STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Rep. Wayne Schmidt

ENROLLED HOUSE BILL No. 5477

AN ACT to amend 1984 PA 270, entitled "An act relating to the economic development of this state; to create the Michigan strategic fund and to prescribe its powers and duties; to transfer and provide for the acquisition and succession to the rights, properties, obligations, and duties of the job development authority and the Michigan economic development authority to the Michigan strategic fund; to provide for the expenditure of proceeds in certain funds to which the Michigan strategic fund succeeds in ownership; to provide for the issuance of, and terms and conditions for, certain notes and bonds of the Michigan strategic fund; to create certain boards and funds; to create certain permanent funds; to exempt the property, income, and operation of the fund and its bonds and notes, and the interest thereon, from certain taxes; to provide for the creation of certain centers within and for the purposes of the Michigan strategic fund; to provide for the creation and funding of certain accounts for certain purposes; to impose certain powers and duties upon certain officials, departments, and authorities of this state; to make certain loans, grants, and investments; to provide penalties; to make an appropriation; and to repeal acts and parts of acts," by amending sections 88d, 88f, and 88q (MCL 125.2088d, 125.2088f, and 125.2088q), section 88d as amended by 2008 PA 571, section 88f as added by 2005 PA 225, and section 88q as amended by 2009 PA 144.

The People of the State of Michigan enact:

Sec. 88d. (1) The fund shall create and operate a loan enhancement program.

(2) As a separate and distinct part of the loan enhancement program, the fund may create a loan guarantee program that does all of the following:

(a) Provide a loan guarantee mechanism to financial institutions located in this state that provide commercial loans to qualified businesses, public authorities, and local units of government.

(b) Ensures that participating financial institutions do not refinance prior debt.

(c) Provide that a qualified business is only eligible for a loan guarantee under this section if it has a documented growth opportunity. As used in this subdivision, "documented growth opportunity" means a plant expansion, capital equipment investment, acquisition of intellectual property or technology, or the hiring of new employees to meet or satisfy a new business opportunity.

(d) Provide that a qualified business that engages primarily in retail sales is not eligible for a loan guarantee under this chapter unless the fund board makes a specific finding that the loan guarantee supports a new concept that has significant growth potential.

(e) Provide repayment provisions for a loan or a guarantee given to a qualified business that leaves Michigan within 3 years of the provision of the loan or guarantee or otherwise breaches the terms of an agreement with the fund.

(3) As a separate and distinct part of the loan enhancement program, the fund shall reestablish the small business capital access program that was previously operated by the fund for small businesses in a manner similar to how that program was operated before January 1, 2002. The small business capital access program shall operate on a market-driven basis and provide for premium payments by borrowers into a special reserve fund. The small business capital access program established by the board shall prohibit an officer, director, principal shareholder of a participating financial institution, or his or her immediate family members from receiving a small business capital access program loan from the financial institution. A loan under the small business capital access program may be issued to an eligible production company or film and digital media private equity fund even if the eligible production company or film and digital media private equity fund is not a small business. A loan under the small business capital access program shall provide that the proceeds of a loan may only be used for a business purpose within this state and may not be used for any of the following:

(a) The construction or purchase of residential housing.

(b) To finance passive real estate ownership.

(c) To refinance prior debt from the participating financial institution that is not part of the small business capital access program.

(4) As a separate and distinct part of the loan enhancement program, the fund shall establish a Michigan film and digital media investment loan program to invest in loans from the investment fund to eligible production companies or film and digital media private equity funds. The fund board shall make investments under this subsection only upon approval of the chief compliance officer and the Michigan film office after a review by the investment advisory committee. If an investment is made under this section, not more than $15,000,000.00 may be loaned to any 1 eligible production company or film and digital media private equity fund for any 1 qualified production. The fund board may make an investment in a qualified production if all of the following are satisfied:

(a) The production is filmed wholly or substantially in this state.

(b) The eligible production company or the film and digital media private equity fund has shown to the satisfaction of the Michigan film office that a distribution contract or plan is in place with a reputable distribution company.

(c) The eligible production company or film and digital media private equity fund agrees that, while filming in this state, a majority of the below the line crew for the qualified production will be residents of this state.

