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BILL



ANALYSIS

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House Bill 6064 (as passed by the House)  
Sponsor: Representative Jason Wentworth  
House Committee: Michigan Competitiveness  
Senate Committee: Economic Development and International Investment

Date Completed: 11-29-18

## **CONTENT**

**The bill would add Chapter 8E to the Michigan Strategic Fund Act to do the following:**

- **Require the Michigan Strategic Fund (MSF) to accept applications for approval as a rural development fund (RDF).**
- **Provide requirements for RDFs.**
- **Create the "Rural Development Job Creation Fund" and provide for its administration.**
- **Require an RDF to submit annual reports, detailing specific information, to the MSF.**
- **Require an RDF to repay repayable grants issued by the MSF if the RDF failed to meet specified requirements.**
- **Require an RDF to pay an annual fee to the MSF.**

## **Definitions**

"Full-time equivalent employees" would mean the number of salaried employment positions plus the quotient obtained by dividing the total number of hours for which employees with an hourly wage rate of at least 150% of the Federal minimum wage were compensated for employment over the preceding 12-month period by 2,080 with respect to hourly employees.

"Growth investment" would mean any capital or equity investment in a qualified business or any loan to a qualified business with a stated maturity at least one year after the date of issuance. A secured loan or the provision of a revolving line of credit to a qualified business is a growth investment only if the RDF obtains an affidavit from the president or chief executive officer of the qualified business attesting that the qualified business sought and was denied similar financing from a commercial bank.

"Investment authority" would mean the amount stated on the certificate certifying the RDF. An RDF's investment authority would have to be composed of equal amounts of repayable grants by the MSF and private contributions.

"New full-time equivalent employees" would mean the number of new full-time equivalent employees based on a computation made annually by subtracting the number of full-time equivalent employees at the qualified business on the date of the RDF's initial growth investment in the qualified business from the monthly average of full-time equivalent employees at the qualified business for the applicable preceding calendar year. If the computation results in a number less than zero, the number of new full-time equivalent employees produced by the RDF's growth investment for that calendar year period would have to be zero. "Principal business operations" would mean for a qualified business, the place

or places where at least 80% of its employees work or where employees that are paid at least 80% of its payroll work. An out-of-state business that has agreed to relocate employees using the proceeds of a growth investment to establish its principal business operations in the State would have to be considered to have its principal business operations in this new location provided it satisfied this definition within 180 days after receiving the growth investment or a later date, if agreed to by the MSF.

"Private contributions" would mean an investment of cash in an RDF to match dollar-for-dollar the repayable grant amount up to the investment authority of the RDF. A RDF's private contributions would have to be composed of not less than 10% of equity investments.

"Qualified business" would mean an operating business that, at the time of the initial investment in the business by an RDF, has fewer than 150 employees and is engaged in industries assigned a North American Industry Classification System Code within sectors 11, 21, 23, 31 through 33, 42, 48, 49, 54, except 541110 through 541219, 56, 62, and 81 or, if not engaged in any of these industries, the Department determines that the investment will be beneficial to the rural area and the economic growth of the State.

"Qualified rural county" would mean a county in Michigan with a population of 200,000 or less.

"Repayable grant" would mean a grant of cash by the MSF into a RDF that would be matched dollar-for-dollar with private contributions up to the investment authority of the RDF.

"Repayment amount" would mean an amount equal to 50% of a RDF's investment authority, minus the sum of the product of new full-time equivalent employees reported to the MSF in each of the RDF's annual reports submitted and the earned job factor and the product of full-time equivalent employees at the time of the initial growth investments in qualified businesses, provided the rural growth fund receives an affidavit from the president or chief executive officer of the qualified business attesting that the full-time equivalent employee positions would have been eliminated without receipt of the initial growth investment and 50% of the earned job factor. "Earned job factor" would mean an amount equal to \$25,000.

#### Rural Development Fund Applications

Beginning October 1, 2018, the MSF would have to accept applications for approval as a rural development fund. The application would have to include all of the following:

- The total investment authority sought by the applicant.
- A copy of the applicant's license showing that the entity or its affiliate was a rural business investment company or a small business investment company under Federal Law.
- Evidence that as of the date of the application, the entity or its affiliates had invested at least \$75.0 million in nonpublic companies located in counties throughout the U.S. with a population less than 50,000.
- Evidence that as of the date of the application, the entity or its affiliates had received equity investments from investors who were not affiliates of the applicant in an amount equal to least \$100.0 million.

