

HOUSE BILL No. 5005

June 23, 2005, Introduced by Reps. Huizenga and Dillon and referred to the Committee on Commerce.

A bill to create the 21st century jobs fund authority; to create a board; to create funds and accounts; to prescribe the powers and duties of the authority; to create and operate certain programs; and to make loans and investments.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "21st
2 century jobs fund authority act".

3 Sec. 2. As used in this act:

4 (a) "Authority" means the 21st century jobs fund authority
5 created under section 3.

6 (b) "Board" means the board of directors of the authority.

7 (c) "Competitive edge technology" means that term as defined
8 in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to

1 125.2093.

2 (d) "Financial institution" means a state or nationally
3 chartered bank or a state or federally chartered savings and loan
4 association, savings bank, or credit union whose deposits are
5 insured by an agency of the United States government and that
6 maintains a principal office or branch office located in this state
7 under the laws of this state or the United States.

8 (e) "Fund" means the 21st century investment fund created in
9 section 11.

10 (f) "Investment" means the provision of capital in any manner
11 permissible by law.

12 (g) "Person" means an individual, corporation, limited or
13 general partnership, joint venture, or limited liability company or
14 a governmental entity.

15 (h) "Qualified business" means a business located in this
16 state.

17 (i) "Qualified private equity fund" means a firm engaged in
18 investing in or acquiring businesses with revenues greater than
19 \$10,000,000.00, that is managed by 2 or more individuals with no
20 less than 5 years of direct experience in private equity, and that
21 holds investment capital from investors other than the authority.

22 (j) "Qualified venture capital fund" means a firm engaged in
23 investing in or acquiring early stage businesses that have not yet
24 demonstrated consistent profitability or a proven business model,
25 that is managed by 2 or more individuals with not less than 5 years
26 of direct experience in venture capital, and that holds investment
27 capital from investors other than the authority.

1 (k) "Small business" means a business entity formed or doing
2 business in this state, including the affiliates of the business
3 concern, which business entity is independently owned and operated
4 and employs fewer than 250 full-time employees or has gross annual
5 sales of less than \$6,000,000.00.

6 (l) "21st century investments" means investments in 1 or more
7 of the following:

8 (i) Commercial loan guarantees under a commercial loan
9 guarantee program operated by the authority.

10 (ii) Private equity investments under a private equity
11 investment program operated by the authority.

12 (iii) Venture capital investments under a venture capital
13 investment program operated by the authority.

14 (iv) Commercialization of competitive edge technology.

15 Sec. 3. (1) The 21st century jobs fund authority is a
16 permanent fund described in section 19 of article IX of the state
17 constitution of 1963 and is created as a public body corporate and
18 politic within the department of treasury.

19 (2) The authority shall do all of the following:

20 (a) Create and operate a commercial loan guarantee program.

21 (b) Create and operate a private equity investment program.

22 (c) Create and operate a venture capital investment program.

23 (d) Make grants and loans for the commercialization of
24 competitive edge technology as provided in the Michigan strategic
25 fund act, 1984 PA 270, MCL 125.2001 to 125.2093.

26 (e) Establish standards to ensure that all 21st century
27 investments made under this act will result in economic benefit to

1 this state and ensure that a major share of the business activity
2 resulting from the investments occurs in this state.

3 (3) The authority shall not make any other investment except
4 as provided in this act.

5 (4) From the money received from 21st century investment
6 returns, the authority shall give priority to funding grants and
7 loans for the commercialization of competitive edge technology as
8 provided in the Michigan strategic fund act, 1984 PA 270, MCL
9 125.2001 to 125.2093.

10 Sec. 4. The authority shall exercise its duties independently
11 of the state treasurer. The budgeting, procurement, and related
12 administrative functions of the authority shall be performed under
13 the direction and supervision of the state treasurer.

14 Sec. 5. (1) The authority shall exercise its powers and duties
15 through its board of directors. The board shall consist of 9
16 members, as provided under subsections (2) and (3).

17 (2) The board shall include each of the 2 following voting ex
18 officio members:

19 (a) The state treasurer or his or her designee from within the
20 department of treasury.

21 (b) The director of the department of labor and economic
22 growth or his or her designee from within the department of labor
23 and economic growth.

24 (3) The board shall include the following 7 members appointed
25 by the governor with, except for the individuals described in
26 subdivisions (d) and (e), the advice and consent of the senate:

27 (a) One member with knowledge, skill, or experience in

1 commercial lending.