(d) The eligible production company or film and digital media private equity fund posts a completion bond approved by the Michigan film office and has obtained no less than 1/3 of the estimated total production costs from other sources as approved by the chief compliance officer and the Michigan film office or has obtained a full, unconditional, and irrevocable guarantee of the repayment of the amount invested by the fund in favor of the investment fund that satisfies 1 or more of the following:

(*i*) The guarantee is from an entity that has a credit rating of not less than BAA or BBB from a national rating agency.

(*ii*) The guarantee is from a substantial subsidiary of an entity that has a credit rating of not less than BAA or BBB from a national rating agency.

(*iii*) The eligible production company or the film and digital media private equity fund provides a full, unconditional letter of credit from a bank with a credit rating of not less than A from a national rating agency.

(*iv*) The guarantee is from a substantial and solvent entity as determined by the investment advisory committee.

(e) The fund board may make a loan under this subsection at a market rate of interest for a qualified production of up to 80% of expected and estimated tax credits available to the eligible production company or film and digital media private equity fund under sections 455 to 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1455 to 208.1459, if the eligible production company or the film and digital media private equity fund agrees to name the fund as its agent for the purpose of filing for the tax credits should the eligible production company not apply for the tax credits. The Michigan film office and the state treasurer shall determine the estimated amount of tax credits for purposes of this subsection. The fund board shall approve guidelines for the initiation of a loan and the terms of the loan under this subsection.

(f) A loan under this subsection may be converted to an equity investment by the fund board with the approval of the chief compliance officer and the Michigan film office.

(g) An eligible production company or film and digital media production company that receives a loan under this subsection is not also eligible for a loan for the same qualified production under subsection (5).

(h) Fifty percent of any earnings on a loan or investment under this subsection shall be deposited in the investment fund and the remainder of the earnings shall be deposited in the Michigan film promotion fund created under chapter 2A. One hundred percent of principal repaid under this subsection shall be deposited in the investment fund upon repayment.

(5) As a separate and distinct part of the loan enhancement program, the fund shall establish and operate the choose Michigan film and digital media loan fund to invest in loans from the investment fund to eligible production companies or film and digital media private equity funds eligible for a tax credit under the Michigan economic growth authority

act, 1995 PA 24, MCL 207.801 to 207.810, or sections 455 to 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1455 to 208.1459. The fund board shall make investments under this subsection only upon approval of the chief compliance officer and the Michigan film office. A loan issued under this subsection is subject to all of the following requirements:

(a) A loan shall be provided at an interest rate of not less than 1%.

(b) The minimum amount of a loan under this subsection is $500,000.00.

(c) The maximum term of a loan under this subsection is 10 years, including up to 3 years of deferred principal payments to align principal payments with receipt of primary incentives, as determined by the fund board.

(d) The value of the loan may not exceed the value of the primary incentive that the eligible production company or film and digital media private equity fund is eligible to receive over 7 years, as discounted by the fund board. A loan authorized by the fund board may provide for a loan amount equal to a portion or all of the discounted value of the primary incentives, as discounted by the fund board.

(e) The eligible production company or film and digital media private equity fund is responsible for repayment of the loan regardless of actual primary incentive amounts received.

(f) The eligible production company or film and digital media private equity fund is responsible for loan preparation and closing costs.

(g) An eligible production company or film and digital media private equity fund that receives a loan under this subsection is not also eligible for a loan for the same qualified production under subsection (4).

(h) The eligible production company or film and digital media private equity fund also obtains an additional loan from an accredited financial institution or other approved lending market.

(i) The loan shall be issued consistent with guidelines for the initiation of a loan and the terms of the loan under this subsection approved by the fund board.

(j) Fifty percent of any earnings on a loan under this subsection shall be deposited in the investment fund and the remainder of the earnings shall be deposited in the Michigan film promotion fund created under chapter 2A. One hundred percent of principal repaid under this subsection shall be deposited in the investment fund upon repayment.

