

HOUSE BILL No. 5321

November 13, 2003, Introduced by Rep. Ward and referred to the Committee on Commerce.

A bill to promote investment in certain businesses; to promote economic development in this state; to provide for a Michigan early stage venture capital investment corporation; to prescribe the powers and duties of a Michigan early stage venture capital investment corporation; to prescribe the powers and duties of certain public officers and departments; to establish the Michigan early stage venture capital investment fund and other funds; to provide for tax credits and incentives; to authorize certain investments; to provide for the expiration of the fund; to provide or allow for appropriations; and to provide penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan early stage venture capital investment act of 2003".

3 Sec. 3. As used in this act:

1 (a) "Alternative energy technology" means that term as
2 defined in section 2(d) of the Michigan next energy authority
3 act, 2002 PA 593, MCL 207.822.

4 (b) "Board" means the Michigan early stage venture capital
5 investment corporation board of directors.

6 (c) "Conflict of interest" means a situation in which the
7 private interest of a director, employee, or agent of the board
8 may influence the judgment of the director, employee, or agent in
9 the performance of his or her duties or responsibilities under
10 this act. A conflict of interest includes, but is not limited
11 to, the following:

12 (i) Any conduct that would lead a reasonable person, knowing
13 all of the circumstances, to conclude that the director,
14 employee, or agent of the board has an interest related to an
15 action that the board is taking under this act.

16 (ii) Acceptance of compensation other than from the board for
17 services rendered as part of the official duties as a director,
18 employee, or agent of the board.

19 (iii) Participation in any business being transacted with or
20 before the board in which the director, employee, or agent of the
21 board or his or her parent, spouse, child, or sibling has a
22 financial interest.

23 (iv) Demonstrated preferential actions related to an action
24 taken by the board.

25 (d) "Equity capital" means capital invested in common or
26 preferred stock, royalty rights, limited partnership interests,
27 limited liability company interests, or any other security or

1 rights that evidence ownership in a private business.

2 (e) "Fund" or "Michigan early stage venture capital
3 investment fund" means the fund created in section 19.

4 (f) "High-technology activity" means that term as defined in
5 section 3(g) of the Michigan economic growth authority act, 1995
6 PA 24, MCL 207.803.

7 (g) "Investor" means an individual, firm, bank, financial
8 institution, limited partnership, co-partnership, partnership,
9 joint venture, association, corporation, receiver, estate, trust,
10 or any other entity that invests in the fund.

11 (h) "Michigan economic development corporation" means the
12 public body corporate created under section 28 of article VII of
13 the state constitution of 1963 and the urban cooperation act of
14 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a
15 contractual interlocal agreement effective April 5, 1999 between
16 local participating economic development corporations formed
17 under the economic development corporations act, 1974 PA 338, MCL
18 125.1601 to 125.1636, and the Michigan strategic fund. If it is
19 determined that the Michigan economic development corporation is
20 unable to perform its duties under this act, those duties shall
21 be exercised by the Michigan strategic fund.

22 (i) "Michigan strategic fund" means the Michigan strategic
23 fund as described in the Michigan strategic fund act, 1984 PA
24 270, MCL 125.2001 to 125.2093.

25 (j) "Near-equity capital" means capital invested in
26 unsecured, undersecured, or debt securities or subordinated or
27 convertible loans.

1 (k) "Negotiated return on qualified investment" means the
2 rate of return agreed upon for investments made by investors in
3 the fund.

4 (l) "Qualified business" means a seed or early stage business
5 that is domiciled in this state, that has its corporate
6 headquarters in this state, or the majority of whose employees
7 work a majority of their time at a site located in this state.

8 (m) "Qualified investment" means the amount of capital
9 invested by an investor in the fund.

10 (n) "Seed or early stage business" means a business that has
11 less than \$15,000,000.00 in gross receipts and fewer than 200
12 employees for the calendar year immediately preceding initial
13 investment in the business by a venture capital company.

