity region average wage" means the average annual wage for the prosperity region where the facility is located based on the most recent data made available by the Michigan Bureau of Labor Market Information and Strategic Initiatives. The bill would modify the term to be the "prosperity region *median* wage", which would mean the *median* annual wage for the prosperity region where the facility is located based on the most recent data made available by the Michigan Bureau of Labor Market Information and Strategic Initiatives.

The Act defines "eligible business" as a business other than a retail establishment, professional sports stadium, casino, or that portion of an eligible business used exclusively for retail sales that proposes to create at least one of the following:

- A minimum of 3,000 certified new jobs in the State with an average annual wage that is equal to or greater than the prosperity region average wage.
- A minimum of 500 certified new jobs in the State with an average annual wage that is equal to or greater than the prosperity regional average wage.
- A minimum of 250 certified new jobs in the State with an average annual wage that is equal to 125% or more of the prosperity regional average wage.

Instead, under the bill, "eligible business" would mean a business other than a retail establishment, professional sports stadium, casino, or that portion of an eligible business used exclusively for retail sales that proposed to create at least one of the following:

- A minimum of 250 certified new jobs in the State with a *median* annual wage that is equal to 150% or more of the prosperity regional median wage.
- A minimum of 50 certified new jobs in the State with a median annual wage that was equal to 175% or more of the property median wage.

Michigan Strategic Tax Capture Program

The Good Jobs for Michigan Program was created in 2017 and offered financial support

through tax capture withholding for companies that created new jobs in Michigan. The Program authorized the transfer of the dedicated portion of withholding tax capture revenues to businesses that provide certified new jobs in the State. The MSF had to develop and use a detailed application, approval, and compliance process. Eligible businesses were able to apply to the MSF to enter a written agreement that authorized the payment of withholding tax capture if the MSF determined that the business met certain requirements similar to those discussed below.

The MSF's authority to designate an authorized business or enter into a new written agreement ended in December 2019 after the Program's sunset. (Since October 1, 2017, the MSF has approved seven projects and as of Fiscal Year 2022 each had not yet received a payment for tax capture withholding revenues.²)

The bill would revive the Program and rename it as the Strategic Tax Capture Program. The new sunset would specify that the MSF could not designate an authorized business or enter into a new written agreement on or after five years after bill's effective date. Additionally, the bill's provisions would not apply to a written agreement executed before the bill's effective date.

Under the Strategic Tax Capture Program, after receiving an application, the MSF could enter a written agreement with an eligible business that authorized the payment of withholding tax capture if the MSF determined all the following conditions were met:

- The eligible business proposed to create and maintain the minimum number of certified jobs at a facility in the State and to pay an annual wage described below.
- In addition to the certified jobs, the eligible business agreed to maintain the number of full-time jobs it maintained in the State before the expansion as determined by the MSF.
- The plans for the expansion or location were economically sound.
- The expansion or location of the eligible businesses would benefit the people of the State by increasing opportunities for employment and by strengthening the economy of the State.
- The withholding tax capture revenues offered under and paid from the Michigan Strategic Tax Capture Fund would be an incentive to expand or locate the eligible businesses in the State and address the need for additional assistance for deal closing and second stage company gap financing.
- An industry-recognized regional economic model cost-benefit analysis revealed that the payment of withholding tax capture revenue to an eligible business would result in an overall positive fiscal impact to the State.
- The eligible business would create the required number of certified new jobs within at least five years after entering a written agreement as determined by the MSF.
- The eligible business would maintain the number of certified new jobs throughout the duration of the period that the authorized business received withholding tax capture revenues paid from the Michigan Strategic Tax Capture Fund; however, if the authorized business failed to maintain the required number of certified new jobs as provided in the written agreement, the authorized business would forfeit the withholding tax capture revenue for that calendar year.
- The local governing body of the municipality in which the facility was located approved the expansion or new location by resolution.
- The eligible business provided detailed hiring and training plans, including any registered apprenticeships or certifications provided, and agreed to coordinate with local workforce development agencies, including local Michigan Works! agencies, to attract and train, if needed, a qualified workforce.

