STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021

Introduced by Senator Victory

ENROLLED SENATE BILL No. 771

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 section 9 (MCL 125.2009), as amended by 2017 PA 109, and by adding section 88s.

The People of the State of Michigan enact:

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

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

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

(c) The amount and type of financial assistance.

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

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

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

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

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

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

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

(e) The duration of the financial assistance.

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

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

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

(i) A list of all entities that are in bankruptcy, that the fund has received actual notice of, filed by a direct recipient of an active single incentive of at least $500,000.00. In addition, the fund shall, within 120 days after the fund receives notice, provide a report of the notice of bankruptcy on its website and shall forward the report to each of the following:

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

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

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

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

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

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

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

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

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

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

(4) The report described in subsection (1) must also contain all of the following that are related to a 21st century investment made by the fund board under chapter 8A:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Section 88b.

(b) Section 88h.

(c) Section 90b.

(10) The report described in subsection (1) must also include, but is not limited to, all of the following for all actions for business incubators approved by the fund after January 14, 2015:

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

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

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

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

(a) Section 78.

(b) Section 88d.

(c) Section 88k.

(d) Section 88q.

(e) Section 88r.

(f) Section 90b.

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

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

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

(b) The total amount of the loan.

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

(d) The interest rate of the loan.

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

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

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

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

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

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

(a) The name of the authorized business.

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

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

(17) The report described in subsection (1) must also include the activities of the critical industry program described in section 88s.

(18) The report described in subsection (1) must also include the activities of the Michigan strategic site readiness program described in section 88t.

(19) As used in this section, "financial assistance" means grants, loans, other economic assistance, and any other incentives or assistance under this act.

Sec. 88s. (1) The fund shall create and operate the critical industry program. The fund shall use money transferred from the strategic outreach and attraction reserve fund created in section 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254, or money appropriated to the program to make qualified investments to qualified businesses.

(2) The fund shall expend money allocated to the Michigan critical industry program only 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 make capital investments, or both, as determined by the fund board. The program must provide for a detailed application, approval, and compliance process that is also published and available on the fund's website.

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

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

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

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

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

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

(f) Creation or retention of qualified jobs as a result of a technological shift in product or production at the project location and within this state.

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

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

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

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

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

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

(m) The level and extent of environmental contamination.

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

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

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

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

(r) Whether and how the project addresses food supply challenges.

(s) Any other additional criteria approved by the board that are specific to each individual project and are consistent with the purpose of this program.

(4) If the fund determines, after making the considerations under subsection (3), to award a qualified investment to a qualified business under this program, the fund shall enter into a written agreement with the qualified business that includes in a clear and concise manner all of the terms and conditions relating to the qualified investment as determined and documented by the fund board, including, but not limited to, the following:

(a) Specific time frames and benchmarks to be met before the qualified business receives a disbursement in installments under the critical industry program pursuant to the approved qualified investment.

(b) Specific terms relating to the required creation or retention of qualified jobs as a result of a technological shift in product or production at the project location and within this state, including measurable outcomes, proration of payments for partial performance, clawback and specific repayment provisions for breach of the agreement, or for failure to meet measurable outcomes.

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

(d) A provision that all money that is subject to a clawback or required to be repaid under a specific repayment provision must be paid within 90 days of notification by the fund. Any amounts not paid within that 90-day period are subject to a penalty of 1% per month, prorated on a daily basis.

(e) A provision that this state shall have a security interest as defined in section 1201(2)(*ii*) of the uniform commercial code, 1962 PA 174, MCL 440.1201, to the extent of the qualified investment. This provision does not apply if it conflicts with any contractual obligation of the qualified business or any federal or state bankruptcy or insolvency laws.

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

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

(5) If the fund receives a request to modify an existing written agreement for a qualified investment under this program, the fund must provide a copy of that requested modification to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies within 5 business days of the receipt of the modification request. In addition to the copy of the request for modification, the notice provided under this subsection must also include the specific provisions to be modified and the rationale for considering the modification. Before the fund modifies an existing written agreement for a qualified investment, the fund must give notice of the proposed amendments and publish them on the fund's internet website at least 1 business day prior to a public hearing on the proposed amendments. If the fund approves and modifies an existing written agreement under this subsection, the fund must provide a copy of that amended written agreement to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies within 1 business day of the modification.

(6) If the fund board seeks to make a determination as to whether a qualified investment approved under this program represents a fair exchange of value for value, the fund may consider the total value to this state of the qualified investment and the best interests of this state, including, but not limited to, any positive economic impact to this state likely to be generated by the qualified business pursuant to the written agreement for a qualified investment, especially economic impact resulting in the location of a high-economic-impact business facility in this state, increased capital investment in this state, and the creation or retention of qualified jobs as a result of a technological shift in product or production in this state.

(7) The fund board shall not disburse funds allocated to the program for a qualified investment to a qualified business if that qualified business has not fully repaid all money subject to clawback or required to be repaid under a specific repayment provision as provided in any written agreement under this act or if that qualified business is in default on any grant, loan, investment, or other economic assistance made or guaranteed by this state. All money paid to the fund pursuant to a clawback or specific repayment provision for a qualified investment under this program shall be deposited in the strategic outreach and attraction reserve fund created in section 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254. The fund shall not use money allocated to the program for administrative purposes. Any money that is allocated to the program that remains unexpended, unallocated, or unobligated at the end of a fiscal year shall revert back to the strategic outreach and attraction reserve fund created in section 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254.

(8) Not later than March 15 of each year, the fund shall transmit to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies a report on the activities of the critical industry program. The report must include the following:

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

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

(c) The amount and type of qualified investment.

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

(*i*) 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.

(*ii*) 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.

(*iii*) 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.

(e) The duration of the qualified investment.

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

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

(9) If the fund fails to transmit the report as required in subsection (8) on or before March 15, the fund board shall not disburse funds for a qualified investment under this program until it transmits the report as required under subsection (8).

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

(11) As used in this section:

(a) "Critical industry program" or "program" means the critical industry program created in subsection (1).

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

(c) "Qualified investment" means a grant, loan, or other economic assistance for a project subject to a written agreement with a qualified business under this program. Qualified investment includes a grant, loan, or other economic assistance for 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, or other assistance, including, but not limited to, an agreement providing for assistance via the transportation economic development fund created under section 2 of 1987 PA 231, MCL 247.902. Qualified investment also includes a grant, loan, or other economic assistance for job training opportunities or workforce development and education, or both.

(d) "Qualified job" means a job performed by an individual who is a resident of this state whose Michigan income taxes are withheld by an employer, or an employee leasing company or professional employer organization on behalf of the employer, or by an individual who is not a resident of this state and is employed by a business at a project location that is located in this state, as determined and verified by the fund.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

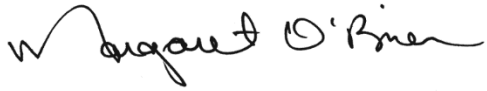
(a) Senate Bill No. 769.

(b) House Bill No. 4082.

(c) House Bill No. 5351.

(d) House Bill No. 5603.

This act is ordered to take immediate effect.



Secretary of the Senate

Clerk of the House of Representatives

Approved_____

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Governor