

SENATE BILL No. 931

November 29, 2007, Introduced by Senator McMANUS and referred to the Committee on Finance.

A bill to amend 2003 PA 296, entitled
"Michigan early stage venture investment act of 2003,"
by amending sections 17, 19, and 23 (MCL 125.2247, 125.2249, and
125.2253), as amended by 2005 PA 102.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

5 (a) An established and agreed-upon investment amount and
6 repayment schedule.

7 (b) A negotiated amount or negotiated return on qualified
8 investment by the investor over the term of the agreement.

(c) A maximum amount of tax vouchers that the investor may use to pay a liability under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, ~~a successor tax to the single business tax act, 1975 PA 228, MCL 208.1 to 208.145~~ **THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601**, or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and the first year in which that tax voucher may be used to pay a liability under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, **THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601**, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, including any withholding tax imposed on the investor under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

(3) The Michigan early stage venture investment corporation shall notify the department of treasury when agreements are entered into under this section and send a copy of each agreement to the department of treasury. After making the determination required under section 23(2), the department of treasury shall issue an approval letter to the investor that states that the investor is entitled to a tax voucher that is 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 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

1 section 23 may use the tax voucher to pay a liability owed by the
2 investor under the ~~single~~ **MICHIGAN** business tax act, ~~1975 PA 228,~~
3 ~~MCL 208.1 to 208.145~~ **2007 PA 36, MCL 208.1101 TO 208.1601**, or the
4 income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, as
5 provided in this act, up to an amount equal to the difference
6 between the amount actually repaid and the amount set as the
7 repayment due in the agreement entered into by the taxpayer and the
8 Michigan early stage venture investment corporation. The Michigan
9 early stage venture investment corporation shall notify the
10 department of treasury when tax voucher certificates are issued
11 under section 23(5).

12 (6) Repayment of a debt under this section may be restricted
13 to specific funds or assets of the Michigan early stage venture
14 investment corporation.

15 (7) The Michigan early stage venture investment corporation
16 may purchase securities and may manage, transfer, or dispose of
17 those securities.

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

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

25 (2) The fund manager shall establish an investment plan
26 approved by the board for the investment of the money in the fund
27 using the following criteria:

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

4 (b) The fund manager with the approval of the board shall
5 undertake to invest the fund in such a way as to promote that at
6 least \$2.00 will be invested in qualified businesses for every
7 \$1.00 of principal for which tax vouchers may be used to pay a
8 liability under the single business tax act, 1975 PA 228, MCL 208.1
9 to 208.145, ~~a successor tax to the single business tax act, 1975 PA~~
10 ~~228, MCL 208.1 to 208.145~~ **THE MICHIGAN BUSINESS TAX ACT, 2007 PA**
11 **36, MCL 208.1101 TO 208.1601**, or the income tax act of 1967, 1967
12 PA 281, MCL 206.1 to 206.532.

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

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

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

19 (i) The retention of those businesses ~~which~~ **THAT** would be
20 likely to leave this state absent the investment.

21 (ii) The revitalization and diversification of the economic
22 base of this state.

23 (iii) Generating and retaining jobs and investment in this
24 state.

25 (3) Consistent with the plan established under subsection (2),
26 the fund manager shall select venture capital companies from among
27 those venture capital companies that apply for money from the fund

1 considering the following criteria:

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

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

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

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

15 (e) The venture capital company will undertake to invest in
16 qualified businesses, as determined at the point of initial
17 investment, a percentage of invested capital equal to or greater
18 than the percentage of invested capital that the venture capital
19 company received from the fund.

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

22 Sec. 23. (1) The Michigan early stage venture investment
23 corporation shall determine which investors are eligible for tax
24 vouchers under the single business tax act, 1975 PA 228, MCL 208.1
25 to 208.145, **THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101**
26 **TO 208.1601**, and the income tax act of 1967, 1967 PA 281, MCL 206.1
27 to 206.532, and the amount of the tax voucher or vouchers allowed

1 to each investor.

2 (2) The Michigan early stage venture investment corporation
3 shall determine which investors are eligible for tax vouchers under
4 this section and submit proposed tax voucher certificates that meet
5 the criteria under subsection (3) to the department of treasury for
6 approval. The department of treasury shall approve or deny proposed
7 tax voucher certificates within 30 days after receipt of the
8 proposed tax voucher certificates. If the department of treasury
9 denies a proposed tax voucher certificate, the department of
10 treasury shall notify the Michigan early stage venture investment
11 corporation and the investor of the denial and the reason for the
12 denial. If a proposed tax voucher certificate is denied under this
13 subsection, the Michigan early stage venture investment corporation
14 is not prohibited from subsequently submitting a proposed tax
15 voucher certificate on behalf of that same investor. If the
16 department of treasury does not approve or deny the proposed tax
17 voucher certificates within 30 days, the proposed tax voucher
18 certificates are considered approved as submitted. The approval by
19 the department of treasury under this section may be a condition to
20 the effectiveness of the agreement between the investor and the
21 Michigan early stage investment corporation required under section
22 17(1).

