

SUBSTITUTE FOR  
SENATE BILL NO. 92

A bill to amend 1967 PA 281, entitled  
"Income tax act of 1967,"  
(MCL 206.1 to 206.532) by adding section 272.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 272. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (3)  
2        AND (6), A TAXPAYER MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY  
3        THIS ACT FOR ALL OF THE FOLLOWING INVESTMENTS MADE AFTER DECEMBER  
4        31, 2005:

5        (A) THAT PORTION OF A TAXPAYER'S EQUITY INVESTMENT IN A  
6        QUALIFIED BUSINESS, AS PROVIDED IN SUBSECTION (2). A TAXPAYER SHALL  
7        NOT CLAIM A CREDIT UNDER THIS SUBDIVISION FOR THE EQUITY  
8        INVESTMENT OF A PARTNERSHIP, LIMITED LIABILITY COMPANY, S  
9        CORPORATION, ESTATE, OR TRUST ELECTING TO HAVE INCOME TAXED

1 DIRECTLY TO THE TAXPAYER. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER  
2 THIS SUBDIVISION EXCEEDS THE TAX LIABILITY OF THE TAXPAYER FOR THE  
3 TAX YEAR, THAT PORTION OF THE CREDIT THAT EXCEEDS THE TAX LIABILITY  
4 SHALL BE REFUNDED.

5 (B) THAT PORTION OF A TAXPAYER'S EQUITY INVESTMENT, AS  
6 PROVIDED IN SUBSECTION (2), IN A COMMUNITY-BASED SEED CAPITAL  
7 COMPANY. A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SUBDIVISION  
8 FOR AN INVESTMENT OF A PARTNERSHIP, LIMITED LIABILITY COMPANY, S  
9 CORPORATION, ESTATE, OR TRUST ELECTING TO HAVE INCOME TAXED  
10 DIRECTLY TO THE TAXPAYER. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER  
11 THIS SUBDIVISION EXCEEDS THE TAX LIABILITY OF THE TAXPAYER FOR THE  
12 TAX YEAR, THAT PORTION OF THE CREDIT THAT EXCEEDS THE TAX LIABILITY  
13 SHALL BE REFUNDED.

14 (C) A TAXPAYER MAY CLAIM A CREDIT UNDER THIS SUBDIVISION FOR  
15 AN AMOUNT OF THE EQUITY INVESTMENT IN A COMMUNITY-BASED SEED  
16 CAPITAL COMPANY OF A PARTNERSHIP, LIMITED LIABILITY COMPANY, S  
17 CORPORATION, ESTATE, OR TRUST ELECTING TO HAVE INCOME TAXED  
18 DIRECTLY TO THE TAXPAYER BASED UPON THE PRO RATA SHARE OF THE  
19 TAXPAYER'S EARNINGS FROM THE INVESTMENT OF THE PARTNERSHIP, LIMITED  
20 LIABILITY COMPANY, S CORPORATION, ESTATE, OR TRUST. IF THE AMOUNT  
21 OF THE CREDIT ALLOWED UNDER THIS SECTION EXCEEDS THE TAX LIABILITY  
22 OF THE TAXPAYER FOR THE TAX YEAR, THAT PORTION OF THE CREDIT THAT  
23 EXCEEDS THE TAX LIABILITY SHALL NOT BE REFUNDED BUT MAY BE CARRIED  
24 FORWARD AS AN OFFSET TO THE TAX LIABILITY IN SUBSEQUENT TAX YEARS  
25 FOR 10 TAX YEARS OR UNTIL THE EXCESS CREDIT IS USED UP, WHICHEVER  
26 OCCURS FIRST. A CREDIT UNDER THIS SUBDIVISION SHALL NOT BE CARRIED  
27 BACK TO A TAX YEAR BEFORE THE TAX YEAR IN WHICH THE TAXPAYER FIRST

1 CLAIMS THE CREDIT.

2 (2) THE AMOUNT OF THE CREDIT UNDER THIS SECTION DETERMINED  
3 UNDER SUBSECTION (1) (A) AND (B) SHALL NOT EXCEED 20% OF THE  
4 TAXPAYER'S TOTAL INVESTMENT. THE MAXIMUM AMOUNT OF A CREDIT UNDER  
5 THIS SECTION FOR INVESTMENT BY AN INVESTOR IN ANY 1 QUALIFIED  
6 BUSINESS IS \$50,000.00. EACH INVESTOR SHALL NOT CLAIM A TOTAL OF  
7 ALL CREDITS UNDER THIS SECTION FOR MORE THAN 5 DIFFERENT  
8 INVESTMENTS IN 5 DIFFERENT QUALIFIED BUSINESSES FOR ANY 1 TAX YEAR.  
9 THE AMOUNT OF A CREDIT UNDER THIS SECTION DETERMINED UNDER  
10 SUBSECTION (1) (C) SHALL NOT EXCEED 20% OF THE TAXPAYER'S TOTAL  
11 INVESTMENT AND SHALL NOT EXCEED A TOTAL OF \$250,000.00 IN ANY 1  
12 QUALIFIED BUSINESS.

