

Act No. 503
Public Acts of 2014
Approved by the Governor
January 10, 2015
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Rep. Leonard

ENROLLED HOUSE BILL No. 4480

AN ACT to amend 1984 PA 270, entitled "An act relating to the economic development of this state; to create the Michigan strategic fund and to prescribe its powers and duties; to transfer and provide for the acquisition and succession to the rights, properties, obligations, and duties of the job development authority and the Michigan economic development authority to the Michigan strategic fund; to provide for the expenditure of proceeds in certain funds to which the Michigan strategic fund succeeds in ownership; to provide for the issuance of, and terms and conditions for, certain notes and bonds of the Michigan strategic fund; to create certain boards and funds; to create certain permanent funds; to exempt the property, income, and operation of the fund and its bonds and notes, and the interest thereon, from certain taxes; to provide for the creation of certain centers within and for the purposes of the Michigan strategic fund; to provide for the creation and funding of certain accounts for certain purposes; to impose certain powers and duties upon certain officials, departments, and authorities of this state; to make certain loans, grants, and investments; to provide penalties; to make an appropriation; and to repeal acts and parts of acts," by amending sections 9 and 88c (MCL 125.2009 and 125.2088c), as amended by 2012 PA 145.

The People of the State of Michigan enact:

Sec. 9. (1) The fund shall transmit to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies annually a report of its activities. The report shall be transmitted not later than April 10 of each year for activities in the immediately preceding state fiscal year. The report shall not include information exempt from disclosure under section 5. The report shall include, but is not limited to, all of the following for each program operated under this act:

- (a) A list of entities that received financial assistance.
- (b) The type of project or product being financed.
- (c) The amount and type of financial assistance.
- (d) For each separate form of financial assistance, all of the following:
 - (i) The number of new jobs committed or projected when the financial assistance was applied for.
 - (ii) The number of retained jobs committed or projected when the financial assistance was applied for.
 - (iii) The actual number of new jobs created that are not temporary employees.
 - (iv) The actual number of retained jobs that are not temporary employees.
 - (v) The average annual salary of the new jobs created that are not temporary employees.
 - (vi) The average annual salary of the retained jobs that are not temporary employees.
- (e) The duration of the financial assistance.
- (f) The amount of financial support other than state resources.

(g) Money or other revenue or property returned to the fund, including any repayments through a clawback provision in the agreement.

(h) The status of all loans of the fund.

(i) A list of all entities that are in bankruptcy, that the fund has received actual notice of, filed by a direct recipient of an active single incentive of at least \$500,000.00. In addition, the fund shall, within 120 days after the fund receives notice, provide a report of the notice of bankruptcy on its website and shall forward the report to each of the following:

(i) The senate majority leader and the senate minority leader.

(ii) The speaker of the house and the house minority leader.

(iii) The members of the house commerce committee.

(iv) The members of the house appropriations subcommittee on general government.

(v) The members of the senate economic development committee.

(vi) The members of the senate appropriations subcommittee on general government.

(j) A summary of the approximate administrative costs used to administer the programs and activities authorized under this act.

(k) Any other information as required in this section.

(2) The auditor general or a certified public accountant appointed by the auditor general annually shall conduct and remit to the legislature an audit of the fund and, in the conduct of the audit, shall have access to all records of the fund at any time, whether or not confidential. Each audit required by this section shall include a determination of whether the fund is likely to be able to continue to meet its obligations, including a report on the status of outstanding loans and agreements made by the fund.

(3) The fund shall also transmit the audit described in subsection (2) to the chairperson and minority vice-chairperson of the senate appropriations subcommittee on general government and the house of representatives appropriations subcommittee on general government. The fund shall make the report and audit available to the public on the fund's website.

(4) The report described in subsection (1) shall also contain all of the following that are related to a 21st century investment made by the fund board under chapter 8A:

(a) The amount of qualified venture capital fund investments, qualified mezzanine fund investments, and qualified private equity fund investments under management in this state, including year-to-year growth.

(b) The value of loan enhancement program investments, qualified private equity fund investments, qualified mezzanine fund investments, and qualified venture capital investments in qualified businesses, including year-to-year growth.

(c) A statement of the amount of money in each loan reserve fund established under the small business capital access program required under chapter 8A.

(5) The report described in subsection (1) shall also include, but is not limited to, all of the following for all actions under section 88r:

(a) The total actual amount of qualified investment attracted under section 88r as reported to the fund.

(b) The total actual number of new jobs created under section 88r as reported to the fund.

(c) The actual amount of the grant, loan, or other economic assistance made under section 88r separately for each qualified business verified by the fund.

(d) For each qualified business, whether it is a new business, whether it is an expansion of an existing business, or whether it relocated from outside of this state.

(e) An evaluation of the aggregate return on investment that this state realizes on the actual qualified new jobs and actual qualified investment made by qualified businesses.

