

HOUSE BILL No. 5099

June 16, 2009, Introduced by Rep. Clemente and referred to the Committee on New Economy and Quality of Life.

A bill to amend 1984 PA 270, entitled "Michigan strategic fund act," by amending section 88k (MCL 125.2088k), as added by 2005 PA 215.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 88k. (1) The strategic economic investment and
2 commercialization board is created within the fund. The
3 commercialization board shall exercise its powers, duties, and
4 decision-making authority under this chapter independently of the
5 fund, the fund board, and the department of treasury.

6 (2) The commercialization board ~~shall~~ **MAY** award grants ~~and~~
7 ~~loans~~ from the 21st century jobs trust fund created in the Michigan
8 trust fund act, 2000 PA 489, MCL 12.251 to ~~12.256~~ **12.260**, and **MAY**
9 **RECOMMEND LOANS, CONVERTIBLE LOANS, EQUITY INVESTMENTS, AND**
10 **WARRANTS FROM** the investment fund ~~only~~ for basic research, applied
11 research, university technology transfer, and commercialization of

1 products, processes, and services to encourage the development of
2 competitive edge technologies **INTENDED** to create jobs in this
3 state. **LOANS, CONVERTIBLE LOANS, EQUITY INVESTMENTS, AND WARRANTS**
4 **RECOMMENDED BY THE COMMERCIALIZATION BOARD ARE SUBJECT TO APPROVAL**
5 **BY THE FUND BOARD. THE FUND BOARD SHALL ESTABLISH A STANDARD**
6 **PROCESS TO REVIEW INVESTMENTS RECOMMENDED BY THE COMMERCIALIZATION**
7 **BOARD UNDER THIS SUBSECTION BEFORE APPROVING ANY INVESTMENT**
8 **CONSIDERED APPROPRIATE BY THE FUND BOARD.**

9 (3) Subject to subsection (2), the fund as determined by the
10 commercialization board ~~shall do all of the following~~ **AND THE FUND**
11 **BOARD MAY DO EITHER (A) OR (B):**

12 (a) Establish a ~~competitive~~ process to award grants **FOR** and
13 ~~make loans for~~ **RECOMMEND INVESTMENTS IN** competitive edge
14 technologies. The ~~competitive~~ process shall include, but is not
15 limited to, the following:

16 (i) A provision that the ~~applications must be peer reviewed by~~
17 ~~independent peer review experts~~ **COMMERCIALIZATION BOARD SHALL AWARD**
18 **GRANTS FOR AND RECOMMEND INVESTMENTS IN COMPETITIVE EDGE**
19 **TECHNOLOGIES BY ISSUING A REQUEST FOR PROPOSAL. THE**
20 **COMMERCIALIZATION BOARD SHALL ESTABLISH A STANDARD PROCESS TO**
21 **EVALUATE PROPOSALS SUBMITTED AS A RESULT OF A REQUEST FOR PROPOSALS**
22 **AND APPOINT A COMMITTEE TO REVIEW THE PROPOSALS. THE APPLICATIONS**
23 **SHALL BE REVIEWED, IN ADDITION TO OTHER CRITERIA ADOPTED BY THE**
24 **COMMERCIALIZATION BOARD, based on the scientific and technical**
25 **merit, personnel expertise, commercial merit, and the ability to**
26 **leverage additional funding of the application. Scientific and**
27 **technical merit, personnel expertise, commercial merit, and the**

1 ability to leverage additional funding, **IN ADDITION TO OTHER**
2 **CRITERIA ADOPTED BY THE COMMERCIALIZATION BOARD**, shall be given
3 ~~equal weight~~ **PREFERENCE** in the review and scoring process. **IF AN**
4 **APPLICANT IS SEEKING A GRANT OR INVESTMENT UNDER THIS CHAPTER TO**
5 **MATCH FEDERAL FUNDS FOR SMALL BUSINESS INNOVATION RESEARCH OR SMALL**
6 **BUSINESS TECHNOLOGY TRANSFER PROGRAMS, THE REVIEW REQUIREMENT UNDER**
7 **THIS SUBSECTION IS SATISFIED BY THE REVIEW CONDUCTED BY THE FEDERAL**
8 **AGENCY AWARDING THE FEDERAL FUNDS.**

9 (ii) A preference for proposals that can contribute to the
10 development of economic diversification or the creation of
11 employment opportunities in this state.

12 (iii) A provision that out-of-state business must have a
13 significant existing or proposed business presence in this state.

14 (iv) A provision that the program will utilize contracts with
15 measurable milestones, clear objectives, provisions to revoke
16 awards for breach of contract, and repayment provisions for loans
17 given to qualified businesses that leave Michigan within 3 years of
18 the execution of the contract or otherwise breach the terms of the
19 contract.

