MEMORANDUM

DATE: November 1, 2013

TO: House Commerce Committee

FROM: Ben Gielczyk, Senior Fiscal Analyst

RE: Proposed Michigan Strategic Fund Act Changes (UPDATED)

This memo provides a summary of the proposed changes to the Michigan Strategic Fund (MSF) Act in a package of both Senate- and House-introduced bills. The bills include Senate Bills 269, 270, 271, 272, and 278, as well as House Bills 4071, 4480, 4481, and 4482. Generally, the bills would expand the authority of, and provide greater latitude to, the MSF. Additionally, the bills would consolidate and eliminate reporting requirements. The bills are not tie-barred.

Background

The MSF was created under Public Act (P.A.) 270 of 1984 as an autonomous entity with the stated intent of producing economic development in the state. Executive Order 1999-1 expanded the authority of the MSF by transferring all state funded economic development programs to the MSF. The MSF was also transferred to the Department of Management and Budget as an autonomous state agency, governed by a board of directors. As a state agency, the MSF was able to enter into interlocal agreements with local entities as provided under the Urban Cooperation Act of 1967.

The interlocal agreements between the MSF and local entities created the Michigan Economic Development Corporation (MEDC), which is also an autonomous entity of the state of Michigan. The MEDC acts as the administrative arm and provides all program services for programs created under the MSF. Therefore, a majority of the state appropriations and employees are transferred to the MEDC. The MEDC is also able to employ non-state (corporate) employees to assist in the administration of MSF programs. The corporate employees are funded with non-appropriated corporate funds which are received through the Tribal-State Gaming Compacts.

The MSF is administered by an 11-member board and is charged with approving private activity bonds; authorizing Community Development Block Grant applications; recommending renaissance zones to the State Administrative Board; approving MSF designated renaissance zones; and acting as fiduciary agent with respect to the 21st Century Jobs Fund investments.

Control and management of the MEDC is conducted by the MEDC Executive Committee consisting of 20 members, appointed by the governor. The responsibilities of the MEDC Executive Committee include developing policy direction and guidance to MEDC regarding economic development programs and initiatives; approving the MEDC corporate budget; and appointing a chief executive officer who administers all programs, funds, personnel and all other administrative transactions of the MEDC, among other things.

Senate Bill 269 - Tobacco Settlement Revenues

Senate Bill 269 would amend the Michigan Trust Fund Act to remove the FY 2014-15 sunset on the requirement that not less than $75.0 million of the tobacco settlement revenue be deposited in the 21st Century Jobs Trust Fund. Correspondingly, the bill would remove the $72.0 million appropriation in FY 2015-16 that was included to make up previous diversions of tobacco settlement revenue from the 21st Century Jobs Trust Fund to the General Fund because $75.0 million would be deposited annually beyond FY 2014-15. The sunset would be extended until FY 2018-19 with an additional $228.0 million appropriated to the MSF over the extended period when compared to current law. The funds would be subject to appropriation in the MSF annual appropriations act.

Under current law, the $75.0 million in tobacco settlement revenues currently dedicated to the MSF would be available for expenditure similar to General Fund revenues after FY 2015-16. Other current uses of tobacco settlement revenue include Medicaid and Family Independence Program (FIP) funding.

The 21st Century Jobs Trust Fund and corresponding 21st Century Jobs Trust Fund programs were established in 2005. Over the ten-year period of funding agreed upon at the time of passage, the 21st Century Jobs Trust Fund was allocated approximately $1.0 billion. In FYs 2005-06 and 2006-07 $394.0 million was deposited in the fund with an additional $600.0 million deposited over the next 8 years ($75.0 million annually) ending in FY 2014-15. An additional transfer of $72.0 million was added in FY 2015-16 due to various transfers from the 21st Century Jobs Trust Fund to the General Fund in an effort to balance the state budget.

