

SENATE BILL No. 1380

June 12, 2008, Introduced by Senators ALLEN, PAPPAGEORGE and STAMAS and referred to the Committee on Commerce and Tourism.

A bill to amend 1984 PA 270, entitled "Michigan strategic fund act," by amending section 88b (MCL 125.2088b), as added by 2005 PA 225, and by adding section 88q.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 88b. (1) The fund shall create and operate programs
2 authorized under this chapter. The fund board shall determine the
3 annual allocation of money for programs authorized under this
4 chapter and make authorized expenditures or investments from the
5 investment fund of the 21st century jobs trust fund created in the
6 Michigan trust fund act, 2000 PA 489, MCL 12.251 to ~~12.256~~12.260,
7 as authorized under this chapter for programs and activities
8 authorized under this chapter.

1 (2) Money transferred or appropriated by law to the fund for
2 the purposes of carrying out this chapter shall be expended or
3 invested by the fund as authorized by law for the following
4 purposes:

5 (a) 21st century investments.

6 (b) Grants and loans approved by the commercialization board
7 under section 88k.

8 (c) Other programs or activities authorized under this
9 chapter.

10 (3) Except for the appropriations described in section 88j(3)
11 **AND AS OTHERWISE PROVIDED IN SECTION 88Q**, the fund board shall not
12 expend more than the following amounts each year from the 21st
13 century jobs trust fund created in the Michigan trust fund act,
14 2000 PA 489, MCL 12.251 to ~~12.256~~**12.260**, for the following
15 purposes:

16 (a) 25% for the loan enhancement program.

17 (b) 40% for the private equity investment program, the venture
18 capital investment program, and the mezzanine investment program
19 combined.

20 (c) 70% for competitive edge technology grants and loans under
21 section 88k. The commercialization board shall not authorize the
22 expenditure of more than \$100,000,000.00 of the amount described in
23 this subdivision for basic research over the life of the program.

24 (4) The commercialization board shall authorize the
25 expenditure of not less than the following amounts described in
26 subsection (3)(c) as follows:

27 (a) \$40,000,000.00 in the 2005-2006 fiscal year.

1 (b) \$50,000,000.00 in the 2006-2007 fiscal year.

2 (c) \$30,000,000.00 in the 2007-2008 ~~through the 2011-2012~~
3 ~~fiscal years~~ YEAR.

4 (D) \$25,000,000.00 IN THE 2008-2009 THROUGH THE 2011-2012
5 FISCAL YEARS.

6 (5) Not more than 4% of the annual appropriation as provided
7 by law from the 21st century jobs trust fund created in the
8 Michigan trust fund act, 2000 PA 489, MCL 12.251 to ~~12.256~~ 12.260,
9 may be used for the purposes of administering the programs and
10 activities authorized under this chapter. However, the fund and the
11 fund board shall not use more than 3% of the annual appropriation
12 for administering the programs and activities authorized under this
13 chapter unless the fund board by a 2/3 vote authorizes the
14 additional 1% for administration.

15 (6) Not more than 5% of the annual appropriation as provided
16 by law from the 21st century jobs trust fund created in the
17 Michigan trust fund act, 2000 PA 489, MCL 12.251 to ~~12.256~~ 12.260,
18 may be used for business development and business marketing costs.
19 Not less than 80% of the funds committed for business development
20 and business marketing costs shall be targeted to persons or
21 entities outside of this state. No funds may be used for any
22 business development and business marketing effort that includes a
23 reference to or the image or voice of an elected state officer or a
24 candidate for elective state office and that is targeted to a media
25 market in Michigan. The fund board shall select all vendors for all
26 marketing expenditures under this chapter by issuing a request for
27 proposal. At a minimum, the request for proposal shall require the

