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BILL ANALYSIS

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House Bill 5602 (Substitute H-1 as passed by the House)
House Bill 5603 (Substitute H-1 as passed by the House)
House Bill 5604 (Substitute H-1 as passed by the House)
Sponsor: Representative Jack O'Malley (H.B. 5602)
Representative Julie Calley (H.B. 5603)
Representative Ben Frederick H.B. 5604)
House Committee: Government Operations (discharged)
Senate Committee: Committee of the Whole

Date Completed: 12-14-21

CONTENT

House Bill 5602 (H-1) would amend the Michigan Trust Fund Act to do the following:

- Create the "Strategic Outreach and Attraction Reserve Fund" in the Department of Labor and Economic Opportunity (LEO).
- Require money to be spent from the Strategic Outreach and Attraction Reserve Fund only for deposit into the Michigan Strategic Site Readiness Fund or the Critical Industry Fund, which House Bills 5603 (H-1) and 5604 (H-1) would create, respectively.
- Require LEO, by March 15 of each year, to submit a report to specified entities and individuals on the Strategic Outreach and Attraction Reserve Fund's activities.

House Bill 5603 (H-1) would amend the Michigan Strategic Fund Act to do the following:

- Create the "Michigan Strategic Site Readiness Fund" as a separate account within the Jobs for Michigan Investment Fund ("Investment Fund").
- Require Michigan Strategic Fund (MSF) to spend money from the Michigan Strategic Site Readiness Fund to provide financial assistance for eligible applicants to conduct eligible activities to create investment-ready sites in Michigan.
- Require the Michigan Strategic Site Readiness Fund to provide for a detailed application, approval, and compliance process, and prescribe process parameters.
- Require the MSF, before approving an application for financial assistance, to consider and document specified general and project-specific criteria.
- Require the MSF, if it determined to provide economic assistance to an eligible applicant after consideration of the prescribed factors, to enter into an agreement with the applicant, and prescribe provisions that would have to be included in the agreement.
- Prescribe procedures for the modification of an existing economic assistance agreement.

- **Require the MSF, by March 15 of each year, to submit a report to specified entities and individuals on the Michigan Strategic Site Readiness Fund's activities, and, if the MSF failed to submit the report, prohibit the MSF from disbursing money from that Fund until the report was submitted.**
- **State that the Legislature finds and declares that funding provided under the bill is for a public purpose and serves the health, safety, and general welfare of the residents of the State.**

House Bill 5604 (H-1) would amend the Michigan Strategic Fund Act to do the following:

- **Create the "Critical Industry Fund" as a separate account within the Investment Fund.**
- **Require the MSF 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.**
- **Require the MSF to consider and document specified criteria before entering into an agreement for a qualified investment.**
- **Require the MSF, if it determined to award a qualified investment to a qualified business, to enter into an agreement with the qualified business, and prescribe provisions that would have to be included in an agreement.**
- **Prescribe procedures for the modification of an existing qualified investment agreement.**
- **Require the MSF, by March 15 of each year, to submit a report to specified entities and individuals on the Critical Industry Fund's activities, and, if the MSF failed to submit the report, prohibit the MSF from disbursing money from that Fund until the report was submitted.**
- **State that the Legislature finds and declares that funding provided under the bill is for a public purpose and serves the health, safety, and general welfare of the residents of the State.**

Each bill is tie-barred to House Bill 4082, which would limit the power of the State Administrative Board to transfer funding between appropriations line items.

House Bill 5602 (H-1)

The bill would amend the Michigan Trust Fund Act to create the Strategic Outreach and Attraction Reserve Fund. The State Treasurer would have to deposit money and other assets received from State appropriations or from any other source into the Fund. The State Treasurer would have to direct the investment of Fund money and credit interest and earnings from the investments to the Fund. The Department of Labor and Economic Opportunity would be the administer of the Fund for auditing purposes. Money in the Fund that was restricted at the close of the fiscal year would have to remain in the Fund and would not lapse to the General Fund.