14 (o) "Venture capital company" means a corporation,
15 partnership, or other legal entity the primary business activity
16 of which is the investment of equity capital in businesses that
17 focus on areas, including, but not limited to, alternative energy
18 technology, high-technology activity, or health care.

19 Sec. 5. (1) A Michigan early stage venture capital
20 investment corporation is a nonprofit corporation incorporated
21 under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to
22 450.3192, that meets the registration requirements of this act.

23 (2) A Michigan early stage venture capital investment
24 corporation shall be incorporated as a nonprofit corporation
25 exempt under section 501(c)(3) or (6) of the internal revenue
26 code or shall be a governmental agency under section 115 of the
27 internal revenue code on or before July 1, 2004.

1 (3) Except as otherwise provided in this act to the
2 contrary, a Michigan early stage venture capital investment
3 corporation is subject to the laws of this state that are
4 applicable to nonprofit corporations.

5 (4) A Michigan early stage venture capital investment
6 corporation is a charitable and benevolent institution, and its
7 funds and property are exempt from taxation by this state or any
8 political subdivision of this state.

9 (5) A corporation shall not act as a Michigan early stage
10 venture capital investment corporation except as authorized under
11 this act.

12 Sec. 7. The articles of incorporation of a Michigan early
13 stage venture capital investment corporation shall contain all of
14 the following:

15 (a) The purposes of the corporation, which shall include,
16 but are not limited to, all of the following:

17 (i) To operate and act exclusively for charitable purposes
18 with the intent to lessen the financial burdens of the government
19 of this state.

20 (ii) To receive and administer funds for the charitable
21 purposes under subparagraph (i).

22 (iii) To raise capital and invest that capital in venture
23 capital firms with the intent of benefiting Michigan's early
24 stage, growth companies.

25 (iv) To promote the economic health of this state by
26 assisting in the creation of new jobs, new businesses, and new
27 industries within this state and through the investment in

1 certain businesses.

2 (v) To enter into an agreement with this state to promote
3 the economic health of this state.

4 (b) A provision that the Michigan early stage venture
5 capital investment corporation shall be governed by a board of
6 directors consisting of 5 members appointed by the governor as
7 follows:

8 (i) The state treasurer or his or her designee.

9 (ii) The chief executive officer of the Michigan economic
10 development corporation or his or her designee.

11 (iii) One person recommended by the majority leader of the
12 senate.

13 (iv) One person recommended by the speaker of the house of
14 representatives.

15 (v) One person recommended by a statewide organization
16 exempt from taxation under section 501(c)(3) or (6) of the
17 internal revenue code, the members of which represent more than
18 50% of the venture capital companies in this state and that has a
19 common interest in stimulating an entrepreneurial environment in
20 this state, encouraging investments in new and emerging companies
21 in this state, and promoting venture capital investing.

22 (c) A provision that, except as otherwise provided in this
23 act, the Michigan early stage venture capital investment
24 corporation and the board shall comply with the open meetings
25 act, 1976 PA 267, MCL 15.261 to 15.275.

26 (d) A provision that, except as otherwise provided in this
27 act, the Michigan early stage venture capital investment

1 corporation shall comply with the freedom of information act,
2 1976 PA 442, MCL 15.231 to 15.246.

3 (e) A provision that provides that, upon dissolution of the
4 Michigan early stage venture capital investment corporation, the
5 property remaining after providing for debts and obligations of
6 the Michigan early stage venture capital investment corporation
7 shall be distributed to an organization that qualifies either as
8 a governmental unit under section 115 of the internal revenue
9 code or is exempt from tax under section 501(c)(3) of the
10 internal revenue code, as designated by the board. If the board
11 fails to designate an organization as provided in this
12 subdivision, the property remaining shall pass to the state of
13 Michigan. For purposes of this subdivision, property remaining
14 after providing for debts and obligations does not include
15 grants, appropriations, or other restricted funds that must be
16 distributed as required by the source of those funds.

17 Sec. 9. (1) Prior to applying for registration as a
18 Michigan early stage venture capital investment corporation under
19 section 11, a nonprofit corporation shall submit its articles of
20 incorporation and any amendments to those articles of
21 incorporation to the attorney general for review and
22 certification.

