

Legislative Analysis



STRATEGIC OUTREACH AND ATTRACTION RESERVE FUND

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5602 (proposed substitute H-1)
Sponsor: Rep. Jack O'Malley

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5603 (proposed substitute H-1)
Sponsor: Rep. Julie Calley

House Bill 5604 (proposed substitute H-1)
Sponsor: Rep. Ben Frederick

Committee: Government Operations
Complete to 12-8-21

SUMMARY:

House Bill 5602 would create the Strategic Outreach and Attraction Reserve Fund in the Department of Labor and Economic Opportunity (LEO). House Bills 5603 and 5604 would create the Michigan Strategic Site Readiness Fund and the Critical Industry Fund, respectively, as separate accounts in the Jobs for Michigan Investment Fund in the Michigan Strategic Fund (MSF). The Michigan Strategic Site Readiness Fund would be used to provide economic assistance for certain manufacturing or commercial sites to attract and promote investment in the state. The Critical Industry Fund would provide investments to certain businesses to create new jobs or make capital investments. In addition to prescribing permitted uses for the new funds, the bills would provide considerations for making and evaluating fund investments, compliance criteria, modification procedures, and reporting requirements.

House Bill 5602 would amend the Michigan Trust Fund Act to create the Strategic Outreach and Attraction Reserve Fund in the Department of Labor and Economic Opportunity. The state treasurer would have to deposit into the fund money and other assets received from state appropriations or any other source and would direct the investment of money in the fund and deposit in the fund interest and earnings from those investments. LEO would be the administrator of the fund for auditing purposes. Money in the fund that is restricted at the close of a fiscal year would remain in the fund and not lapse to the general fund.

Money in the Strategic Outreach and Attraction Reserve Fund could be expended only pursuant to an appropriation or legislative transfer and only for either or both of the following purposes:

- For deposit into the Michigan Strategic Site Readiness Fund proposed by HB 5603.
- For deposit into the Critical Industry Fund proposed by HB 5604.

By March 15 each year, LEO would have to send to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature a report on the activities of the Strategic Outreach and Attraction Reserve Fund.

The bill is tie-barred to House Bill 4082, which means that it could not take effect unless House Bill 4082 were also enacted.

[House Bill 4082 would amend 1921 PA 2 to require the State Administrative Board to have legislative approval to make an inter-transfer of appropriations for a particular department or institution that would increase or decrease an appropriation by the greater of 3% or \$125,000 or would increase or decrease an appropriation by more than \$200,000 in the aggregate. The bill was passed by the House and is currently in the Senate Appropriations committee.]

MCL 12.252 and proposed MCL 12.254

House Bill 5603 would amend the Michigan Strategic Fund Act to create the Michigan Strategic Site Readiness Fund as a separate account within the Jobs for Michigan Investment Fund created within the Michigan Strategic Fund. The Michigan Strategic Site Readiness Fund would include money appropriated to, transferred to, or deposited in the fund from the Strategic Outreach and Attraction Reserve Fund (proposed by House Bill 5602). Money in the fund at the close of a fiscal year that is not allocated or otherwise committed would revert to the Strategic Outreach and Attraction Reserve Fund.

Permitted uses of the fund

MSF would have to spend money from the Michigan Strategic Site Readiness Fund only to provide grants, loans, investments, or other economic assistance to *eligible applicants* to conduct *eligible activities* for the purpose of creating investment-ready sites to attract and promote investment in the state for eligible activities on or related to *strategic sites* and *mega-strategic sites*. Money in the fund could not be used for administrative purposes.

Eligible applicant would mean an applicant that is one of the following:

- A political subdivision of the state, including, but not limited to, any of the following:
 - A county, city, village, township, or charter township.
 - An instrumentality of a county, city, village, township, or charter township.
 - A single purpose or multipurpose special district.
 - A single or purpose multipurpose public authority.
- A local economic development corporation or similar authority.
- A person who is the owner of the site for which the improvements are proposed but is not that site's *end user*, as long as the person applies jointly with an applicant described above.
- The person that is or will be the end user of a site for which a specific person has been identified as the end user.

Eligible activities would mean one or more of the following with respect to a site that is the subject of an application under the bill:

- Land acquisition and assembly.
- Site preparation and improvement.
- Infrastructure improvements that directly benefit the site, such as transportation infrastructure, water and wastewater infrastructure, and utilities necessary to service the site.
- Demolition, construction, alteration, rehabilitation, or improvement of buildings on the site.
- Environmental remediation.
- Architectural, engineering, surveying, and similar professional fees.