(6) As a separate and distinct part of the loan enhancement program, the fund shall operate the choose Michigan fund program to invest in loans from the investment fund to a qualified business. The choose Michigan fund program shall operate on an incentive basis and shall provide loans to qualified businesses to promote and enhance significant job creation or retention within this state. The choose Michigan fund shall not make a loan under this subsection after September 30, 2009. Notwithstanding any requirement imposed by the fund before April 1, 2008, to receive a loan under this subsection, the fund board may or may not require a qualified business to obtain an additional loan from an accredited financial institution or other approved lending market to obtain a loan under this subsection. At the discretion of the fund board, not more than 3 loans provided through the choose Michigan fund may be forgivable. A loan issued under this subsection is subject to all of the following requirements:

(a) A loan shall be provided at an interest rate of not less than 1%.

(b) The minimum amount of a loan under this subsection is $500,000.00.

(c) The maximum term of a loan under this subsection is 10 years, including up to 3 years of deferred principal payments to align principal payments with receipt of any primary incentives, as determined by the fund board.

(d) Except as provided in subdivision (g), the qualified business is responsible for repayment of the loan regardless of any primary incentives received.

(e) The qualified business is responsible for loan preparation and closing costs.

(f) The loan shall be issued consistent with guidelines for the initiation of a loan and the terms of the loan under this subsection approved by the fund board.

(g) A loan under this subsection may be converted to an equity investment by the fund board.

(h) The loan shall be subject to repayment provisions. If the loan is with a qualified business that closes down or relocates outside of Michigan anytime within 3 years after the term of the loan, then the provisions of the loan shall also include, at a minimum, immediate repayment of any outstanding principal, payment of a default interest rate, and repayment of any amounts forgiven.

(i) In determining whether to forgive all or a portion of a loan to a qualified business, the fund shall consider the net economic impact of the project on the state's economy. The loan agreement between the fund and the qualified business shall clearly enumerate the terms, conditions and requirements under which all or a portion of the loan may be forgiven, including, but not limited to, job creation and investment in this state.

(7) As a separate and distinct part of the loan enhancement program, the fund shall operate the Michigan micro loan program to invest in, make loans to, or provide other economic assistance to support loans made by qualified micro loan

lenders. The fund shall establish guidelines for the Michigan micro loan program that include, but are not limited to, all of the following:

(a) A provision that requires consideration of a guarantee by a person as determined by the fund to act as a guarantor, or that provides a surety agreement for the qualified micro loan lender's loan.

(b) A provision that the amount of a loan may not exceed the greater of $50,000.00 or small business administration micro loan amount limitations.

(c) A provision that requires a position of security for the benefit of the qualified micro loan lender, which may include security on assets of the borrower that are financed through the support of the Michigan micro loan program.

(d) A provision that requires consideration of the default rate of credit facilities extended by the qualified micro loan lender before approving support under the Michigan micro loan program.

(e) A provision that provides that the qualified micro loan lender agrees to maintain a loan loss reserve in an amount as determined by the fund.

(8) As used in this section:

(a) "Below the line crew" means that term as defined under section 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1459.

(b) "Eligible production company" means that term as defined under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455.

(c) "Film and digital media private equity fund" means any limited partnership, limited liability company, or corporation organized and operating in the United States that satisfies all of the following:

(*i*) Has as its primary business activity the investment of funds in return for equity in qualified productions.

(*ii*) Holds out the prospect for capital appreciation from the investments.

(*iii*) Accepts investments only from accredited investors as that term is defined in section 2 of the federal securities act of 1963 and rules promulgated under that act.

(d) "Investment advisory committee" means the committee created within the department under section 91 of the executive organization act of 1965, 1965 PA 380, MCL 16.191.

(e) "Michigan film office" means the office created under chapter 2A.

(f) "Primary incentive" means a tax credit an eligible production company is eligible to receive under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, or under sections 455 to 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1455 to 208.1459.

(g) "Qualified micro loan lender" means a nonprofit entity, community development financial institution, regional revolving loan fund, or other organization making micro loans to qualified micro businesses as determined by the fund.

(h) "Qualified production" means that term as defined under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455.