2 (b) One member with knowledge, skill, or experience in private
3 equity investments.

4 (c) One member with knowledge, skill, or experience in venture
5 capital investments.

6 (d) One member appointed from a list of 2 or more individuals
7 selected by the majority leader of the senate representing
8 business, technological, or financial experience related to 21st
9 century investments.

10 (e) One member appointed from a list of 2 or more individuals
11 selected by the speaker of the house of representatives
12 representing business, technological, or financial experience
13 related to 21st century investments.

14 (f) Two members with business, technological, or financial
15 experience related to 21st century investments.

16 (4) Of the members of the board initially appointed under
17 subsection (3), 2 members shall be appointed for terms expiring on
18 December 31, 2006, 2 members shall be appointed for terms expiring
19 on December 31, 2007, 2 members shall be appointed for terms
20 expiring on December 31, 2008, and 1 member shall be appointed for
21 a term expiring on December 31, 2009. After the expiration of the
22 initial appointment terms provided for by this subsection, members
23 of the board shall be appointed for terms of 4 years.

24 (5) For members of the board appointed under subsection (3), a
25 vacancy on the board occurring other than by expiration of a term
26 shall be filled in the same manner as the original appointment for
27 the balance of the unexpired term. A member of the board shall hold

1 office until a successor has been appointed and qualified. A member
2 of the board is eligible for reappointment. State employees are not
3 eligible to serve as members appointed under subsection (3).

4 (6) The governor shall designate 1 of the members of the board
5 to serve as its chairperson at the pleasure of the governor. The
6 board shall select from among its members a member to serve as
7 vice-chairperson and a member to serve as secretary.

8 (7) Upon appointment to the board under this section and upon
9 the taking and filing of the constitutional oath of office
10 prescribed in section 1 of article XI of the state constitution of
11 1963, a member shall enter the office and exercise the duties of
12 the office.

13 (8) Members of the board shall serve without compensation, but
14 may be reimbursed for actual and necessary expenses.

15 (9) Upon the initial appointment of members under this
16 section, the board shall organize and adopt its own policies,
17 procedures, schedule of regular meetings, and a regular meeting
18 date, place, and time.

19 (10) The board may act only by resolution approved by a
20 majority of board members appointed and serving. A majority of the
21 members of the board then in office shall constitute a quorum for
22 the transaction of business. The board shall meet in person or by
23 means of electronic communication devices that enable all
24 participants in the meeting to communicate with each other.

25 (11) The board shall conduct all business at public meetings
26 held in compliance with the open meetings act, 1976 PA 267, MCL
27 15.261 to 15.275. Public notice of the time, date, and place of

1 each meeting shall be given in the manner required by the open
2 meetings act, 1976 PA 267, MCL 15.261 to 15.275, and shall be
3 published on the internet.

4 Sec. 6. (1) A record prepared, owned, used, in the possession
5 of, or retained by the board in the performance of an official
6 function under this act shall be available to the public in
7 compliance with the freedom of information act, 1976 PA 442, MCL
8 15.231 to 15.246, unless otherwise provided by law.

9 (2) A record or portion of a record, material, or other data
10 received, prepared, used, or retained by the board in connection
11 with an investment under this act that relates to financial or
12 proprietary information submitted by the applicant that is
13 considered by the applicant and acknowledged by the board as
14 confidential shall not be subject to the disclosure requirements of
15 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
16 A designee of the board shall make the determination as to whether
17 the board acknowledges as confidential any financial or proprietary
18 information submitted by the applicant and considered by the
19 applicant as confidential. Unless considered proprietary
20 information, the board shall not acknowledge routine financial
21 information as confidential. If the designee of the board
22 determines that information submitted to the board is financial or
23 proprietary information and is confidential, the designee of the
24 board shall release a written statement, subject to disclosure
25 under the freedom of information act, 1976 PA 442, 15.231 to
26 15.246, which states all of the following:

27 (a) The name and business location of the person requesting

1 that the information submitted be confidential as financial or
2 proprietary information.

3 (b) That the information submitted was determined by the
4 designee of the board to be confidential as financial or
5 proprietary information.

6 (c) A broad nonspecific overview of the financial or
7 proprietary information determined to be confidential.