20 (v) A provision that the applicant leverage other resources as
21 a condition of the grant or ~~loan~~ **INVESTMENT**. If an applicant is
22 seeking a grant or a ~~loan~~ **AN INVESTMENT** under this chapter to match
23 federal funds for small business innovation research or small
24 business technology transfer programs **OR OTHER RESEARCH PROGRAMS**
25 **SUPPORTED BY FEDERAL FUNDS**, the grant or ~~loan~~ **INVESTMENT** under this
26 chapter shall not exceed 25% of the federal funds. ~~and must~~
27 ~~leverage third party commercialization funding at both the phase I~~

1 ~~and phase II levels.~~

2 (vi) ~~Limit~~ **A LIMITATION OF** overhead rates for recipients of
3 grants and ~~loans~~ **INVESTMENTS** to reflect actual overhead but not
4 greater than 15% of the grant or loan.

5 (vii) Except as provided in subparagraph (v), a provision that
6 grants can only be awarded to Michigan institutions of higher
7 education, Michigan nonprofit research institutions, and Michigan
8 nonprofit corporations.

9 (viii) A preference for collaborations between institutions of
10 higher education, Michigan nonprofit research institutions,
11 Michigan nonprofit corporations, and qualified businesses.

12 (ix) A provision authorizing the award of grants to
13 institutions of higher education to serve as match to promote or
14 secure the award and receipt of competitively awarded federal
15 research grants related to competitive edge technologies. A
16 matching grant shall not exceed 10% of the amount of the
17 competitively awarded federal research grants received.

18 (x) A provision encouraging the redevelopment of existing
19 scientific wet lab space for the commercialization of life science
20 technology.

21 (xi) A preference for proposals that meet 1 or more of the
22 following:

23 (A) Forecast revenues within 2 years.

24 (B) Have outside investments from investors with experience
25 and management teams with experience in the industry targeted by
26 the proposal.

27 (C) Have outside directors with expertise in the industry

1 targeted by the proposal.

2 ~~—— (b) The fund shall contract with independent peer review~~
3 ~~experts selected by the commercialization board to assist the~~
4 ~~commercialization board with its responsibilities under this~~
5 ~~chapter.~~

6 (B) ESTABLISH A PROCESS TO RECOMMEND INVESTMENTS TO THE FUND
7 IN QUALIFIED VENTURE CAPITAL FUNDS TO ESTABLISH ACCELERATOR FUNDS
8 THAT WILL INVEST IN QUALIFIED BUSINESSES THAT ENGAGE IN COMPETITIVE
9 EDGE TECHNOLOGIES. THE PROCESS SHALL INCLUDE, BUT IS NOT LIMITED
10 TO, THE FOLLOWING:

11 (i) A PROVISION THAT THE COMMERCIALIZATION BOARD SHALL SELECT
12 QUALIFIED VENTURE CAPITAL FUNDS BY ISSUING A REQUEST FOR PROPOSALS.
13 AT A MINIMUM, THE REQUEST FOR PROPOSALS SHALL REQUIRE A RESPONDING
14 ENTITY TO DISCLOSE ANY CONFLICT OF INTEREST, DISCLOSE ANY CRIMINAL
15 CONVICTIONS, OR DISCLOSE ANY INVESTIGATIONS BY THE INTERNAL REVENUE
16 SERVICE OR THE SECURITIES AND EXCHANGE COMMISSION, OR ANY OTHER
17 FEDERAL OR STATE TAXING OR SECURITIES REGULATORY BODY, OR COURT, OR
18 PERTINENT LITIGATION REGARDING THE CONDUCT OF THE PERSON OR ENTITY.
19 THE COMMERCIALIZATION BOARD SHALL ESTABLISH A STANDARD PROCESS TO
20 EVALUATE PROPOSALS SUBMITTED AS A RESULT OF A REQUEST FOR PROPOSALS
21 AND APPOINT A COMMITTEE TO REVIEW THE PROPOSALS.

22 (ii) A PROVISION THAT A QUALIFIED VENTURE CAPITAL FUND IS NOT
23 ELIGIBLE TO PARTICIPATE UNLESS IT OPERATES OR ENTERS INTO AN
24 AGREEMENT FOR THE OPERATION OF A BUSINESS DEVELOPMENT OFFICE IN
25 THIS STATE STAFFED WITH AT LEAST 1 FULL-TIME EQUIVALENT PERSON WHO
26 IS ACTIVELY SEEKING OPPORTUNITIES FOR VENTURE CAPITAL INVESTMENTS
27 IN BUSINESSES LOCATED IN THIS STATE UNLESS THE INVESTMENT

1 OPPORTUNITY REQUESTED BY THE QUALIFIED VENTURE CAPITAL FUND IS
2 TARGETED TO A SPECIFIC TRANSACTION INVOLVING A COMPETITIVE EDGE
3 TECHNOLOGY THAT WILL NOT OCCUR WITHOUT THE FUND'S INVESTMENT AS
4 DETERMINED BY THE COMMERCIALIZATION BOARD.