1 responding entities to disclose any conflict of interest, disclose
2 any criminal convictions, disclose any investigations by the
3 internal revenue service or any other federal or state taxing body
4 or court, disclose any pertinent litigation regarding the conduct
5 of the entity, and maintain records and evidence pertaining to work
6 performed. The fund board shall establish a standard process to
7 evaluate proposals submitted as a result of a request for proposal
8 and appoint a committee to review the proposals. **THE FUND OR THE**
9 **FUND BOARD SHALL NOT APPOINT OR DESIGNATE ANY PERSON PAID OR UNPAID**
10 **TO A COMMITTEE TO REVIEW PROPOSALS IF THAT PERSON HAS A CONFLICT OF**
11 **INTEREST WITH ANY POTENTIAL VENDORS AS DETERMINED BY THE OFFICE OF**
12 **THE CHIEF COMPLIANCE OFFICER ESTABLISHED IN SECTION 88I.**

13 (7) The fund shall not use any money appropriated or
14 transferred for purposes authorized under this chapter to acquire
15 interests in or improve real property. The restriction under this
16 subsection applies only to the fund and not to recipients of
17 expenditures or investments under this chapter.

18 **SEC. 88Q. (1) THE FUND MAY CREATE AND OPERATE A CENTERS OF**
19 **ENERGY EXCELLENCE PROGRAM TO PROMOTE THE DEVELOPMENT, ACCELERATION,**
20 **AND SUSTAINABILITY OF ENERGY EXCELLENCE SECTORS IN THIS STATE. THE**
21 **FUND MAY ENTER INTO AGREEMENTS WITH 1 OR MORE QUALIFIED ENTITIES**
22 **FOR THE DESIGNATION AND OPERATION OF A CENTER OF ENERGY EXCELLENCE**
23 **AS PROVIDED IN SUBSECTION (5). PRIOR TO ENTERING INTO AN AGREEMENT**
24 **UNDER THIS SECTION, 1 OR MORE QUALIFIED ENTITIES MAY APPLY TO THE**
25 **FUND FOR AN AGREEMENT FOR DESIGNATION AND OPERATION OF A CENTER OF**
26 **ENERGY EXCELLENCE. THE APPLICATION SHALL BE IN A FORM DETERMINED BY**
27 **THE FUND AND SHALL INCLUDE INFORMATION THE FUND DETERMINES**

1 NECESSARY AND APPROPRIATE.

2 (2) THE FUND BOARD SHALL NOT EXPEND MORE THAN \$40,000,000.00
3 OF THE MONEY APPROPRIATED FOR PROGRAMS AUTHORIZED UNDER THIS
4 CHAPTER FROM THE 21ST CENTURY JOBS TRUST FUND CREATED IN THE
5 MICHIGAN TRUST FUND ACT, 2000 PA 489, MCL 12.251 TO 12.260, FOR THE
6 CENTERS OF ENERGY EXCELLENCE PROGRAM. GRANTS GIVEN FOR THE CENTERS
7 OF ENERGY EXCELLENCE PROGRAM SHALL ONLY BE AWARDED TO FOR-PROFIT
8 COMPANIES FOR 1 OF THE FOLLOWING PURPOSES:

9 (A) PROVIDING A MATCH FOR A FEDERAL OR INTERNATIONAL GRANT OF
10 UP TO 25%.

11 (B) SUPPLEMENTING IN-KIND CONTRIBUTIONS PROVIDED BY A PERSON
12 OR ENTITY OTHER THAN THIS STATE.

13 (C) ACCELERATING THE COMMERCIALIZATION OF A NEW ENERGY
14 TECHNOLOGY OR PROCESS THAT WILL BE READY TO MARKET WITHIN 3 YEARS
15 OF THE EFFECTIVE DATE OF THE AGREEMENT.

16 (D) ACTIVITIES OF THE CENTER, INCLUDING, BUT NOT LIMITED TO,
17 WORKFORCE DEVELOPMENT AND TECHNOLOGY DEMONSTRATION.

18 (3) NOT LESS THAN 70% OF THE FUNDS ALLOCATED TO THE CENTERS
19 FOR ENERGY EXCELLENCE PROGRAM SHALL BE USED TO MATCH FEDERAL OR
20 INTERNATIONAL GRANTS. THE FUND BOARD MAY AUTHORIZE INVESTMENT TERMS
21 IN QUALIFIED ENTITIES AS PART OF ANY AGREEMENT AS PROVIDED IN
22 SUBSECTION (5). NOT MORE THAN 15% OF ANY GRANT AWARDED CAN BE USED
23 FOR ADMINISTRATIVE COSTS OR OVERHEAD BY THE GRANTEE OR ANY
24 SUBCONTRACTOR HIRED TO IMPLEMENT ANY PORTION OF THE CENTERS FOR
25 ENERGY EXCELLENCE AGREEMENT. GRANTS AUTHORIZED BY THIS SECTION
26 SHALL BE DISBURSED PURSUANT TO A TIMELINE AND PROGRESS DISBURSEMENT
27 SCHEDULE INCLUDED AS PART OF AN AGREEMENT UNDER THIS SECTION.