Sec. 88f. (1) When creating programs for 21st century investments under this chapter, the fund shall create and operate the venture capital investment program. The fund board shall authorize investments that shall invest only in or alongside a qualified venture capital fund that invests primarily in early stage businesses. The venture capital investment program shall do all of the following:

(a) Provide that the return on investment that is sought is greater than the return on investment under the commercial loan portion of the loan enhancement program to reflect the greater risk and track actual return on investment performance comparison between venture capital investment and commercial loan enhancement investments on an ongoing basis in the annual report.

(b) Provide that the qualified venture capital fund will have an amount at risk greater than the fund's investment.

(c) Provide that a qualified venture capital fund is not eligible to participate in a venture capital investment program unless it operates a business development office in this state staffed with at least 1 full-time equivalent employee who is actively seeking opportunities for venture capital investments in businesses located in this state unless the investment opportunity requested by the qualified venture capital fund is targeted to a specific transaction involving a competitive edge technology that will not occur without the fund's investment as determined by the fund board.

(d) Provide that a qualified venture capital fund is not eligible to participate in a venture capital investment program unless it agrees to make venture capital investments in this state at a percentage rate that is not less than the percentage rate that the fund's investment in the qualified venture capital fund bears to the total amount in the qualified venture capital fund.

(e) Provide that a qualified venture capital fund is not eligible to participate in a venture capital investment program if its investment strategy provides for the breakup and liquidation of businesses. The fund board shall make sure that the agreements with a venture capital fund have the appropriate provisions to prohibit the actions described in this subdivision.

(f) Coordinate with the Michigan early stage venture investment fund as defined in section 3 of the Michigan early stage venture investment act of 2003, 2003 PA 296, MCL 125.2233, to ensure that a continuum of venture capital is available in this state.

(g) Provide that 80% of the funds allocated to a venture capital investment program shall focus on competitive edge technologies.

(h) Provide that a qualified venture capital fund may make follow-up investments that were eligible for investment at the time of initial investment but that subsequently may not be characterized as an investment in an early stage business.

(2) The fund board may limit overhead rates for recipients of awards to reflect actual overhead, administrative fees, and management fees, to an amount as determined by the fund board, which overhead rates shall not exceed 25% of the award. Start-up costs may be reimbursed as determined by the fund board.

Sec. 88q. (1) The fund may create and operate a center of innovation program to promote the development, acceleration, and sustainability of competitive edge technology sectors in this state. The fund may enter into agreements with 1 or more qualified entities for the designation and operation of a center of innovation as provided in subsection (5). Prior to entering into an agreement under this section, 1 or more qualified entities may apply to the fund for an agreement for designation and operation of a center of innovation. The application shall be in a form determined by the fund and shall include information the fund determines necessary and appropriate.

(2) Grants, loans, or other economic assistance given for the centers of innovation program may be awarded to for-profit companies, benefit companies, nonprofit companies, universities, and national laboratories for all of the following purposes:

(a) Providing up to a 1-for-1 match for federal, collaborative partners, or third party funding of up to 50% of the total project costs.

(b) Supplementing in-kind contributions provided by a person or entity other than this state.

(c) Accelerating the commercialization of an innovative technology or process that will be ready to market within 5 years of the effective date of the agreement.

(d) Activities of the center, including, but not limited to, workforce development and technology demonstration.

(3) All of the funds allocated to the centers for innovation program shall be used to match federal, collaborative partners, or third party funding. The fund board may authorize investment terms in qualified entities as part of any agreement as provided in subsection (5). Not more than 25% of any grant, loan, or other economic assistance awarded, as determined by the fund board, can be used for administrative costs or overhead by the awardee or any subcontractor hired to implement any portion of the centers for innovation agreement. Grants, loans, or other economic assistance authorized by this section shall be disbursed pursuant to a timeline and progress disbursement schedule included as part of an agreement under this section.

(4) The fund board shall establish a standard process to evaluate applications for an agreement under this section and shall appoint a committee to assist in the review of applications. The fund or the fund board shall not appoint or designate any person paid or unpaid to a committee to review applications if that person has a conflict of interest with any potential applicants as determined by the office of the chief compliance officer established in section 88i. When determining whether to enter into an agreement under this section, the fund board shall consider all of the following:

(a) The potential that in the absence of an agreement the development, acceleration, and sustainability of competitive edge technology sectors addressed by the proposed center of innovation will occur in a location other than this state.

