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Senate Bills 472 and 473 (as introduced 6-26-25)

Sponsor: Senator Sam Singh Committee: Regulatory Affairs

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INTRODUCTION

The bills would require the Michigan Strategic Fund (MSF) to create the More Jobs for Michigan Program (Program). Under the bills, an eligible business could apply to the MSF for participation in the Program and, if it met certain requirements, enter into a written agreement with the MSF. The MSF would provide a business authorized by the Program (an authorized business) a certain amount of withholding tax capture revenue collected under the Income Tax Act, contingent on the authorized business' fulfillment of the written agreement's goals. Generally, a business that entered into a written agreement with the MSF would have to engage in tangible efforts to create new jobs or maintain protected jobs in the State. The bills also would create the More Jobs for Michigan Fund (Fund). The State Treasurer would have to deposit the sum of withholding tax capture revenue allocated to authorized businesses under written agreements into the Fund each State fiscal year. The MSF would have to provide to authorized businesses a withholding certificate, which an authorized business could use to request payment from the Fund; however, the bills would allow the MSF to use 4% of the Program's funds, and administrative fees in the application process, to cover the Program's administrative expenses. The bills would prohibit the MSF from entering into a new written agreement with an authorized business under the Program after December 31, 2032.

BRIEF FISCAL IMPACT

The bills would reduce State General Fund revenue by an unknown and likely significant amount through fiscal year (FY) 2062-63. Although withholding revenue is distributed to both the General Fund and the School Aid Fund (SAF), the SAF would not be affected by the changes in the bills because the SAF portion is based on the gross revenue received and any withholding capture payments would not affect gross revenue. The bills do not limit the number of agreements nor, for individual taxpayers or in aggregate across all agreements, the total amount of withholding captures or the annual amount of withholding captures. The bills also do not provide for any carryover of any unused withholding capture in a given year into future years.

MCL 206.51f & 206.711 (S.B. 472) 125.2009 et al. (S.B. 473) Legislative Analyst: Nathan Leaman Fiscal Analyst: Joe Carrasco, Jr.; Jonah Houtz Elizabeth Raczkowski; Cory Savino, PhD David Zin

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CONTENT

<u>Senate Bill 473</u> would add Chapter 8F to the Michigan Strategic Fund Act to do the following:

- -- Require the MSF to create the Program.
- -- Establish the requirements that a business would have to meet to be eligible for the Program and that the MSF would have to determine to enter into a written agreement with a business, which would generally include the creation or protection of jobs in the State.
- -- Establish requirements for the content of an application to the Program and of a written agreement between the MSF and an eligible business.
- -- Require the MSF to determine the amount and duration of the withholding tax capture revenues to be authorized for an applicant based on specified economic factors and enter into a written agreement.
- -- Allow an applicant to receive up to 100% of withholding tax capture revenues for certified new jobs for a period of up to 10 years and allow the MSF to extend this duration by up to 10 years if certain requirements were met.
- -- Allow an eligible business to receive up to 100% of withholding tax capture revenues for protected jobs for a period of up to 20 years.
- -- Prohibit the MSF from entering into a new written agreement under the bill after December 31, 2032.
- -- Require the MSF to issue a withholding certificate each calendar year to an authorized employer under a written agreement.
- -- Create the Fund in the State Treasury.
- -- Allow an authorized business to request payment from the Fund by filing a copy of the withholding certificate with the MSF and require the MSF to fulfill the request within 90 days.
- -- Require the State Treasurer to develop methods and processes that were necessary for the authorized employer to report the amount of withholding from individuals employed in certified new jobs or protected jobs.
- -- Allow the MSF to reduce the total allocated withholding tax capture revenue by up to 4%, which the MSF would have to use to cover the Program's administrative costs.
- -- Repeal the Michigan Business Tax Act and the Michigan Economic Growth Authority Act, effective for tax years that began after December 31, 2030.

<u>Senate Bill 472</u> would amend the Income Tax Act to specify that an amount equal to the withholding tax capture revenue attributable to certified new jobs and protected jobs under the Program would have to be deposited into the Fund each State fiscal year according to agreements made between the MSF and eligible businesses.