5 (iii) A PROVISION THAT A QUALIFIED VENTURE CAPITAL FUND IS NOT
6 ELIGIBLE TO PARTICIPATE UNLESS IT AGREES TO ESTABLISH AN
7 ACCELERATOR FUND AND COLLABORATE WITH AN INSTITUTION OF HIGHER
8 EDUCATION.

9 (iv) A PREFERENCE FOR PROPOSALS THAT CAN CONTRIBUTE TO THE
10 DEVELOPMENT OF ECONOMIC DIVERSIFICATION OR THE CREATION OF
11 EMPLOYMENT OPPORTUNITIES IN THIS STATE.

12 (v) A PROVISION THAT THE APPLICANT LEVERAGE OTHER RESOURCES AS
13 A CONDITION OF THE INVESTMENT.

14 (vi) A PROVISION THAT NOT MORE THAN 15% OF ANY INVESTMENT
15 AWARDED CAN BE USED FOR ADMINISTRATIVE COSTS OR OVERHEAD,
16 INCLUDING, BUT NOT LIMITED TO, PERSONNEL, BY THE AWARDEE, OR ITS
17 ACCELERATOR FUND.

18 (vii) INVESTMENTS AUTHORIZED UNDER THIS SUBSECTION SHALL
19 INCLUDE REPAYMENT PROVISIONS IN THE EVENT THE QUALIFIED VENTURE
20 CAPITAL FUND OR ACCELERATOR FUND FAILS TO COMPLY WITH THE
21 AGREEMENT.

22 (C) AS USED IN THIS SUBSECTION, "ACCELERATOR FUND" MEANS AN
23 INVESTMENT FUND TARGETED AT EARLY STAGE TECHNOLOGY COMPANIES.

24 (4) The commercialization board shall establish standards to
25 ensure that money expended under this chapter will result in
26 economic benefit to this state and ensure that a major share of the
27 business activity resulting from the expenditures occurs in this

1 state.

2 (5) The commercialization board shall ensure that a recipient
3 of money expended under this chapter agrees as a condition of
4 receiving the money not to use the money for any of the following:

5 (a) The development of a stadium or arena for use by a
6 professional sports team.

7 (b) The development of a casino regulated by this state under
8 the Michigan gaming control and revenue act, ~~the Initiated Law of~~
9 1996 **IL 1**, MCL 432.201 to 432.226, a casino at which gaming is
10 conducted under the Indian gaming regulatory act, Public Law 100-
11 497, ~~102 Stat. 2467,~~ or property associated or affiliated with the
12 operation of either type of casino described in this subdivision,
13 including, but not limited to, a parking lot, hotel, motel, or
14 retail store.

15 (6) The commercialization board shall establish requirements
16 to ensure that money expended under this section shall not be used
17 for any of the following:

18 (a) Grants, ~~or~~ loans, **CONVERTIBLE LOANS, EQUITY INVESTMENTS,**
19 **OR WARRANTS** to a person who has been convicted of a criminal
20 offense incident to the application for or performance of a state
21 contract or subcontract. As used in this subdivision, if a person
22 is a business entity, then person includes affiliates,
23 subsidiaries, officers, directors, managerial employees, and any
24 person who, directly or indirectly, holds a pecuniary interest in
25 that business entity of 20% or more. **A DIRECTOR OR OFFICER OF A**
26 **NONPROFIT ENTITY MAY SATISFY THE REQUIREMENTS OF THIS SUBDIVISION**
27 **IF HE OR SHE FILES AN AFFIDAVIT WITH THE FUND AFFIRMING THAT HE OR**

1 SHE HAS NOT BEEN CONVICTED OF A CRIMINAL OFFENSE INCIDENT TO THE
2 APPLICATION FOR OR PERFORMANCE OF A STATE CONTRACT OR SUBCONTRACT.