8 (3) Unless otherwise required by law, the board shall not
9 disclose financial or proprietary information exempt from
10 disclosure as provided by law without the consent of the person
11 submitting the information.

12 (4) As used in this section, "financial or proprietary
13 information" means information that has not been publicly
14 disseminated or is unavailable from other sources, the release of
15 which might cause the person significant competitive harm.

16 Sec. 7. (1) The commercial loan guarantee program created and
17 operated by the authority shall do all of the following:

18 (a) Provide a guarantee to financial institutions located in
19 this state that provide commercial loans to qualified businesses.

20 (b) Provide that the guarantee not exceed 40% of the amount of
21 all outstanding loans from the financial institution to the
22 qualified business immediately preceding the making of a loan under
23 this program.

24 (c) Provide that the financial institution charge a higher
25 rate of interest for the amount of the loan covered by the
26 guarantee.

27 (d) Provide that the financial institution pay the authority a

1 closing fee of up to 1% of the amount guaranteed by the authority
2 plus an annual percentage rate of interest of up to 2% on the
3 amount of the guarantee which amounts shall be paid to the
4 authority on the same terms and conditions as the borrower pays to
5 the financial institution.

6 (e) Provide that a qualified business is only eligible for a
7 loan guarantee under this section if it has a documented growth
8 opportunity. As used in this subdivision, "documented growth
9 opportunity" means a plant expansion, capital equipment investment,
10 or the hiring of new employees to meet or satisfy a new business
11 opportunity.

12 (f) Provide that a qualified business that engages primarily
13 in retail sales is not eligible for a loan guarantee under this act
14 unless the board makes a specific finding that the loan supports a
15 new concept that has significant growth potential.

16 (2) As a separate and distinct part of the commercial loan
17 guarantee program, the authority shall reestablish the capital
18 access program that was operated by the Michigan strategic fund
19 under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to
20 125.2093, for small businesses.

21 (3) There are no annual minimum or maximum amounts of
22 investments under the commercial loan guarantee programs operated
23 under this section.

24 Sec. 8. The private equity investment program created and
25 operated by the authority shall invest only in or alongside a
26 qualified private equity fund. The private equity investment
27 program shall do all of the following:

1 (a) Provide that the return on investment that is sought is
2 greater than the return on investment under the commercial loan
3 guarantee program to reflect the greater risk.

4 (b) Provide that the qualified private equity fund will have
5 an amount at risk greater than the authority's.

6 (c) Provide that a qualified private equity fund is not
7 eligible to participate in the private equity investment program
8 unless it opens a marketing office in this state staffed with at
9 least 1 full-time equivalent employee who is actively seeking
10 opportunities for investments in businesses located in this state
11 unless the investment opportunity requested by the qualified
12 private equity fund is targeted to a specific transaction that will
13 save jobs and will not occur without the authority's investment as
14 determined by the board.

15 (d) Provide that a qualified private equity fund is not
16 eligible to participate in the private equity investment program
17 unless it agrees to make investments in this state at a percentage
18 rate that is not less than the percentage rate that the authority's
19 investment in the qualified private equity fund bears to the total
20 amount in the qualified private equity fund.

21 (e) Provide that a qualified private equity fund is not
22 eligible to participate in the private equity investment program if
23 its investment strategy provides for the break up and liquidation
24 of businesses. The board shall make sure that the agreements with a
25 private equity fund have the appropriate provisions to prohibit the
26 actions described in this subdivision.

27 (f) Provide that there are no annual minimum or maximum

1 amounts of investments under the private equity investment program.

2 Sec. 9. The venture capital investment program created and
3 operated by the authority shall invest only in, or alongside, a
4 qualified venture capital fund that invests primarily in businesses
5 that have yearly revenues of \$10,000,000.00 or less. The venture
6 capital investment program shall do all of the following:

7 (a) Provide that the return on investment that is sought is
8 greater than the return on investment under the commercial loan
9 guarantee program to reflect the greater risk.

10 (b) Provide that the qualified venture capital fund will have
11 an amount at risk greater than the authority's.

12 (c) Provide that a qualified venture capital fund is not
13 eligible to participate in the venture capital investment program
14 unless it opens a marketing office in this state staffed with at
15 least 1 full-time equivalent employee who is actively seeking
16 opportunities for venture capital investments in businesses located
17 in this state unless the investment opportunity requested by the
18 qualified venture capital fund is targeted to a specific
19 transaction involving a competitive edge technology that will not
20 occur without the authority's investment as determined by the
21 board.