The bills are tie-barred. Senate Bill 473 is discussed in greater detail below.

Senate Bill 473

Business Eligibility

An eligible business could apply to the MSF for participation in the Program. A retail establishment, professional sports stadium, casino, or the portion of an eligible business used exclusively for retail sales would *not* be eligible for participation.

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To be eligible, a business would have to operate in or plan to locate in the State. A business also would have to comply with Michigan law, as well as the law of the state it was organized in, if applicable. Lastly, a business would have to have the power to enter an agreement with the MSF.

In addition to these requirements, an eligible business would have to either propose to create new jobs or protect currently existing jobs. (See <u>Written Agreements; Creating Jobs</u> or <u>Written Agreements; Protecting Jobs</u> for more information).

Written Agreements; Creating Jobs

Upon receipt of an application, the MSF could enter into a written agreement with the applicant only *if* the MSF determined that the applicant met the requirements of this section (<u>Written</u> Agreements; Creating Jobs) or of the following section (Written Agreements; Protecting Jobs).

Firstly, if an applicant were eligible for authorization based on job creation, the MSF would have to determine if the applicant would create jobs according to one of the following tiers:

- -- Twenty-five or more certified new jobs that paid at least 175% of the prosperity region median wage.^{1,2}
- -- Twenty-five or more certified new jobs at a facility in a county with a population of up to 50,000 that paid at least 135% of the prosperity region median wage.
- -- Two-hundred and fifty or more certified new jobs that paid at least 150% of the prosperity region median wage.
- -- One thousand or more certified new jobs that paid at least 150% of the prosperity region median wage, if the applicant *also* proposed investments in the facility that exceeded \$1.0 billion.

Additionally, the MSF would have to determine that the applicant and the applicant's written agreement did or would do the following:

- -- In addition to the certified new jobs specified, the applicant, if already located in the State, agreed to a base employment level,³ as determined by the MSF.
- -- The plans for the creation of certified new jobs and any renovation or new construction of a facility were economically sound.
- -- The investment by the applicant and the creation of certified new jobs in the State would serve the public purpose of benefiting the people of the State by increasing opportunities for employment and by strengthening the economy of the State as determined by the MSF
- -- The withholding tax capture revenues offered and paid from the Fund were an incentive to expand or locate the applicant in the State, including addressing a need for additional assistance for deal closing or second stage company gap financing.
- -- A regional economic model cost benefit analysis recognized by economic development professionals indicated that the proposed payment of withholding tax capture revenues to the applicant would result in an overall positive fiscal impact to the State.

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¹ "Prosperity region median wage" would mean the median annual wage for the prosperity region where a facility is or will be located based on the most recent data made available by the Michigan bureau of labor market information and strategic initiatives.

² "Certified new job" would mean a full-time job created by an authorized employer or connected employer pursuant to a written agreement under the bill at a facility that is in excess of any base employment level or qualifying employment level applicable under the written agreement.

³ "Base employment level" would mean the number of full-time jobs in this state of an eligible business and any related business when the eligible business or related business enters into a written agreement under the bill, as determined by the MSF.

- -- The applicant would create the requisite number of certified new jobs within the time period provided in a written agreement, as determined by the MSF.
- -- The applicant would maintain the base employment level and at least the requisite number of certified new jobs throughout the duration of the period of time that the applicant received withholding tax capture revenues paid from the Fund; however, if the applicant failed to do so, the applicant would forfeit withholding tax capture revenues for the period of time provided in the written agreement.
- -- The applicant demonstrated to the satisfaction of the MSF that the applicant had paid taxes levied by the Federal government, the State, another state, or a political subdivision of the State or another state that were due and payable by the applicant before any penalty for nonpayment of the tax had attached, except for taxes contested in good faith and according to proceedings authorized by law.
- -- The governing body of the municipality in which the facility or proposed facility was located indicated its support for the proposed expansion or new location.
- -- The applicant 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.

