

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 525

A bill to amend 2003 PA 296, entitled
"Michigan early stage venture investment act of 2003,"
by amending sections 3, 5, 15, 17, 19, and 23 (MCL 125.2233,
125.2235, 125.2245, 125.2247, 125.2249, and 125.2253).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

2 (a) "Alternative energy technology" means that term as defined
3 in section 2(d) of the Michigan next energy authority act, 2002 PA
4 593, MCL 207.822.

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

7 (c) "Conflict of interest" means a situation in which the
8 private interest of a director, employee, or agent of the board may

1 influence the judgment of the director, employee, or agent in the
2 performance of his or her duties or responsibilities under this
3 act. A conflict of interest includes, but is not limited to, the
4 following:

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

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

12 (iii) Participation in any business being transacted with or
13 before the board in which the director, employee, or agent of the
14 board or his or her spouse, child, parent, stepparent, grandparent,
15 grandchild, brother, sister, parent-in-law, brother-in-law, sister-
16 in-law, aunt, uncle, nephew, niece, first cousin, or second cousin
17 or the spouse of any of the persons described in this subparagraph
18 has a financial interest.

19 (d) "Equity capital" means capital invested in common or
20 preferred stock, royalty rights, limited partnership interests,
21 limited liability company interests, or any other security or
22 rights that evidence ownership in a private business.

23 (e) "Fund" or "Michigan early stage venture investment fund"
24 means the fund created in section 19.

25 (f) "High-technology activity" means that term as defined in
26 section 3(g) of the Michigan economic growth authority act, 1995 PA
27 24, MCL 207.803.

1 (G) "HOLDER" MEANS A PERSON THAT HAS A TAX VOUCHER CERTIFICATE
2 OR THE RIGHT TO BE ISSUED A TAX VOUCHER CERTIFICATE FROM THE
3 MICHIGAN EARLY STAGE VENTURE INVESTMENT CORPORATION.

4 (H) ~~—(g)—~~ "Investor" means an individual, firm, bank,
5 financial institution, limited partnership, co-partnership,
6 partnership, joint venture, association, corporation, receiver,
7 estate, trust, or any other entity that invests in the fund.

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

19 (J) ~~—(i)—~~ "Michigan strategic fund" means the Michigan
20 strategic fund as described in the Michigan strategic fund act,
21 1984 PA 270, MCL 125.2001 to 125.2093.

22 (K) ~~—(j)—~~ "Near-equity capital" means capital invested in
23 unsecured, undersecured, or debt securities or subordinated or
24 convertible loans.

25 (L) ~~—(k)—~~ "Negotiated return on qualified investment" means the
26 rate of return agreed upon for investments made by investors in the
27 fund.

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

5 (N) ~~—(m)—~~ "Qualified investment" means the amount of capital
 6 invested by an investor in the fund.

7 (O) ~~—(n)—~~ "Seed or early stage business" means a business that
 8 is either of the following:

9 (i) A business that has not fully established commercial
 10 operations and may also be engaged in continued research and
 11 product development.

12 (ii) A business engaged in product, service, or technology
 13 development and initial manufacturing, marketing, or sales
 14 activities.

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

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

25 (2) A Michigan early stage venture investment corporation
 26 shall be incorporated as a nonprofit corporation that has received,
 27 on or before ~~September 1, 2004~~ **AUGUST 1, 2005**, a favorable

determination from the internal revenue service that the corporation is exempt from taxation under section 501(c)(3) or 501(c)(4) of the internal revenue code. The department of treasury may allow up to 3, 30-day extensions of the date under this section for purposes of reviewing and approving an application for registration under section 11.

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

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

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

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

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

(b) Charge reasonable fees for the implementation of this act and the ongoing operation of the Michigan early stage venture

1 investment corporation.

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

4 (d) Invest in venture capital funds through equity securities.

5 (e) Employ ~~a fund manager~~ **FUND MANAGERS** and other persons it
6 considers necessary to implement this act. ~~The Michigan early~~
7 ~~stage venture investment corporation shall employ only 1 fund~~
8 ~~manager at any 1 time.~~

9 (2) The fund manager shall exercise the duties of a fiduciary
10 toward the corporation and shall discharge his or her duties with
11 the degree of diligence, care, and skill that an ordinarily prudent
12 person would exercise under the same or similar circumstances in a
13 like position.

14 (3) The fund manager shall solicit investors pursuant to
15 section 17.

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

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

1 agreements with investors.

