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Senate Bill 200 (as introduced 3-12-15)  
Sponsor: Senator Darwin L. Booher  
Committee: Banking and Financial Institutions

Date Completed: 4-14-15

## **CONTENT**

**The bill would add Section 88s to the Michigan Strategic Fund to do the following:**

- Require the Michigan Strategic Fund to create and operate the Michigan Investment Program, to provide economic assistance to Michigan investment markets and qualified persons with a controlling interest in a Michigan investment portfolio.**
- Require the Michigan Investment Program to provide for a detailed application, approval, and compliance process.**
- Specify the provisions to be included in a written agreement for a grant, loan, or other economic assistance.**
- Set a cap of \$1.0 million on the amount a Michigan investment market or qualified person could receive under the Michigan Investment Program.**
- Provide that the Fund could not enter into an agreement unless the investment market or qualified person met certain conditions.**
- Require the Fund to post on its website information related to the Michigan Investment Program, and issue an annual report to the Legislature beginning November 1, 2015.**

The bill states, "The legislature finds and declares that funding authorized under this section to encourage diversification of the economy, to encourage capital investment in this state, and to promote the development of Michigan investment markets and Michigan advancement portfolios in this state is a public purpose and of paramount concern in the interest of the health, safety, and general welfare of the citizens of this state."

## **Definitions**

The bill would define "Michigan advancement portfolio" as a collection of investments that, as a whole, meets all of the following criteria: a) the collection includes securities only in businesses that are doing business in this State, b) at least 10% of the portfolio's overall investment for a calendar year is in businesses that employ 50 or fewer employees at the time of the investment, c) includes securities in businesses that employ 50 or fewer employees at the time of the investment transacted through a Michigan investment market, and d) the collection of investments maintains at least \$1.0 million in investments at all times.

"Michigan investment market" would mean that term as defined in Section 451 of the Uniform Securities Act (2002): a person that is a broker-dealer, is exempt from Federal registration under Section 15(a)(1) of the Securities Exchange Act of 1934, and provides a market or exchange, including an online market or exchange operated through a web portal, at which transactions in securities that are sold or offered for sale in this State under an intrastate

offering exemption take place. (The Securities Exchange Act is Federal law pertaining to the offer, sale, or purchase of securities. Section 15(a)(1) requires the registration and regulation of securities brokers or dealers, but exempts a broker or dealer whose business is only intrastate transactions.)

"Qualified person" would mean a person that is doing business in this State or is a resident of this State and either an institutional investor or an accredited investor as defined by Rule 501 of Securities Exchange Commission Regulation D. The Fund could rely on confirmation that the purchaser was an accredited investor from a licensed broker-dealer or another third party in making a determination that the individual was an accredited investor.

"Institutional investor" would mean that term as defined in Section 102a of the Uniform Securities Act (2002). Institutional investor would include, for example, a depository institution or international banking institution, an insurance company, an investment company, a registered broker-dealer, and certain employee pension or benefit plans.

Each of the following would be prima facie evidence that an individual was a resident of this State: a) a valid operator's license, chauffeur's license, or official personal identification card issued by this State, b) a current Michigan voter registration, c) a signed affidavit, as described in Section 7cc(2) of the General Property Tax Act, that indicated that the individual owned and occupied property in this State as his or her principal residence, and d) any other record or documents issued by this State that established that the individual's principal residence was in this State.

For purposes of Section 88s, a business would be considered to be doing business in this State if all of the following were met: a) if the business had gross revenue of more than \$5,000 from the sale of products or services or other conduct of its business for its most recent 12-month fiscal period, it derived at least 80% of its gross revenue, and that of its subsidiaries on a consolidated basis, from the operation of a business or of real property located in or from the rendering of services in this State during one of the following periods: i) in its most recent fiscal year, if the first offer of any part of the issue were made during the first six months of the issuer's current fiscal year, or ii) in the first six months of its current fiscal year, or during the 12-month fiscal period ending with that six-month period, if the first offer of any part of the business's intrastate offering were made during the last six months of the business's current fiscal year; b) at the end of its most recent semiannual fiscal period before the first offer of any part of the issue, the business had at least 80% of its assets and those of its subsidiaries in this State; c) the business intended to use and used at least 80% of the net proceeds to the business from the sale or resale of intrastate securities in connection with the operation of a business or of real property in, the purchases of real property located in, or the rendering of services in this State; and d) the principal office of the business was located in this State.