Money would have to be spent from the Strategic Outreach and Attraction Reserve Fund only under an appropriation as provided by law or by a legislative transfer under the Management and Budget Act, and only for deposit into the Critical Industry Fund or the Michigan Strategic Site Readiness Fund.

By March 15 each year, LEO would have to transmit to each member of the Legislature, the Governor, the Clerk of the House of Representatives, the Secretary of the Senate, and the House and Senate Fiscal Agencies a report on the Fund's activities.

House Bill 5603 (H-1)

Definitions

"Eligible applicant" would mean an applicant that is one or more of the following: i) a political subdivision of Michigan, including a county, city, village, township, charter township, or instrumentality of a county, city, village, township, or charter township; single or multipurpose special district; or single or multipurpose public authority; ii) a local economic development corporation or similar entity; iii) a person who is the owner of the site for which the improvements are proposed, but who is not the end user of that site, provided that that person must apply jointly with an applicant under i) or ii); or iv) in the case of an application for a site for which a specific person has been identified as the end user, the person that is or will be the end user of that site.

"Eligible activities" would mean, with respect to a site that is the subject of an application under this section, one or more of the following: i) land acquisition and assembly; ii) site preparation and improvement; iii) infrastructure improvements that directly benefit the site, including transportation infrastructure, water and wastewater infrastructure, and utilities necessary to service the site; iv) any demolition, construction, alteration, rehabilitation, or improvement of buildings on the site; v) environmental remediation; or vi) architectural, engineering, surveying, and similar professional fees.

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

"Strategic site" would mean a site, whether public or privately owned, that is, or subsequent to a proposed acquisition will be, used for manufacturing or other commercial use. "Mega-strategic site" would mean a strategic site that is at least 500 acres in size.

Michigan Strategic Site Readiness Fund

The bill would amend the Michigan Strategic Fund Act to create the Michigan Strategic Site Readiness Fund ("Fund") as a separate account within the Investment Fund. The Fund would include money appropriated to, transferred to, or deposited in the Fund from the Strategic Outreach and Attraction Reserve Fund as provided by law. The MSF Board could not disburse money from the Fund for a grant, loan, investment, or other economic assistance to an eligible applicant if the applicant had not repaid all money subject to clawback or required to be repaid under a specific repayment provision in an agreement under the Act or if the applicant were in default on a grant, loan, investment, or other economic assistance made or guaranteed by the State. All money paid to the MSF under a clawback or specific repayment provision for economic assistance would have to be deposited in the Strategic Outreach and Attraction Reserve Fund. Money in the Fund could not be used for administrative purposes; money in the Fund at the close of the fiscal year that was not allocated or otherwise committed would have to revert back to the Strategic Outreach and Attraction Reserve Fund.

Disposition of Money & Application Process

The MSF would have to spend money from the Fund only to provide grants, loans, investments, and other economic assistance for eligible applicants to conduct eligible activities for the purpose of creating investment-ready sites to attract and promoted investment in Michigan for eligible activities on, or related to, strategic sites and mega-strategic sites. The Fund would have to provide for a detailed application, approval, and compliance process that

would have to be published and available on the MSF's website. The application, approval, and compliance process would have to provide, at a minimum, for all of the following:

- An eligible applicant could apply for a grant, loan, investment, or other economic assistance in a form and manner determined by the MSF.
- The MSF would have to establish separate application criteria for mega-strategic sites and for strategic sites that were not mega-strategic sites and for sites that had, and did not have, a specifically identified end user.

Economic Assistance Criteria

Before approving an application, the MSF would have to consider and document, at least all of the following criteria to the extent reasonably applicable as determined by the MSF to the type of project proposed before entering into an agreement for economic assistance:

- The importance of the project or eligible activities to the community in which it would be located.
- If the project would act as a catalyst for additional revitalization of the community in which it would be located and the State.
- The amount of local community and financial support for the project.
- The amount of any other economic assistance or support provided by the State or Federal government for the project.
- The amount of any private funds or investments for the project including the applicant's own investments in the project.
- The applicant's financial need for a grant, loan, investment, or other economic assistance.
- The extent of reuse of vacant buildings, public or private, reuse of historic resources, and redevelopment of blighted property.
- Creation of new jobs at the project location and within Michigan.
- Whether and how the project would be financially and economically sound.
- Whether and how the project converted abandoned public buildings to private use.
- Whether and how the project promoted sustainable development.
- Whether and how the project involved the rehabilitation of a historic resource.
- Whether and how the project addressed areawide redevelopment and underserved markets.
- The level and extent of environmental contamination.
- Whether and how the project would compete with or affect existing Michigan businesses within the same industry.
- Whether and how the project's proximity to rail and utility would affect the project's performance and maximize energy and logistics needs in the community in which it would be located and in Michigan.
- The risk of obsolescence of the project, products, and investments in the future.
- The overall return on investment to Michigan.
- Whether the proposed strategic site or mega-strategic site would be incorporated into a strategic plan of a political subdivision of the State.
- Any other additional criteria approved by the MSF Board that were specific to each individual project and were consistent with the findings and intent of the bill.

In addition to these factors, the MSF would have to consider and document criteria specified in the bill in determining whether to approve economic assistance for a strategic site for which an end use had not been identified, a mega-strategic site for which an end user had not been identified, or a project for which an end user had been identified.

Economic Assistance Agreement Provisions

If the MSF determined, after consideration of the above factors, to provide economic assistance from the Fund to an eligible applicant, it would have to enter into an agreement with the applicant that included all of the terms and conditions related to the assistance as determined and documented by the MSF Board, including the following:

- Specific dates and benchmarks for the eligible applicant to receive economic assistance, including conditions for the disbursement of funds in installments.
- For a grant, loan, investment, or other financial assistance provided to a person identified as the end user of the site, a clawback and specific repayment provision if the person failed to comply with the agreement.
- A provision that all money subject to clawback or required to be repaid under a specific repayment provision would have to be paid within 30 days after notification by the MSF; any amounts not paid within that 30-day period would be subject to a penalty of 1.0% per month, prorated on a daily basis.
- A provision that if the applicant filed for bankruptcy, the State would be a secured creditor and would have first priority over other creditors if the eligible applicant were in default under the agreement to the extent permitted by law.
- An audit provision that required the MSF to verify that the established benchmarks for the project had been met.

Modification of Existing Agreement

If the MSF received a request to modify an existing agreement for economic assistance, it would have to provide a copy of the requested modification to each member of the Legislature, the Governor, the Secretary of the Senate, the Clerk of the House of Representatives, and the Senate and House Fiscal Agencies within five business days after receiving the modification request. The notice would have to include the specific provision to be modified and rationale for considering modification. Before the MSF modified an existing agreement, it would have to give notice of the proposed amendments and post them on the MSF's website at least one day before a public hearing on the proposed amendments. If the MSF approved and modified an existing agreement, it would have to provide a copy of the amended agreement to all of the individuals and entities specified above within one business day after the modification.

Mega-Strategic Site Investment Strategy & Listings

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

The bill would require the MSF to post on its website or the Michigan Economic Development Corporation's website, at least every three months, the name of the eligible applicant or applicants, the location of each site that received economic assistance in that period, and the amount of the assistance.

Notwithstanding anything to the contrary, the MSF could make grants and could provide technical assistance from the Fund to local economic development corporations to create an

inventory of development-ready sites, provided that the inventory would have to use nationally recognized criteria to identify those sites for investment and that the MSF maintained an inventory of the sites on its website. The inventory would have to include in an interactive and user-friendly manner a listing of all development-ready sites and any pictures, maps, and other documentation related to those sites.

Required Report

By March 15 each year, the MSF would have to transmit to each member of the Legislature, the Governor, the Clerk of the House of Representatives, the Secretary of the Senate, and the House and Senate Fiscal Agencies a report on the Fund's activities. The report would have to include the following:

- A list of eligible applicants that received economic assistance.
- The type of project or eligible activities approved for an award.
- The amount, type, and duration of the award.
- The amount of other financial assistance other than State resources.
- Money or other revenue or property returned to the Fund, including clawbacks and repayments due to a breach of a written agreement.