"Affiliate" would mean an entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity. For the purposes of the bill, an entity would be controlled by another entity if the controlling entity held, directly or indirectly, the majority voting or ownership interest in the controlled entity or had control over the day-to-day operations of the controlled entity by contract or law.

The MSF would have to make application determinations by November 30, 2018, in the order in which the applications were received. The MSF would have to consider applications received on the same day to have been received simultaneously. The MSF could not approve more than \$100.0 million in investment authority and \$50.0 million in repayable grants. If requests for investment authority received simultaneously would result in that limitation being exceeded, the MSF would have to allot the investment authority and repayable grants among the approved applications proportionally. After approval of an application, the MSF would have to provide a grant certificate to the applicant designating the applicant as a RDF and specify the amount of the RDF's investment authority and the amount of the repayable grant to be received.

The MSF could deny an application for approval as an RDF only for the following reasons:

- The applicant did not satisfy all the criteria described in the bill.
- The MSF had already approved the maximum amount of investment authority allowed under the Chapter.

If the MSF denied an application, the applicant could provide additional information to the MSF within five days of the notice of denial. The MSF would have to review and reconsider the application and additional information within 10 days, but not beyond December 15, 2018. A reconsidered application would have to retain the original date of receipt for purposes of priority.

#### Rural Development Fund Activities

A rural development fund would have to do all of the following:

- Within 60 days after receiving the approval from the MSF, collect private contributions equal to 50.0% of the rural development fund's investment authority.
- Within 65 days after receiving the approval from the MSF, send to the fund documentation sufficient to prove that the amounts described above have been collected.

If the RDF failed to fully comply with these requirements, its approval would be forfeited, and the MSF would have to award the corresponding investment authority first to existing applicants who received investment authority lower than the amount requested and then to new applicants.

The bill would require the MSF to transfer the repayable grant to the RDF after receiving the RDF contribution documentation within one business day.

#### Rural Development Job Creation Fund

The bill also would create the Rural Development Job Creation Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the Fund, and credit it interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and would have to not lapse to the General Fund. The Department of Talent and Economic Development would have to administer the Rural Development Job Creation Fund for auditing purposes.

The MSF would have to spend money from the Fund, upon appropriation, only to make refundable grants to RDFs in the State.

### Forfeiture & Repayment of Grant Money

The MSF would have to demand immediate repayment of the repayable grant issued under the Chapter if any of the following occurred with respect to the RDF before it was certified to exit the program as provided below:

- The RDF did not invest all its investment authority in growth investments in the State within three years of the closing date with 100% of its authority invested in growth investments in qualified businesses with principal business operations located in qualified rural counties.
- The RDF, before exiting the program in accordance with Chapter 8E, made a distribution or payment that resulted in the RDF having less than 100% of its investment authority invested in growth investments in the State or available for investment in growth investments and held in cash and other marketable securities.
- The RDF made a growth investment in a qualified business that directly or indirectly through an affiliate owned, had the right to acquire an ownership interest, made a loan to, or made an investment in the RDF, an affiliate of the RDF, or an investor in the RDF. This provision would not apply to investments in public-traded securities. For purposes of this provision, an RDF would not be considered an affiliate of a business solely because of its growth investment.

The MSF also would have to demand immediate payment if the RDF, after satisfying the above requirement, failed to maintain growth investments at the required levels until the sixth anniversary of the closing date. For the purposes of this requirement, an investment would be maintained even if the investment was sold or repaid so long as the RDF reinvested an amount equal to the capital returned or recovered by the RDF from the original investment, exclusive of any profits realized, in other growth investments in the State within 12 months of the receipt of that capital. Amounts received by an RDF pursuant to periodic repayments would have to be treated as continually invested in growth investments if the amounts are reinvested in one or more growth investments by the end of the following calendar year. An RDF would not be required to reinvest capital returned from growth investments after the fifth anniversary of the closing date, and those growth investments would have to be considered held continuously by the RDF through the sixth anniversary of the closing date.

No more than \$5.0 million in growth investments in a qualified business, including growth investments in affiliates of the qualified business, could count toward the growth investment requirements above.

Before demanding repayment under the bill, the MSF would have to notify the RDF of the reasons for the pending repayment. The RDF would have 90 days from the date the notice was dispatched to correct any violation outlined in the notice to the satisfaction of the MSF and to avoid repayment of the refundable grant.

An RDF, before making a growth investment, could request from the MSF a written opinion as to whether the business in which it proposed to invest was a qualified business as defined in Chapter 8E. The MSF, before the fifteenth business day after the date of receiving of the request, would have to notify the RDF of its determination. If the MSF failed to notify the RDF by the fifteenth business day of its determination, the qualified business in which the RDF proposed to invest would be a qualified business.

