

**SUBSTITUTE FOR
SENATE BILL NO. 771**

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending section 9 (MCL 125.2009), as amended by 2017 PA 109,
and by adding section 88s.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) The fund shall transmit to each member of the
2 legislature, the governor, the clerk of the house of
3 representatives, the secretary of the senate, and the senate and
4 house fiscal agencies annually a report of its activities. The
5 report shall be transmitted not later than April 10 of each year
6 for activities in the immediately preceding state fiscal year. The
7 report shall not include information exempt from disclosure under
8 section 5. The report shall include, but is not limited to, all of

1 the following for each program operated under this act:

2 (a) A list of entities that received financial assistance.

3 (b) The type of project or product being financed.

4 (c) The amount and type of financial assistance.

5 (d) For each separate form of financial assistance, all of the
6 following:

7 (i) The number of new jobs committed or projected when the
8 financial assistance was applied for.

9 (ii) The number of retained jobs committed or projected when
10 the financial assistance was applied for.

11 (iii) The actual number of new jobs created that are not
12 temporary employees.

13 (iv) The actual number of retained jobs that are not temporary
14 employees.

15 (v) The average annual salary of the new jobs created that are
16 not temporary employees.

17 (vi) The average annual salary of the retained jobs that are
18 not temporary employees.

19 (e) The duration of the financial assistance.

20 (f) The amount of financial support other than state
21 resources.

22 (g) Money or other revenue or property returned to the fund,
23 including any repayments through a clawback provision in the
24 agreement.

25 (h) The status of all loans of the fund.

26 (i) A list of all entities that are in bankruptcy, that the
27 fund has received actual notice of, filed by a direct recipient of
28 an active single incentive of at least \$500,000.00. In addition,
29 the fund shall, within 120 days after the fund receives notice,

1 provide a report of the notice of bankruptcy on its website and
 2 shall forward the report to each of the following:

3 (i) The senate majority leader and the senate minority leader.

4 (ii) The speaker of the house and the house minority leader.

5 (iii) The members of the house commerce **and tourism** committee.

6 (iv) The members of the house appropriations subcommittee on
 7 general government.

8 (v) The members of the senate economic **and small business**
 9 development committee.

10 (vi) The members of the senate appropriations subcommittee on
 11 general government.

12 (j) A summary of the approximate administrative costs used to
 13 administer the programs and activities authorized under this act.

14 (k) Any other information as required in this section.

15 (2) The auditor general or a certified public accountant
 16 appointed by the auditor general annually shall conduct and remit
 17 to the legislature an audit of the fund and, in the conduct of the
 18 audit, shall have access to all records of the fund at any time,
 19 whether or not confidential. Each audit required by this section
 20 shall include a determination of whether the fund is likely to be
 21 able to continue to meet its obligations, including a report on the
 22 status of outstanding loans and agreements made by the fund.

23 (3) The fund shall also transmit the audit described in
 24 subsection (2) to the chairperson and minority vice-chairperson of
 25 the senate appropriations subcommittee on general government and
 26 the house of representatives appropriations subcommittee on general
 27 government. The fund shall make the report and audit available to
 28 the public on the fund's website.

29 (4) The report described in subsection (1) ~~shall~~**must** also

1 contain all of the following that are related to a 21st century
2 investment made by the fund board under chapter 8A:

3 (a) The amount of qualified venture capital fund investments,
4 qualified mezzanine fund investments, and qualified private equity
5 fund investments under management in this state, including year-to-
6 year growth.

7 (b) The value of loan enhancement program investments,
8 qualified private equity fund investments, qualified mezzanine fund
9 investments, and qualified venture capital investments in qualified
10 businesses, including year-to-year growth.

11 (c) A statement of the amount of money in each loan reserve
12 fund established under the small business capital access program
13 required under chapter 8A.

