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Senate Bill 1318 (as introduced 5-9-02)
Sponsor: Senator Glenn Steil
Committee: Finance

Date Completed: 5-14-02

CONTENT

The bill would create the "Michigan Early Stage Venture Capital Investment Act" to:

- Create a fund that would invest in selected venture capital companies whose primary business activity was investing in qualified high-technology businesses.**
- Create an authority and require it to solicit investor groups and capital for the fund.**
- Allow the authority to enter into agreements with investors in the fund, guaranteeing a negotiated return on qualified investment.**
- Allow the authority to authorize single business tax (SBT) credits for the difference between a negotiated return and the actual return.**
- Limit total SBT credits for all years to \$30 million, and limit credits for one year to \$5 million.**

Authority and Board

The Michigan Early Stage Venture Capital Investment Authority would be created in the Department of Treasury. The Authority board would consist of one member appointed by the State Treasurer; two appointed by the CEO of the Michigan Economic Development Corporation; one appointed by the Senate Majority Leader; and one appointed by the Speaker of the House of Representatives.

The Authority would be required to establish an investment plan and to solicit investor groups and capital to fund the Michigan Early Stage Venture Capital Investment Fund, which would be created as a fund of the Authority. After the initial board members were appointed, the Authority would have to hire a Fund manager.

Venture Capital Investment

The Fund manager would have to select venture capital companies in which to invest money from the Fund, using at least the following criteria:

- The investment performance history of the venture capital company and other professional portfolio management criteria that the Fund manager and the board considered appropriate.
- The level of the company's experience in investing in qualified businesses.
- The company's probability of success in soliciting investments.
- The company's investment history and expected ability to invest in qualified businesses in a manner that mobilized a wide variety of equity capital and near-equity capital investment in ventures that promoted the economic development of the State.
- A commitment from the company that it would make a good faith effort to invest in qualified businesses based in Michigan.

The bill would define "venture capital company" as a corporation, partnership, or other legal entity with a place of business in Michigan and having as its primary business activity the investment in qualified businesses as determined by the Authority.

"Qualified business" would mean a business whose primary business activity was "high-technology activity", as defined in the Michigan Economic Growth Authority Act (i.e., advanced computing, advanced materials, biotechnology, electronic device technology, engineering or laboratory testing related to the development of a product, technology that assists in the assessment or prevention of threats or damage to human health or the environment, medical device technology, product research and development, and advanced vehicles technology).

"Equity capital" would mean capital invested in common or preferred stock, royalty rights, limited partnership interests, limited liability company interests, or any other security or rights that evidence ownership in private businesses. "Near-equity capital" would mean capital invested in unsecured, undersecured, or debt securities or subordinated or convertible loans.

Negotiated Return; SBT Credit

The Authority could enter into agreements with investors that would guarantee a negotiated return on qualified investment over the term of an agreement. The guarantees would not be considered obligations of the State, and could be restricted to specific funds or assets of the Authority.

("Qualified investment" would mean the amount of capital invested by a certified investor in the Fund. "Certified investor" would mean an individual, financial institution, firm, partnership, corporation, joint venture, association, receiver, estate, trust, or any other group or combination of groups acting as a unit that invested in the Fund.)

The Authority also could authorize single business tax credits that investors could claim (under Senate Bill 1322). With the approval of the board, the Fund manager would have to determine which certified investors were eligible for tax credits, and the amount of the credit allowed to each investor. The tax credit would be the difference between the negotiated return on qualified investment and the stated return on qualified investment, as determined in the agreement between the Authority and the investor. (The stated return would be the actual return paid by the Fund to a certified investor.)

The Authority would have to issue certificates that authorized tax credits. Certificates would have to be issued annually by March 1 following the end of the Authority's fiscal year. A certificate would have to be attached to the taxpayer's annual return for the first tax year in which the SBT credit was allowed and claimed, which would have to be the tax year in which the certificate was issued. The certificate would have to state that the taxpayer was a qualified investor; the taxpayer's Federal employer identification number or the number assigned to the taxpayer by the Department for SBT filing purposes; the amount of the tax credit that the taxpayer was allowed; the tax year for which the credit could be claimed; and that the credit was transferrable.

The Authority could not authorize more than \$30 million in total tax credits for all taxpayers for all years, and could not authorize more than \$5 million for each State fiscal year. If the total amount authorized in a fiscal year equaled less than \$5 million, however, the difference could be carried forward into and authorized in a subsequent fiscal year, in addition to the \$5 million allocated for that fiscal year.

Additional Powers

The Authority or the Fund manager as its designee would have the power to do the following:

- Make contracts and execute any necessary documents.
- Charge reasonable fees for the implementation of the proposed Act and the ongoing operation of the programs established under it.
- Perform any act or enter into financial or other transactions necessary to carry out the Act.
- Employ persons the Authority or Fund manager considered required to implement the Act.
- Perform any other act or transaction that the Authority considered necessary to carry out its functions.

The Authority also could purchase securities and security interests, and could manage, transfer, or dispose of them.

Annual Report

Within three months after the close of its fiscal year, the Authority would have to publish an annual report. The report would have to include all of the following:

- A report of all investment and related activities for the fiscal year.
- Documentation and analysis of the implementation and status of the Authority's investment plan and its economic impact on the State.
- Documentation of determinations made in the fiscal year of the business activity of venture capital companies.
- A list of all tax credits authorized for that fiscal year.

Conflict of Interest

A conflict of interest would exist in any contractual relationship in which a director, officer, agent, or employee of the Authority, or any company, firm, or corporation in which a director, officer, agent, or employee or any member of his or her immediate family was an officer, partner, or principal stockholder, directly or indirectly bought or sold goods or services to or otherwise contracted with the board or the Authority. If a conflict of interest existed, the director, officer, agent, or employee would be subject to removal and any contract entered into would be considered unenforceable against the board or Authority unless its records reflected that the individual fully and publicly disclosed all interests and unless the contractual relationship was secured by competitive bidding following a public invitation to bid.

If a director, officer, agent, or employee had a conflict of interest, he or she would have to refrain from any further official involvement in regard to the related contract or agreement, from voting on any matter pertaining to the contract or agreement, and from communicating with other board members, officers, agents, or employees concerning the contract or agreement.

Other Provisions

The bill specifies that the Authority and its officers, directors, and employees would not be broker-dealers, agents, investment advisors, or investment advisor representatives when carrying out their duties and responsibilities under the proposed Act.

The Authority could promulgate rules under the Administrative Procedures Act.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would create a new Authority charged with generating investment in high technology activity. The Authority would not have bonding capacity. Revenue would be generated by investor groups funding a new Michigan Early Stage Venture Capital Investment Fund. As an incentive to invest, single business tax credits would be given to participating investors for the difference between the negotiated return on a qualified investment and the stated return on a qualified investment. The value of the tax credits is unknown. The bill would place a total cap of \$30,000,000 on the value of the tax credits, with not more than \$5,000,000 being authorized in a single fiscal year. Any unused tax credit authorization from a single fiscal year could be carried forward to the subsequent year and added to the \$5,000,000 authorization.

The Authority would have minimal operating expenses that would be funded by the Investment Fund created in the bill. The members of the board of directors of the Authority would not receive compensation other than travel and meeting expenses. The bill would require the appointment of a Fund manager, who would be a contract employee. Additional staffing should be modest.

Fiscal Analyst: Jessica Runnels
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.