#### Michigan Investment Program

The Michigan Investment Program would have to provide for the following: a) grants, loans, and other economic assistance in developing Michigan investment markets and Michigan advancement portfolios, and b) a detailed application, approval, and compliance process published and available on the Fund's website. This process would have to contain at least the following: a) a Michigan investment market or qualified person with a controlling interest in a Michigan advancement portfolio could apply for a grant, loan, or other economic assistance in a form and manner determined by the Fund, and b) after receipt of an application, the Fund could enter into a written agreement with the Michigan investment market or qualified person.

With assistance from the Michigan Economic Development Corporation (MEDC) and the Office of the Chief Compliance Officer, the Fund would have to establish policies and procedures to

conduct background checks on each Michigan investment market and qualified person applying for a grant, loan, or other economic assistance under the bill.

In any fiscal year, a Michigan investment market or qualified person could not receive more than \$1.0 million from the Michigan Investment Program.

"Other economic assistance" would mean "any other form of assistance allowed under this Act that is not a grant or loan". Economic assistance could include providing security for a qualified person's investments within its Michigan advancement portfolio. That security could be equal to or less than 35% of the original value of the qualified person's advancement portfolio; however, that security would be payable only in proportion to realized losses in investments within that portfolio on an individual basis.

#### Written Agreement

The written agreement would have to provide for the following: a) in a clear and concise manner, all of the conditions imposed, including specific time frames, on the Michigan investment market or the qualified person to receive a grant, loan, or other economic assistance, b) a provision for the repayment of any grants, loans, or other economic assistance if the Michigan investment market or qualified person failed to comply with the agreement, and c) an audit provision that required the Fund to verify that established milestones for the Michigan investment market or qualified person were met.

The Fund could not enter into a written agreement with a Michigan investment market or qualified person unless the Michigan investment market or qualified person provided a business plan or demonstrated the need for the grant, loan, or other economic assistance, and agreed to provide the data described in the agreement necessary for the Fund to report to the Legislature under the Act.

#### Website Posting, & Reports

The Fund would have to post on its website, or on the MEDC's website, the name and location of each Michigan investment market and qualified person that received a grant, loan, or other economic assistance awarded under Section 88s and the amount of the grant, loan, or assistance. Beginning February 1, 2016, and then not less than every three months, the Fund would have to post on its website the name and location of each Michigan investment market and each qualified person that received approval of a loan, grant, or other assistance in the immediately preceding three-month period.

Beginning November 1, 2015, and each year thereafter, the Fund would have to report to each house of the Legislature on the activities of the Fund that occurred under Section 88s in the previous fiscal year. The report would have to be made available in an electronic format, and would have to include all of the following: a) the total number of agreements, b) the amount of the grant, loan, or other economic assistance awarded under the section separately for each Michigan investment market and each qualified person, c) the actual amount of the grant, loan, or other economic assistance for each Michigan investment market and each qualified person verified by the Fund.

Proposed MCL 125.2088s

Legislative Analyst: Jeff Mann

#### **FISCAL IMPACT**

State: The bill would result in additional costs to the Michigan Strategic Fund (MSF). The MSF would need to hire staff to process, analyze, and decide on applicants in accordance with this legislation, as well as produce the reports that would be required. There also would be additional costs from the appropriation of funds that would be used to issue grants, loans,

and other economic assistance. If it were a priority of the Legislature that this program be funded and the MSF or the MEDC did not have corporate funds available, then the State would need to find additional resources. This could be done by either reducing a program currently operated by the MSF or appropriating additional resources to the MSF. The costs would depend on how large the Legislature wanted this program to be. One thing that is not clear is what would happen to money received after loans or agreements were repaid. If the funds were returned to the State, then the Legislature could appropriate the money to this program, which would reduce its long-term ongoing expenses.

Local: The bill would affect only local economic development corporations within the State that are involved with investment markets and potentially could receive economic assistance under the bill.

Fiscal Analyst: Cory Savino