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

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

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

8 (c) A maximum amount of ~~credit~~ **TAX VOUCHERS** that the
9 investor may ~~claim~~ **USE TO PAY A LIABILITY** under ~~section 37e of~~
10 the single business tax act, 1975 PA 228, MCL ~~208.37e~~ **208.1 TO**
11 **208.145**, a successor tax to the single business tax act, 1975 PA
12 228, MCL 208.1 to 208.145, or under ~~section 270 of~~ the income tax
13 act of 1967, 1967 PA 281, MCL ~~206.270~~ **206.1 TO 206.532**, and the
14 first year in which that ~~credit can be claimed~~ **TAX VOUCHER MAY BE**
15 **USED TO PAY A LIABILITY UNDER THE SINGLE BUSINESS TAX ACT, 1975 PA**
16 **228, MCL 208.1 TO 208.145, OR THE INCOME TAX ACT OF 1967, 1967 PA**
17 **281, MCL 206.1 TO 206.532, INCLUDING ANY WITHHOLDING TAX IMPOSED ON**
18 **THE INVESTOR UNDER THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL**
19 **206.1 TO 206.532.**

20 (3) The Michigan early stage venture investment corporation
21 shall notify the department of treasury when agreements are entered
22 into under this section and send a copy of each agreement to the
23 department of treasury. ~~The~~ **AFTER MAKING THE DETERMINATION**
24 **REQUIRED UNDER SECTION 23(2), THE** department of treasury shall
25 issue an approval letter to the investor that states that the
26 investor is entitled to a tax ~~credit under section 37e of the~~
27 ~~single business tax act, 1975 PA 228, MCL 208.37e,~~ **VOUCHER** that is

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equal to the difference between the amount actually repaid and the amount set as the repayment due in the agreement entered into by the investor and the ~~fund manager~~ **MICHIGAN EARLY STAGE VENTURE INVESTMENT CORPORATION.**

(4) The fund shall repay any amounts due from proceeds from the funds raised based on the agreements made under this section **[AND FROM THE PROCEEDS OF INVESTMENTS MADE BY THE FUND]**.

(5) For tax years that begin after December 31, 2008, investors that have **TAX VOUCHER** certificates issued pursuant to section 23 may ~~claim a credit~~ **USE THE TAX VOUCHER TO PAY A LIABILITY OWED BY THE INVESTOR** under ~~section 37e of~~ the single business tax act, 1975 PA 228, ~~MCL 208.37e~~ **MCL 208.1 TO 208.145**, or ~~section 270 of~~ the income tax act of 1967, 1967 PA 281, ~~MCL 206.270~~ **MCL 206.1 TO 206.532**, as ~~otherwise~~ provided in this act, **UP TO AN AMOUNT** equal to the difference between the amount actually repaid and the amount set as the repayment due in the agreement entered into by the taxpayer and the ~~fund manager~~ **MICHIGAN EARLY STAGE VENTURE INVESTMENT CORPORATION.** The Michigan early stage venture investment corporation shall notify the department of treasury when ~~credit~~ **TAX VOUCHER** certificates are issued under section **23(5).** ~~23, and upon notification and approval by the department of treasury under section 23, the amount of credit allowed pursuant to the credit certificate becomes a debt of the fund to the state subject to repayment pursuant to the agreement between the Michigan early stage venture investment corporation and the department of treasury. A debt under this section shall accrue interest at the same rate as the interest paid to the investor.~~

(6) Repayment of a debt under this section may be restricted

1 to specific funds or assets of the Michigan early stage venture
2 investment corporation.

3 (7) The Michigan early stage venture investment corporation
4 may purchase securities and may manage, transfer, or dispose of
5 those securities.

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

10 Sec. 19. (1) A Michigan early stage venture investment
11 corporation shall create a Michigan early stage venture investment
12 fund, which shall be a restricted fund.

13 (2) The fund manager shall establish an investment plan
14 approved by the board for the investment of the money in the fund
15 using the following criteria:

16 (a) Not more than 15% of the total capital and outstanding
17 commitments of the fund shall be invested in any single venture
18 capital company.

19 (b) The fund manager with the approval of the board shall
20 undertake to invest the fund in such a way as to promote that at
21 least \$2.00 will be invested in qualified businesses for every
22 \$1.00 of principal for which ~~credits may be claimed under section~~
23 ~~37e of~~ **TAX VOUCHERS MAY BE USED TO PAY A LIABILITY UNDER** the
24 single business tax act, 1975 PA 228, ~~MCL 208.37e~~ **MCL 208.1 TO**
25 **208.145**, a successor tax to the single business tax act, 1975 PA
26 228, MCL 208.1 to 208.145, or ~~section 270 of~~ the income tax act
27 of 1967, 1967 PA 281, ~~MCL 206.270~~ **MCL 206.1 TO 206.532.**

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

3 (d) Any other professional portfolio management criteria that
4 the fund manager and board consider appropriate.

5 (e) Priorities for investment in venture capital may be based
6 on an evaluation, which shall consider the following criteria:

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

9 (ii) The revitalization and diversification of the economic
10 base of this state.