1 (4) THE FUND BOARD SHALL ESTABLISH A STANDARD PROCESS TO
2 EVALUATE APPLICATIONS FOR AN AGREEMENT UNDER THIS SECTION AND SHALL
3 APPOINT A COMMITTEE OF MEMBERS OF THE FUND BOARD TO ASSIST IN THE
4 REVIEW OF APPLICATIONS. THE FUND OR THE FUND BOARD SHALL NOT
5 APPOINT OR DESIGNATE ANY PERSON PAID OR UNPAID TO A COMMITTEE TO
6 REVIEW APPLICATIONS IF THAT PERSON HAS A CONFLICT OF INTEREST WITH
7 ANY POTENTIAL APPLICANTS AS DETERMINED BY THE OFFICE OF THE CHIEF
8 COMPLIANCE OFFICER ESTABLISHED IN SECTION 88I. WHEN DETERMINING
9 WHETHER TO ENTER INTO AN AGREEMENT UNDER THIS SECTION, THE FUND
10 BOARD SHALL CONSIDER ALL OF THE FOLLOWING:

11 (A) THE POTENTIAL THAT IN THE ABSENCE OF AN AGREEMENT THE
12 DEVELOPMENT, ACCELERATION, AND SUSTAINABILITY OF ENERGY EXCELLENCE
13 SECTORS ADDRESSED BY THE PROPOSED CENTER OF ENERGY EXCELLENCE WILL
14 OCCUR IN A LOCATION OTHER THAN THIS STATE.

15 (B) THE EXTENT TO WHICH THE PROPOSED CENTER OF ENERGY
16 EXCELLENCE WILL PROMOTE THE DEVELOPMENT OF ENERGY EXCELLENCE
17 SECTORS IN THIS STATE.

18 (C) THE EXTENT TO WHICH THE PROPOSED CENTER OF ENERGY
19 EXCELLENCE WILL PROMOTE ECONOMIC DEVELOPMENT OR JOB CREATION IN
20 THIS STATE.

21 (D) THE EXTENT TO WHICH THE PROPOSED CENTER OF ENERGY
22 EXCELLENCE COULD ATTRACT PRIVATE INVESTMENT OR ENCOURAGE
23 COMMERCIALIZATION IN ENERGY EXCELLENCE SECTORS IN THIS STATE.

24 (E) THE EXTENT TO WHICH THE PROPOSED CENTER OF ENERGY
25 EXCELLENCE MAY LEVERAGE SKILLS OR RESOURCES IN WHICH THIS STATE
26 POSSESSES A COMPETITIVE ADVANTAGE, INCLUDING, BUT NOT LIMITED TO,
27 SKILLS OF WORKERS, INTELLECTUAL PROPERTY, AND NATURAL RESOURCES.

1 (F) THE EXTENT TO WHICH THE PROPOSED CENTER OF ENERGY
2 EXCELLENCE MAY ENCOURAGE COLLABORATION ON COMMERCIALIZATION AND
3 TECHNOLOGY TRANSFER AMONG QUALIFIED ENTITIES IN THIS STATE.

4 (G) THE EXTENT TO WHICH THE PROPOSED CENTER OF ENERGY
5 EXCELLENCE MAY ATTRACT ADDITIONAL FEDERAL FUNDING TO THIS STATE OR
6 PERSONS OR ENTITIES WITHIN THIS STATE.

