

Legislative Analysis



ECONOMIC DEVELOPMENT PROGRAMS

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Senate Bill 769 (H-1) as enrolled
Sponsor: Sen. Kimberly LaSata
House Committee: [Placed on second reading]
Senate Committee: Government Operations [Discharged]

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 771 (H-1) as enrolled
Sponsor: Sen. Roger Victory
House Committee: [Placed on second reading]
Senate Committee: Government Operations [Discharged]

House Bill 5603 (S-1) as enrolled
Sponsor: Rep. Julie Calley
House Committee: Government Operations
Senate Committee: [Committee of the Whole]

House Bill 4082 (S-2) as enrolled
Sponsor: Rep. Ben Frederick
House Committee: Appropriations
Senate Committee: Appropriations [Discharged]

Complete to 12-15-21

SUMMARY:

Senate Bill 769 would create the Strategic Outreach and Attraction Reserve Fund in the Department of Labor and Economic Opportunity (LEO). Money in the fund could only be spent pursuant to an appropriation or legislative transfer for the critical industry program proposed by Senate Bill 771 or for the Michigan strategic site readiness program proposed by House Bill 5603.

Senate Bill 771 would require the Michigan Strategic Fund (MSF) to create and implement the critical industry program to provide assistance to qualified businesses to make capital investments or create or retain certain jobs.

House Bill 5603 would require MSF to create and implement the Michigan strategic site readiness program to provide economic assistance for certain manufacturing or commercial sites to attract and promote investment in Michigan.

Senate Bill 771 and House Bill 5603 also would prescribe considerations for making and evaluating investments under the new programs, compliance criteria, procedures for modifying agreements, and reporting requirements.

House Bill 4082 would amend the act that governs the State Administrative Board to provide that the board cannot transfer funds from the Strategic Outreach and Attraction Reserve Fund, the critical industry program, or the Michigan strategic site readiness program

Senate Bill 769 would amend the Michigan Trust Fund Act to create the Strategic Outreach and Attraction Reserve Fund in the Department of Labor and Economic Opportunity. The state treasurer would deposit into the fund money and other assets received from state appropriations or any other source and would direct the investment of money in the fund and deposit interest and earnings from those investments. LEO would be the administrator of the fund for auditing purposes. Money in the fund that is restricted, obligated, or committed at the end of a fiscal year would remain in the fund and not lapse to the general fund.

Money in the Strategic Outreach and Attraction Reserve Fund could only be spent pursuant to an appropriation or legislative transfer for either of the following purposes:

- For the critical industry program proposed by SB 771.
- For the Michigan strategic site readiness program proposed by HB 5603.

By March 15 each year, LEO would have to send to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature a report on the activities of the Strategic Outreach and Attraction Reserve Fund.

MCL 12.252 and proposed MCL 12.254

Senate Bill 771 would amend the Michigan Strategic Fund Act to require MSF to create the critical industry program. MSF would have to use money appropriated to the program or money transferred from the Strategic Outreach and Attraction Reserve Fund (proposed by Senate Bill 769) to provide **qualified investments** to **qualified businesses** for deal-closing, gap financing, or other economic assistance to create or retain **qualified jobs** as a result of a technological shift in product or production or to make capital investments, or both, as determined by the MSF board of directors.

Qualified investment would mean a grant, loan, or other economic assistance for a project subject to a written agreement with a qualified business under the program, including for the following:

- Creation or retention of qualified jobs as a result of a technological shift in product or production.
- Infrastructure improvements.
- Other capital investments.
- The purchase or acquisition of heavy machinery.
- Other assistance, such as an agreement providing for assistance through the Transportation Economic Development Fund (TEDF).
- Job training opportunities or workforce development and education.

Qualified business would mean a business that is located or operates in Michigan or will locate or operate in Michigan as determined by the MSF board. A qualified business could include more than one business as determined by the MSF board.

Qualified job would mean a job performed by either of the following, as determined and verified by MSF:

- A Michigan resident whose state income taxes are withheld by an employer or by an employee leasing company or professional employer organization on behalf of the employer.

- A nonresident who is employed by a business at a project location located in Michigan.

MSF could not use money allocated to the program for administrative purposes. Any money allocated to the program that is unexpended, unallocated, or unobligated at the end of a fiscal year would revert to the Strategic Outreach and Attraction Reserve Fund proposed by Senate Bill 769.

Application process and criteria for consideration

MSF would have to provide for a detailed application, approval, and compliance process for the program and also publish it and make it available on the MSF website.

