

Act No. 423
Public Acts of 2018
Approved by the Governor
December 19, 2018
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STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Reps. Wentworth, Hughes, Sheppard, VanSingel, LaFave, Cole, Frederick, Bellino, Maturen, Webber, McCreedy, Rendon, Kelly, Howell, Calley, Lower, VanderWall, LaSata, Griffin, Canfield, Leutheuser, Elder, Sabo, Lilly, Guerra, Bizon, Inman and Vaupel

ENROLLED HOUSE BILL No. 6064

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 section 90b (MCL 125.2090b), as amended by 2017 PA 239, and by adding chapter 8E.

The People of the State of Michigan enact:

Sec. 90b. (1) The fund shall create and operate the Michigan community revitalization program to provide community revitalization incentives for eligible investments on eligible property in this state. The fund shall develop and use a detailed application, approval, and compliance process adopted by a resolution of the board and published and available on the fund's website. Program standards, guidelines, templates, or any other forms used by the fund to implement the Michigan community revitalization program shall be approved by the board.

(2) A person or 2 or more persons may apply to the fund for approval of community revitalization incentives associated with a project under this section. Community revitalization incentives shall not be approved for any property that is not eligible property.

(3) Funds appropriated for programs under this chapter must be placed in the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.262.

(4) Subject to section 88c, the fund shall review all applications for community revitalization incentives. As part of the application, the applicant shall include documentation establishing that the project is located on eligible property and a project description that includes a project pro-forma. The fund shall consider the following criteria to the extent reasonably applicable as reasonably determined by the fund board or its designee to the type of project proposed when approving a community revitalization incentive:

- (a) The importance of the project to the community in which it is located.
- (b) If the project will act as a catalyst for additional revitalization of the community in which it is located.
- (c) The amount of local community and financial support for the project.
- (d) The applicant's financial need for a community revitalization incentive.

- (e) The extent of reuse of vacant buildings, reuse of historic resources, and redevelopment of blighted property.
- (f) Creation of jobs.
- (g) The level of private sector and other contributions, including, but not limited to, federal funds and federal tax credits.
- (h) Whether the project is financially and economically sound.
- (i) Whether the project increases the density of the area.
- (j) Whether the project promotes mixed-use development and walkable communities.
- (k) Whether the project converts abandoned public buildings to private use.
- (l) Whether the project promotes sustainable development.
- (m) Whether the project involves the rehabilitation of a historic resource.
- (n) Whether the project addresses areawide redevelopment.
- (o) Whether the project addresses underserved markets of commerce.
- (p) The level and extent of environmental contamination.
- (q) If the rehabilitation of the historic resource will meet the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, 36 CFR 67, when applied after engaging in discussions with the state historic preservation office.
- (r) Whether the project will compete with or affect existing Michigan businesses within the same industry.
- (s) Any other additional criteria approved by the board that are specific to each individual project and are consistent with the findings and intent of this chapter.

(5) An application shall be approved or denied not more than 90 days after receipt of the application that is considered administratively complete by the board or its designee. If the application is neither approved nor denied within 90 days after being considered administratively complete, it must be considered by the fund board, or its president if delegated, for action at, or by, the next regularly scheduled board meeting. If an application is approved, the fund shall determine the amount of community revitalization incentives for the project based on the fund's review of the application and the criteria specified in subsection (4).