Table 1
21st Century Jobs Trust Fund Deposits (Current Law)

Fiscal Year	Orig. Appropriation	Adjustment	TOTAL
2005-06	$394,000,000	($55,950,000)	$338,050,000
2006-07*	0	0	0
2007-08	75,000,000	50,000,000	125,000,000
2008-09	75,000,000	(22,050,000)	52,950,000
2009-10	28,500,000	0	28,500,000
2010-11	75,000,000	0	75,000,000
2011-12	75,000,000	0	75,000,000
2012-13	75,000,000	0	75,000,000
2013-14	75,000,000	0	75,000,000
2014-15 (est.)	*75,000,000*	*N/A*	*75,000,000*
2015-16 (est.)	*72,000,000*	*N/A*	*72,000,000*
TOTAL	**$1,019,500,000**	**($28,000,000)**	**$991,500,000**

*FY 2005-06 appropriation covers two-year period.

Senate Bill 270 - 21st Century Job Trust Fund Expenditures

Senate Bill 270 would expand MSF's authority to commit 21st Century Jobs Trust Fund appropriations to any program MSF operates and not just those programs that are under Chapter 8A, 8B, and 8C.

The provisions of the bill would also authorize the MSF to expend up to $7,250,000 of the $75.0 million annually appropriated from the 21st Century Jobs Trust Fund for business development and marketing costs. Under current law, the MSF can expend up to 5%, or $3,750,000. The bill would also strike the requirement that at least 80% of the funds committed for business development and business marketing be targeted to persons or entities outside of the state.

In addition to striking the requirement that at least 80% of business marketing and business development be targeted to out-of-state persons, the bill would strike the requirement that at least 75% of the funds appropriated under Chapter 8A (21st Century Jobs Trust Fund appropriations) be targeted to persons or entities outside of the state of Michigan. By striking the expenditure minimums for targeting out-of-state persons or entities, the MSF Board would not be statutorily required to expend any funds targeting out-of-state persons or entities.

Senate Bill 271 - Community Revitalization Program

Senate Bill 271 would make various changes to the Michigan Community Revitalization Program under Chapter 8C of the MSF Act. The provisions of the bill would expand the definition of "eligible property" to include "[a]ny other property as determined by the MSF Board." This would expand the scope of the Community Revitalization Program beyond its current exclusive statutory definition of eligible property. The change would open up the Community Revitalization Program to any property deemed eligible by the MSF Board.

The bill would also eliminate the requirement that certain criteria be considered when reviewing an application for a Community Revitalization incentive. Use of the criteria would be permissive under the bill.

Additionally, the provisions of the bill would revise the grant and loan amounts under the Community Revitalization Program. Specifically, the maximum grant award would be increased from $1.0 million to $2.5 million.

Since FY 2011-12, boilerplate Section 1024 of the MSF appropriations act has required a minimum of $20.0 million annually to go to programs operating under the Community Revitalization Program.

Reporting requirements removed under the bill are moved to a consolidated report under the provisions of House Bill 4480 (see below).

Senate Bill 272 - Revised Definition of Economic Development Projects

Senate Bill 272 would amend the Michigan Strategic Fund Act to do the following:

- Include port facilities in the definition of "economic development project" and provide a definition of port facilities that would not include an international bridge or tunnel. An advisory committee would be established to make recommendations to the MSF Board regarding projects relating to port facilities.
- Expand the definition of "person" to include a lender or any other entity approved by the MSF Board. The change would give the MSF Board complete discretion as to who qualifies as a "person" under the provisions of the bill.
- Include dredging of recreational or commercial harbors in the definition of "project."

Under the provisions of the bill, no additional appropriations are directed to the expanded projects. Rather, allocations to the expanded uses would depend on current and future appropriation levels. The MSF Board determines how expenditures of appropriated funds are allocated.

There would be minimal costs associated with the establishment of an advisory committee on port facilities. Any increased costs would be absorbed under current appropriations levels.

Senate Bill 278 - Jobs for Michigan Investment Fund

The provisions of the bill would expand the use of the Jobs for Michigan Investment Fund, a permanent fund, to any authorized use under the MSF Act. The MSF Board allocates the expenditure of the funds from the investment fund. Under current law, the Jobs for Michigan Investment Fund is restricted to use for grants, loans, investments, tourism promotion, business development, and community revitalization under Chapters 8A and 8C of the MSF Act. Additionally, the bill would allow the MSF Board to collect up to 4.0% for administrative expenses.