To the extent reasonably applicable as determined by the MSF board, MSF would have to consider and document at least all of the following criteria before entering into a written agreement for a qualified investment:

- The importance of the project to the community where it is located.
- Whether the project will stimulate additional revitalization of Michigan and the community where it is located.
- The amount of local financial and community support for the project.
- The business's financial need for a qualified investment.
- The extent to which vacant buildings and historic resources will be reused and blighted property will be redeveloped.
- The creation or retention of qualified jobs as a result of a technological shift in product or production in Michigan and at the project location.
- The amount of other public funds, such as federal or state funds and tax credits.
- The amount of private funds, investments, or contributions to the project, including the business's own investments.
- Whether and in what ways the project is financially and economically sound.
- Whether and in what ways the project promotes sustainable development.
- Whether and in what ways the project involves the rehabilitation of a historic resource.
- Whether and in what ways the project addresses areawide redevelopment and its overall economic benefit to the existing chain of supply.
- The extent and level of environmental contamination.
- Whether and in what ways the project will compete with or affect existing Michigan businesses in the same industry.
- Whether and in what ways the project's proximity to rail and utility infrastructure will affect the performance of the project and will maximize energy and logistics needs in Michigan and in the community where the project is located.
- The risk that the project, products, and investments will become obsolete in the future.
- The overall return on investment to the state.
- Whether and in what ways the project addresses food supply challenges.
- Any other criteria approved by the MSF board that are specific to an individual project and consistent with the purposes of the program.

Terms included in agreement

If MSF decides to award a qualified investment to a qualified business after considering the above criteria, it would have to enter into a written agreement with the business that clearly

and concisely includes all of the terms and conditions relating to the investment as determined and documented by the MSF board, including at least all of the following:

- Specific time frames and benchmarks for the business to receive a disbursement in installments under the agreement.
- Specific terms concerning the required creation or retention of qualified jobs as a result of a technological shift in product or production in Michigan and at the project location, including measurable outcomes, proration of payments for partial performance, and clawback and specific repayment provisions for breach of the agreement or failure to meet measurable outcomes.
- Specific penalties for noncompliance with the agreement as determined by MSF.
- A provision that all money subject to a clawback or repayment provision must be paid within 90 days of notification by MSF. Amounts not paid within 90 days would be subject to a penalty of 1% per month, prorated on a daily basis.
- A provision that the state will have a ***security interest*** to the extent of the qualified investment, unless this provision conflicts with any contractual obligation of the business or with any federal or state bankruptcy or insolvency laws.
- A provision that the business will provide the data described in the written agreement that are necessary for MSF to report to the legislature as required under the program.
- A provision that, when determined appropriate by MSF, the business may enter into direct agreements with workforce training providers to meet workforce requirements of a qualified investment.

Security interest would mean an interest in personal property or fixtures that secures payment or performance of an obligation.

Notice requirements for modifications

If MSF receives a request to modify an existing written agreement, it would have to provide a copy of the requested modification to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature within five business days after receiving it, together with the specific provisions to be modified and the rationale for considering the modification. Before modifying an existing written agreement, MSF would have to give notice of the proposed amendments and publish them on its website at least one business day before a public hearing on them. If MSF modifies a written agreement, it would have to provide a copy of the amended written agreement to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature within one business day after the modification.

Determination of fair exchange of value

In determining whether an approved qualified investment represents a fair exchange of value for value, MSF could consider the total value to Michigan of the investment and the best interests of the state, including any positive economic impact to the state likely to be generated by the qualified business under the written agreement, especially economic impact resulting in the location in the state of a business facility with a high economic impact, increased capital investment in the state, and the creation or retention of qualified jobs as a result of a technological shift in product or production in the state.

Limitation on disbursement

The MSF board could not disburse funds allocated to the program for a qualified investment to a qualified business if either of the following applies:

- The business has not fully repaid all money subject to clawback or required to be repaid under a specific repayment provision in a written agreement under the act.
- The business is in default on any grant, loan, investment, or other economic assistance made or guaranteed by the state.