(6) Except as otherwise provided in this subsection, the amount of community revitalization incentives that the board may approve for a single project shall not exceed 25% of a project's eligible investment up to \$10,000,000.00. However, in a city, village, or township with a population of 15,000 or less based on the most recent federal decennial census, the amount of community revitalization incentives that the board may approve for a single project shall not exceed 50% of a project's eligible investment up to \$10,000,000.00. A community revitalization loan shall not exceed \$10,000,000.00, and a community revitalization grant shall not exceed \$1,500,000.00. However, a combination of loans, grants, and other economic assistance under this chapter shall not exceed \$10,000,000.00 per project. The board may not approve \$10,000,000.00 per project in community revitalization incentives to more than 3 projects per fiscal year. The board shall approve not less than 5 projects of \$1,000,000.00 or less per project per fiscal year. If, after reviewing all applications in a fiscal year, the fund determines that less than 5 projects warranted an award of \$1,000,000.00 or less, this subsection does not apply. Notwithstanding any other limitation in this subsection, each year, of the community revitalization projects approved by the board, the board may approve up to 3 single projects that shall not exceed 50% of a project's eligible investment up to \$10,000,000.00 for community revitalization loans and grants for the specific purpose of historic preservation. Beginning for the 2017-2018 fiscal year and through the 2021-2022 fiscal year, except as otherwise provided in subsection (9), not less than 5% of community revitalization incentives shall be awarded to neighborhood and commercial corridor food initiatives.

(7) When the board approves an application and determines the amount of community revitalization incentives, the board shall enter into a written agreement with the applicant. The written agreement must provide in a clear and concise manner all of the conditions imposed, including specific time frames, on the applicant to receive the community revitalization incentive under this chapter. The written agreement must provide for the secured status of any loan, repayment, and penalties if the applicant fails to comply with the provisions of the written agreement as determined by the board. The applicant shall agree to provide the data described in the written agreement that is necessary for the fund to report to the legislature under this chapter.

(8) Not more than 4% of the annual appropriation as provided by law from the 21st century jobs trust fund established in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.262, may be used for the purposes of administering the programs and activities authorized under this chapter. However, the fund and the fund board shall not use more than 3% of the annual appropriation for administering the programs and activities authorized under this chapter unless the fund board by a 2/3 vote authorizes the additional 1% for administration. The MEDC may charge actual and reasonable fees for costs associated with the community revitalization incentive authorized under this chapter. These fees are in addition to an amount of the appropriation used for administering the programs and activities authorized under this chapter.

(9) The application process for community revitalization incentives for neighborhood and commercial corridor food initiatives must provide that applications for neighborhood and commercial corridor food initiatives must be received

on or before June 1 for that fiscal year. If there are insufficient approved applications in a fiscal year for community revitalization incentives for neighborhood and commercial corridor food initiatives, then the remaining allocated funds may be used for community revitalization incentives that are not for neighborhood and commercial corridor food initiatives as determined by the board. In addition, a new neighborhood and commercial corridor food initiative, as determined by the board, is not eligible for a community revitalization incentive if it is located within 1 mile of an existing retail supermarket, grocery store, or produce market, as determined by the board, that offers unprocessed USDA-inspected meat and poultry products or meat products that carry the USDA organic seal, fresh fruits and vegetables, and dairy products for sale to the public.

(10) The legislature finds and declares that funding authorized under this section is intended to encourage diversification of the economy, to encourage capital investment in this state, to promote the creation of qualified new jobs in this state, and to promote the investment in brownfield and historic preservation projects that reclaim previously used property that is less likely to be revitalized without the investment.

CHAPTER 8E

Sec. 90l. As used in this chapter:

(a) “Affiliate” means an entity that, directly or indirectly, through 1 or more intermediaries, controls, is controlled by, or is under common control with another entity. For the purposes of this subdivision, an entity is controlled by another entity if the controlling entity holds, directly or indirectly, the majority voting or ownership interest in the controlled entity or has control over the day-to-day operations of the controlled entity by contract or law.

(b) “Closing date” means the date on which a rural jobs and capital investment fund has received a grant, loan, or other type of economic assistance.

(c) “Earned job factor” means an amount equal to \$7,500.00 for factor 1 jobs with an hourly wage rate of at least 125% of the federal minimum wage, \$15,000.00 for factor 2 jobs with an hourly wage rate of at least 150% of the federal minimum wage, \$25,000.00 for factor 3 jobs with an hourly wage rate of at least 200% of the federal minimum wage, and \$35,000.00 for factor 4 jobs with an hourly wage rate of at least 125% of the federal minimum wage and employ veterans, senior citizens, ex-offenders, citizens with disabilities, or any citizen concurrently in a Michigan department of health and human services assistance program.