14 (5) The report described in subsection (1) ~~shall~~**must** also
15 include, but is not limited to, all of the following for all
16 actions under section 88r:

17 (a) The total actual amount of qualified investment attracted
18 under section 88r as reported to the fund.

19 (b) The total actual number of new jobs created under section
20 88r as reported to the fund.

21 (c) The actual amount of the grant, loan, or other economic
22 assistance made under section 88r separately for each qualified
23 business verified by the fund.

24 (d) For each qualified business, whether it is a new business,
25 whether it is an expansion of an existing business, or whether it
26 relocated from outside of this state.

27 (e) An evaluation of the aggregate return on investment that
28 this state realizes on the actual qualified new jobs and actual
29 qualified investment made by qualified businesses.

1 (6) The report described in subsection (1) ~~shall~~**must** also
2 include, but is not limited to, all of the following for all
3 actions under chapter 8B:

4 (a) For tourism promotion efforts, all of the following:

5 (i) An itemized list, by market, of how much was spent, types
6 of media purchased, and target of the tourism promotion campaign.

7 (ii) The return on investment analysis that utilizes existing
8 baseline data and compares results with prior outcome evaluations
9 funded by Travel Michigan.

10 (b) For business development efforts, all of the following:

11 (i) An itemized list, by market, of how much was spent, types
12 of media purchased, and target of the business promotion campaign.

13 (ii) A performance analysis that compares the program or
14 campaign objectives and outcome of the campaign or program.

15 (7) The report described in subsection (1) ~~shall~~**must** also
16 include, but is not limited to, all of the following for all
17 actions under section 90d:

18 (a) The total actual amount of private investment attracted
19 under section 90d as reported to the fund.

20 (b) The actual amount of the community revitalization
21 incentives made under chapter 8C separately for each project.

22 (c) The total actual amount of square footage revitalized or
23 added for each project approved under section 90d as reported to
24 the fund. When reporting square footage, the person must report the
25 square footage by category, including, but not limited to,
26 commercial, residential, or retail.

27 (d) The aggregate increase in taxable value of all property
28 subject to a written agreement under chapter 8C when established
29 and recorded by the local units of government and as reported to

1 the fund.

2 (e) The total actual number of residential units revitalized
3 or added for each project approved under section 90d as reported to
4 the fund.

5 (f) Each project that received a community revitalization
6 incentive outside the fund program standards and guidelines and why
7 the variance was given.

8 (8) Beginning on and after January 1, 2012, on a monthly basis
9 the fund shall provide exact copies of all information regarding
10 all actions under chapter 8C that is provided to board members of
11 the fund for the purpose of monthly board meetings, subject to
12 confidentiality under section 5, to each of the following and post
13 that information on the fund's website:

14 (a) The chairperson and minority vice-chairperson of the house
15 commerce **and tourism** committee.

16 (b) The chairperson and minority vice-chairperson of the house
17 appropriations subcommittee on general government.

18 (c) The chairperson and minority vice-chairperson of the
19 senate economic **and small business** development committee.

20 (d) The chairperson and minority vice-chairperson of the
21 senate appropriations subcommittee on general government.

22 (9) The report described in subsection (1) ~~shall~~**must** also
23 include a summary of the approximate administrative costs used to
24 administer the programs and activities authorized in the following
25 sections:

26 (a) Section 88b.

27 (b) Section 88h.

28 (c) Section 90b.

29 (10) The report described in subsection (1) ~~shall~~**must** also

1 include, but is not limited to, all of the following for all
2 actions for business incubators approved by the fund after January
3 14, 2015:

4 (a) The number of new jobs created and projected new job
5 growth by current clients of the business incubator.

6 (b) Amounts of other funds leveraged by current clients of the
7 business incubator.

8 (c) Increases in revenue for current clients of the business
9 incubator.

10 (11) The report described in subsection (1) ~~shall~~**must** also
11 include the actual repayments received by the fund for failure to
12 comply with clawback provisions of the written agreement under all
13 of the following:

14 (a) Section 78.

