

## New MEDC Policy Requires Background Checks

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The good news is that the April 20 Michigan Economic Growth Authority (MEGA) board meeting will occur as scheduled. However, as a result of recent events relating to the issuance of a MEGA tax credit to a convicted embezzler (read the story [here](#)), Governor Granholm has directed the MEGA Board to institute safeguards to ensure the integrity of the program.

### **Executive directive:**

As an initial step, she has issued an executive directive. Executive directives are policies that do not carry the force of law. This executive directive calls for creation of a Business Integrity Verification Program that will:

- Require businesses seeking MEGA tax credits to submit answers to a new questionnaire (to be developed by the Michigan Economic Development Corp.)
- Require the officers, directors and shareholders of certain businesses to submit to a background check (civil/criminal/credit) if the MEGA board decides that a check is "necessary to verify the business integrity of the business"
- Allow MEGA to withhold issuance of tax credits if MEGA determines the business is not in compliance, and
- Require MEGA's Chief Compliance Officer to assist the MEGA board with implementing the directive, and to recommend and implement policies relating to ethics and conflicts of interest

### **Executive order:**

Granholm also issued an executive order, which will become law unless it is rejected by both houses of the Michigan Legislature within 60 days. The executive order calls for changes in the make-up of the MEGA board, effective April 30. The changes include:

- Removing the president of the Michigan Strategic Fund as MEGA Board chair and making him/her an ex-officio, non-voting member
- Appointing the State Treasurer as MEGA Board chair, and
- Replacing the Director of the Michigan Department of Transportation with the State Budget Director as a board member

**What This Means for You:**

In sum, background checks will now be required for many who seek MEGA tax credits or MEGA-approved Brownfield Redevelopment incentives. This policy will likely be expanded to other MEDC programs later this year, policymakers tell us. It's also possible the MEDC may require retroactive background checks for all projects approved since Jan. 1, 2010.

For the time being, the MEDC has decided that background checks will only be required for companies that do not have to file reports with the Securities and Exchange Commission. Further, the checks will only include "key personnel," including directors, officers, partners, members and those "who directly or indirectly, hold a pecuniary interest in the business entity of 20% or more of the Company, Corporation or Partnership."

Under the current language, beginning this month those who apply for MEGA tax credits or Brownfield incentives will need to consent to a criminal and civil background check by submitting their name, residential address and date of birth. The MEDC considers the authorization form and the information obtained in the background check to be exempt from Michigan's Freedom of Information Act.

The policies, still in their infancy, are sure to develop over time. We will provide additional information as it becomes available. If you have any questions regarding the new background check requirements, please contact Kurt Brauer ([kbrauer@wnj.com](mailto:kbrauer@wnj.com) or 248.784.5181) or John Byl ([jbyl@wnj.com](mailto:jbyl@wnj.com) or 616.752.2149.)