(6) The report described in subsection (1) shall also include, but is not limited to, all of the following for all actions under chapter 8B:

(a) For tourism promotion efforts, all of the following:

(i) An itemized list, by market, of how much was spent, types of media purchased, and target of the tourism promotion campaign.

(ii) The return on investment analysis that utilizes existing baseline data and compares results with prior outcome evaluations funded by Travel Michigan.

(b) For business development efforts, all of the following:

(i) An itemized list, by market, of how much was spent, types of media purchased, and target of the business promotion campaign.

(ii) A performance analysis that compares the program or campaign objectives and outcome of the campaign or program.

(7) The report described in subsection (1) shall also include, but is not limited to, all of the following for all actions under section 90d:

(a) The total actual amount of private investment attracted under section 90d as reported to the fund.

(b) The actual amount of the community revitalization incentives made under chapter 8C separately for each project.

(c) The total actual amount of square footage revitalized or added for each project approved under section 90d as reported to the fund. When reporting square footage, the person must report the square footage by category, including, but not limited to, commercial, residential, or retail.

(d) The aggregate increase in taxable value of all property subject to a written agreement under chapter 8C when established and recorded by the local units of government and as reported to the fund.

(e) The total actual number of residential units revitalized or added for each project approved under section 90d as reported to the fund.

(f) Each project that received a community revitalization incentive outside the fund program standards and guidelines and why the variance was given.

(8) Beginning on and after January 1, 2012, on a monthly basis the fund shall provide exact copies of all information regarding all actions under chapter 8C that is provided to board members of the fund for the purpose of monthly board meetings, subject to confidentiality under section 5, to each of the following and post that information on the fund's website:

(a) The chairperson and minority vice-chairperson of the house commerce committee.

(b) The chairperson and minority vice-chairperson of the house appropriations subcommittee on general government.

(c) The chairperson and minority vice-chairperson of the senate economic development committee.

(d) The chairperson and minority vice-chairperson of the senate appropriations subcommittee on general government.

(9) The report described in subsection (1) shall also include a summary of the approximate administrative costs used to administer the programs and activities authorized in the following sections:

(a) Section 88b.

(b) Section 88h.

(c) Section 90b.

(10) The report described in subsection (1) shall also include, but is not limited to, all of the following for all actions for business incubators approved by the fund after the effective date of the amendatory act that added this subsection:

(a) The number of new jobs created and projected new job growth by current clients of the business incubator.

(b) Amounts of other funds leveraged by current clients of the business incubator.

(c) Increases in revenue for current clients of the business incubator.

(11) The report described in subsection (1) shall also include the actual repayments received by the fund for failure to comply with clawback provisions of the written agreement under all of the following:

(a) Section 78.

(b) Section 88d.

(c) Section 88k.

(d) Section 88q.

(e) Section 88r.

(f) Section 90b.

(12) Beginning on July 1, 2015, the fund shall post on the fund's website a list of each contract, agreement, or other written loan or grant documentation for financial assistance under sections 88r and 90b that the fund entered into or modified in the immediately preceding fiscal year.

(13) Beginning on July 1, 2015, the fund shall post and update periodically all of the following on its website for all loans made under sections 88r and 90b:

(a) A description of the project for which the loan was made.

(b) The total amount of the loan.

(c) Whether payments on the loan balance are current or delinquent.

(d) The interest rate of the loan.

(14) Beginning July 1, 2015, the report described in subsection (1) shall also contain all of the following for each program that provides financial assistance under this act that requires a site visit:

(a) A copy of the site visit guidelines for that program.

(b) The number of site visits conducted under that program.

(c) The chief compliance officer shall review and evaluate compliance with the site visit guidelines.

(15) The fund shall post on its website and update periodically all of the information described in subsection (14).

(16) As used in this section, "financial assistance" means grants, loans, other economic assistance, and any other incentives or assistance under this act.

Sec. 88c. (1) The fund board shall exercise the duties of a fiduciary with respect to 21st century investments consistent with the purposes of this chapter. The prudent investor rule shall be applied by the fund board and any agent of the fund board in the management of 21st century investments. The prudent investor rule as applied to 21st century investments means that in making 21st century investments, the fund board shall exercise the judgment and care under the circumstances then prevailing that an institutional investor of ordinary prudence, discretion, and intelligence would exercise in similar circumstances in a like position. The fund board shall maintain a reasonable diversification among 21st century investments consistent with the requirements of this chapter.

(2) The fund board shall select qualified private equity funds, qualified venture capital funds, and qualified mezzanine funds by issuing a request for proposal. At a minimum, the request for proposal shall require a responding entity to disclose any conflict of interest, disclose any criminal convictions, disclose any investigations by the internal revenue service, the securities and exchange commission, or any other federal or state taxing or securities regulatory body, or court, or pertinent litigation regarding the conduct of the person or entity. The fund board shall establish a standard process to evaluate proposals submitted as a result of a request for proposal and appoint a committee to review the proposals.