15 (b) Section 88d.

16 (c) Section 88k.

17 (d) Section 88q.

18 (e) Section 88r.

19 (f) Section 90b.

20 (12) Beginning on July 1, 2015, the fund shall post on the
21 fund's website a list of each contract, agreement, or other written
22 loan or grant documentation for financial assistance under sections
23 88r and 90b that the fund entered into or modified in the
24 immediately preceding fiscal year.

25 (13) Beginning on July 1, 2015, the fund shall post and update
26 periodically all of the following on its website for all loans made
27 under sections 88r and 90b:

28 (a) A description of the project for which the loan was made.

29 (b) The total amount of the loan.

1 (c) Whether payments on the loan balance are current or
2 delinquent.

3 (d) The interest rate of the loan.

4 (14) Beginning July 1, 2015, the report described in
5 subsection (1) shall also contain all of the following for each
6 program that provides financial assistance under this act that
7 requires a site visit:

8 (a) A copy of the site visit guidelines for that program.

9 (b) The number of site visits conducted under that program.

10 (c) The chief compliance officer shall review and evaluate
11 compliance with the site visit guidelines.

12 (15) The fund shall post on its website and update
13 periodically all of the information described in subsection (14).

14 (16) The report described in subsection (1) must also include,
15 but is not limited to, all of the following for all written
16 agreements related to the good jobs for Michigan program created
17 under chapter 8D:

18 (a) The name of the authorized business.

19 (b) The number of certified new jobs required to be
20 maintained.

21 (c) The amount and duration of the withholding tax capture
22 revenues.

23 **(17) The report described in subsection (1) must also include**
24 **the activities of the critical industry fund described in section**
25 **88s.**

26 **(18) The report described in subsection (1) must also include**
27 **the activities of the Michigan strategic site readiness fund**
28 **described in section 88t.**

29 **(19) ~~(17)~~As used in this section, "financial assistance"**

1 means grants, loans, other economic assistance, and any other
2 incentives or assistance under this act.

3 Sec. 88s. (1) The critical industry fund is created as a
4 separate account within the investment fund. The critical industry
5 fund includes money appropriated to, transferred to, or deposited
6 in the critical industry fund from the strategic outreach and
7 attraction reserve fund created in section 4 of the Michigan trust
8 fund act, 2000 PA 489, MCL 12.254, as provided by law. Money in the
9 critical industry fund at the close of a fiscal year that is not
10 allocated or otherwise committed pursuant to this section shall
11 revert back to the strategic outreach and attraction reserve fund
12 created in section 4 of the Michigan trust fund act, 2000 PA 489,
13 MCL 12.254.

14 (2) The fund shall expend money from the Michigan critical
15 industry fund only to provide qualified investments to qualified
16 businesses for deal-closing, gap financing, or other economic
17 assistance to create new qualified jobs or make capital
18 investments, or both, as determined by the fund board. Money within
19 the critical industry fund must not be used for administrative
20 purposes. The fund board shall not disburse funds from the critical
21 industry fund for a qualified investment under this section to a
22 qualified business if that qualified business has not fully repaid
23 all money subject to clawback or required to be repaid under a
24 specific repayment provision as provided in any written agreement
25 under this act or if that qualified business is in default on any
26 grant, loan, investment, or other economic assistance made or
27 guaranteed by this state. All money paid to the fund pursuant to a
28 clawback or specific repayment provision for a qualified investment
29 under this section shall be deposited in the strategic outreach and

1 attraction reserve fund created in section 4 of the Michigan trust
2 fund act, 2000 PA 489, MCL 12.254.

3 (3) The fund shall consider and document at a minimum all of
4 the following criteria to the extent reasonably applicable as
5 reasonably determined by the fund board to the type of project
6 proposed before entering into a written agreement for a qualified
7 investment as provided under subsection (4):

8 (a) The importance of the project to the community in which it
9 is located.