The Jobs for Michigan Investment Fund consists of the following funds:

- Funds appropriated or transferred to the investment fund from the 21st Century Jobs Trust Fund;
- Earnings and repayments received pursuant to programs under Chapters 8A or 8C;
- Earnings and repayments received pursuant to the previous Michigan technology tri-corridor and life sciences initiative program;
- Interest and earnings on any funds; and
- Any other money or assets received by the investment fund.

The investment fund also receives direct payments from the Nottawaseppi Huron Band of Potawatomi Tribal-State Gaming Compact. For the most recent year ending December 2012, the permanent fund received approximately $15.3 million from this payment. Since August 2009, approximately $41.5 million has been received.

As of October 1, 2011 (most recent data available), approximately $31.0 million was available in the fund.

Under a previous legal opinion obtained by the MSF, in consultation with the Department of Attorney General and the Office of the Chief Compliance Officer, the only amount available for legislative appropriation from the fund is the earnings on funds in the investment fund (common cash earnings).

House Bill 4480 - Michigan Strategic Fund Act Consolidated Reporting Requirements

The provisions of House Bill 4480 consolidate and modify reporting requirements throughout the MSF Act. The new report would be due annually on April 10. Outside of the Tourism and Business Promotion Program report, the April 10 reporting date would be later in the year than most current reporting requirements for the MSF. The proposed changes consolidate the following reporting requirements into one report:

- General Report on Activities by the MSF, Section 9 of the MSF Act;
- Report on 21st Century Jobs Fund grants and loans, Section 88n(5) of the MSF Act;
- Report on 21st Century Jobs Fund investments, Section 88n(6) of the MSF Act;
- Report on Michigan Business Development Program Activity, Section 88r(6) of the MSF Act;
- Report on Tourism and Business Development Promotion, Section 89d(1) of the MSF Act; and
- Report on Community Revitalization Program activity, Section 90d(4) of the MSF Act;

The provisions of the bill would also cover the following reporting requirements normally located in the MSF appropriations act boilerplate provisions:

- Report on all grants awarded by the MSF or by the MEDC, Section 1006;
- Report on MEDC grants and investment programs financed from the MSF using investment or Indian gaming revenues, Section 1007; and
- Report on geographic market locations and recreational activities used in tourism promotion; Section; Section 1023.

Nothing in the bills would prevent or preclude the inclusion of specific boilerplate reporting requirements in the MSF appropriations act.

In general, reporting language that was no longer applicable to the program was removed from the consolidated reporting language. A few reporting requirements that were determined to be duplicative were also removed. Other changes are explained in further detail below.

As it applies to the Business Development Program (Michigan Economic Growth Authority (MEGA) tax credit replacement), the provisions of the bill eliminate the requirement that the MSF include a report on the individuals hired by a qualified business, which currently includes the number of individuals hired, their educational attainment, and the number of individuals hired who relocated to this state.

Under the Tourism and Business Development Promotion reporting requirement, the provisions of the bill would eliminate the specific outcome measures that the MSF may include in the performance analysis of the promotion program. Additionally, the bill would eliminate the requirement that the MSF report on the type of tourism promoted.

House Bill 4480 would also transfer the Office of the Chief Compliance Officer from the MSF to the Department of Treasury. The Department of Treasury would become the appointing authority of the chief compliance officer. This change was proposed to eliminate any perceived conflicts of interest.

Finally, all background check requirements would be consolidated into Section 88c. The provisions of the bill would strike specific references to banned recipients of grants, loans, economic assistance, or any other incentive or assistance under the act, and replace them with a general provision providing the MSF discretion in establishing background check policies and procedures. No specific policies would be outlined in statute. The MSF would be required to consult with the Office of the Chief Compliance Officer and Michigan Economic Development Corporation when establishing background check policies and procedures.