End user would mean the person that will, directly or through an affiliate, establish and operate the manufacturing or other commercial enterprise that constitutes the improved site's end use.

Strategic site would mean a publicly or privately owned site that is used for manufacturing or another commercial use or will be used for those purposes after a proposed acquisition.

Mega-strategic site would mean a strategic site that is at least 500 acres in size.

The MSF board of directors could not disburse funds from the Michigan Strategic Site Readiness Fund for a grant, loan, investment, or other economic assistance to an eligible applicant if either of the following apply:

- That applicant has not fully repaid all money subject to clawback or required to be repaid under a specific repayment provision in a written agreement under the act.
- That applicant is in default on any grant, loan, investment, or other economic assistance made or guaranteed by the state.

Money paid to MSF under a clawback or specific repayment provision for a grant, loan, investment, or other economic assistance under the bill would have to be deposited in the Strategic Outreach and Attraction Reserve Fund proposed by HB 5602.

Application, approval, and compliance process

The *Michigan Strategic Site Readiness Fund* would have to provide for a detailed application, approval, and compliance process that is also published and available on the MSF website. This process would have to provide for at least all of the following:

- An eligible applicant may apply for a grant, loan, investment, or other economic assistance in a form and manner determined by MSF.
- MSF must establish separate application criteria for mega-strategic sites and other strategic sites, and for sites that have a specifically identified end user and those that do not.

General criteria for consideration

MSF would have to consider and document at least all of the following criteria, to the extent reasonably applicable as determined by the MSF board, before entering into a written agreement for a grant, loan, investment, or other economic assistance as described below:

- The importance of the project or eligible activities to the community where they are located.
- Whether the project will stimulate additional revitalization of Michigan and the community where it is located.
- The amount of local financial and community support for the project.
- The amount of any other economic assistance or support provided by the state for the project.
- The amount of any other economic assistance or support provided by the federal government for the project, including federal appropriations or tax credits.
- The amount of any private funds or investments for the project, including the applicant's own investments.

- The applicant’s financial need for a grant, loan, investment, or other economic assistance under the bill.
- The extent to which vacant buildings and historic resources will be reused and blighted property will be redeveloped.
- The creation of new jobs in Michigan and at the project location.
- Whether and in what ways the project is financially and economically sound.
- Whether and in what ways the project converts abandoned public buildings to private use.
- Whether and in what ways the project promotes sustainable development.
- Whether and in what ways the project involves the rehabilitation of a historic resource.
- Whether and in what ways the project addresses areawide redevelopment.
- Whether and in what ways the project addresses underserved markets of commerce.
- The extent and level of environmental contamination.
- Whether and in what ways the project will compete with or affect existing Michigan businesses in the same industry.
- Whether and in what ways the project’s proximity to rail and utility infrastructure will affect the performance of the project and will maximize energy and logistics needs in Michigan and in the community where it is located.
- The risk that the project, products, and investments will become obsolete in the future.
- The overall return on investment to the state.
- Whether the proposed strategic site or mega-strategic site is incorporated into a strategic plan of a political subdivision of the state.
- Any other criteria approved by the MSF board that are specific to an individual project and are consistent with the intent and findings of the bill. (The bill contains a legislative finding that funding provided under the bill is for a public purpose and serves the health, safety, and general welfare of the residents of Michigan.)

Additional consideration criteria for certain cases

In addition to the above general considerations, MSF would have to consider and document at least all of the following criteria, to the extent reasonably applicable as determined by the MSF board, in determining whether to approve a grant, loan, investment, or other economic assistance for a strategic site for which an end user has not been specifically identified:

- The degree to which the proposed site demonstrates a high level of competitiveness for future development, considering and documenting all of the following:
 - Whether the proposed site is currently assembled.
 - Whether the proposed site is under site control.
 - Whether the proposed site is of a size, configuration, location, and condition that makes it substantially ready for marketing and competitive for development upon completion of the proposed grant, loan, investment, or other economic assistance and demonstrated matching contributions.
- Whether the proposed investment will result in the elimination of blight and the remediation of environmental contamination.
- The degree of local matching contributions.
- Whether the investment will promote geographic equity in the distribution of funds between different areas of the state.
- Whether the eligible applicant has pursued all available cost-containment measures.