13 (3) A TAXPAYER MAY CLAIM A CREDIT UNDER THIS SECTION ONLY IN A  
14 TAX YEAR IN WHICH, FOR FEDERAL INCOME TAX PURPOSES, THE TAXPAYER  
15 REALIZES A LOSS FROM THE SALE OR EXCHANGE OF THE INVESTMENT OR THE  
16 INVESTMENT BECOMES A WORTHLESS SECURITY AS DETERMINED UNDER SECTION  
17 165(G) OF THE INTERNAL REVENUE CODE.

18 (4) AN INVESTMENT IS CONSIDERED TO HAVE BEEN MADE ON THE SAME  
19 DATE AS THE DATE OF ACQUISITION OF THE EQUITY INTEREST. FOR  
20 PURPOSES OF THIS SECTION, THE DATE OF ACQUISITION IS THE SAME AS  
21 THE DATE OF ACQUISITION OF THE EQUITY INTEREST UNDER THE INTERNAL  
22 REVENUE CODE. INVESTMENTS MADE BEFORE JANUARY 1, 2006 SHALL NOT  
23 QUALIFY FOR A TAX CREDIT UNDER THIS SECTION.

24 (5) THE TOTAL OF ALL CREDITS TO ALL TAXPAYERS FOR ALL TAX  
25 YEARS UNDER THIS SECTION SHALL NOT EXCEED \$10,000,000.00.

26 (6) A CREDIT ALLOWED UNDER THIS SECTION SHALL BE CLAIMED ONLY  
27 IN TAX YEARS THAT BEGAN AFTER DECEMBER 31, 2006.

1           (7) A CREDIT ALLOWED UNDER THIS SECTION IS NONTRANSFERABLE AND  
2 SHALL NOT BE TRANSFERRED TO ANY OTHER TAXPAYER.

3           (8) A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SECTION FOR  
4 THE SAME INVESTMENT USED AS A BASIS FOR A CREDIT UNDER SECTION 37E  
5 OF THE SINGLE BUSINESS TAX ACT, 1975 PA 228, MCL 208.37E.

6           (9) THE MICHIGAN CAPITAL INVESTMENT BOARD IS CREATED IN THE  
7 DEPARTMENT. THE MICHIGAN CAPITAL INVESTMENT BOARD SHALL DO ALL OF  
8 THE FOLLOWING:

9           (A) DEVELOP AN APPLICATION PROCESS FOR TAX CREDIT CERTIFICATES  
10 FOR CREDITS ALLOWED UNDER THIS SECTION.

11           (B) DETERMINE THE DISTRIBUTION OF CREDITS TO INVESTORS UNDER  
12 THIS SECTION.

13           (C) DEVELOP PROCEDURES FOR THE QUALIFICATION AND  
14 ADMINISTRATION OF QUALIFIED BUSINESSES AND COMMUNITY-BASED SEED  
15 CAPITAL COMPANIES.

16           (D) DEVELOP APPLICATION FORMS AND DISTRIBUTE COPIES OF THE  
17 APPLICATION FORMS TO ALL COMMUNITY-BASED SEED CAPITAL COMPANIES AND  
18 POTENTIAL INDIVIDUAL INVESTORS.

19           (10) A BUSINESS SHALL APPLY TO THE BOARD TO BE DESIGNATED AS A  
20 QUALIFIED BUSINESS. TO BE DESIGNATED AS A QUALIFIED BUSINESS, A  
21 BUSINESS SHALL MEET ALL OF THE FOLLOWING CRITERIA:

22           (A) THE PRINCIPAL BUSINESS OPERATIONS OF THE BUSINESS ARE  
23 LOCATED IN THIS STATE.