If the Fund failed to transmit the report as required above, the MSF Board could not disburse money from the Fund for economic assistance until it transmitted the report as required.

MSF Report

The Michigan Strategic Fund Act requires the MSF to transmit an annual report of its activities to the individuals and entities listed above. Under the bill, this report also would have to include the activities of the Fund and the Critical Industry Fund (which House Bill 5604 (H-1) would create).

House Bill 5604 (H-1)

Definitions

"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. The term would include a grant, loan, investment, or other economic assistance for creation of new qualified jobs, infrastructure improvements, other capital investments, or other assistance, including an agreement providing for assistance via the Transportation Economic Development Fund. The term also would include a grant, loan, investment, or other economic assistance for job training opportunities or workforce development and education, or both. "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 business" would mean a business that is located in or operates in the State or will locate or will operate in this state as determined by the MSF Board. A qualified business could include more than one business as determined by the MSF Board.

"Qualified job" would mean a job performed by an individual who is a resident of the State whose Michigan income taxes are withheld by an employer, or an employee leasing company or professional employer organization on behalf of the employer, or by an individual who is not a resident of the State and is employed by a business at a project location that is located in the State, as determined and verified by the MSF.

Critical Industry Fund

The bill would create the Critical Industry Fund ("Fund") as a separate account within the Investment Fund. The Critical Industry Fund would include money appropriated to, transferred to, or deposited in the Fund as provided by law. Money in the Fund at the close of a fiscal year that was not allocated or otherwise committed would have to revert back to the Strategic Outreach and Attraction Reserve Fund.

MSF Duties; Critical Jobs Fund

The Fund would have to spend money from the 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. Fund money could not be used for administrative purposes. The MSF Board could not disburse money from the Fund for a qualified investment to a qualified business if that business had not fully repaid all money subject to a clawback or required to be repaid under a specific repayment provision as provided in an agreement under the Act or if that business were in default on any economic assistance made or guaranteed by the State. All money paid to the Fund under a clawback or repayment provision for a qualified investment would have to be deposited in the Strategic Outreach and Attraction Reserve Fund.

Investment Criteria

The MSF would have to consider and document at least all of the following criteria to the extent reasonably applicable as reasonably determined by the MSF Board to the type of project proposed before entering into an agreement for qualified investment:

- The importance of the project to the community in which it would be located.
- If the project would act as a catalyst for additional revitalization of the community in which it would be located and Michigan.
- The amount of local community and financial support for the project.
- The applicant's financial need for a qualified investment from the Fund.
- The extent of reuse of vacant buildings, public or private, reuse of historic resources, and redevelopment of blighted property.
- Creation of new qualified jobs at the project location and within Michigan.
- The level of other public funds including the appropriation of Federal or State funds and tax credits.
- The level of any private funds, investments, or contributions into the project, including the qualified business' own investments in the project.
- Whether and how the project would be financially and economically sound and would promote sustainable development.
- Whether and how the project involved the rehabilitation of a historic resource.
- Whether and how the project would address areawide redevelopment and the overall economic benefit to the existing supply chain.
- The level and extent of environmental contamination.
- Whether and how the project would compete with or affect existing Michigan businesses within the same industry.
- Whether and how the project's proximity to rail and utility would affect the project's performance and maximize energy and logistics needs in the community in which it would be located and Michigan.
- The risk of obsolescence of the project, products, and investments in the future.
- The overall return on investment to Michigan.
- Any other additional criteria approved by the MSF Board that were specific to each individual project and were consistent with the findings and intent of the bill.