11 (iii) Generating and retaining jobs and investment in this
12 state.

13 (3) Consistent with the plan established under subsection (2),
14 the fund manager shall select venture capital companies from among
15 those venture capital companies that apply for money from the fund
16 considering the following criteria:

17 (a) The venture capital company's probability of success in
18 generating above-average returns through investing in qualified
19 businesses.

20 (b) The venture capital company's probability of success in
21 soliciting investments. The level of investment from the fund
22 committed to each venture capital company shall not be more than
23 25% of the venture capital company's total capital under
24 management.

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

27 (d) The venture capital company has a significant presence in

1 this state as determined by the Michigan early stage venture
2 investment corporation.

3 (e) The venture capital company will undertake to invest in
4 qualified businesses, as determined at the point of initial
5 investment, a percentage of invested capital equal to or greater
6 than the percentage of invested capital that the venture capital
7 company received from the fund.

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

10 Sec. 23. (1) The Michigan early stage venture investment
11 corporation shall determine which investors are eligible for tax
12 ~~credits~~ **VOUCHERS** under ~~section 37e of~~ the single business tax
13 act, 1975 PA 228, ~~MCL 208.37e~~ **MCL 208.1 TO 208.145**, and ~~section~~
14 ~~270 of~~ the income tax act of 1967, 1967 PA 281, ~~MCL 206.270~~ **MCL**
15 **206.1 TO 206.532**, and the amount of the tax ~~credit under those~~
16 ~~sections~~ **VOUCHER OR VOUCHERS** allowed to each investor.

17 (2) The Michigan early stage venture investment corporation
18 shall determine which investors are eligible for tax ~~credits~~
19 **VOUCHERS** under this section and submit proposed **TAX VOUCHER**
20 certificates that meet the criteria under subsection (3) to the
21 department of treasury for approval. The department of treasury
22 shall approve or deny proposed **TAX VOUCHER** certificates within 30
23 days after receipt of the **PROPOSED TAX VOUCHER** certificates. If the
24 department of treasury denies a proposed **TAX VOUCHER** certificate,
25 the department of treasury shall notify the Michigan early stage
26 venture investment corporation and the investor of the denial and
27 the reason for the denial. If a proposed **TAX VOUCHER** certificate is

denied under this subsection, the Michigan early stage venture investment corporation is not prohibited from subsequently submitting a proposed **TAX VOUCHER** certificate on behalf of that same investor. If the department of treasury does not approve or deny the **PROPOSED TAX VOUCHER** certificates within 30 days, the **PROPOSED TAX VOUCHER** certificates are considered approved **AS SUBMITTED. THE APPROVAL BY THE DEPARTMENT OF TREASURY UNDER THIS SECTION MAY BE A CONDITION TO THE EFFECTIVENESS OF THE AGREEMENT BETWEEN THE INVESTOR AND THE MICHIGAN EARLY STAGE INVESTMENT CORPORATION REQUIRED UNDER SECTION 17(1).**

(3) ~~The~~ **AT THE TIME PERMITTED UNDER SUBSECTION (5), THE** Michigan early stage venture investment corporation shall issue a **TAX VOUCHER** certificate approved under subsection (2) to each investor **IN THE NAME OF THE INVESTOR** that states all of the following:

(a) The taxpayer is an investor.

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

(c) The amount of the tax ~~credit~~ **VOUCHER** that ~~the~~ **ANY** taxpayer **THAT USES THE TAX VOUCHER** may ~~claim against~~ **USE TO PAY** its tax liability under ~~section 37e of~~ the single business tax act, 1975 PA 228, ~~MCL 208.37e~~ **MCL 208.1 TO 208.145**, or ~~section 270 of~~ the income tax act of 1967, 1967 PA 281, ~~MCL 206.270~~ **MCL 206.1 TO 206.532.**

(d) The tax years for which the ~~credit~~ **TAX VOUCHER** under

subdivision (c) may be ~~claimed~~ **USED** and the maximum annual amount that may be ~~claimed~~ **USED** each tax year.

(e) The ~~tax credit is refundable~~ **AMOUNT OF THE TAX VOUCHERS THAT MAY BE USED SHALL NOT EXCEED THE TAX LIABILITY UNDER THE SINGLE BUSINESS TAX ACT, 1975 PA 228, MCL 208.1 TO 208.145, OR THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.532, OF THE TAXPAYER THAT USES THE TAX VOUCHER.**

(F) THE TAX VOUCHER MAY BE TRANSFERRED IN WHOLE OR IN PART.