The MSF could allow an applicant to receive up to 100% of withholding tax capture revenues for certified new jobs for a period of up to 10 years. The MSF could extend this period for up to an additional 10 years if the applicant proposed to create at least 1,000 certified new jobs and proposed investments in the applicant's facility that exceeded \$1.0 billion.

An applicant that the MSF determined met the following requirements could receive up to 100% of withholding tax capture revenues for certified new jobs for a period of up to 30 years:

- -- The applicant proposed a transformational job creation project that would a) create or provide for the creation of 3,000 or more certified new jobs, in excess of any applicable base employment level and the qualifying employment level, with a median annual wage of 150% or more of the prosperity region median wage by a date provided in the written agreement.
- -- Invested \$20.0 billion or more in excess of the qualifying investment level in a proposed facility by a date to be included in the written agreement with the applicant.
- -- The applicant proposed to create the certified new jobs within 10 years after achieving the qualifying employment level.
- -- The facility and the creation of the certified new jobs were determined by the MSF to be in the economic interests of the State.
- -- The facility and the creation of certified new jobs would benefit the people of the State by increasing activities for employment and strengthening the economy of the State, as determined by the MSF.
- -- The withholding tax capture revenues available and paid from the Fund were an incentive to expand or locate the applicant in the State and address the economic competitiveness of the State, as determined by the MSF.
- -- The qualifying employment level and qualifying investment level would be reached within 10 years as provided in the written agreement.
- -- Any applicable base employment level and the qualifying employment level would be maintained throughout the duration of the period of time that the applicant received withholding tax capture revenues paid from the Fund.
- -- The applicant demonstrated to the satisfaction of the MSF that the applicant had paid taxes levied by the Federal government, the State, another state, or a political subdivision of the State or another state that were due and payable by the applicant before any

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penalty for nonpayment of the tax had attached, except for taxes contested in good faith and under proceedings authorized by law.

An applicant whose location or expansion in the State required construction, including renovations or new construction, would have to meet the following timeline or be released from the written agreement:

- -- The applicant would have to begin construction within three years after the date the written agreement was executed.
- -- The applicant 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 applicant 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 its first hire.

An applicant whose location or expansion in the State did *not* require construction would have to meet the following timeline or be released from the written agreement:

- -- The applicant would have to complete its first hire of an individual to fill a certified new job within three years after the date the written agreement was executed.
- -- The applicant 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 its first hire.

The bill would require the MSF to notify an applicant of applicable deadlines at least 90 days before the deadline. The MSF *could* extend an applicable deadline for one year If the MSF determined that the applicant had proceeded in good faith with a location or expansion and there was good cause for the delay.

Written Agreements; Protecting Jobs

If an applicant were eligible for authorization due to the protection of jobs, the MSF would have to determine if the applicant met at least one of the following requirements:

- -- Maintained its North American headquarters or global headquarters in the State.
- -- Had at least 30% of its business activity in the State engaged in nonmanufacturing activities.
- -- The principal business operations of the eligible business were located in the State.

The MSF also would have to determine if the applicant met the following requirements:

- -- The investment by the eligible business and the maintenance of a base employment level, including any protected jobs in the State, would serve the public purpose of benefiting the people of the State by maintaining opportunities for employment and by strengthening the State's economy, as determined by the MSF.
- -- The withholding tax capture revenues offered and paid from the Fund were an incentive to maintain the protected jobs in the State.
- -- A regional economic model cost benefit analysis recognized by economic development professionals indicated that the proposed payment of withholding tax capture revenues to an eligible business would avoid an overall negative fiscal impact to the State.
- -- The eligible business demonstrated to the satisfaction of the MSF that the eligible business had paid taxes levied by the Federal government, the State, another state, or a political subdivision of the State or another state that were due and payable by the eligible business

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before any penalty for nonpayment of the tax had attached, except for taxes contested in good faith and pursuant to proceedings authorized by law.