² Michigan Strategic Fund, *Fiscal Year 2021 MSF/MEDC Annual Report to the Legislature*, p. 51, 2022.

Under the Good Jobs for Michigan Program the MSF had to determine that the withholding tax capture revenues offered and paid from the Good Jobs for Michigan Fund was an incentive to expand or locate the eligible businesses in the State to address the competitive disadvantage with sites outside the State. The bill would modify this provision as described above. Additionally, previously the MSF did not have to consider the detailed hiring plan as described above.

"Local Michigan Works! agency" would mean the entity designated to be the administrator for workforce and development activities in a local Michigan works area under the guidance of the Local Workforce Development Board.

Withholding Tax Capture Revenue Determinations

If the MSF determined that the eligible business satisfied all the requirements described above and subject to the provisions described below, the MSF would have to determine the amount and duration of the withholding tax capture revenue to be authorized and would have to enter into a written agreement stating such. The duration of the withholding tax capture revenue could not exceed five or 10 years, as determined by the MSF, from the date the authorized business created the jobs as provided in the agreement.

In determining the amount of the withholding the tax capture revenue payments, the MSF could approve a payment of up to 100% of the withholding tax capture revenues. The amount of withholding tax capture revenues certified to be paid to an authorized business would have to be reduced by 5%, which would be retained by the MSF for additional administrative expenses and for the periodic evaluation of economic development incentives in compliance with the Economic Development Incentive Evaluation Act. Subject to these provisions, in determining the maximum amount and maximum duration of the withholding tax capture revenues authorized, the MSF would have to consider the following factors, if applicable:

- The number of certified new jobs to be created.
- The degree to which the median annual wage of the certified new jobs exceeded the prosperity region median wage.
- Whether there was a disadvantage to the eligible business if it were to expand or locate in the State versus a site outside the State.
- The potential impact of the expansion or location on the economy of the State.
- The estimated cost of the reimbursement of withholding tax capture revenues, the staff, financial, or economic assistance provided by the municipality, 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 payment of withholding tax capture revenues.
- Whether the eligible business had made a written commitment to fund some portion of costs for applicable training of the individual who would perform the full-time jobs that lead to professional or technical certification for these individuals.
- Whether the eligible business would honor a decision by its workers to form a union and would commit to not interfere in unionization efforts.

Previously, under the Good for Michigan Jobs Program, the MSF also had to consider if the eligible business would make a good faith effort to employ, if qualified, Michigan residents.

Additionally, under the Michigan Strategic Tax Capture Program, in determining the maximum amount and maximum duration of the withholding tax capture revenues authorized, the MSF would have to consider whether the expansion or location of the business would support or

enable progress toward the following core policy priorities for community benefit plans as defined by guidelines issued under the Justice40 Initiative (see **BACKGROUND**):

- Engaging communities and labor.
- Investing in the State's workforce.
- Advancing diversity, equity, inclusion, and accessibility.
- Implementing the Justice40 Initiative of benefiting the State's disadvantaged communities.

Written Agreement

The Act currently prescribes the requirements for a written agreement between the MSF and an eligible business and those requirements would apply as described below with the proposed revival of the Act. Generally, the agreement would have to include a description of the business expansion or location and conditions for the business designation. The business would have to affirm that it would not have created certified new jobs without the tax capture revenue payments. Additionally, the agreement would have to provide an estimate of expenses tax capture revenue and would include provisions stating that a breach could lead to the loss of authorized business status and reduced payments or repayments. The agreement also would require the business to file certain reports, returns, and provide the Department of Treasury with specific information, among other things.

Under the bill, the conditions on which the authorized business designation was made would be subject to an authorized business' ability to meet certain timeline requirements. The MSF would have to notify a business no later than 90 days before an applicable deadline. The business would have to meet one as applicable, or both if the authorized business and the MSF were released from the written agreement.

For a business whose location or expansion in the State required construction, the following timeline:

- The business would have to begin construction within three years after the written contract agreement was executed.
- The business would have to complete its first hire of an individual to fill a certified new job within two years after the start of construction.
- The business would have to create the certified new jobs as provided in the written agreement and begin receiving withholding tax capture revenues within three years after the first hire.