7 (H) THE FINANCIAL VIABILITY OF THE PROPOSED CENTER OF ENERGY
8 EXCELLENCE AND THE PROPOSED BUSINESS PLAN FOR THE CENTER OF ENERGY
9 EXCELLENCE, INCLUDING, BUT NOT LIMITED TO, COMMITMENTS OF FINANCIAL
10 AND OTHER SUPPORT FOR THE PROPOSED CENTER AND THE POTENTIAL
11 AVAILABILITY OF FEDERAL FUNDING FOR THE PROPOSED CENTER.

12 (I) THE FINANCIAL RESOURCES AVAILABLE TO THE FUND BOARD FOR
13 OPERATION OF THE CENTERS OF ENERGY EXCELLENCE PROGRAM UNDER THIS
14 SECTION.

15 (J) ANY RECOMMENDATIONS FROM THE CENTERS MANAGER SELECTED
16 UNDER SUBSECTION (6).

17 (5) IF THE FUND BOARD ENTERS INTO AN AGREEMENT WITH 1 OR MORE
18 QUALIFIED ENTITIES FOR THE OPERATION OF A CENTER OF ENERGY
19 EXCELLENCE, THE AGREEMENT SHALL INCLUDE PARTICIPATION BY AT LEAST 1
20 QUALIFIED BUSINESS AND AT LEAST 1 INSTITUTION OF HIGHER EDUCATION.
21 AN AGREEMENT SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE
22 FOLLOWING:

23 (A) THE ROLES AND RESPONSIBILITIES OF THE FUND AND THE
24 QUALIFIED ENTITIES PARTICIPATING IN THE AGREEMENT.

25 (B) A GOVERNANCE STRUCTURE FOR THE CENTER OF ENERGY
26 EXCELLENCE. THE AGREEMENT MAY PROVIDE FOR REPRESENTATION OF THE
27 FUND IN THE GOVERNANCE OF THE CENTER.

1 (C) THE RESPONSIBILITIES OF THE FUND AND THE QUALIFIED
2 ENTITIES PARTICIPATING IN THE AGREEMENT, INCLUDING, BUT NOT LIMITED
3 TO, FINANCIAL RESOURCES, TECHNOLOGY, REAL PROPERTY, PERSONAL
4 PROPERTY, OR OTHER RESOURCES CONTRIBUTED BY THE PARTIES TO THE
5 AGREEMENT.

6 (D) A COMMITMENT BY THE QUALIFIED ENTITIES PARTICIPATING IN
7 THE AGREEMENT TO COLLABORATE ON COMMERCIALIZATION AND TECHNOLOGY
8 TRANSFER OPPORTUNITIES IN ENERGY EXCELLENCE SECTORS IN THIS STATE.

9 (E) A COMMITMENT BY QUALIFIED ENTITIES THAT ARE INSTITUTIONS
10 OF HIGHER EDUCATION TO PROVIDE INCENTIVES FOR FACULTY WHO
11 PARTICIPATE IN TECHNOLOGY TRANSFER AND COMMERCIALIZATION ACTIVITIES
12 IN ENERGY EXCELLENCE SECTORS AND EXPANSION OF BUSINESS FORMATION
13 EFFORTS RELATED TO ENERGY EXCELLENCE SECTORS TO INCREASE THE NUMBER
14 OF INSTITUTION OF HIGHER EDUCATION RELATED START-UP COMPANIES.

15 (F) A COMMITMENT TO LOCATE AND RETAIN COMMERCIALIZATION
16 OPPORTUNITIES RESULTING FROM THE AGREEMENT OR CENTER OF ENERGY
17 EXCELLENCE WITHIN THIS STATE.

18 (G) A BUSINESS PLAN FOR THE CENTER OF ENERGY EXCELLENCE THAT
19 IDENTIFIES CLEAR AND MEASURABLE OBJECTIVES, TIMELINES, AND
20 DELIVERABLES FOR THE CENTER.

21 (H) THE DURATION OF THE AGREEMENT AND A MECHANISM FOR THE
22 DISSOLUTION OF THE CENTER OF ENERGY EXCELLENCE AND THE DISPOSITION
23 OF ANY ASSETS. THE FUND BOARD MAY REVOKE AN AGREEMENT FOR THE
24 DESIGNATION AND OPERATION OF A CENTER OF ENERGY EXCELLENCE IF A
25 QUALIFIED ENTITY THAT IS A PARTY TO THE AGREEMENT DOES NOT COMPLY
26 WITH THE AGREEMENT.