(d) “Full-time equivalent employees” means 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.

(e) “Growth investment” means any capital or equity investment in a qualified business or any loan to a qualified business with a stated maturity at least 1 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 rural jobs and capital investment fund obtains an affidavit from the president or chief executive officer or equivalent position of the qualified business attesting that the qualified business sought and was denied similar financing from a commercial bank.

(f) “Investment authority” means the amount stated on the certificate under section 90m certifying the rural jobs and capital investment fund. A rural jobs and capital investment fund’s investment authority shall be composed of equal amounts of grants, loans, or other types of economic assistance by the fund and private contributions.

(g) “New full-time equivalent employees” means the number of jobs performed by an individual who is employed for consideration for at least 35 hours of work each week based in this state and for whom the company, an employee leasing company, or a professional employer organization on behalf of the company, or other entity authorized under this act, withholds income and United States Social Security taxes.

(h) “Principal business operations” means the operations of a business are located at the place or places where at least 60% of its employees work or where employees that are paid at least 60% of its payroll work. A business that has agreed to relocate or hire new employees using the proceeds of a growth investment to establish its principal business operations in a qualified rural local governmental unit in the state shall be considered to have its principal business operations in this new location provided it satisfies this definition within 180 days after receiving the growth investment, unless the fund agrees to a later date. A business located in this state that has agreed to hire new employees in a qualified rural local governmental unit using the proceeds of a growth investment to establish its principal business operations in that qualified rural local governmental unit shall be considered to have its principal business operations in a qualified rural local governmental unit provided it hires the necessary employees within 180 days after receiving the growth investment or a later date, if agreed to by the fund.

(i) “Private contributions” means an investment of cash in a rural jobs and capital investment fund to match dollar-for-dollar the grants, loans, or other types of economic assistance up to the investment authority of the rural jobs and capital investment fund. A rural jobs and capital investment fund’s private contributions shall be composed of not less than 10% of equity investments.

(j) “Qualified business” means an operating business that, at the time of the initial investment in the business by a rural jobs and capital investment fund, 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 fund determines that the investment will be beneficial to the rural area, the economic growth of this state, and the industry is not assigned a North American Industry Classification System code within sector 51.

(k) "Qualified rural local governmental unit" means a county in this state with a population of 225,000 or less.

(l) "Repayment amount" means an amount equal to 50% of a rural jobs and capital investment fund's investment authority, minus the sum of the product of new full-time equivalent employees reported to the fund for each of the rural jobs and capital investment fund's annual reports submitted pursuant to section 90p and the appropriate earned job factor rate.

(m) "Rural jobs and capital investment fund" means an entity approved by the fund under section 90m that meets all of the following:

(i) The entity or its affiliate meets all of the following:

(A) Is a rural business investment company under 7 USC 2009cc or a small business investment company under 15 USC 68.

(B) Is registered as an investment adviser under 15 USC 80b-1 to 80b-21.

(C) Is regulated by the Securities and Exchange Commission.

(ii) As of the date of the application, the entity or its affiliates have invested at least \$100,000,000.00 in nonpublic companies located in counties throughout the United States with a population less than 50,000.

(iii) 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 at least \$100,000,000.00.

Sec. 90m. (1) Beginning 90 days after the effective date of the amendatory act that added this chapter, and in each subsequent year through 2029, the fund shall accept applications for approval as a rural jobs and capital investment fund. The application shall include all of the following:

(a) The total investment authority sought by the applicant.

(b) A copy of the applicant's license showing that the entity or its affiliate is a rural business investment company under 7 USC 2009cc or a small business investment company under 15 USC 68.

(c) Evidence that as of the date of the application, the entity or its affiliates have invested at least \$100,000,000.00 in nonpublic companies located in counties throughout the United States with a population less than 50,000.