(3) The fund board shall ensure that a recipient of money under sections 88d, 88e, 88f, 88g, 88q, and 88r and chapter 8C agrees as a condition of receiving the money not to use the money for any of the following:

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

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

(4) The fund board shall establish requirements to ensure that money expended under sections 88d, 88e, 88f, 88g, 88k, 88q, and 88r and chapter 8C shall not be used for any of the following:

(a) Provision of money to a person who has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees as determined by the board, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(b) Provision of money to a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of state or federal antitrust statutes, or for any additional findings as determined by the fund board. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(c) Provision of money to a business enterprise to induce qualified businesses or small businesses to leave this state.

(d) Provision of money that would contribute to the violation of internationally recognized workers rights, as defined in section 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a country other than the United States, including any designated zone or area in that country.

(e) Provision of money to a corporation or an affiliate of the corporation who is incorporated in a tax haven country after September 11, 2001, while maintaining the United States as the principal market for the public trading of the corporation's stock. As used in this section, "tax haven country" includes a country with tax laws that facilitate avoidance by a corporation or an affiliate of the corporation of United States tax obligations, including Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the principality of Liechtenstein, the principality of Monaco, and the Republic of the Seychelles.

(5) Before adopting a resolution that establishes or substantially changes a 21st century investment program, including any fees, charges, or penalties attached to that program, the fund board shall give notice of the proposed resolution to the governor, to the clerk of the house of representatives, to the secretary of the senate, to members of the senate and house of representatives appropriation committees, and to each person who requested from the fund in writing or electronically to be notified regarding proposed resolutions. The notice and proposed resolution and all attachments shall be published on the fund's internet website at least 10 days prior to the date that the proposed resolution is considered by the fund board. The fund board shall hold a public hearing and offer a person an opportunity to present data, views, questions, and arguments. Members of the fund board or 1 or more persons designated by the fund board who have knowledge of the subject matter of the proposed resolution shall be present at the public hearing

and shall participate in the discussion of the proposed resolution. The fund board may act on the proposed resolution on the day of the public hearing. The fund board shall produce a final decision document that describes the basis for its decision. The final resolution and all attachments and the decision document shall be provided to the governor, to the clerk of the house of representatives, to the secretary of the senate, and to members of the senate and house of representatives appropriation committees and shall be published on the fund's internet website.

(6) The notice described in subsection (5) shall include all of the following:

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

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

(c) The address to which written comments may be sent and the date by which comments must be mailed or electronically transmitted, which date shall not be before the date of the public hearing.

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

(7) The fund board shall employ or contract with a fund manager or other persons it considers necessary to implement this section. The person employed or contracted under this subsection shall have not less than 10 years' experience in commercial lending, private equity, mezzanine funding, or venture capital. The person employed or contracted under this section shall exercise the duties of a fiduciary toward investments from the investment fund under this section. Management fees payable by the fund and other investors in a qualified private equity fund, a qualified mezzanine fund, or a qualified venture capital fund shall be considered an investment expense and not an administrative cost incurred by the fund.

(8) Subject to subsection (9), a record received, prepared, used, or retained by an investment fiduciary in connection with an investment or potential investment of the investment fund that relates to investment information pertaining to a portfolio company in which the investment fiduciary has invested or has considered an investment that is considered by the portfolio company and acknowledged by the investment fiduciary as confidential, or that relates to investment information whether prepared by or for the investment fiduciary regarding loans and assets directly owned by the investment fiduciary and acknowledged by the investment fiduciary as confidential, is exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, if at least annually the fund provides to the fund board, and makes available to the public, a report of fund investments during the prior state fiscal year that includes all of the following:

(a) The name of each portfolio company in which the investment fund invested during the reporting period.

(b) The aggregate amount of money invested by the investment fund in portfolio companies during the reporting period.

(c) The rate of return realized during the reporting period on the investments of the investment fund in portfolio companies.

(d) The source of any public funds invested by the investment fund in portfolio companies during the reporting period.

(9) If a record described in subsection (8) is an agreement or instrument to which an investment fiduciary is a party, only those parts of the record that contain investment information are exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) As used in subsections (8) and (9):

(a) "Investment fiduciary" means a person who exercises any discretionary authority or control over an investment of the investment fund or renders investment advice for the fund for a fee or other direct or indirect compensation.

(b) "Investment information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause a portfolio company or an investment fiduciary significant competitive harm. Investment information includes, but is not limited to, financial performance data and projections, financial statements, list of coinvestors and their level of investment, product and market data, rent rolls, and leases.

(c) "Portfolio company" means an entity in which an investment fiduciary has made or considered an investment on behalf of the investment fund.

(d) "Record" means all or part of a writing, as that term is defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 97th Legislature are enacted into law:

(a) Senate Bill No. 271.

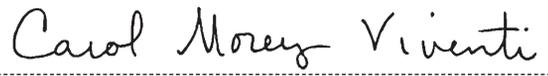
(b) House Bill No. 4481.

(c) House Bill No. 4482.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor