Act No. 173
Public Acts of 2007
Approved by the Governor
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STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007

Introduced by Senator McManus

ENROLLED SENATE BILL No. 931

AN ACT to amend 2003 PA 296, entitled "An act to promote investment in certain businesses; to promote economic development in this state; to provide for a Michigan early stage venture investment corporation; to prescribe the powers and duties of a Michigan early stage venture investment corporation; to prescribe the powers and duties of certain public officers and departments; to establish the Michigan early stage venture investment fund and other funds; to provide for tax credits and incentives; to authorize certain investments; to provide for the expiration of the fund; to provide or allow for appropriations; and to provide penalties and remedies," 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:

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

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

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

(b) A negotiated amount or negotiated return on qualified 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, 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 section 23 may use the tax voucher to pay a liability owed by the investor under 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, as 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 Michigan early stage venture investment corporation. The Michigan early stage venture investment corporation shall notify the department of treasury when tax voucher certificates are issued under section 23(5).

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

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

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

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

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

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

(b) The fund manager with the approval of the board shall undertake to invest the fund in such a way as to promote that at least $2.00 will be invested in qualified businesses for every $1.00 of principal for which tax vouchers 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.

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

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

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

(*i*) The retention of those businesses that would be likely to leave this state absent the investment.

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

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

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

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

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

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

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

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

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

Sec. 23. (1) The Michigan early stage venture investment corporation shall determine which investors are eligible for tax vouchers 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, and the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and the amount of the tax voucher or vouchers allowed to each investor.

(2) The Michigan early stage venture investment corporation shall determine which investors are eligible for tax vouchers under this section and submit proposed tax voucher certificates that meet the criteria under subsection (3) to the department of treasury for approval. The department of treasury shall approve or deny proposed tax voucher certificates within 30 days after receipt of the proposed tax voucher certificates. If the department of treasury denies

a proposed tax voucher certificate, the department of treasury shall notify the Michigan early stage venture investment corporation and the investor of the denial and 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) 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, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

(c) The amount of the tax voucher that any taxpayer that uses the tax voucher may use to pay its tax 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.

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

(e) The 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, 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, 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, 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, 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, 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.

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

(5) The Michigan early stage investment corporation shall issue tax voucher certificates under this section to an investor at the time that the Michigan early stage venture investment corporation determines that, for that investor, it is unable to pay the negotiated amount or the negotiated return on qualified investment of that investor on or before the date on which payment is due. The total of all tax voucher certificates issued under this section shall not exceed the maximum amount allowed under section 37e(2) of the single business tax act, 1975 PA 228, MCL 208.37e, or, after December 31, 2007, the maximum amount allowed under section 419(2) of the Michigan business tax act, 2007 PA 36, MCL 208.1419.

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

(7) A tax voucher certificate issued under subsection (5), or the right to be issued and receive a tax voucher certificate from the Michigan early stage venture investment corporation, may be transferred in whole or in part by a holder to another person if the holder notifies the department of treasury and the Michigan early stage venture investment corporation in writing of the transfer, the amount of the tax voucher certificate to be transferred, and the name and tax identification information provided for under subsection (3) of the proposed transferee. The tax voucher certificate transferred under this subsection shall be made on a form prescribed by the department of treasury. The holder shall send a copy of the completed transfer form to the department of treasury within 60 days after the date of the transfer.

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

(9) A holder of a tax voucher certificate shall attach a copy of the tax voucher certificate and, if applicable, a completed transfer form to its annual return for the tax toward which the tax voucher certificate is used by the holder. If the amount of any tax voucher certificate eligible to be used by a holder is in excess of the holder's tax liability under either 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, the excess may be retained and used to pay any future business tax or income tax liability of the holder.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved _____

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Governor