(G) IF THE AMOUNT OF ANY TAX VOUCHER CERTIFICATE EXCEEDS THE INVESTOR'S TAX LIABILITY UNDER THE SINGLE BUSINESS TAX ACT, 1975 PA 228, MCL 208.1 TO 208.145, OR THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.532, THE AMOUNT THAT EXCEEDS THE INVESTOR'S TAX LIABILITY MAY BE RETAINED AND USED TO PAY A FUTURE LIABILITY OF THE INVESTOR UNDER THE SINGLE BUSINESS TAX ACT, 1975 PA 228, MCL 208.1 TO 208.145, OR THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.532.

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

(5) ~~Certificates~~ **THE MICHIGAN EARLY STAGE INVESTMENT CORPORATION SHALL ISSUE TAX VOUCHER CERTIFICATES** under this section ~~shall be issued~~ to an investor at the time that the Michigan early stage venture investment corporation determines that, for that investor, ~~capital is not sufficient to meet the guaranteed~~ **IT IS UNABLE TO PAY THE** negotiated amount or the negotiated return on

1 qualified investment of that investor **ON OR BEFORE THE DATE ON**
2 **WHICH PAYMENT IS DUE.** The total of all **TAX VOUCHER** certificates
3 issued under this section shall not exceed the maximum amount
4 allowed under section 37e(2) of the single business tax act, 1975
5 PA 228, MCL 208.37e.

6 (6) ~~Certificates~~ **TAX VOUCHER CERTIFICATES** under this section
7 shall not be issued until December 31, 2008. ~~or 5 years after all~~
8 ~~the requirements under section 29 have been met, whichever occurs~~
9 ~~later.~~

10 (7) A **TAX VOUCHER CERTIFICATE** ISSUED UNDER SUBSECTION (5), OR
11 THE RIGHT TO BE ISSUED AND RECEIVE A **TAX VOUCHER CERTIFICATE** FROM
12 THE MICHIGAN EARLY STAGE VENTURE INVESTMENT CORPORATION, MAY BE
13 TRANSFERRED IN WHOLE OR IN PART BY A HOLDER TO ANOTHER PERSON IF
14 THE HOLDER NOTIFIES THE DEPARTMENT OF TREASURY AND THE MICHIGAN
15 EARLY STAGE VENTURE INVESTMENT CORPORATION IN WRITING OF THE
16 TRANSFER, THE AMOUNT OF THE **TAX VOUCHER CERTIFICATE** TO BE
17 TRANSFERRED, AND THE NAME AND TAX IDENTIFICATION INFORMATION
18 PROVIDED FOR UNDER SUBSECTION (3) OF THE PROPOSED TRANSFEREE. THE
19 **TAX VOUCHER CERTIFICATE** TRANSFERRED UNDER THIS SUBSECTION SHALL BE
20 MADE ON A FORM PRESCRIBED BY THE DEPARTMENT OF TREASURY. THE HOLDER
21 SHALL SEND A COPY OF THE COMPLETED TRANSFER FORM TO THE DEPARTMENT
22 OF TREASURY WITHIN 60 DAYS AFTER THE DATE OF THE TRANSFER.

23 (8) A TRANSFER UNDER THIS SECTION IS IRREVOCABLE. IF THE
24 HOLDER IS TRANSFERRING LESS THAN ALL OF THE **TAX VOUCHER CERTIFICATE**
25 TO A TRANSFEREE, THE DEPARTMENT OF TREASURY MAY ISSUE NEW **TAX**
26 **VOUCHER CERTIFICATES** TO THE HOLDER AND TRANSFEREE REPRESENTING THE
27 ALLOCATED VALUES OF THE **TAX VOUCHER CERTIFICATES** HELD BY THE HOLDER

1 AND THE TRANSFEREE AFTER THE TRANSFER.

2 (9) A HOLDER OF A TAX VOUCHER CERTIFICATE SHALL ATTACH A COPY
3 OF THE TAX VOUCHER CERTIFICATE AND, IF APPLICABLE, A COMPLETED
4 TRANSFER FORM TO ITS ANNUAL RETURN FOR THE TAX TOWARD WHICH THE TAX
5 VOUCHER CERTIFICATE IS USED BY THE HOLDER. IF THE AMOUNT OF ANY TAX
6 VOUCHER CERTIFICATE ELIGIBLE TO BE USED BY A HOLDER IS IN EXCESS OF
7 THE HOLDER'S TAX LIABILITY UNDER EITHER THE SINGLE BUSINESS TAX
8 ACT, 1975 PA 228, MCL 208.1 TO 208.145, OR THE INCOME TAX ACT OF
9 1967, 1967 PA 281, MCL 206.1 TO 206.532, THE EXCESS MAY BE RETAINED
10 AND USED TO PAY ANY FUTURE SINGLE BUSINESS TAX OR INCOME TAX
11 LIABILITY OF THE HOLDER.