In addition to the above general considerations, MSF would have to consider and document at least all of the following criteria, to the extent reasonably applicable as determined by the MSF board, in determining whether to approve a grant, loan, investment, or other economic assistance for a mega-strategic site for which an end user has not been specifically identified:

- The degree to which the proposed site demonstrates a high level of competitiveness for future development, considering and documenting all of the following:
 - Whether the proposed site is currently assembled.
 - Whether the proposed site is under site control.
 - Whether the proposed site is of a size, configuration, location, and condition that makes it substantially ready for marketing and competitive for development upon completion of the proposed grant, loan, investment, or other economic assistance and demonstrated matching contributions.
- Whether the proposed site is supported by a strategic analysis that supports the demand for that site.
- The feasibility of proposed land acquisition.
- Utility and transportation availability and the feasibility of necessary utility and transportation improvements.
- Workforce availability and training capability.
- Environmental and topographical conditions and the feasibility of necessary site improvements to address those conditions.

In addition to the above general considerations, MSF would have to consider and document at least all of the following criteria, to the extent reasonably applicable as determined by the MSF board, in determining whether to approve a grant, loan, investment, or other economic assistance for a strategic site for which an end user has been specifically identified:

- The strategic economic importance of the project to Michigan and the community where it is located.
- Whether the financial assistance is needed to secure the project in the state.
- The degree to which the project is a priority for the local governmental unit or local economic development corporation in the jurisdiction where the site is located.
- The level of new job creation.
- Whether the jobs being created equal or exceed the average wage for the county where the project is located.
- The level of capital investment.
- The evidence of the end user's commitment to the site.

Terms included in agreement

If MSF determines to provide a grant, loan, investment, or other economic assistance from the Michigan Strategic Site Readiness Fund to an eligible applicant after considering the above criteria, MSF would have to enter into a written agreement with the applicant that clearly and concisely includes all of the terms and conditions relating to the grant, loan, investment, or other economic assistance as determined and documented by the MSF board, including at least all of the following:

- Specific dates and benchmarks for the eligible applicant to receive a grant, loan, investment, or other economic assistance, including conditions for the disbursement of funds in installments.

- For a grant, loan, investment, or other economic assistance provided to an end user of the site, a clawback and specific repayment provision if the person fails to comply with the written agreement.
- A provision that all money subject to a clawback or repayment provision must be paid within 30 days of notification by MSF. Amounts not paid within 30 days would be subject to a penalty of 1% per month, prorated on a daily basis.
- A provision that if the applicant files for bankruptcy, the state is a secured creditor and must have first priority over other creditors if the applicant is in default under the written agreement to the extent allowed by law.
- An audit provision that requires MSF to verify that the established benchmarks for the project have been met.

In making an award for a mega-strategic site that does not have a specifically identified end user, MSF would have to prepare, in collaboration with the eligible applicant, a mega-strategic site investment strategy and spending plan that details the sequence and cost of anticipated investments in the selected mega-strategic site, the benchmarks for bringing the mega-strategic site to a marketable condition, and the marketing strategy for the mega-site. Each plan would have to have the objective of establishing a certified mega-strategic site under a nationally recognized third-party certification program.

Notice requirements for modifications

If MSF receives a request to modify an existing written agreement for a grant, loan, investment, or other economic assistance under the bill, MSF would have to provide a copy of the requested modification to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature within five business days after receiving it, together with the specific provisions to be modified and the rationale for considering the modification.

Before modifying an existing written agreement for a grant, loan, investment, or other economic assistance, MSF would have to give notice of the proposed amendments and publish them on the MSF's website at least one business day before a public hearing on the proposed amendments.

If MSF approves and modifies a written agreement under these provisions, it would have to provide a copy of that amended written agreement to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature within one business day of the modification.

Inventory of development-ready sites

Notwithstanding any other provision of the bill, MSF could make grants and provide technical assistance from the Michigan Strategic Site Readiness Fund to local economic development corporations for the purpose of creating an inventory of development-ready sites. The inventory would have to use nationally recognized criteria to identify the readiness of those sites for investment. MSF would have to maintain a comprehensive inventory of those sites on its website that would have to include an interactive and user-friendly listing of all local and state development-ready sites and any related pictures, maps, or other documentation.

Reports and disclosures

At least every three months, MSF would have to post on the website of the Michigan Economic Development Corporation the name of the eligible applicants, the location of each site that received a grant, loan, investment, or other economic assistance in that period, and the amount of the grant, loan, investment, or other economic assistance.