23 (2) The attorney general shall review the information
24 submitted pursuant to subsection (1) and, if that information
25 complies with the requirements of this act, and upon payment of a
26 fee of \$100.00, the attorney general shall issue a certificate of
27 compliance to the Michigan early stage venture capital investment

1 corporation not later than 60 days after the initial receipt of
2 the information.

3 Sec. 11. (1) To apply for registration as a Michigan early
4 stage venture capital investment corporation, a nonprofit
5 corporation shall file all of the following with the state
6 treasurer:

7 (a) A copy of the articles of incorporation of the nonprofit
8 corporation and any amendments to those articles of
9 incorporation.

10 (b) The certificate of compliance issued under section 9.
11 This subdivision does not apply if the attorney general does not
12 issue the certificate within the time provided in section 9(2).

13 (c) A general plan of the proposed activities of the
14 nonprofit corporation, including, but not limited to, evidence of
15 the establishment by the nonprofit corporation of a restricted
16 fund that shall be known as a Michigan early stage venture
17 capital investment fund.

18 (d) A copy of the financial statements of the nonprofit
19 corporation for the first immediately preceding fiscal year of
20 the nonprofit corporation.

21 (e) A copy of the bylaws of the nonprofit corporation.

22 (f) Payment of a fee to the state treasurer of \$500.00.

23 (2) The state treasurer shall examine the documents filed
24 under subsection (1), may conduct any investigation he or she
25 considers necessary, may request additional oral and written
26 information from the nonprofit corporation, and may examine under
27 oath any persons interested in or connected with the nonprofit

1 corporation seeking to be registered as a Michigan early stage
2 venture capital investment corporation.

3 (3) The state treasurer shall register a nonprofit
4 corporation as a Michigan early stage venture capital investment
5 corporation if all of the following conditions are met:

6 (a) The documents filed under subsection (1) are in proper
7 form.

8 (b) The articles of incorporation of the nonprofit
9 corporation or any amendments to those articles of incorporation
10 meet the requirements of section 7.

11 (c) The internal revenue service has determined that the
12 nonprofit corporation is exempt from taxation under section
13 501(c)(3) or (6) of the internal revenue code or is a
14 governmental unit under section 115 of the internal revenue
15 code.

16 (4) If the state treasurer registers the nonprofit
17 corporation as a Michigan early stage venture capital investment
18 corporation under this section, the state treasurer shall return
19 to the nonprofit corporation 1 copy of its articles of
20 incorporation and any amendments to those articles of
21 incorporation, with a notation indicating that the nonprofit
22 corporation is registered as a Michigan early stage venture
23 capital investment corporation.

24 Sec. 13. (1) A Michigan early stage venture capital
25 investment corporation shall be governed by a board of directors
26 consisting of 5 directors. The directors of the board shall be
27 appointed by the governor as follows:

1 (a) The state treasurer or his or her designee.

2 (b) The chief executive officer of the Michigan economic
3 development corporation or his or her designee.

4 (c) One person recommended by the majority leader of the
5 senate.

6 (d) One person recommended by the speaker of the house of
7 representatives.

8 (e) One person recommended by a statewide organization
9 exempt from taxation under section 501(c)(3) of the internal
10 revenue code, the members of which represent more than 50% of the
11 venture capital companies in this state and that has a common
12 interest in stimulating an entrepreneurial environment in this
13 state, encouraging investments in new and emerging companies in
14 this state, and promoting venture capital investing.

15 (2) Each director appointed under subsection (1)(c) to (e)
16 shall serve for a term of 3 years, except that of those directors
17 first appointed, the director first appointed under subsection
18 (1)(c) shall serve for a term of 1 year, the director first
19 appointed under subsection (1)(d) shall serve for a term of 2
20 years, and the director first appointed under subsection (1)(e)
21 shall serve for a term of 3 years. A vacancy on the board at the
22 end of or during a director's term shall be filled in the same
23 manner as the original appointment for the remainder of the
24 unexpired term or for the new term and until a successor is
25 appointed.