10 (b) If the project will act as a catalyst for additional
11 revitalization of the community in which it is located and this
12 state.

13 (c) The amount of local community and financial support for
14 the project.

15 (d) The applicant's financial need for a qualified investment
16 from the critical industry fund.

17 (e) The extent of reuse of vacant buildings, public or
18 private, reuse of historic resources, and redevelopment of blighted
19 property.

20 (f) Creation of new qualified jobs at the project location and
21 within this state.

22 (g) The level of other public funds including, but not limited
23 to, the appropriation of federal or state funds and any federal or
24 state tax credits.

25 (h) The level of any private funds, investments, or
26 contributions into the project including, but not limited to, the
27 qualified business's own investments in the project.

28 (i) Whether and how the project is financially and
29 economically sound.

1 (j) Whether and how the project promotes sustainable
2 development.

3 (k) Whether and how the project involves the rehabilitation of
4 a historic resource.

5 (l) Whether and how the project addresses areawide
6 redevelopment and the overall economic benefit to the existing
7 supply chain.

8 (m) The level and extent of environmental contamination.

9 (n) Whether and how the project will compete with or affect
10 existing Michigan businesses within the same industry.

11 (o) Whether and how the project's proximity to rail and
12 utility will impact performance of the project and maximize energy
13 and logistics needs in the community in which it is located and in
14 this state.

15 (p) The risk of obsolescence of the project, products, and
16 investments in the future.

17 (q) The overall return on investment to this state.

18 (r) Any other additional criteria approved by the board that
19 are specific to each individual project and are consistent with the
20 findings and intent of this section.

21 (4) If the fund determines, after making the considerations
22 under subsection (3), to award a qualified investment from the
23 critical industry fund to a qualified business under this section,
24 the fund shall enter into a written agreement with the qualified
25 business that includes in a clear and concise manner all of the
26 terms and conditions relating to the qualified investment as
27 determined and documented by the fund board, including, but not
28 limited to, the following:

29 (a) Specific time frames and benchmarks to be met before the

1 qualified business receives a disbursement in installments from the
2 critical industry fund pursuant to the approved qualified
3 investment.

4 (b) Specific terms relating to the required creation of new
5 qualified jobs at the project location and within this state,
6 including measurable outcomes, proration of payments for partial
7 performance, clawback and specific repayment provisions for breach
8 of the agreement, or for failure to meet measurable outcomes.

9 (c) Specific penalties for noncompliance with the written
10 agreement as determined by the fund.

11 (d) A provision that all money that is subject to a clawback
12 or required to be repaid under a specific repayment provision must
13 be paid within 30 days of notification by the fund. Any amounts not
14 paid within that 30-day period are subject to a penalty of 1% per
15 month, prorated on a daily basis.

16 (e) A provision that in the event the qualified business files
17 for bankruptcy, to the extent permitted by law, this state is a
18 secured creditor and shall have first priority over other creditors
19 if the qualified business is in default under the written
20 agreement.

21 (f) A provision that the qualified business will provide the
22 data described in the written agreement that are necessary for the
23 fund to report to the legislature as required under this section.

24 (g) A provision that the qualified business may enter into
25 direct agreements with workforce training providers, when
26 appropriate, as determined by the fund to meet the workforce
27 requirements of a qualified investment.

28 (5) If the fund receives a request to modify an existing
29 written agreement for a qualified investment under this section,

1 the fund must provide a copy of that requested modification to each
2 member of the legislature, the governor, the clerk of the house of
3 representatives, the secretary of the senate, and the senate and
4 house fiscal agencies within 5 business days of the receipt of the
5 modification request. In addition to the copy of the request for
6 modification, the notice provided under this subsection must also
7 include the specific provisions to be modified and the rationale
8 for considering the modification. Before the fund modifies an
9 existing written agreement for a qualified investment, the fund
10 must give notice of the proposed amendments and publish them on the
11 fund's internet website at least 1 business day prior to a public
12 hearing on the proposed amendments. If the fund approves and
13 modifies an existing written agreement under this subsection, the
14 fund must provide a copy of that amended written agreement to each
15 member of the legislature, the governor, the clerk of the house of
16 representatives, the secretary of the senate, and the senate and
17 house fiscal agencies within 1 business day of the modification.