23 (3) At the time permitted under subsection (5), the Michigan
24 early stage venture investment corporation shall issue a tax
25 voucher certificate approved under subsection (2) to each investor
26 in the name of the investor that states all of the following:

27 (a) The taxpayer is an investor.

1 (b) The taxpayer's federal employer identification number or
2 the number assigned to the taxpayer by the department of treasury
3 for filing purposes under the single business tax act, 1975 PA 228,
4 MCL 208.1 to 208.145, **OR THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36,**
5 **MCL 208.1101 TO 208.1601.**

6 (c) The amount of the tax voucher that any taxpayer that uses
7 the tax voucher may use to pay its tax liability under the single
8 business tax act, 1975 PA 228, MCL 208.1 to 208.145, **THE MICHIGAN**
9 **BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601,** or the
10 income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

11 (d) The tax years for which the tax voucher under subdivision
12 (c) may be used and the maximum annual amount that may be used each
13 tax year.

14 (e) The amount of the tax vouchers that may be used shall not
15 exceed the tax liability under the single business tax act, 1975 PA
16 228, MCL 208.1 to 208.145, **THE MICHIGAN BUSINESS TAX ACT, 2007 PA**
17 **36, MCL 208.1101 TO 208.1601,** or the income tax act of 1967, 1967
18 PA 281, MCL 206.1 to 206.532, of the taxpayer that uses the tax
19 voucher.

20 (f) The tax voucher may be transferred in whole or in part.

21 (g) If the amount of any tax voucher certificate exceeds the
22 investor's tax liability under the single business tax act, 1975 PA
23 228, MCL 208.1 to 208.145, **THE MICHIGAN BUSINESS TAX ACT, 2007 PA**
24 **36, MCL 208.1101 TO 208.1601,** or the income tax act of 1967, 1967
25 PA 281, MCL 206.1 to 206.532, the amount that exceeds the
26 investor's tax liability may be retained and used to pay a future
27 liability of the investor under the single business tax act, 1975

1 PA 228, MCL 208.1 to 208.145, **THE MICHIGAN BUSINESS TAX ACT, 2007**
2 **PA 36, MCL 208.1101 TO 208.1601**, or the income tax act of 1967,
3 1967 PA 281, MCL 206.1 to 206.532.

4 (4) The fund manager shall invest, budget, and plan scheduled
5 payments and repayments so that no tax voucher is used in any tax
6 year before tax years that begin after December 31, 2008.

7 (5) The Michigan early stage investment corporation shall
8 issue tax voucher certificates under this section to an investor at
9 the time that the Michigan early stage venture investment
10 corporation determines that, for that investor, it is unable to pay
11 the negotiated amount or the negotiated return on qualified
12 investment of that investor on or before the date on which payment
13 is due. The total of all tax voucher certificates issued under this
14 section shall not exceed the maximum amount allowed under section
15 37e(2) of the single business tax act, 1975 PA 228, MCL 208.37e,
16 **OR, AFTER DECEMBER 31, 2007, THE MAXIMUM AMOUNT ALLOWED UNDER**
17 **SECTION 419(2) OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL**
18 **208.1419.**

19 (6) Tax voucher certificates under this section shall not be
20 issued until December 31, 2008.

21 (7) A tax voucher certificate issued under subsection (5), or
22 the right to be issued and receive a tax voucher certificate from
23 the Michigan early stage venture investment corporation, may be
24 transferred in whole or in part by a holder to another person if
25 the holder notifies the department of treasury and the Michigan
26 early stage venture investment corporation in writing of the
27 transfer, the amount of the tax voucher certificate to be

1 transferred, and the name and tax identification information
2 provided for under subsection (3) of the proposed transferee. The
3 tax voucher certificate transferred under this subsection shall be
4 made on a form prescribed by the department of treasury. The holder
5 shall send a copy of the completed transfer form to the department
6 of treasury within 60 days after the date of the transfer.

7 (8) A transfer under this section is irrevocable. If the
8 holder is transferring less than all of the tax voucher certificate
9 to a transferee, the department of treasury may issue new tax
10 voucher certificates to the holder and transferee representing the
11 allocated values of the tax voucher certificates held by the holder
12 and the transferee after the transfer.

13 (9) A holder of a tax voucher certificate shall attach a copy
14 of the tax voucher certificate and, if applicable, a completed
15 transfer form to its annual return for the tax toward which the tax
16 voucher certificate is used by the holder. If the amount of any tax
17 voucher certificate eligible to be used by a holder is in excess of
18 the holder's tax liability under either the single business tax
19 act, 1975 PA 228, MCL 208.1 to 208.145, **THE MICHIGAN BUSINESS TAX**
20 **ACT, 2007 PA 36, MCL 208.1101 TO 208.1601**, or the income tax act of
21 1967, 1967 PA 281, MCL 206.1 to 206.532, the excess may be retained
22 and used to pay any future ~~single-business~~ tax or income tax
23 liability of the holder.