Investment Agreement Provisions

If the MSF determined, after making the considerations listed above, to award a qualified investment from the Fund to a qualified business, the MSF would have to enter into an agreement with the business that included all of the terms and conditions relating to the qualified investment, including the following:

- Specific time frames and benchmarks to be met before qualified business received a disbursement in installments from the Fund under the approved qualified investment.
- Specific terms relating to the required creation of new qualified jobs at the project location and within Michigan, including measurable outcomes, proration of payments for partial performance, clawbacks and specific repayment provisions for breach of the agreement, or for failure to meet measurable outcomes.
- Specific penalties for noncompliance with the agreement as determined by MSF.
- A provision that all money that was subject to a clawback or required to be repaid under a specific repayment provision would have to be paid within 30 days of notification by the MSF; any amounts not paid within that 30-day period would be subject to a penalty of 1.0% per month, prorated on a daily basis.
- A provision that if the business filed for bankruptcy, to the extent permitted by law, the State would be a secured creditor and would have first priority over other creditors if the business were in default under the agreement.
- A provision that the qualified business would provide the data described in the agreement that were necessary for the MSF to report to the Legislature.
- A provision that the qualified business could enter into a direct agreement with workforce training providers, when appropriate, to meet the workforce requirements of a qualified investment.

Modification Procedures & Determination of Fair Exchange of Value

If the MSF received a request to modify an existing agreement for a qualified investment, it would have to provide a copy of the requested modification to each member of the Legislature, the Governor, the Secretary of the Senate, the Clerk of the House of Representatives, and the Senate and House Fiscal Agencies within five business days after receiving the modification request. The notice would have to include the specific provision to be modified and rationale for considering modification. Before the MSF modified an existing agreement, it would have to give notice of the proposed amendments and post them on the MSF's website at least one day before a public hearing on the proposed amendments. If the MSF approved and modified an existing agreement, it would have to provide a copy of the amended agreement to all of the individuals and entities specified above within one business day after the modification.

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

Required Report & Miscellaneous Provisions

By March 15 each year, the MSF would have to transmit to each member of the Legislature, the Governor, the Clerk of the House of Representatives, the Secretary of the Senate, and

the House and Senate Fiscal Agencies a report on the Fund's activities. The report would have to include the following:

- A list of qualified businesses that received a qualified investment.
- The type of project or product approved for an award.
- The amount, type, and duration of qualified investment.
- For each separate form of investment, the number of new qualified jobs committed or projected when the investment was applied for, the actual number of new qualified jobs created that were not temporary employees, and the average salaries for those jobs.
- The amount of other financial assistance other than State resources.
- Money or other revenue or property returned to the Strategic Outreach and Attraction Reserve Fund, including clawbacks and repayments due to a breach of an agreement.

If the MSF failed to transmit the report as required above, the MSF Board could not disburse money from the Fund for a qualified investment until it transmitted the report.

The bill states that the Legislatures "finds and declares that funding provided under [the bill] is for a public purpose and serves the health, safety, and general welfare of the residents of this state".

MSF Report

The Michigan Strategic Fund Act requires the MSF to transmit an annual report of its activities to the individuals and entities listed above. Under the bill, this report also would have to include the activities of the Fund and the Michigan Strategic Site Readiness Fund (which House Bill 5603 (H-1) would create).

MCL 12.252 et al. (H.B. 5602)
125.2009 et al. (H.B. 5603)
125.2009 et al. (H.B. 5604)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 5602 (H-1)

The bill would have a minor, but negative, fiscal impact on the State, and no fiscal impact on local units of government. The bill would create the Strategic Outreach and Attraction Reserve Fund in LEO. The creation of a new restricted fund would create some minor administrative costs for LEO related to accounting, budgeting, and reporting, but as the bill would not create a revenue source or dedicated purpose for the Fund, the bill would have no other fiscal impact on the State or local units of government.

House Bill 5603 (H-1)

The bill would have a minor, but negative, fiscal impact on State and local government. The bill would create the Michigan Strategic Site Readiness Fund, which would create administrative costs for the MSF related to administration of the Fund, reporting, accounting, and other costs. The bill would not create any additional revenue source for the Fund, so the bill itself would have no additional fiscal impact.

House Bill 5604 (H-1)

The bill would have a minor, but negative, fiscal impact on the State, and no fiscal impact on local units of government. The bill would create the Critical Industry Fund in the MSF. The

creation of a new restricted fund would create some minor administrative costs for MSF related to accounting, budgeting, and reporting, but as the bill would not create a revenue source or dedicated purpose for the Fund, the bill would have no other fiscal impact on the State or local units of government.

Fiscal Analyst: Cory Savino
Josh Sefton

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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.