26 (3) A majority of the directors appointed and serving
27 constitute a quorum for the transaction of business at a meeting

1 of the board. A majority vote of the directors present and
2 serving is required for official action of the board.

3 (4) Each director shall prepare and file with the board a
4 disclosure form in which the director discloses any potential
5 conflict of interest under this act.

6 (5) A director, employee, or agent of the board shall not
7 engage in any conduct that constitutes a conflict of interest and
8 shall immediately advise the board in writing of the details of
9 any incident or circumstances that may present the existence of a
10 conflict of interest with respect to the performance of the
11 board-related work or duty of the director, employee, or agent of
12 the board.

13 (6) A director who has a conflict of interest related to any
14 matter before the board shall disclose the conflict of interest
15 before the board takes any action with respect to the matter,
16 which disclosure shall become a part of the record of the board's
17 official proceedings. The director with the conflict of interest
18 shall refrain from doing all of the following with respect to the
19 matter that is the basis of the conflict of interest:

20 (a) Voting in the board's proceedings related to the
21 matter.

22 (b) Participating in the discussion of and deliberation on
23 the matter.

24 (c) Being present at the meeting when the discussion,
25 deliberation, and voting on the matter take place.

26 (7) Failure of a director to comply with subsection (6)
27 constitutes misconduct in office. A director may be removed from

1 the board for misconduct by a vote of a majority of the directors
2 not subject to the vote under this subsection appointed and
3 serving on the board.

4 (8) With respect to management of the affairs and property
5 of the authority, each director shall exercise the duties of a
6 fiduciary toward the authority and shall discharge his or her
7 duties with the degree of diligence, care, and skill that an
8 ordinarily prudent person would exercise under the same or
9 similar circumstances in a like position. In discharging his or
10 her duties, a director, when acting in good faith, may rely upon
11 the opinion of counsel. A director may be removed from the board
12 for a breach of fiduciary duty by a vote of a majority of the
13 directors not subject to the vote under this subsection appointed
14 and serving on the board.

15 (9) A director of the board or an officer or employee of the
16 board or Michigan early stage venture capital investment
17 corporation is not subject to personal liability when acting in
18 good faith within the scope of his or her authority or on account
19 of liability of the Michigan early stage venture capital
20 investment corporation, and the board may defend and indemnify a
21 director of the board or an officer or employee of the board or
22 Michigan early stage venture capital investment corporation
23 against liability arising out of the discharge of his or her
24 official duties. The Michigan early stage venture capital
25 investment corporation may indemnify and procure insurance
26 indemnifying directors of the board and other officers and
27 employees of the board or Michigan early stage venture capital

1 investment corporation from personal loss or accountability for
2 liability asserted by a person with regard to actions of the
3 board or the failure to act by the board or Michigan early stage
4 venture capital investment corporation. The Michigan early stage
5 venture capital investment corporation may also purchase and
6 maintain insurance on behalf of any person against any liability
7 asserted against the person and incurred by the person in any
8 capacity or arising out of the status of the person as a director
9 of the board or an officer or employee of the board or Michigan
10 early stage venture capital investment corporation, whether or
11 not the Michigan early stage venture capital investment
12 corporation would have the power to indemnify the person against
13 that liability under this subsection. The board or the Michigan
14 early stage venture capital investment corporation may by a
15 majority vote of the board obligate itself in advance to defend
16 and indemnify persons.

17 Sec. 15. (1) Except as otherwise provided in this act, in
18 the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to
19 450.3192, by law, or in its articles of incorporation, a Michigan
20 early stage venture capital investment corporation may do or
21 delegate any act consistent with this act and the purposes of the
22 nonprofit corporation, including, but not limited to, the
23 following:

24 (a) Enter into contracts and all necessary activities in the
25 regular course of business of the Michigan early stage venture
26 capital investment corporation.

27 (b) Charge reasonable fees for the implementation of this act

1 and the ongoing operation of the Michigan early stage venture
2 capital investment corporation.

3 (c) Perform acts or enter into financial or other
4 transactions necessary to carry out its powers and duties under
5 this act.