18 (6) If the fund board seeks to make a determination as to
19 whether a qualified investment approved under this section
20 represents a fair exchange of value for value, the fund may
21 consider the total value to this state of the qualified investment
22 and the best interests of this state, including, but not limited
23 to, any positive economic impact to this state likely to be
24 generated by the qualified business pursuant to the written
25 agreement for a qualified investment, especially economic impact
26 resulting in the location of a high-economic-impact business
27 facility in this state, increased capital investment in this state,
28 and the creation of new qualified jobs in this state.

29 (7) Not later than March 15 of each year, the fund shall

1 transmit to each member of the legislature, the governor, the clerk
2 of the house of representatives, the secretary of the senate, and
3 the senate and house fiscal agencies a report on the activities of
4 the critical industry fund under this section. The report must
5 include the following:

6 (a) A list of qualified businesses that received a qualified
7 investment.

8 (b) The type of project or product approved for a qualified
9 investment.

10 (c) The amount and type of qualified investment.

11 (d) For each separate form of qualified investment, all of the
12 following:

13 (i) The number of new qualified jobs committed or projected
14 when the qualified investment was applied for.

15 (ii) The actual number of new qualified jobs created that are
16 not temporary employees.

17 (iii) The average annual salary of the new qualified jobs
18 created that are not temporary employees.

19 (e) The duration of the qualified investment.

20 (f) The amount of other financial assistance other than state
21 resources.

22 (g) Money or other revenue or property returned to the
23 strategic outreach and attraction reserve fund, created in section
24 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254,
25 including any clawbacks and repayments due to a breach of the
26 written agreement.

27 (8) If the fund fails to transmit the report as required in
28 subsection (7) on or before March 15, the fund board shall not
29 disburse funds from the critical industry fund for a qualified

1 investment under this section until it transmits the report as
2 required under subsection (7).

3 (9) The legislature finds and declares that funding provided
4 under this section is for a public purpose and serves the health,
5 safety, and general welfare of the residents of this state.

6 (10) As used in this section:

7 (a) "Other economic assistance" means any other form of
8 assistance allowed under this act that is not a grant, a loan, or
9 an investment.

10 (b) "Qualified business" means a business that is located in
11 or operates in this state or will locate or will operate in this
12 state as determined by the fund board. A qualified business may
13 include more than 1 business as determined by the fund board.

14 (c) "Qualified investment" means a grant, loan, investment, or
15 other economic assistance for a project subject to a written
16 agreement with a qualified business under this section. Qualified
17 investment includes a grant, loan, investment, or other economic
18 assistance for creation of new qualified jobs, infrastructure
19 improvements, other capital investments, or other assistance,
20 including, but not limited to, an agreement providing for
21 assistance via the transportation economic development fund created
22 under section 2 of 1987 PA 231, MCL 247.902. Qualified investment
23 also includes a grant, loan, investment, or other economic
24 assistance for job training opportunities or workforce development
25 and education, or both.

26 (d) "Qualified job" means a job performed by an individual who
27 is a resident of this state whose Michigan income taxes are
28 withheld by an employer, or an employee leasing company or
29 professional employer organization on behalf of the employer, or by

1 an individual who is not a resident of this state and is employed
2 by a business at a project location that is located in this state,
3 as determined and verified by the fund.

4 Enacting section 1. This amendatory act does not take effect
5 unless House Bill No. 4082 of the 101st Legislature is enacted into
6 law.