(b) The extent to which the proposed center of innovation will promote the development of competitive edge technology sectors in this state.

(c) The extent to which the proposed center of innovation will promote economic development or job creation in this state.

(d) The extent to which the proposed center of innovation could attract private investment or encourage commercialization in competitive edge technology sectors in this state.

(e) The extent to which the proposed center of innovation may leverage skills or resources in which this state possesses a competitive advantage, including, but not limited to, skills of workers, intellectual property, and natural resources.

(f) The extent to which the proposed center of innovation may encourage collaboration on commercialization and technology transfer among qualified entities in this state.

(g) The extent to which the proposed center of innovation may attract additional federal funding to this state or persons or entities within this state.

(h) The financial viability of the proposed center of innovation and the proposed business plan for the center of innovation, including, but not limited to, commitments of financial and other support for the proposed center and the potential availability of federal funding for the proposed center.

(i) The financial resources available to the fund board for operation of the centers of innovation program under this section.

(j) Any recommendations from the centers manager selected under subsection (6).

(5) If the fund board enters into an agreement with 1 or more qualified entities for the operation of a center of innovation, the agreement shall include participation by at least 1 qualified business and at least 1 institution of higher education or a national laboratory. An agreement shall include, but is not limited to, all of the following:

(a) The roles and responsibilities of the fund and the qualified entities participating in the agreement.

(b) A governance structure for the center of innovation. The agreement may provide for representation of the fund in the governance of the center.

(c) The responsibilities of the fund and the qualified entities participating in the agreement, including, but not limited to, financial resources, technology, real property, personal property, or other resources contributed by the parties to the agreement.

(d) A commitment by the qualified entities participating in the agreement to collaborate on commercialization and technology transfer opportunities in competitive edge technology sectors in this state.

(e) A commitment by qualified entities that are institutions of higher education to provide incentives for faculty who participate in technology transfer and commercialization activities in competitive edge technology sectors and expansion of business formation efforts related to competitive edge technology sectors to increase the number of institution of higher education related start-up companies.

(f) A commitment to locate and retain commercialization opportunities resulting from the agreement or center of innovation within this state.

(g) A business plan for the center of innovation that identifies clear and measurable objectives, timelines, and deliverables for the center.

(h) The duration of the agreement and a mechanism for the dissolution of the center of innovation and the disposition of any assets. The fund board may revoke an agreement for the designation and operation of a center of innovation if a qualified entity that is a party to the agreement does not comply with the agreement.

(i) Negotiation of specific claw back and repayment provisions if performance to contract related to job creation, commercialization, or other metrics do not comply with the agreement. This provision shall be part of the public record and is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) The fund board may select a person or entity as a centers manager to assist the fund in the administration of the centers of innovation program authorized by this section. Costs associated with the administration of the centers of innovation program are subject to section 88b(5). The centers manager shall do all of the following as determined by the fund board:

(a) Provide administrative services related to the centers of innovation program.

(b) Act as contract manager on behalf of the fund for any agreement establishing a center of innovation under this section.

(c) Recommend to the fund board a plan for managing the centers of innovation program and implement any plan authorized by the fund board.

(d) Assist centers of innovation in developing a supply chain for competitive edge technology sectors.

(e) Evaluate and report to the fund board on the centers of innovation program and progress made toward commercialization of technology in competitive edge technology sectors in this state.

(f) Review applications submitted under subsection (1) and make recommendations to the fund board on the applications for approval of applications.

(g) Perform other functions related to the centers for innovation program authorized by this section as deemed necessary and appropriate by the fund board.

(7) As used in this section:

(a) "Centers manager" means a centers manager selected under subsection (6).

(b) "Competitive edge technology sectors" means sectors involving competitive edge technology.

(c) "Qualified entity" means a qualified business, an institution of higher education, a Michigan nonprofit corporation, a national laboratory, or a political subdivision of this state.

This act is ordered to take immediate effect.

Gary L Randall

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved ______________________________

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Governor