(d) Evidence that 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 at least \$100,000,000.00.

(e) A nonrefundable application fee of \$10,000.00.

(2) The fund shall make application determinations within 60 business days from the receipt of an administratively complete application as determined by the fund, in the order in which the applications are received. The fund shall consider applications received on the same day to have been received simultaneously. The fund shall not approve more than \$30,000,000.00 in investment authority in a calendar year, through 2029. If requests for investment authority received simultaneously would result in the limitation provided in this subsection being exceeded, the fund shall proportionally allot the investment authority and grants, loans, or other types of economic assistance among the approved applications. Upon approval of an application, the fund and the rural jobs and capital investment fund shall execute a written agreement setting forth the terms and conditions of the grants, loans, or other types of economic assistance.

(3) The fund may deny an application submitted under this section only for the following reasons:

(a) The applicant does not satisfy all the criteria described in this section.

(b) The fund has already approved the maximum amount of investment authority allowed under this section.

(4) If the fund denies an application, the applicant may provide additional information to the fund within 5 days of the notice of denial. The fund shall review and reconsider the application and additional information within 30 days. A reconsidered application shall retain the original date of receipt provided under this section for purposes of priority.

(5) A rural jobs and capital investment fund shall do all of the following:

(a) Within 60 days after receiving the approval issued under this section, collect private contributions equal to 50% of the rural jobs and capital investment fund's investment authority.

(b) Within 65 days after receiving the approval issued under this section, send to the fund documentation sufficient to prove that the amounts described in subdivision (a) have been collected.

(6) If the rural jobs and capital investment fund fails to fully comply with subsection (5), the rural jobs and capital investment fund's approval is forfeited, and the fund shall first award the corresponding investment authority to existing applicants who received investment authority lower than the amount requested under this section and then to new applicants.

(7) The fund shall disperse the grants, loans, or other types of economic assistance to the rural jobs and capital investment fund upon receipt and approval of the documentation described in subsection (5)(b) within 21 business days.

Sec. 90n. (1) The rural jobs and capital investment creation fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the rural jobs and capital investment creation fund. The state treasurer shall direct the investment of the rural jobs and capital investment creation fund. The state treasurer shall credit to the rural jobs and capital investment creation fund interest and earnings from rural jobs and capital investment creation fund investments.

(3) Money in the rural jobs and capital investment creation fund at the close of the fiscal year shall remain in the rural jobs and capital investment creation fund and shall not lapse to the general fund.

(4) The fund shall be the administrator of the rural jobs and capital investment creation fund for auditing purposes.

(5) The fund shall expend money from the rural jobs and capital investment creation fund, upon appropriation, only to make grants, loans, or other types of economic assistance to rural jobs and capital investment funds in this state.

Sec. 90o. (1) The fund shall demand immediate repayment of the grants, loans, or other types of economic assistance issued under this chapter if any of the following occurs with respect to the rural jobs and capital investment fund before it is certified to exit the program as provided in this chapter:

(a) The rural jobs and capital investment fund does not invest all its investment authority in growth investments in this state within 3 years of the closing date with 100% of its investment authority invested in growth investments in qualified businesses with principal business operations located in qualified rural local governmental units.

(b) The rural jobs and capital investment fund, after satisfying subdivision (a), fails to maintain growth investments at the levels required by subdivision (a) until the sixth anniversary of the closing date. For the purposes of this subdivision, an investment is maintained even if the investment is sold or repaid so long as the rural jobs and capital investment fund reinvests an amount equal to the capital returned or recovered by the rural jobs and capital investment fund from the original investment, exclusive of any profits realized, in other growth investments in this state within 12 months of the receipt of that capital. Amounts received by a rural jobs and capital investment fund pursuant to periodic repayments shall be treated as continually invested in growth investments if the amounts are reinvested in 1 or more growth investments by the end of the following calendar year. A rural jobs and capital investment fund is not required to reinvest capital returned from growth investments after the fifth anniversary of the closing date, and those growth investments shall be considered held continuously by the rural jobs and capital investment fund through the sixth anniversary of the closing date.