### RDF Report

An RDF would have to submit an annual report to the MSF on or before the last day of February

of each year until the RDF had exited the program in accordance with Chapter 8E. The annual report would have to provide documentation as to the RDF's growth investments and include all of the following:

- A bank statement evidencing each growth investment.
- The name, location, and industry of each qualified business receiving a growth investment, including either the determination letter set forth in Section 90o or evidence that the business was a qualified business at the time the growth investment was made.
- The number of new full-time equivalent employees at the qualified business in the State.
- The number of full-time equivalent employees at the qualified business on the date of receipt of the initial growth investment in the State.
- Any other information required by the MSF.

Within 60 days after receiving an annual report, the MSF would have to provide written confirmation to the RDF of the new full-time equivalent employees the RDF had been credited for that year.

By the fifth business day after the third anniversary of the closing date, a RDF would have to submit a report to the fund evidencing its compliance with the investment requirements of Chapter 8E.

The MSF could adopt rules necessary to implement Chapter 8E.

The MSF would have to submit an annual report to each house of the Legislature on or before April 1, 2020. The annual report would have to include all of the following:

- The name and number of all the RDFs approved to participate in the program.
- The amount of investment authority awarded to each RDF.
- Any investments made by the RDFs, including the location of the investments.
- Whether the RDFs were in compliance with this Chapter.
- Any other information required by the MSF.

#### Rural Development Fund Fee

The MSF would have to calculate an annual fee to be paid by each RDF approved by dividing \$25,000 by the number of applications approved under the Chapter and notify each RDF of the amount of the annual fee.

The initial annual fee would be due and payable to the MSF within one business day after receiving a repayable grant. After the initial annual fee, an annual fee would be due and payable to the MSF on or before that last day of February of each year.

An annual fee would not be required once an RDF has exited the program in accordance with the Chapter.

To maintain an aggregate annual fee of \$25,000 for all RDFs, the MSF would have to recalculate the annual fee as needed after the lapse of any certification, the demand of repayment under this Chapter, or an RDF's exit from the program.

#### Exiting the Program

On or after the sixth anniversary of the closing date, a RDF could exit the program and would no longer be subject to the provisions of Chapter 8E. The MSF would have to respond to the

application within 30 days after receiving it and would have to include a calculation of any repayment amount due.

No distributions other than those permitted above could be made with respect to the equity interests of the RDF more than the sum of the amount of equity capital invested into the RDF with respect to the equity interests and an amount equal to any projected increase in the Federal or State tax liability of holders of those interests related to the ownership of the RDF until the RDF has made payments to the MSF equal to the repayment amount.

"Rural development fund" would mean an entity approved by the MSF that meets all of the following:

- The entity or its affiliate is a rural business investment company that has been granted final approval by the U.S. Secretary of Agriculture or has entered into a participation agreement with the U.S. Secretary of Agriculture, or a small business investment company under Federal Law.
- As of the date of the application, the entity or its affiliates have invested at least \$75,000,000 in nonpublic companies located in counties throughout the United States with a population less than 50,000.
- As of the date of the application, the entity or its affiliates have received equity investments from investors who are not affiliates of the applicant in an amount equal to least \$100,000,000.

Proposed MCL 125.2090I

Legislative Analyst: Nathan Leaman

### **FISCAL IMPACT**

The bill would have an indirect fiscal impact on the State and no impact on local units of government. The Rural Development Fund Program would not have a designated fund source and would be subject to legislative appropriations. If funds were appropriated to the program, the total appropriations would be capped at \$50.0 million for the repayable grants. If the grants were repaid under the formula in full, the program could have additional funds in the future to issue new grants and require fewer appropriations to the program if the Legislature decided on funding the program to the \$50.0 million cap.

If the budget appropriated funds to the program, the Michigan Strategic Fund, within the Department of Talent and Economic Development, would have increased administrative costs associated with processing applications, overseeing grants, and reporting to the Legislature. These costs would be offset by the \$25,000 total annual fee. It is currently unknown if this amount would be sufficient to cover the additional administrative expenses. Typical grant programs in the Michigan Strategic Fund allow 4.0% of program appropriations to go towards administration and marketing of the program, meaning that the \$25,000 application fee would be significantly under the typical administrative costs allowable for other grant programs. If costs were greater than the \$25,000, the Michigan Strategic Fund would have to use existing funds for administration and oversight.

Fiscal Analyst: Cory Savino

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.