Lastly, an applicant would have to agree to do all the following:

- -- Maintain at a facility 50 or more full-time jobs within the State that otherwise were at risk of transfer to another state or elimination.
- -- Maintain during the term of a written agreement with the MSF a base employment level, including any protected jobs.
- -- Maintain during the term of a written agreement with the MSF annual payroll payments for its full-time employees in the State at an amount equal to or greater than annual payroll payments of the eligible business during the calendar year immediately preceding the date the written agreement was executed.
- -- Make new investments in the State within five years after the date the written agreement was executed equal to at least \$100,000 for each protected job maintained.
- -- Make additional investment in the State during the term of the written agreement.
- -- Maintain the base employment level and the payroll for the protected jobs throughout the duration of the written agreement; however, if the eligible business failed to maintain the base employment level, including the requisite number of protected jobs as provided in the written agreement, the eligible business would forfeit withholding tax capture revenues as provided in the written agreement.

The MSF could allow an eligible business to receive up to 100% of withholding tax capture revenues for protected jobs for a period of up to 20 years.

Program Application Requirements

The bill would require the MSF to determine the form of the application for Program participation. Additionally, it would require each applicant to submit with their application a certified schedule listing all the business' legal violations within the three-year period immediately preceding the date of the application. For any violation that was not resolved, the schedule would have to include an action plan on resolving the violation.

If the schedule or other information available to the MSF indicated that an applicant had a violation that was *not* resolved, the bill would prohibit the MSF from entering into a written agreement with the applicant unless the applicant submitted satisfactory evidence that the applicant had a sufficient action plan to resolve the violation or that the violation was in the process of being resolved.

The bill also would prohibit the MSF from entering into a written agreement with an applicant if the applicant's schedule or other information indicated that any of the following applied:

- -- That, in the three-year period immediately preceding the date of application, the applicant had been issued five or more notices of violation of environmental regulations, or had an administrative consent order or a consent judgment involving environmental regulations that included stipulated penalties, unless the Department of Environment, Great Lakes, and Energy (EGLE) found the applicant had made improvements in operations to come into compliance with the State's environmental regulations, or other demonstrated ability to comply with the State's environmental regulations.
- -- In the three-year period immediately preceding the date of application, the applicant was subject to a criminal penalty under certain sections of the Michigan Occupational Safety and Health Act for a willful or repeated violation of that Act, an order issued under that Act, or a rule or standard promulgated under that Act.

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-- Inclusion in the Michigan Occupational Safety and Health Administration's severe violator enforcement program.

The MSF could request additional information to facilitate its responsibilities under the bill. Additionally, the bill would allow the MSF to enter into agreements with an eligible business other than an authorized employer, including a connected employer, if the MSF determined it necessary for the implementation and enforcement of the bill and a written agreement with an authorized employer.

Written Agreement Contents

If the MSF determined that all applicable requirements were or would be satisfied, the MSF would have to enter into a written agreement with the applicant for a duration determined by the MSF. A written agreement would have to include, without limitation, all the following information, as applicable:

- -- A description of any expansion, development, facility, or location that was the subject of the written agreement.
- -- Conditions on which the designation as an authorized employer was made.
- -- A statement from the authorized employer that the authorized employer would not otherwise add certified new jobs or retain protected jobs as provided for under the written agreement without the withholding tax capture revenue payments authorized under the bill.
- -- A provision indicating that misrepresentation in an application under the bill could result in the revocation of the designation as an authorized employer and the repayment of some or all the withholding tax capture revenues received, which could include a penalty equal to 10% of the withholding tax capture revenue payments received.
- -- A method for measuring and verifying certified new jobs required under the written agreement.
- -- A method for measuring and verifying protected jobs maintained under the written agreement.
- -- A provision requiring the authorized employer that was certified under the bill for a payment from the More Jobs for Michigan Fund to a) file the information, returns, or reports required under the Act and Chapter 17 of the Income Tax Act with the Department of Treasury (DOT) and b) provide any other information reasonably requested by the MSF, the Michigan Economic Development Corporation (MEDC), or the DOT.
- -- A maximum amount of withholding tax capture revenues that an authorized employer could claim before reduction of the up to 4% payment for administrative expenses, as provided in the written agreement.
- -- Specific penalties for noncompliance with the written agreement, including provisions for a clawback of disbursements to the authorized employer under the written agreement, as provided in the written agreement.
- -- A provision for the termination of the written agreement.
- -- An audit provision requiring the MSF to verify that the authorized employer had satisfied the requirements of the written agreement.
- -- A provision requiring the authorized employer to disclose to the MSF whether, to the knowledge of the authorized employer, there were any pending legal proceedings that could have a materially adverse effect on the authorized employer, a facility that was the subject of the written agreement, or the performance of the obligations of the authorized employer under the written agreement.
- -- A provision requiring an authorized employer and any general contractor or subcontractor of the authorized employer to comply with any requirements applicable under laws specified in the written agreement.