Reports

By March 15 each year, MSF would have to send to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature a report on the activities of the critical industry program. The report would have to include all of the following:

- A list of qualified businesses that received a qualified investment.
- The type of project or product approved.
- The amount and type of qualified investment.
- For each separate form of qualified investment, all of the following:
 - The number of qualified jobs committed or projected to be created or retained as a result of a technological shift in product or production when the qualified investment was applied for.
 - The actual number of qualified jobs created or retained as a result of a technological shift in product or production that are not temporary employees.
 - The average annual salary of the qualified jobs created or retained as a result of a technological shift in product or production that are not temporary employees.
- The duration of the qualified investment.
- The amount of financial assistance other than state resources.
- Amounts returned to the Strategic Outreach and Attraction Reserve Fund, including any clawbacks and repayments due to a breach of the written agreement.

If MSF fails to send the report as required above on or before March 15, the MSF board could not disburse funds for a qualified investment under the program until MSF sends the report as required.

MSF also would have to include the activities of the critical industry program in the annual report it now submits to the individuals and entities described above.

MCL 125.2009 and proposed MCL 125.2088s

House Bill 5603 would amend the Michigan Strategic Fund Act to require MSF to create the critical industry program. MSF could use money appropriated to the program or money transferred from the Strategic Outreach and Attraction Reserve Fund (proposed by Senate Bill 769) only to provide grants, loans, or other economic assistance to ***eligible applicants*** to conduct ***eligible activities*** to create investment-ready sites to attract and promote investment in the state for eligible activities on or related to ***strategic sites*** and ***mega-strategic sites***.

Eligible applicant would mean an applicant that is one of the following:

- A political subdivision of the state, including a county, city, village, township, or charter township or an instrumentality of any of those political subdivisions.
- A local economic development corporation or similar authority.
- A person who is the owner of the site for which the improvements are proposed but is not its **end user**, as long as the person applies jointly with an applicant described above.
- A person that is or will be the end user of a site.

Eligible activities would mean one or more of the following for an applicable site:

- Land acquisition and assembly.
- Site preparation and improvement.
- Infrastructure improvements that directly benefit the site, such as transportation infrastructure, water and wastewater infrastructure, and utilities necessary to service the site.
- Demolition, construction, alteration, rehabilitation, or improvement of buildings on the site.
- Environmental remediation.
- Architectural, engineering, surveying, and similar professional fees.

End user would mean the person that will, directly or through an affiliate, establish and operate the manufacturing or other commercial enterprise that is the improved site's end use.

Strategic site would mean a publicly or privately owned site that is used for manufacturing or another commercial use or will be used for those purposes after a proposed acquisition.

Mega-strategic site would mean a strategic site that is or will be used for a large industrial project.

MSF could not use money allocated to the program for administrative purposes. Any money allocated to the program that is unexpended, unallocated, or unobligated at the end of a fiscal year would revert back to the Strategic Outreach and Attraction Reserve Fund proposed by Senate Bill 769.

Application, approval, and compliance process

MSF would have to provide for a detailed application, approval, and compliance process for the program and also publish it and make it available on the MSF website. This process would have to provide for at least both of the following:

- An eligible applicant may apply for a grant, loan, or other economic assistance in a form and manner determined by MSF.
- MSF must have separate application criteria for mega-strategic sites and other strategic sites and for sites that have a specifically identified end user and those that do not.

General criteria for consideration

To the extent reasonably applicable as determined by the MSF board, MSF would have to consider and document at least all of the following criteria before entering into a written agreement for a grant, loan, or other economic assistance:

- The importance of the project or eligible activities to the community where they are located.
- Whether the project will stimulate additional revitalization of Michigan and the community where it is located.
- The amount of local financial and community support for the project.
- The amount of other economic assistance or support provided for the project by the state.
- The amount of other economic assistance or support provided for the project by the federal government, including federal appropriations or tax credits.
- The amount of private funds or investments for the project, including the applicant's own investments.
- The applicant's financial need for a grant, loan, or other assistance.
- The extent to which vacant buildings and historic resources will be reused and blighted property will be redeveloped.
- The creation or retention of **qualified jobs** as a result of a technological shift in product or production in Michigan and at the project location.
- Whether and in what ways the project is financially and economically sound.
- Whether and in what ways the project converts abandoned public buildings to private use.
- Whether and in what ways the project promotes sustainable development.
- Whether and in what ways the project involves the rehabilitation of a historic resource.
- Whether and in what ways the project addresses areawide redevelopment.
- Whether and in what ways the project addresses underserved markets of commerce.
- The extent and level of environmental contamination.
- Whether and in what ways the project will compete with or affect existing Michigan businesses in the same industry.
- Whether and in what ways the project's proximity to rail and utility infrastructure will affect the performance of the project and will maximize energy and logistics needs in Michigan and in the community where the project is located.
- The risk that the project, products, and investments will become obsolete in the future.
- The overall return on investment to the state.
- Whether the proposed site is incorporated into a strategic plan of a political subdivision.
- Any other criteria approved by the MSF board that are specific to an individual project and consistent with the purpose of the program.