By March 15 each year, MSF would have to send to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature a report on the activities of the Michigan Strategic Site Readiness Fund. The report would have to include all of the following:

- A list of eligible applicants that received a grant, loan, investment, or other economic assistance.
- The type of project or eligible activities approved for a grant, loan, investment, or other economic assistance.
- The amount and type of each award.
- The duration of the grant, loan, investment, or other economic assistance.
- The amount of financial assistance other than state resources.
- Money or other revenue or property returned to the Strategic Outreach and Attraction Reserve Fund proposed by HB 5602, including any clawbacks and repayments due to a breach of the written agreement.

If MSF fails to send the report as required above on or before March 15, the MSF board could not disburse funds from the Michigan Strategic Site Readiness Fund for a grant, loan, investment, or other economic assistance under the bill until MSF sends the report as required.

The bill also would require MSF to include the activities of the Michigan Strategic Site Readiness Fund in the annual report it now submits to the individuals and entities described above.

The bill is tie-barred to House Bill 4082, which means that it could not take effect unless House Bill 4082 were also enacted. (See the summary of House Bill 5602 for a description of House Bill 4082.)

MCL 125.2009 and proposed MCL 125.2088t

House Bill 5604 would amend the Michigan Strategic Fund Act to create the Critical Industry Fund as a separate account within the Jobs for Michigan Investment Fund created within the Michigan Strategic Fund. The Critical Industry Fund would include money appropriated to, transferred to, or deposited in the fund from the Strategic Outreach and Attraction Reserve Fund (proposed by House Bill 5602). Money in the fund at the close of a fiscal year that is not allocated or otherwise committed would revert to the Strategic Outreach and Attraction Reserve Fund.

Permitted uses of the fund

MSF would have to spend money from the Critical Industry Fund only to provide *qualified investments* to *qualified businesses* for deal-closing, gap financing, or *other economic assistance* to create new *qualified jobs* or make capital investments, or both, as determined by the MSF board. Money in the fund could not be used for administrative purposes.

Qualified investment would mean a grant, loan, investment, or other economic assistance from the jobs account for a project subject to a written agreement with a qualified business under the bill, including a grant, loan, investment, or other economic assistance for the following:

- Creation of new qualified jobs, infrastructure improvements, other capital investments, or other assistance, such as an agreement providing for assistance through the Transportation Economic Development Fund (TEDF).¹
- Job training opportunities or workforce development and education, or both.

Qualified business would mean a business that is located in Michigan, that operates in Michigan, or that will locate or operate in Michigan as determined by MSF. A qualified business could include more than one business as determined by the MSF board.

Other economic assistance would mean any other form of assistance allowed under the Michigan Strategic Fund Act that is not a grant, a loan, or an investment.

Qualified job would mean a job performed by either of the following, as determined and verified by MSF:

- A Michigan resident whose state income taxes are withheld by an employer or by an employee leasing company or professional employer organization on behalf of the employer.
- A nonresident who is employed by a business at a project location that is located in Michigan.

The MSF board could not disburse funds from the Critical Industry Fund for a qualified investment to a qualified business if either of the following apply:

- That business has not fully repaid all money subject to clawback or required to be repaid under a specific repayment provision in a written agreement under the act.
- That business is in default on any grant, loan, investment, or other economic assistance made or guaranteed by the state.

Money paid to MSF under a clawback or specific repayment provision for a qualified investment under the bill would have to be deposited in the Strategic Outreach and Attraction Reserve Fund proposed by HB 5602.

Criteria for consideration

MSF would have to consider and document at least all of the following criteria, to the extent reasonably applicable as determined by the MSF board, before entering into a written agreement for a qualified investment as described below:

- The importance of the project to the community where it is located.
- Whether the project will stimulate additional revitalization of Michigan and the community where it is located.
- The amount of local financial and community support for the project.
- The applicant's financial need for a qualified investment from the fund.
- The extent to which vacant buildings and historic resources will be reused and blighted property will be redeveloped.