6 (d) Invest in common or preferred stock and equity securities
7 without a repurchase requirement for at least 5 years and the
8 right to purchase stock or equity securities.

9 (e) Employ a fund manager and other persons it considers
10 necessary to implement this act. The Michigan early stage
11 venture capital investment corporation shall employ only 1 fund
12 manager at any 1 time.

13 (2) The fund manager shall establish an investment plan and
14 solicit investors pursuant to section 17.

15 (3) The Michigan early stage venture capital investment
16 corporation shall require the fund manager to develop procedures
17 to evaluate types of business and industry for investment
18 purposes and to set priorities as to which businesses are most
19 likely to meet the desired outcomes of the investment plan
20 established under section 17 and which businesses conduct
21 activities that are consistent with the purposes of this act and
22 of the fund. This evaluation shall include, but not be limited
23 to, the location of the firm and the direct and indirect impact
24 of the business on the economic development of this state.

25 Sec. 17. (1) To secure investment in the fund, the Michigan
26 early stage venture capital investment corporation shall enter
27 into agreements with investors.

1 (2) Each agreement shall contain all of the following:

2 (a) An established and agreed-upon investment amount and
3 repayment schedule.

4 (b) A guaranteed negotiated amount or negotiated return on
5 qualified investment by the certified investor over the term of
6 the agreement.

7 (c) A maximum amount of credit that the investor may claim
8 under section 37e of the single business tax act, 1975 PA 228,
9 MCL 208.37e, a successor tax to the single business tax act, 1975
10 PA 228, MCL 208.1 to 208.145, or under section 270 of the income
11 tax act of 1967, 1967 PA 281, MCL 206.270, and the first year in
12 which that credit can be claimed.

13 (3) The fund shall repay any amounts due from proceeds from
14 the funds raised based on the agreements made under this
15 section.

16 (4) For tax years that begin after December 31, 2008,
17 investors that have certificates may claim a credit under section
18 37e of the single business tax act, 1975 PA 228, MCL 208.37e, or
19 section 270 of the income tax act of 1967, 1967 PA 281, MCL
20 206.270, as otherwise provided in this act, equal to the
21 difference between the amount actually repaid and the amount set
22 as the repayment due in the agreement entered into by the
23 taxpayer and the fund manager. The Michigan early stage venture
24 capital investment corporation shall notify the department of
25 treasury when credit certificates are issued under this section,
26 and upon notification and approval by the department of treasury
27 under section 23, the amount of credit allowed pursuant to the

1 credit certificate becomes a guarantee of repayment and a debt of
2 the fund to the department of treasury subject to repayment
3 pursuant to the agreement between the Michigan early stage
4 venture capital investment corporation and the department of
5 treasury. A debt under this section shall accrue interest at the
6 same rate as the interest paid to the investor.

7 (5) A guarantee provided for under this section shall not be
8 considered an obligation of this state and may be restricted to
9 specific funds or assets of the Michigan early stage venture
10 capital investment corporation.

11 (6) The Michigan early stage venture capital investment
12 corporation may purchase securities and security interests and
13 may manage, transfer, or dispose of those securities and security
14 interests.

15 (7) The Michigan early stage venture capital investment
16 corporation and its directors are not broker-dealers, agents,
17 investment advisors, or investment advisor representatives when
18 carrying out their duties and responsibilities under this act.

19 Sec. 19. (1) A Michigan early stage venture capital
20 investment corporation shall create a Michigan early stage
21 venture capital investment fund, which shall be a restricted
22 fund.

23 (2) The fund manager shall establish an investment plan for
24 the investment of the money in the fund using the following
25 criteria:

26 (a) Not more than 15% of the total capital and outstanding
27 commitments of the fund shall be invested in any single venture

1 capital company.

2 (b) The fund manager shall undertake to invest the fund in
3 such a way as to promote that at least \$2.00 will be invested in
4 qualified businesses for every \$1.00 of principal guaranteed by
5 this state as tax credits available under section 37e of the
6 single business tax act, 1975 PA 228, MCL 208.37e, a successor
7 tax to the single business tax act, 1975 PA 228, MCL 208.1 to
8 208.145, or section 270 of the income tax act of 1967, 1967 PA
9 281, MCL 206.270.