Qualified job would mean a job performed by either of the following, as determined and verified by MSF:

- A Michigan resident whose state income taxes are withheld by an employer or by an employee leasing company or professional employer organization on behalf of the employer.
- A nonresident who is employed by a business at a project location located in Michigan.

Additional consideration criteria for specified cases

In addition to the above general considerations, MSF would have to consider and document at least all of the following criteria, to the extent reasonably applicable as determined by the MSF board, in determining whether to approve a grant, loan, investment, or other economic assistance for a *strategic site* for which an end user has *not* been specifically identified:

- The degree to which the proposed site demonstrates a high level of competitiveness for future development, considering and documenting all of the following:
 - Whether the proposed site is currently assembled.
 - Whether the proposed site is under site control.
 - Whether the proposed site's size, configuration, location, and condition make it substantially ready for marketing and competitive for development upon completion of the proposed grant, loan, or other assistance and demonstrated matching contributions.
- Whether the proposed investment will result in the elimination of blight and the remediation of environmental contamination.
- The degree of local matching contributions.
- Whether the investment will promote geographic equity in the distribution of funds among different areas of the state.
- Whether the eligible applicant has pursued all available cost-containment measures.

In addition to the above general considerations, MSF would have to consider and document at least all of the following criteria, to the extent reasonably applicable as determined by the MSF board, in determining whether to approve a grant, loan, or other economic assistance for a *mega-strategic site* for which an end user has *not* been specifically identified:

- The degree to which the proposed site demonstrates a high level of competitiveness for future development, considering and documenting all of the following:
 - Whether the proposed site is currently assembled.
 - Whether the proposed site is under site control.
 - Whether the proposed site's size, configuration, location, and condition make it substantially ready for marketing and competitive for development upon completion of the proposed grant, loan, or other assistance and demonstrated matching contributions.
- Whether a strategic analysis supports the demand for the proposed site.
- The feasibility of proposed land acquisition.
- Utility and transportation availability and the feasibility of necessary improvements.
- Workforce availability and training capability.
- Environmental and topographical conditions and the feasibility of necessary site improvements.

In addition to the above general considerations, MSF would have to consider and document at least all of the following criteria, to the extent reasonably applicable as determined by the MSF board, in determining whether to approve a grant, loan, or other economic assistance for a *strategic site* for which an end user *has* been specifically identified:

- The strategic economic importance of the project to Michigan and the community where it is located.
- Whether the financial assistance is needed to secure the project in the state.
- The degree to which the project is a priority for the local governmental unit or local economic development corporation where the site is located.

- The level of creation or retention of qualified jobs as a result of a technological shift in product or production.
- Whether the qualified jobs created or retained as a result of a technological shift in product or production equal or exceed the average wage for the county where the project is located.
- The level of capital investment.
- The evidence of the end user's commitment to the site.

Terms included in agreement

If MSF decides to provide a grant, loan, or other economic assistance to an eligible applicant after considering the above criteria, it would have to enter into a written agreement with the applicant that clearly and concisely includes all of the terms and conditions relating to the grant, loan, or other economic assistance as determined and documented by the MSF board, including at least all of the following:

- Specific dates and benchmarks for the applicant to receive a grant, loan, or other assistance, including conditions for the disbursement of funds in installments.
- For a grant, loan, or other assistance provided to an end user of the site, a clawback and specific repayment provision for failure to comply with the agreement.
- A provision that all money subject to a clawback or repayment provision must be paid within 90 days of notification by MSF. Amounts not paid within 90 days would be subject to a penalty of 1% per month, prorated on a daily basis.
- A provision that the state will have a ***security interest*** to the extent of the qualified investment, unless this provision conflicts with any contractual obligation of the business or with any federal or state bankruptcy or insolvency laws.
- An audit provision that requires MSF to verify that the established benchmarks for the project have been met.

Security interest would mean an interest in personal property or fixtures that secures payment or performance of an obligation.

In making an award for a mega-strategic site *without* a specifically identified end user, MSF would have to prepare, in collaboration with the applicant, a mega-strategic site investment strategy and spending plan that details the sequence and cost of anticipated investments in the selected site, the benchmarks for bringing the site to a marketable condition, and the marketing strategy for the site. Each plan would have to have the objective of establishing a certified mega-strategic site under a nationally recognized third-party certification program.