¹ About the TEDF: https://www.michigan.gov/mdot/0,1607,7-151-9621_17216_18230---,00.html

- The creation of new qualified jobs in Michigan and at the project location.
- The level of other public funds, such as the appropriation of federal or state funds and any federal or state tax credits.
- The level of any private funds, investments, or contributions into the project, including the business's own investments.
- Whether and in what ways the project is financially and economically sound.
- Whether and in what ways the project promotes sustainable development.
- Whether and in what ways the project involves the rehabilitation of a historic resource.
- Whether and in what ways the project addresses areawide redevelopment and its overall economic benefit to the existing chain of supply.
- The extent and level of environmental contamination.
- Whether and in what ways the project will compete with or affect existing Michigan businesses in the same industry.
- Whether and in what ways the project's proximity to rail and utility infrastructure will affect the performance of the project and will maximize energy and logistics needs in Michigan and in the community where it is located.
- The risk that the project, products, and investments will become obsolete in the future.
- The overall return on investment to the state.
- Any other criteria approved by the MSF board that are specific to an individual project and are consistent with the intent and findings of the bill. (The bill contains a legislative finding that funding provided under the bill is for a public purpose and serves the health, safety, and general welfare of the residents of Michigan.)

Terms included in agreement

If MSF determines to award a qualified investment from the Critical Industry Fund to a qualified business after considering the above criteria, MSF would have to enter into a written agreement with the business that clearly and concisely includes all of the terms and conditions relating to the investment as determined and documented by the MSF board, including at least all of the following:

- Specific time frames and benchmarks to be met before the business receives a disbursement in installments from the fund pursuant to the investment.
- Specific terms concerning the required creation of new qualified jobs in Michigan and at the project location, including measurable outcomes, proration of payments for partial performance, clawback and specific repayment provisions for breach of the agreement or failure to meet measurable outcomes.
- Specific penalties for noncompliance with the written agreement as determined by MSF.
- A provision that all money subject to a clawback or repayment provision must be paid within 30 days of notification by MSF. Amounts not paid within 30 days would be subject to a penalty of 1% per month, prorated on a daily basis.
- A provision that if the business files for bankruptcy, the state is a secured creditor and must have first priority over other creditors if the business is in default under the written agreement.
- A provision that the business will provide the data described in the written agreement that are necessary for MSF to report to the legislature as required by the bill.

Notice requirements for modifications

If MSF receives a request to modify an existing written agreement for a qualified investment under the bill, MSF would have to provide a copy of the requested modification to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature within five business days after receiving it, together with the specific provisions to be modified and the rationale for considering the modification.

Before modifying an existing written agreement for a qualified investment, MSF would have to give notice of the proposed amendments and publish them on the MSF's website at least one business day before a public hearing on the proposed amendments.

If MSF approves and modifies a written agreement under these provisions, it would have to provide a copy of that amended written agreement to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature within one business day of the modification.

Determination of fair exchange of value

In making a determination as to whether an approved qualified investment represents a fair exchange of value for value, MSF could consider the total value to Michigan of the qualified investment and the best interests of the state, including any positive economic impact to the state likely to be generated by the qualified business under the written agreement, especially economic impact resulting in the location in the state of a business facility with a high economic impact, increased capital investment in the state, and the creation of new qualified jobs in the state.

Reports

By March 15 each year, MSF would have to send to the governor, the House and Senate Fiscal Agencies, the Clerk of the House, the Secretary of the Senate, and each member of the legislature a report on the activities of the Critical Industry Fund. The report would have to include all of the following:

- A list of qualified businesses that received a qualified investment.
- The type of project or product approved for a qualified investment.
- The amount and type of qualified investment.
- For each separate form of qualified investment, all of the following:
 - The number of new qualified jobs committed or projected when the qualified investment was applied for.
 - The actual number of new qualified jobs created that are not temporary employees.
 - The average annual salary of the new qualified jobs created that are not temporary employees.
 - The duration of the qualified investment.
 - The amount of financial assistance other than state resources.
 - Money or other revenue or property returned to the Strategic Outreach and Attraction Reserve Fund proposed by HB 5602, including any clawbacks and repayments due to a breach of the written agreement.

If MSF fails to send the report as required above on or before March 15, the MSF board could not disburse funds from the Critical Industry Fund for a qualified investment until MSF sends the report as required.

The bill also would require MSF to include the activities of the Critical Industry Fund in the annual report it now submits to the individuals and entities described above.

The bill is tie-barred to House Bill 4082, which means that it could not take effect unless House Bill 4082 were also enacted. (See the summary of House Bill 5602 for a description of House Bill 4082.)

MCL 125.2009 and proposed MCL 125.2088s

FISCAL IMPACT:

Collectively, the bills would have no direct fiscal impact on state or local government. While the bills create funds and the statutory framework associated with the funds, funding for the purposes associated with the funds would be subject to annual legislative appropriations. The bills include no specific revenue source for any of the funds established under the bills.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.