House Bill 4481 - Eliminate References to Strategic Economic Investment and Commercialization Board

The provisions of House Bill 4481 provide various technical adjustments and clean-up changes to Sections 88k and 88n of the MSF Act. Specifically, the bill eliminates references to the Strategic Economic Investment and Commercialization Board, which was dissolved in October 2010 and had its duties and responsibilities shifted to the MSF Board. The bill strikes additional language dealing with reporting and prohibitions of grant and loan funding. Similar language already applies to the MSF Board.

House Bill 4482 (H-2) - Michigan Strategic Fund Authority

House Bill 4482 (H-2) would expand the authority of the MSF to include the following:

- Procure goods and services, purchase and sell real and personal property, and lease property independent of any other department or agency;
- Appoint individuals to a private or independent board to represent the interests of the MSF;
- Establish a program allowing entities to invest in and collect a return on investment in programs, projects, economic development projects, investments, or investment funds or other programs or ventures in the MSF Act;
- Establish and operate a job training fund that will support worker training at Michigan businesses as determined by the MSF; and
- Establish and operate a Community Revitalization Investment Program that provides capital for projects as determined by the MSF.

The provisions of the bill would also eliminate the requirement that not more than 1/4 of the $50.0 million appropriated to the Michigan Promotion Program in 2008 from the refinancing of tobacco settlement bonds be used to promote business development in this state. If funds remain from this 2008 transfer, the elimination of this language would allow the MSF to expend any of the remaining funds to promote business development. This funding was appropriated for FYs 2007-08 and 2008-09 and it is unknown if any of the funds remain. *NOTE: language is also included in HB 4071 (H-1) Draft 2, explained in detail below.*

House Bill 4071 (H-1) Draft 2 - Michigan Promotion Program (Pure Michigan)

The bill would eliminate the limitation on the promotion of business from the funds appropriated to the Michigan Promotion Program in 2008 (see explanation in HB 4482 (H-2) above).

The provisions of the bill would also require that beginning in FY 2013-14 at least $29.0 million be appropriated and transferred annually to the MSF for carrying out the purposes of the Michigan Promotion Program (Pure Michigan). However, the statutory language cannot bind future legislatures to make an appropriation for this program. Rather, any attempt to bind future legislatures to an appropriation amount has been determined to serve as an intention to appropriate.[1]

The bill does not specify a source of funding for the appropriation; however, recent appropriation acts appropriated 21st Century Jobs Trust Fund dollars for this purpose (See Table 2).

Table 2
Tourism Promotion Funding FY 2005-06 to FY 2013-14

Fiscal Year	GF/GP	21st Century Jobs Trust Fund*	Michigan Promotion Fund	TOTAL
2005-06**	$5,817,500	$7,500,000	$0	$13,317,500
2006-07	5,717,500	7,500,000	0	13,217,500
2007-08***	5,717,500	14,282,500	0	20,000,000
2008-09	5,717,500	27,500,000	0	33,217,500
2009-10	5,402,800	0	9,500,000	14,902,800
2010-11	5,402,800	20,000,000	0	25,402,800
2011-12	0	25,000,000	0	25,000,000
2012-13	0	25,000,000	0	25,000,000
2013-14	0	29,000,000	0	29,000,000
TOTAL	**$33,775,600**	**$155,782,500**	**$9,500,000**	**$199,058,100**

*Includes Jobs For Michigan Investment Fund - Returns to Fund appropriations in FY 2007-08 in the amount of $4,282,500.
**$100,000 GF/GP was included in a supplemental appropriation, Public Act 345 of 2006, for the promotion of the Detroit Zoological Institute.
***Additional $12.5 million was appropriated in FY 2008 to the Michigan Promotion Program from refinancing tobacco settlement bonds, which was dedicated to the promotion of business development in this State (authorized under MCL 125.2089b). Refinancing allowed the deposit of a total of $50.0 million that was to be spread between FYs 2008 and 2009. $10.0 million was appropriated in FY 2008 and $27.5 million was appropriated in FY 2009.

[1] See Attorney General Opinion No. 6238 - http://www.ag.state.mi.us/opinion/datafiles/1980s/op06238.htm.