24           (B) THE BUSINESS HAS BEEN IN OPERATION FOR 5 YEARS OR LESS.  
25 THIS SUBDIVISION DOES NOT APPLY TO A BUSINESS, THE BUSINESS  
26 ACTIVITY OF WHICH IS BASED ON RESEARCH OR DEVELOPMENT BY AN  
27 INSTITUTION OF HIGHER EDUCATION OR ORGANIZATION EXEMPT FROM

1 TAXATION UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE THAT  
2 IS LOCATED IN THIS STATE.

3 (C) THE BUSINESS IS NOT A BUSINESS ENGAGED PRIMARILY IN RETAIL  
4 SALES, REAL ESTATE, OR THE PROVISION OF HEALTH CARE OR OTHER  
5 PROFESSIONAL SERVICES BUT IS A BUSINESS THAT FOCUSES ON AREAS  
6 INCLUDING, BUT NOT LIMITED TO, ALTERNATIVE ENERGY TECHNOLOGY,  
7 TECHNOLOGY AS ADDRESSED BY THE MICHIGAN TRI-TECHNOLOGY CORRIDOR  
8 INITIATIVE, AND MICHIGAN LIFE SCIENCES CORRIDOR INITIATIVE, AND  
9 HIGH-TECHNOLOGY ACTIVITY.

10 (D) THE BUSINESS HAS A PREINVESTMENT VALUATION OF  
11 \$10,000,000.00 OR LESS.

12 (11) A QUALIFIED BUSINESS SHALL NOTIFY THE BOARD IN A TIMELY  
13 MANNER OF ANY CHANGES IN THE QUALIFICATIONS OF THE BUSINESS OR IN  
14 THE ELIGIBILITY OF INVESTORS TO CLAIM A CREDIT UNDER THIS SECTION.

15 (12) A COMMUNITY-BASED SEED CAPITAL COMPANY SHALL APPLY TO THE  
16 BOARD FOR ELIGIBILITY UNDER THIS SECTION. AN INVESTMENT IN A  
17 COMMUNITY-BASED SEED CAPITAL COMPANY QUALIFIES FOR A CREDIT UNDER  
18 THIS SECTION IF, IN ADDITION TO ALL OTHER REQUIREMENTS UNDER THIS  
19 SECTION, THE BOARD DETERMINES THAT THE FOLLOWING REQUIREMENTS ARE  
20 MET:

21 (A) THE COMMUNITY-BASED SEED CAPITAL COMPANY MEETS ALL OF THE  
22 FOLLOWING CRITERIA:

23 (i) THE COMPANY IS A LIMITED PARTNERSHIP OR LIMITED LIABILITY  
24 COMPANY.

25 (ii) THE COMPANY HAS, ON OR AFTER JANUARY 1, 2005, A TOTAL OF  
26 BOTH CAPITAL COMMITMENTS FROM INVESTORS AND INVESTMENTS IN  
27 QUALIFIED BUSINESSES OF AT LEAST \$250,000.00 BUT NOT MORE

1 THAN \$10,000,000.00.

2 (B) THE COMMUNITY-BASED SEED CAPITAL COMPANY HAS NO FEWER THAN  
3 5 INDIVIDUAL INVESTORS WHO ARE NOT AFFILIATES, WITH NO SINGLE  
4 INVESTOR AND AFFILIATES OF THAT INVESTOR THAT TOGETHER OWN A TOTAL  
5 OF MORE THAN 35% OF THE OWNERSHIP INTERESTS OUTSTANDING IN THE  
6 COMPANY.

7 (C) THE COMMUNITY-BASED SEED CAPITAL COMPANY NOTIFIES THE  
8 BOARD WITHIN 120 DAYS AFTER THE DATE OF THE FIRST INVESTMENT OF THE  
9 NAMES, ADDRESSES, TAXPAYER IDENTIFICATION NUMBERS, EQUITY INTERESTS  
10 ISSUED, CONSIDERATION PAID FOR THE INTERESTS, AND THE AMOUNT OF ANY  
11 CREDITS UNDER THIS SECTION, OF ALL LIMITED PARTNERS OR MEMBERS WHO  
12 MAY INITIALLY QUALIFY FOR THE CREDITS UNDER THIS SECTION, AND THE  
13 EARLIEST YEAR IN WHICH THE TAX CREDITS MAY BE CLAIMED. THE LIST OF  
14 LIMITED PARTNERS OR MEMBERS WHO QUALIFY FOR THE CREDITS UNDER THIS  
15 SECTION SHALL BE AMENDED WHEN NEW EQUITY INTERESTS ARE SOLD OR WHEN  
16 ANY INFORMATION ON THE LIST CHANGES.