22 (d) Provide that a qualified venture capital fund is not
23 eligible to participate in the venture capital investment program
24 unless it agrees to make venture capital investments in this state
25 at a percentage rate that is not less than the percentage rate that
26 the authority's investment in the qualified venture capital fund
27 bears to the total amount in the qualified venture capital fund.

1 (e) Provide that a qualified venture capital fund is not
2 eligible to participate in the venture capital investment program
3 if its investment strategy provides for the break up and
4 liquidation of businesses. The board shall make sure that the
5 agreements with a venture capital fund have the appropriate
6 provisions to prohibit the actions described in this subdivision.

7 (f) Provide that there are no annual minimum or maximum
8 amounts of investments under the venture capital investment
9 program.

10 Sec. 10. The powers of the authority shall include all those
11 necessary to carry out and effectuate the purposes of this act,
12 including, but not limited to, all of the following:

13 (a) To create and operate programs relating to 21st century
14 investments.

15 (b) To invest any money of the authority as provided in this
16 act and to name and use depositories for its money.

17 (c) To receive and distribute federal, state, or local funding
18 including grants, loans, and appropriations.

19 (d) To procure insurance against any loss in connection with
20 the operation of the authority.

21 (e) To sue and be sued, to have a seal, and to make, execute,
22 and deliver contracts, conveyances, and other instruments necessary
23 to the exercise of the authority's powers.

24 (f) To make and amend bylaws.

25 (g) To indemnify and procure insurance indemnifying any
26 members of the board of the authority from personal liability by
27 reason of their service as a board member.

1 (h) To hire an executive director to facilitate the operation
2 of the authority as determined by the board. The executive director
3 is exempt from the classified state civil service and shall be paid
4 a salary and bonus comparable to what an individual in a comparable
5 position with similar responsibilities would be paid in the private
6 sector. The executive director shall have not less than 10 years'
7 experience in commercial lending, private equity, or venture
8 capital.

9 Sec. 11. (1) The 21st century investment fund is created
10 within the state treasury.

11 (2) The state treasurer may receive money or other assets from
12 any source for deposit into the fund. The state treasurer shall
13 direct the investment of the fund. The state treasurer shall credit
14 to the fund interest and earnings from fund investments.

15 (3) Money in the fund at the close of the fiscal year shall
16 remain in the fund and shall not lapse to the general fund.

17 (4) The board shall expend money from the fund, upon
18 appropriation, only for a 21st century investment.

19 (5) For the initial allocations, the board shall not expend
20 more than the following amounts from the fund for the following
21 purposes:

22 (a) 30% for the commercial loan guarantee program.

23 (b) 30% for the private equity investment program.

24 (c) 30% for the venture capital investment program.

25 (d) 30% for the commercialization of competitive edge
26 technology as provided in the Michigan strategic fund act, 1984 PA
27 270, MCL 125.2001 to 125.2093.

1 Sec. 12. The authority may provide tax vouchers and tax
2 credits, as provided by law, to businesses selected by qualified
3 venture capital firms or to businesses that are receiving loans or
4 grants for the commercialization of competitive edge technology as
5 provided in the Michigan strategic fund act, 1984 PA 270, MCL
6 125.2001 to 125.2093.

7 Sec. 13. Not later than May 15, 2007 and each subsequent May
8 15, the auditor general shall conduct a performance post audit of
9 the board and the fund and a post audit of financial transactions
10 and accounts of the board and the fund. The results of the
11 performance post audit and the post audit of financial transactions
12 and accounts shall be published on the internet and disseminated by
13 other means in a manner determined by the board to advise the
14 citizens of this state of the result of the audits. Copies of the
15 audits shall be provided to the governor, the clerk of the house of
16 representatives, and the secretary of the senate.

17 Sec. 14. Not later than March 1 of each year, the board and
18 the fund shall report to the governor, the clerk of the house of
19 representatives, and the secretary of the senate. The report shall
20 contain all of the following for the immediately preceding fiscal
21 year that are related to a 21st century investment made by the
22 board:

23 (a) A list of entities that received funding, the amount
24 received, and the type of funding.

25 (b) The number of new start-up businesses operating in this
26 state.

27 (c) The number of new jobs created and projected new job

1 growth.