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-- A projected schedule of withholding tax capture revenues permitted under the written agreement, which could be updated by the MSF to ensure an accurate projection of withholding tax capture revenues and compliance with the bill during the term of the written agreement.

On execution of a written agreement, an eligible business and any related business would be considered an authorized employer. The MSF would have to provide a copy of each written agreement to the DOT. On execution of the written agreement, the transfer and payment of withholding tax capture revenues and in the written agreement would be binding on the State and the authorized employer.

As a condition of being an authorized employer, an authorized employer would authorize the MSF to identify the authorized employer and disclose the amount and duration of the withholding tax capture revenue payments. The MSF would have to publish the information on the MSF's website and include this information in the required report.

The MSF could not enter into a new agreement under the bill after December 31, 2032.

Withholding Tax Capture Revenue Calculation

If the MSF determined that all applicable requirements were or would be satisfied, the MSF would have to determine the amount and duration of the withholding tax capture revenues to be authorized for the applicant and enter into a written agreement for a duration determined by the MSF. In determining the maximum amount and maximum duration of the withholding tax capture revenues authorized, the MSF would have to consider certain factors, largely pertaining to the economic impact of the applicant on the State.

The bill would require the State Treasurer to calculate, based on the bill and the written agreements received, the amount of withholding tax capture revenues collected as a result of the certified new jobs created or protected jobs maintained and those written agreements for each calendar year, as well as the percentage of that amount that needed to be transferred from the General Fund and deposited, in accordance with Senate Bill 472, into the Fund.

Withholding Tax Capture Revenues Payment

The bill would require the MSF to issue a withholding certificate each calendar year to an authorized employer under the written agreement that stated all the following:

- -- That the authorized employer was an authorized employer under the bill.
- -- The amount of withholding tax capture revenues to be paid to the authorized employer from the Fund for the designated calendar year.
- -- The authorized employer's Federal employer identification number or the Michigan treasury number assigned to the authorized employer, or both.

The MSF would have to provide the DOT with a copy of each withholding certificate issued. On receipt of a withholding certificate, an authorized employer could request a payment from the Fund by filing a copy of the withholding certificate with the MSF. The MSF would have to issue the withholding tax capture revenue payment from the Fund within 90 days after receipt of the request for payment from the authorized employer.

The bill would require the State Treasurer to develop methods and processes that were necessary for the authorized employer to report the amount of withholding from individuals employed in certified new jobs or protected jobs and for the determination of withholding tax capture revenues under the bill and the Income Tax Act.

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The Fund

The bill would create the Fund in the State Treasury. The State Treasurer would have to deposit money and assets received under the Income Tax Act (as required by <u>Senate Bill 472</u>), or from any other source, into the Fund. The State Treasurer would have to direct the investment of money in the Fund and credit interest and earnings from the investments to the Fund. The MSF would be the administrator of the Fund for auditing purposes. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund.

The MSF would have to spend money from the Fund, on appropriation, only to make withholding tax capture revenue payments in accordance with a written agreement within 90 days after receipt of a request for payment and a copy of the withholding certificate issued under the bill.