17 (13) IF THE BOARD DETERMINES THAT THE BUSINESS IS A QUALIFIED  
18 BUSINESS OR THAT AN INVESTMENT IN A COMMUNITY-BASED SEED CAPITAL  
19 COMPANY IS ELIGIBLE FOR A CREDIT UNDER THIS SECTION, THE BOARD  
20 SHALL ISSUE A TAX CREDIT CERTIFICATE TO BE ATTACHED TO THE  
21 TAXPAYER'S ANNUAL RETURN REQUIRED UNDER THIS ACT. THE TAX CREDIT  
22 CERTIFICATE SHALL CONTAIN THE TAXPAYER'S NAME, ADDRESS, TAX  
23 IDENTIFICATION NUMBER, THE AMOUNT OF CREDIT, THE NAME OF THE  
24 QUALIFIED BUSINESS OR COMMUNITY-BASED SEED CAPITAL COMPANY, AND  
25 OTHER INFORMATION REQUIRED BY THE DEPARTMENT. A COMMUNITY-BASED  
26 SEED CAPITAL COMPANY SHALL NOTIFY THE BOARD IN A TIMELY MANNER OF  
27 ANY CHANGES IN THE QUALIFICATIONS OF THE COMMUNITY-BASED SEED

1 CAPITAL COMPANY, IN THE QUALIFICATIONS OF ANY QUALIFIED BUSINESS IN  
2 WHICH THE COMPANY HAS INVESTED, OR IN THE ELIGIBILITY OF LIMITED  
3 PARTNERS OR MEMBERS TO REDEEM THE TAX CREDITS IN ANY YEAR.

4 (14) FOR AN EQUITY INVESTMENT TO QUALIFY FOR A CREDIT UNDER  
5 THIS SECTION, THE BUSINESS IN WHICH THE EQUITY INVESTMENT IS MADE  
6 SHALL, WITHIN 100 DAYS OF THE DATE OF THE FIRST INVESTMENT, NOTIFY  
7 THE BOARD OF THE NAMES, ADDRESSES, TAXPAYER IDENTIFICATION NUMBERS,  
8 SHARES ISSUED, CONSIDERATION PAID FOR THE SHARES, AND THE AMOUNT OF  
9 ANY CREDITS OF ALL SHAREHOLDERS WHO MAY INITIALLY QUALIFY FOR THE  
10 CREDITS UNDER THIS SECTION. THE LIST OF SHAREHOLDERS WHO MAY  
11 QUALIFY FOR THE CREDITS SHALL BE AMENDED AS NEW EQUITY INVESTMENTS  
12 ARE SOLD OR AS ANY INFORMATION ON THE LIST CHANGES.

13 (15) IF A TAXPAYER DOES NOT CLAIM ALL OF THE AMOUNT OF CREDIT  
14 ALLOWED BY THE TAXPAYER'S TAX CREDIT CERTIFICATE IN THE FIRST 5 TAX  
15 YEARS BEGINNING WITH THE TAX YEAR IN WHICH THE TAX CREDIT  
16 CERTIFICATE WAS ISSUED, THE TAX CREDIT CERTIFICATE EXPIRES AND IS  
17 VOID, AND NO FURTHER CREDITS SHALL BE CLAIMED BASED ON THAT TAX  
18 CREDIT CERTIFICATE. IN YEARS FOLLOWING THE TAX YEAR IN WHICH A TAX  
19 CREDIT CERTIFICATE EXPIRES, THE DEPARTMENT SHALL ISSUE NEW TAX  
20 CREDIT CERTIFICATES UNDER SUBSECTION (13) FOR THE TOTAL AMOUNT OF  
21 TAX CREDITS THAT EXPIRED, BUT THE TOTAL OF ALL CREDITS FOR ALL  
22 TAXPAYERS FOR ALL YEARS SHALL NOT EXCEED THE MAXIMUM UNDER  
23 SUBSECTION (5).

24 (16) AN INVESTOR IN A COMMUNITY-BASED SEED CAPITAL COMPANY MAY  
25 CLAIM A CREDIT UNDER THIS SECTION ONLY FOR THE INVESTOR'S  
26 INVESTMENT IN THE COMMUNITY-BASED SEED CAPITAL COMPANY AND  
27 MAY NOT CLAIM ANY ADDITIONAL CREDIT FOR THE INVESTOR'S SHARE OF

1 INVESTMENTS IN A QUALIFIED BUSINESS MADE BY THE COMMUNITY-BASED  
2 SEED CAPITAL COMPANY. HOWEVER, AN INVESTOR IN A COMMUNITY-BASED  
3 SEED CAPITAL COMPANY MAY CLAIM A CREDIT UNDER THIS SECTION FOR A  
4 SEPARATE DIRECT INVESTMENT MADE BY THE INVESTOR IN THE SAME  
5 QUALIFIED BUSINESS IN WHICH THE COMMUNITY-BASED SEED CAPITAL  
6 COMPANY INVESTS.