(c) The rural jobs and capital investment fund, before exiting the program in accordance with this chapter, makes a distribution or payment that results in the rural jobs and capital investment fund having less than 100% of its investment authority invested in growth investments in this state or available for investment in growth investments and held in cash and other marketable securities.

(d) The rural jobs and capital investment fund makes a growth investment in a qualified business that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest, makes a loan to, or makes an investment in the rural jobs and capital investment fund, an affiliate of the rural jobs and capital investment fund, or an investor in the rural jobs and capital investment fund. This section does not apply to investments in public-traded securities. For purposes of this subdivision, a rural jobs and capital investment fund will not be considered an affiliate of a business solely because of its growth investment.

(e) The rural jobs and capital investment fund invests in any industry assigned a North American Industry Classification System code within sector 51.

(2) No more than \$5,000,000.00 in growth investments in a qualified business, including growth investments in affiliates of the qualified business, shall count toward the requirements of subsection (1)(a) and (b).

(3) Before demanding repayment under this section, the fund shall notify the rural jobs and capital investment fund of the reasons for the pending repayment. The rural jobs and capital investment fund shall have 90 days from the date the notice was dispatched to correct any violation outlined in the notice to the satisfaction of the fund and avoid repayment of the grants, loans, or other types of economic assistance.

Sec. 90p. (1) A rural jobs and capital investment fund shall submit an annual report to the fund on or before the last day of February of each year until the rural jobs and capital investment fund has exited the program in accordance with this chapter. The annual report shall provide documentation as to the rural jobs and capital investment fund's growth investments and include all of the following:

(a) A bank statement evidencing each growth investment.

(b) 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.

(c) The number of new full-time equivalent employees and the corresponding earned job factor at the qualified business in this state.

(d) The number of full-time equivalent employees at the qualified business on the date of receipt of the initial growth investment in this state.

(e) Any other information required by the fund.

(2) Within 60 days of receipt of an annual report, the fund shall provide written confirmation to the rural jobs and capital investment fund of the new full-time equivalent employees the rural jobs and capital investment fund has been credited for that year.

(3) By the fifth business day after the third anniversary of the closing date, a rural jobs and capital investment fund shall submit a report to the fund evidencing its compliance with the investment requirements of this chapter.

(4) The fund may adopt rules necessary to implement this chapter.

(5) The fund shall submit an annual report to each house of the legislature on or before April 1, 2020. The annual report shall include all of the following:

(a) The name and number of all the rural jobs and capital investment funds approved to participate in the program.

(b) The amount of investment authority awarded to each rural jobs and capital investment fund.

(c) Any investments made by the rural jobs and capital investment funds, including the location of the investments.

(d) Whether the rural jobs and capital investment funds are in compliance with this chapter.

(e) Any other information required by the fund.

Sec. 90q. (1) The fund shall charge an annual fee of 0.5% of the investment authority authorized for that rural jobs and capital investment fund.

(2) The initial annual fee is due and payable to the fund within 1 business day of receipt of a grant, loan, or other type of economic assistance. After the initial annual fee, an annual fee is due and payable to the fund on or before that last day of February of each year.

(3) An annual fee is not required once a rural jobs and capital investment fund has exited the program in accordance with this chapter.

Sec. 90r. (1) On or after the sixth anniversary of the closing date, a rural jobs and capital investment fund may exit the program and no longer be subject to the provisions of this chapter. The fund shall respond to the application within 30 days of receipt and include a calculation of any repayment amount due.

(2) No distributions other than those permitted by section 90o(1)(b) may be made with respect to the equity interests of the rural jobs and capital investment fund more than the sum of the amount of equity capital invested into the rural jobs and capital investment fund 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 rural jobs and capital investment fund until the rural jobs and capital investment fund has made payments to the fund equal to the repayment amount.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved

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Governor