10 (c) That investments facilitate the transfer of technologies
11 from the state's various universities and research institutions.

12 (d) That investments promote the ability to work in
13 collaboration with the southeastern Michigan transportation
14 authority established under section 4a of the metropolitan
15 transportation authorities act of 1967, 1967 PA 204, MCL
16 125.404a.

17 (e) Any other professional portfolio management criteria that
18 the fund manager and board consider appropriate.

19 (f) Priorities for investment in venture capital may be based
20 on an evaluation, which shall consider the following criteria:

21 (i) The retention of those businesses which would be likely
22 to leave this state absent the investment.

23 (ii) The revitalization and diversification of the economic
24 base of this state.

25 (iii) Generating and retaining jobs and investment in this
26 state.

27 (3) Consistent with the plan established under subsection

1 (2), the fund manager shall select venture capital companies from
2 among those venture capital companies that apply for money from
3 the fund considering the following criteria:

4 (a) The venture capital company's probability of success in
5 generating above-average returns through investing in qualified
6 businesses.

7 (b) The venture capital company's probability of success in
8 soliciting investments. The level of investment from the fund
9 committed to the venture capital companies shall not be more than
10 25% of the total venture capital company's capital under
11 management.

12 (c) The venture capital company's probability of success as
13 it relates to the investment plan criteria under subsection
14 (2)(b).

15 (d) The venture capital company has a significant presence in
16 this state as determined by the Michigan early stage venture
17 capital investment corporation.

18 (e) The venture capital company will undertake to invest in
19 qualified businesses a percentage of invested capital equal to or
20 greater than the percentage of invested capital that the venture
21 capital company received from the fund.

22 (f) The venture capital company's consideration of minority
23 owned businesses in its investment activities.

24 Sec. 21. The fund manager shall file a report with the
25 Michigan early stage venture capital investment corporation that
26 includes an annual financial audit conducted by an independent
27 auditor and any other financial information and documentation

1 required by the Michigan early stage venture capital investment
2 corporation to ensure the proper administration and investment of
3 the fund.

4 Sec. 23. (1) The Michigan early stage venture capital
5 investment corporation shall determine which investors are
6 eligible for tax credits under section 37e of the single business
7 tax act, 1975 PA 228, MCL 208.37e, and section 270 of the income
8 tax act of 1967, 1967 PA 281, MCL 206.270, and the amount of the
9 tax credit under those sections allowed to each investor.

10 (2) The Michigan early stage venture capital investment
11 corporation shall determine which investors are eligible for tax
12 credits under this section and submit proposed certificates that
13 meet the criteria under subsection (3) to the department of
14 treasury for approval. The department of treasury shall approve
15 proposed certificates within 30 days after receipt of the
16 certificates. If the department of treasury does not approve the
17 certificates within 30 days, the certificates are considered
18 approved.

19 (3) The Michigan early stage venture capital investment
20 corporation shall issue a certificate approved under subsection
21 (2) to each investor that states all of the following:

22 (a) The taxpayer is an investor.

23 (b) The taxpayer's federal employer identification number or
24 the number assigned to the taxpayer by the department of treasury
25 for filing purposes under the single business tax act, 1975 PA
26 228, MCL 208.1 to 208.145.

27 (c) The amount of the tax credit that the taxpayer may claim

1 against its tax liability under section 37e of the single
2 business tax act, 1975 PA 228, MCL 208.37e, or section 270 of the
3 income tax act of 1967, 1967 PA 281, MCL 206.270.

4 (d) The tax years for which the credit under subdivision (c)
5 may be claimed and the maximum annual amount that may be claimed
6 each tax year.

7 (e) The tax credit is refundable.

8 (4) The fund manager shall invest, budget, and plan scheduled
9 payments and repayments so that no credits are claimed under
10 section 37e of the single business tax act, 1975 PA 228, MCL
11 208.37e, in any tax year before tax years that begin after
12 December 31, 2008.