7 (17) ON OR BEFORE APRIL 1 EACH YEAR, THE BOARD SHALL PUBLISH  
8 AN ANNUAL REPORT OF THE ACTIVITIES CONDUCTED UNDER THIS SECTION AND  
9 SHALL SUBMIT THE REPORT TO THE GOVERNOR AND THE LEGISLATURE. THE  
10 REPORT SHALL INCLUDE A LISTING OF ELIGIBLE QUALIFIED BUSINESSES, A  
11 LIST OF ELIGIBLE COMMUNITY-BASED SEED CAPITAL COMPANIES, THE NUMBER  
12 OF TAX CREDIT CERTIFICATES ISSUED BY THE BOARD AND THE TOTAL AMOUNT  
13 OF CREDITS AUTHORIZED BY THOSE CERTIFICATES, AND THE TOTAL AMOUNT  
14 OF CREDITS CLAIMED UNDER THIS SECTION FOR THE IMMEDIATELY PRECEDING  
15 CALENDAR YEAR.

16 (18) AS USED IN THIS SECTION:

17 (A) "ALTERNATIVE ENERGY TECHNOLOGY" MEANS THAT TERM AS DEFINED  
18 IN SECTION 2 OF THE MICHIGAN NEXT ENERGY AUTHORITY ACT, 2002 PA  
19 593, MCL 207.822.

20 (B) "BOARD" OR "MICHIGAN CAPITAL INVESTMENT BOARD" MEANS THE  
21 MICHIGAN CAPITAL INVESTMENT BOARD CREATED IN SUBSECTION (9).

22 (C) "COMMUNITY-BASED SEED CAPITAL COMPANY" MEANS A FLOW-  
23 THROUGH ENTITY, THE PRINCIPAL BUSINESS OPERATIONS OF WHICH ARE  
24 LOCATED IN THIS STATE, FORMED SOLELY FOR THE PURPOSE OF INVESTING  
25 IN A SINGLE QUALIFIED BUSINESS.

26 (D) "FLOW-THROUGH ENTITY" MEANS AN S CORPORATION, PARTNERSHIP,  
27 LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, OR LIMITED



1 LIABILITY COMPANY. FLOW-THROUGH ENTITY DOES NOT INCLUDE A PUBLICLY  
2 TRADED PARTNERSHIP AS THAT TERM IS DEFINED IN SECTION 7704 OF THE  
3 INTERNAL REVENUE CODE THAT HAS EQUITY SECURITIES REGISTERED WITH  
4 THE SECURITIES AND EXCHANGE COMMISSION UNDER SECTION 12 OF TITLE I  
5 OF THE SECURITIES EXCHANGE ACT OF 1934, CHAPTER 404, 48 STAT. 881,  
6 15 USC 78/.

7 (E) "HIGH-TECHNOLOGY ACTIVITY" MEANS THAT TERM AS DEFINED IN  
8 SECTION 3 OF THE MICHIGAN ECONOMIC GROWTH AUTHORITY ACT, 1995 PA  
9 24, MCL 207.803.

10 (F) "INSTITUTION OF HIGHER EDUCATION" MEANS A PUBLIC OR  
11 PRIVATE INSTITUTION OF A STATE WHICH OFFERS A DEGREE OR COURSE OF  
12 STUDY BEYOND THE TWELFTH GRADE.

13 (G) "INVESTOR" MEANS AN INDIVIDUAL WHO MAKES A CASH INVESTMENT  
14 IN A QUALIFIED BUSINESS OR A PERSON WHO MAKES A CASH INVESTMENT IN  
15 A COMMUNITY-BASED SEED CAPITAL COMPANY. INVESTOR DOES NOT INCLUDE A  
16 PERSON WHO IS A CURRENT OR PREVIOUS OWNER, MEMBER, OR SHAREHOLDER  
17 IN A QUALIFIED BUSINESS.

18 (H) "NEAR EQUITY" MEANS DEBT THAT MAY BE CONVERTED TO EQUITY  
19 AT THE OPTION OF THE DEBT HOLDER AND ROYALTY AGREEMENTS.

20 (I) "QUALIFIED BUSINESS" MEANS A BUSINESS THAT MEETS THE  
21 CRITERIA IN SUBSECTION (10).

22 Enacting section 1. This amendatory act does not take effect  
23 unless Senate Bill No. 521 of the 93rd Legislature is enacted into  
24 law.