3 (b) Grants, ~~or~~loans, CONVERTIBLE LOANS, EQUITY INVESTMENTS,
4 OR WARRANTS to a person who has been convicted of a criminal
5 offense, or held liable in a civil proceeding, that negatively
6 reflects on the person's business integrity, based on a finding of
7 embezzlement, theft, forgery, bribery, falsification or destruction
8 of records, receiving stolen property, or violation of state or
9 federal antitrust statutes. As used in this subdivision, if a
10 person is a business entity, then person includes affiliates,
11 subsidiaries, officers, directors, managerial employees, and any
12 person who, directly or indirectly, holds a pecuniary interest in
13 that business entity of 20% or more. A DIRECTOR OR OFFICER OF A
14 NONPROFIT ENTITY MAY SATISFY THE REQUIREMENTS OF THIS SUBDIVISION
15 IF HE OR SHE FILES AN AFFIDAVIT WITH THE FUND AFFIRMING THAT HE OR
16 SHE HAS NOT BEEN CONVICTED OF A CRIMINAL OFFENSE, OR HELD LIABLE IN
17 A CIVIL PROCEEDING, THAT NEGATIVELY REFLECTS ON THE PERSON'S
18 BUSINESS INTEGRITY, BASED ON A FINDING OF EMBEZZLEMENT, THEFT,
19 FORGERY, BRIBERY, FALSIFICATION OR DESTRUCTION OF RECORDS,
20 RECEIVING STOLEN PROPERTY, OR VIOLATION OF STATE OR FEDERAL
21 ANTITRUST STATUTES.

22 (c) Grants, ~~or~~loans, CONVERTIBLE LOANS, EQUITY INVESTMENTS,
23 OR WARRANTS to induce a qualified business or a small business to
24 leave this state.

25 (d) Grants, ~~or~~loans, CONVERTIBLE LOANS, EQUITY INVESTMENTS,
26 OR WARRANTS that would contribute to the violation of
27 internationally recognized workers rights, as defined in section

1 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a
 2 country other than the United States, including any designated zone
 3 or area in that country.

4 (e) Grants, ~~or~~ loans, **CONVERTIBLE LOANS, EQUITY INVESTMENTS,**
 5 **OR WARRANTS** to a corporation or an affiliate of the corporation
 6 incorporated in a tax haven country after September 11, 2001, but
 7 with the United States as the principal market for the public
 8 trading of the corporation's stock. As used in this section, "tax
 9 haven country" includes a country with tax laws that facilitate
 10 avoidance by a corporation or an affiliate of the corporation of
 11 United States tax obligations, including Barbados, Bermuda, British
 12 Virgin Islands, Cayman Islands, Commonwealth of the Bahamas,
 13 Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein,
 14 the Principality of Monaco, and the Republic of the Seychelles.

15 (7) When ~~the commercialization board approves a grant, or a~~
 16 loan, **CONVERTIBLE LOAN, EQUITY INVESTMENT, OR WARRANT IS APPROVED**
 17 under this chapter, the ~~commercialization board~~ **APPROVING THE**
 18 **GRANT, LOAN, CONVERTIBLE LOAN, EQUITY INVESTMENT, OR WARRANT** shall
 19 state the specific objective reasons the applicant was selected
 20 over other applicants. ~~for a grant or loan under this chapter.~~

21 ~~(8) After March 31, 2006, before adopting a resolution that~~
 22 ~~establishes or substantially changes a program operated by the~~
 23 ~~commercialization board, including any fees, charges, or penalties~~
 24 ~~attached to that program, the commercialization board shall give~~
 25 ~~notice of the proposed resolution to the governor, to the secretary~~
 26 ~~of the senate, to the clerk of the house of representatives, to~~
 27 ~~members of the senate and house of representatives standing~~

~~1 committees on appropriations, and to each person who requested from
2 the fund in writing or electronically to be notified regarding
3 proposed resolutions. The notice and proposed resolution and all
4 attachments shall be published on the fund's internet website. The
5 commercialization board shall hold a public hearing not sooner than
6 14 days and not longer than 30 days from the date notice of a
7 proposed resolution is given and offer a person an opportunity to
8 present data, views, questions, and arguments. Commercialization
9 board members or 1 or more persons designated by the
10 commercialization board who have knowledge of the subject matter of
11 the proposed resolution shall be present at the public hearing and
12 shall participate in the discussion of the proposed resolution. The
13 commercialization board may act on the proposed resolution no
14 sooner than 14 days after the public hearing. The commercialization
15 board shall produce a final decision document that describes the
16 basis for its decision. The final resolution and all attachments
17 and the decision document shall be provided to the governor, to the
18 secretary of the senate, to the clerk of the house of
19 representatives, and to members of the senate and house of
20 representatives standing committees on appropriations and shall be
21 published on the fund's internet website.~~

~~22 — (9) The notice described in subsection (8) shall include all
23 of the following:~~

~~24 — (a) A copy of the proposed resolution and all attachments.~~

~~25 — (b) A statement that the addressee may express any data,
26 views, or arguments regarding the proposed resolution.~~

~~27 — (c) The address to which written comments may be sent and the~~

1 ~~date by which comments must be mailed or electronically~~
2 ~~transmitted, which date shall not be before the date of the public~~
3 ~~hearing.~~

4 ~~—— (d) The date, time, and place of the public hearing.~~