Notice requirements for modifications

If MSF receives a request to modify an existing written agreement, it would have to provide a copy of the requested modification to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature within five business days after receiving it, together with the specific provisions to be modified and the rationale for considering the modification. Before modifying an agreement, MSF would have to give notice of the proposed amendments and publish them on its website at least one business day before a public hearing on them. If MSF modifies an agreement, it would have to provide a copy of the amended written agreement to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature within one business day after the modification.

Limitation on disbursement

The MSF board of directors could not disburse money from the program for a grant, loan, or other economic assistance to an eligible applicant if either of the following applies:

- The applicant has not fully repaid all money subject to clawback or required to be repaid under a specific repayment provision in a written agreement under the act.
- The applicant is in default on any grant, loan, investment, or other economic assistance made or guaranteed by the state.

Money paid to MSF under a clawback or specific repayment provision for a grant, loan, investment, or other economic assistance under the bill would have to be deposited in the Strategic Outreach and Attraction Reserve Fund proposed by Senate Bill 769.

Inventory of development-ready sites

The program could provide grants and technical assistance to local economic development corporations to create an inventory of development-ready sites. The inventory would have to use nationally recognized criteria to identify the readiness of sites for investment. MSF would have to maintain on its website a comprehensive inventory of those sites, with an interactive and user-friendly listing of all local and state development-ready sites and any related pictures, maps, or other documentation.

Reports and disclosures

By March 15 each year, MSF would have to send to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature a report on the activities of the Michigan Strategic Site Readiness Fund. The report would have to include all of the following:

- A list of eligible applicants that received a grant, loan, investment, or other assistance.
- The type of project or eligible activities approved.
- The amount and type of each award.
- The duration of the grant, loan, investment, or other economic assistance.
- The amount of financial assistance other than state resources.
- Amounts returned to the Strategic Outreach and Attraction Reserve Fund, including any clawbacks and repayments due to a breach of the written agreement.

If MSF fails to send the report by March 15, the MSF board could not disburse money for a grant, loan, or other economic assistance under the program until MSF sends the report as required.

In addition, at least every three months, MSF would have to post on the Michigan Economic Development Corporation's website the names of eligible applicants and location of each site that received a grant, loan, or other economic assistance in that period and the amount of the grant, loan, or other assistance.

MSF also would have to include the activities of the Michigan Strategic Site Readiness Fund in the annual report it now submits to the individuals and entities described above.

MCL 125.2009 and proposed MCL 125.2088t

House Bill 4082 would amend 1921 PA 2, which prescribes certain powers and duties of the State Administrative Board, to provide that the board may not transfer funds from the Strategic Outreach and Attraction Reserve Fund, the critical industry program, or the Michigan strategic site readiness program.

1921 PA 2 created the State Administrative Board and enumerates several of its powers and duties. Under the act, the board does not have the power to transfer to a state department, board, commission, officer, or institution any sum from the amount appropriated by the legislature for any other purpose, except that the board may inter-transfer funds within the appropriation for a particular department, board, commission, officer, or institution.

Under the bill, the State Administrative Board could not transfer or inter-transfer any funds that are appropriated to or deposited in the Strategic Outreach and Attraction Reserve Fund created under the Michigan Trust Fund Act or that are appropriated or transferred for the critical industry program created under the Michigan Strategic Fund Act or the Michigan strategic site readiness program created under the Michigan Strategic Fund Act.

MCL 17.3

Tie-bars

A bill cannot take effect unless each bill to which it is tie-barred is also enacted.

Senate Bills 769 and 771 and House Bill 5603 are all tie-barred to each other and to House Bills 4082 and 5351.¹

House Bill 4082 is tie-barred to Senate Bills 769 and 771 and House Bill 5603.

FISCAL IMPACT:

Collectively, the bills would have no direct fiscal impact on state or local government. While the bills create funds and the statutory framework associated with the funds, funding for the purposes associated with the funds would be subject to annual legislative appropriations. The bills include no specific revenue source for any of the funds established under the bills.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

¹ Enrolled House Bill 5351 would amend the General Property Tax Act to increase, from \$80,000 to \$180,000, the true cash value of industrial or commercial personal property owned by a taxpayer in a particular local tax collecting unit that can be exempted under the act. (This is commonly called the small business exemption.)