For any future State fiscal year that the MSF, after consultation with the DOT, projected that withholding tax capture revenue payments would be required to be paid to an authorized employer, the MSF would have to notify the State Budget Director of that required activity for inclusion in annual proposals developed by the State Budget Director. In preparing an executive budget for that fiscal year for submission to the Legislature, the State Budget Director would have to include an appropriation from the Fund for the purpose of making withholding tax capture revenue payments from the Fund required by the bill. The Legislature would have to appropriate money from the Fund for the purpose of making payments from the Fund as required.

Additional Requirements

The Program would have to be operated and administered in compliance with the law by the MSF's authorized employees, officers, and agents, which could include employees of the MEDC. The MSF Board could delegate to its president, its vice president, employees of the MSF, or employees or officers of the MEDC, the functions and responsibilities under the bill that the MSF Board considered necessary or appropriate to administer the law. The MSF would have to adopt Program guidelines and use a detailed application, approval, and compliance process that was published and available on the MSF's website.

The amount of withholding tax capture revenues certified by the DOT to be paid to an authorized employer could be reduced by up to 4%, as determined by the MSF and provided in a written agreement. That amount would have to be retained by the MSF or the MEDC for administrative expenses incurred by the MSF or the MEDC in the operation of the Program. The MSF could enter into an agreement with the MEDC and the DOT regarding the administration of the Program and related administrative expenses.

Additionally, the MSF could use application fees or administrative fees received for activities authorized under the bill and for the administrative activities of the MSF and the MEDC authorized by the bill. Lastly, the bill also would require the MSF to include in its required annual report to the Legislature and other government officials information concerning its actions related to the Program.

Repeal

The bill would repeal the Michigan Business Tax Act and the Michigan Economic Growth Authority Act, effective for tax years that began after December 31, 2030. The Michigan Business Tax Act currently consists only of definitions and is set to be repealed for tax years

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beginning December 31, 2031. The Michigan Economic Growth Authority Act provides for the creation of the Michigan Economic Growth Authority within the MSF.

FISCAL IMPACT

The bills' provisions are similar to the provisions adopted in Public Act 109 of 2017 and Public Act 46 of 2017, although without the limits on agreements or capture amounts. Public Act 109 of 2017 limited the amount of withholding tax capture to a total of \$200.0 million over all agreements. Public Act 46 of 2017 also provides for withholding tax captures, and the current limits under that program restrict annual withholding tax captures to \$80.0 million per year with additional provisions for carryovers of up to \$30.0 million, bring to potential annual maximum revenue impact to \$110.0 million. Public Act 46 of 2017 also limits the combined total of withholding capture amounts and other authorized capture amounts to \$1.6 billion. If the bills resulted in approved captures similar to these limits, the bills would reduce General Fund revenue by more than \$100.0 million per year; however, because the bills would not impose any limits and the timing of when any applicable captures could occur is uncertain, the amount of revenue loss in any given fiscal year could be less than or greater than this amount.

The bills also would repeal the Michigan Business Tax Act and the Michigan Economic Growth Authority Act, effective December 31, 2030. Certificated credits administered under the provisions of these acts currently average approximately \$500.0 million per year. If the bills replicated these economic development incentive amounts, the annual General Fund reduction could exceed \$500.0 million per year, even without considering captures allowed for projects covered by Public Acts 46 and 109 of 2017

The MSF would experience additional administrative costs to oversee the Program. This includes overseeing tax capture, verifying certified jobs, developing program guidelines, processing applications, and approve agreements. These responsibilities could be delegated to the MEDC or the DOT. Administrative costs can be supported with no more than 4% of total tax capture as well as with application or administrative fees. This allowable level to cover administrative oversight should be sufficient to support the additional administrative costs for MSF, the MEDC, and the DOT.

The bills would have an indeterminate fiscal impact on the DOT. The DOT could incur expenses related to the administration of the Fund; however, the degree to which Treasury staff and resources would be used for various administrative activities would depend upon any specific agreement made between the MSF, Treasury, and MEDC as permitted under the bills. The costs likely could be covered by the amount retained by the MSF for administrative expenses, but this would depend on the specific agreement.

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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.