13 (5) Certificates under this section shall be issued to an
14 investor at the time that the Michigan early stage venture
15 capital investment corporation determines that, for that
16 investor, capital is not sufficient to meet the guaranteed
17 negotiated amount or the negotiated return on qualified
18 investment of that investor. The total of all certificates
19 issued under this section shall not exceed the maximum amount
20 allowed under section 37e(2) of the single business tax act, 1975
21 PA 228, MCL 208.37e.

22 (6) Certificates under this section shall not be issued until
23 December 31, 2008 or 5 years after all the requirements under
24 section 31 have been met, whichever occurs later.

25 Sec. 25. (1) The business that the Michigan early stage
26 venture capital investment corporation and the board shall comply
27 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, as

1 applicable. A record or portion of a record, material, or other
2 data received, prepared, used, or retained by the Michigan early
3 stage venture capital investment corporation or the board in
4 connection with an investment under this act that relates to
5 financial or proprietary information submitted by a venture
6 capital company or investor as it relates to its fund and
7 respective portfolio companies that is considered by the venture
8 capital company or investor and acknowledged by the Michigan
9 early stage venture capital investment corporation or the board
10 as confidential shall not be subject to the disclosure
11 requirements of the freedom of information act, 1976 PA 442, MCL
12 15.231 to 15.246. Unless considered proprietary information, the
13 board shall not acknowledge routine financial information as
14 confidential.

15 (2) The Michigan early stage venture capital investment
16 corporation shall not disclose financial or proprietary
17 information not subject to disclosure pursuant to subsection (1)
18 without consent of the venture capital company or investor
19 submitting the information.

20 (3) For purposes of this section, "financial or proprietary
21 information" means information that has not been publicly
22 disseminated or that is unavailable from other sources, the
23 release of which may cause the venture capital company or
24 investor significant competitive harm.

25 Sec. 27. This act shall be construed liberally to
26 effectuate the legislative intent and its purposes. All powers
27 granted shall be cumulative and not exclusive and shall be

1 broadly interpreted to effectuate the intent and purposes and not
2 as a limitation of powers.

3 Sec. 29. The Michigan early stage venture capital
4 investment corporation shall publish an annual report not more
5 than 3 months after the close of the Michigan early stage venture
6 capital investment corporation's fiscal year that includes all of
7 the following:

8 (a) An enumeration of all investment and related activities
9 for the fiscal year.

10 (b) Documentation and analysis of the implementation and
11 status of the Michigan early stage venture capital investment
12 corporation's investment plan and the economic impact of the plan
13 on this state, including, but not limited to, the following:

14 (i) The number of jobs represented by the investments made in
15 qualified businesses in this state.

16 (ii) Return on investment generated by investment, the types
17 of activities in which investment was made, and the impact of
18 that investment on the economic base of this state.

19 Sec. 31. Not later than 1 year after the effective date of
20 this act, all of the following shall occur:

21 (a) The Michigan early stage venture capital investment
22 corporation shall be established and the board appointed.

23 (b) A fund manager shall be hired by the Michigan early stage
24 venture capital investment corporation.

25 (c) A investment plan shall be established.

26 (d) Funds shall have been solicited and available for
27 investment consistent with the investment plan.

1 Sec. 33. The fund created in section 19 shall expire on
2 January 1, 2054. Any money in the fund, subject to all
3 outstanding debts and obligation of the Michigan early stage
4 venture capital investment corporation being defeased and
5 satisfied, shall be distributed as provided in the Michigan early
6 stage venture investment corporation's articles of incorporation
7 or amendments to those articles of incorporation transferred to
8 the general fund of this state on that date.

9 Sec. 35. This act does not take effect unless all of the
10 following bills of the 92nd Legislature are enacted into law:

11 (a) Senate Bill No. _____ or House Bill No. 5320
12 (request no. 04172'03 *).

13 (b) Senate Bill No. _____ or House Bill No. 5322
14 (request no. 05321'03).