27 (I) PROVISION FOR REPAYMENT OF GRANTS FROM THE FUND IN THE

1 EVENT A QUALIFIED ENTITY FAILS TO COMPLY WITH THE AGREEMENT.

2 (6) THE FUND BOARD MAY SELECT A PERSON OR ENTITY AS A CENTERS
3 MANAGER TO ASSIST THE FUND IN THE ADMINISTRATION OF THE CENTERS OF
4 ENERGY EXCELLENCE PROGRAM AUTHORIZED BY THIS SECTION. COSTS
5 ASSOCIATED WITH THE ADMINISTRATION OF THE CENTERS OF ENERGY
6 EXCELLENCE PROGRAM ARE SUBJECT TO SECTION 88B(5). THE CENTERS
7 MANAGER SHALL DO ALL OF THE FOLLOWING AS DETERMINED BY THE FUND
8 BOARD:

9 (A) PROVIDE ADMINISTRATIVE SERVICES RELATED TO THE CENTERS OF
10 ENERGY EXCELLENCE PROGRAM.

11 (B) ACT AS CONTRACT MANAGER ON BEHALF OF THE FUND FOR ANY
12 AGREEMENT ESTABLISHING A CENTER OF ENERGY EXCELLENCE UNDER THIS
13 SECTION.

14 (C) RECOMMEND TO THE FUND BOARD A PLAN FOR MANAGING THE
15 CENTERS OF ENERGY EXCELLENCE PROGRAM AND IMPLEMENT ANY PLAN
16 AUTHORIZED BY THE FUND BOARD.

17 (D) ASSIST CENTERS OF ENERGY EXCELLENCE IN DEVELOPING A SUPPLY
18 CHAIN FOR ENERGY EXCELLENCE SECTORS.

19 (E) EVALUATE AND REPORT TO THE FUND BOARD ON THE CENTERS OF
20 ENERGY EXCELLENCE PROGRAM AND PROGRESS MADE TOWARD
21 COMMERCIALIZATION OF TECHNOLOGY IN ENERGY EXCELLENCE SECTORS IN
22 THIS STATE.

23 (F) REVIEW APPLICATIONS SUBMITTED UNDER SUBSECTION (1) AND
24 MAKE RECOMMENDATIONS TO THE FUND BOARD ON THE APPLICATIONS FOR
25 APPROVAL OR DISAPPROVAL OF APPLICATIONS.

26 (G) PERFORM OTHER FUNCTIONS RELATED TO THE CENTERS FOR ENERGY
27 EXCELLENCE PROGRAM AUTHORIZED BY THIS SECTION AS DEEMED NECESSARY

1 AND APPROPRIATE BY THE FUND BOARD.

2 (7) AS USED IN THIS SECTION:

3 (A) "CENTERS MANAGER" MEANS A CENTERS MANAGER SELECTED UNDER
4 SUBSECTION (6).

5 (B) "ENERGY EXCELLENCE SECTORS" MEANS NEW AND DEVELOPING
6 INDUSTRY SECTORS IN THE ENERGY FIELD IN THIS STATE WHERE THE FUND
7 HAS DETERMINED THE STATE HAS A COMPETITIVE ADVANTAGE AND THERE ARE
8 BARRIERS TO THE COMMERCIALIZATION OF TECHNOLOGY WITHIN THE NEW AND
9 DEVELOPING INDUSTRY SECTOR.

10 (C) "ENERGY FIELD" MEANS ALTERNATIVE ENERGY TECHNOLOGY, ENERGY
11 EFFICIENCY TECHNOLOGY, TECHNOLOGIES THAT CONTRIBUTE TO ENERGY
12 SECURITY AND INDEPENDENCE, AND OTHER ADVANCED ENERGY TECHNOLOGIES.

13 (D) "QUALIFIED ENTITY" MEANS A QUALIFIED BUSINESS, AN
14 INSTITUTION OF HIGHER EDUCATION, A MICHIGAN NONPROFIT CORPORATION,
15 OR A POLITICAL SUBDIVISION OF THIS STATE.