For a business whose location or expansion in the State did not require construction, the following timeline:

- The business would have to complete its first hire to file a certified new job within three years after the written agreement was executed.
- The business would have to create the certified new jobs provided in the written agreement and begin receiving withholding tax capture revenues within three years after its first hire.

The MSF could extend an application for one year if the MSF determined that the authorized business had proceeded in good faith with the location or expansion and there was good cause for the business' delay in meeting the deadline. The MSF could request, and the business would have to provide, any information the MSF considered necessary to make the extension determination.

Disbursement of Funds

Among other provisions for the execution of an agreement under the Good Jobs for Michigan Program the amount of withholding tax capture revenues collected as a result of the certified new jobs created pursuant to the written agreement for each calendar year and the percentage of that amount needs to be transferred from the General Fund and deposited in accordance with Section 51f of the Income Tax Act, into the Good Jobs for Michigan Fund and the MSF must issue payments to the authorized business. The bill would modify this provision to refer to the Michigan Strategic Tax Capture Program and the Michigan Strategic Tax Capture Fund, respectively.

(Part 1 of the Income Tax Act imposes a tax at a rate of 4.25% on the taxable income of individuals and the collections from that tax would be credited the General Fund. A percentage must be deposited in the State School Aid Fund, and distribution must be made to the Renew Michigan Fund and the Michigan Transportation Fund, among other things. Section 51f of the Income Tax Act specifies that in addition to those distributions, an amount equal to the portion of the withholding tax capture revenue attributable to certified new jobs and due to be paid as described above would have to be deposited in the Good Jobs for Michigan Fund, which Senate Bill 481 would amend to reflect the name change.)

Currently, the MSF cannot commit, and the Department of Treasury cannot disburse, more than \$2.0 million in total withholding tax capture revenue³, which includes the 5% payment for administrative expenses. Under the bill, the MSF could not commit, and the Department of Treasury could not disburse, more than \$100.0 million in total withholding tax capture revenues.

The MSF cannot execute more than 15 new written agreements each calendar year for authorized businesses. If the MSF approves fewer than 15 written agreements in a calendar year any unused agreements would carry forward into future years and would be in addition the annual limit. The bill would delete this provision.

Reporting Requirements

The Act requires the MSF to transmit to each member of the Legislature, the Governor, the Clerk of the House of Representative, the Secretary of the Senate, and the Senate and House Fiscal Agencies annually a report of its activities. The report must include certain information such as a list of entities that received financial assistance, the type of project or product being financed, and the amount of financial assistance, among other things.

The report must include certain information regarding all written agreements related to the Good Jobs for Michigan Program including the name of authorized businesses, the number of certified new jobs required to be maintained, and the amount and duration of the withholding tax capture revenues. Under the bill, this provision would apply to the Michigan Strategic Tax Capture Program.

BACKGROUND

On January 27, 2021, President Joe Biden signed Executive Order (EO) 14008. Among other things, EO 14008 required the Council on Environmental Quality, the Director of the Office of Management and Budget, and the National Climate Advisor, in consultation with the White House Environmental Justice Advisory Council, to jointly publish recommendations on how

³ "Total withholding tax capture revenues" means the aggregate amount of withholding tax capture revenues that may be distributed to authorized businesses under all written agreements.

Federal investments, particularly those focused on clean energy and sustainability, could be made to provide disadvantaged communities with 40% of the overall benefits. It also required several agency heads to publish an annual Environmental Justice Scorecard detailing agency environmental justice performance measures.⁴ In May 2021, the White House Environmental Justice Advisory Council released its interim final recommendations which, among other things, provided a series of recommendations for different United States agencies and departments.⁵

⁴ For more information, see www.ejscorecard.geoplatform.gov/scorecard/.

⁵ White House Environmental Justice Advisory Council, *Justice40, Climate and Economic Justice Screening Tool, & Executive Order 12898 Revisions: Interim Final Recommendations*, May 13, 2021.

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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.