

Act No. 134
Public Acts of 2021
Approved by the Governor
December 20, 2021
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**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021**

Introduced by Reps. Calley and Frederick

ENROLLED HOUSE BILL No. 5603

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 9 (MCL 125.2009), as amended by 2017 PA 109, and by adding section 88t.

The People of the State of Michigan enact:

Sec. 9. (1) The fund shall transmit to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies annually a report of its activities. The report shall be transmitted not later than April 10 of each year for activities in the immediately preceding state fiscal year. The report shall not include information exempt from disclosure under section 5. The report shall include, but is not limited to, all of the following for each program operated under this act:

- (a) A list of entities that received financial assistance.
- (b) The type of project or product being financed.
- (c) The amount and type of financial assistance.
- (d) For each separate form of financial assistance, all of the following:
 - (i) The number of new jobs committed or projected when the financial assistance was applied for.
 - (ii) The number of retained jobs committed or projected when the financial assistance was applied for.
 - (iii) The actual number of new jobs created that are not temporary employees.
 - (iv) The actual number of retained jobs that are not temporary employees.
 - (v) The average annual salary of the new jobs created that are not temporary employees.
 - (vi) The average annual salary of the retained jobs that are not temporary employees.
- (e) The duration of the financial assistance.

(f) The amount of financial support other than state resources.

(g) Money or other revenue or property returned to the fund, including any repayments through a clawback provision in the agreement.

(h) The status of all loans of the fund.

(i) A list of all entities that are in bankruptcy, that the fund has received actual notice of, filed by a direct recipient of an active single incentive of at least \$500,000.00. In addition, the fund shall, within 120 days after the fund receives notice, provide a report of the notice of bankruptcy on its website and shall forward the report to each of the following:

(i) The senate majority leader and the senate minority leader.

(ii) The speaker of the house and the house minority leader.

(iii) The members of the house commerce and tourism committee.

(iv) The members of the house appropriations subcommittee on general government.

(v) The members of the senate economic and small business development committee.

(vi) The members of the senate appropriations subcommittee on general government.

(j) A summary of the approximate administrative costs used to administer the programs and activities authorized under this act.

(k) Any other information as required in this section.

(2) The auditor general or a certified public accountant appointed by the auditor general annually shall conduct and remit to the legislature an audit of the fund and, in the conduct of the audit, shall have access to all records of the fund at any time, whether or not confidential. Each audit required by this section shall include a determination of whether the fund is likely to be able to continue to meet its obligations, including a report on the status of outstanding loans and agreements made by the fund.

(3) The fund shall also transmit the audit described in subsection (2) to the chairperson and minority vice-chairperson of the senate appropriations subcommittee on general government and the house of representatives appropriations subcommittee on general government. The fund shall make the report and audit available to the public on the fund's website.

(4) The report described in subsection (1) must also contain all of the following that are related to a 21st century investment made by the fund board under chapter 8A:

(a) The amount of qualified venture capital fund investments, qualified mezzanine fund investments, and qualified private equity fund investments under management in this state, including year-to-year growth.

(b) The value of loan enhancement program investments, qualified private equity fund investments, qualified mezzanine fund investments, and qualified venture capital investments in qualified businesses, including year-to-year growth.

(c) A statement of the amount of money in each loan reserve fund established under the small business capital access program required under chapter 8A.

(5) The report described in subsection (1) must also include, but is not limited to, all of the following for all actions under section 88r:

(a) The total actual amount of qualified investment attracted under section 88r as reported to the fund.

(b) The total actual number of new jobs created under section 88r as reported to the fund.

(c) The actual amount of the grant, loan, or other economic assistance made under section 88r separately for each qualified business verified by the fund.

(d) For each qualified business, whether it is a new business, whether it is an expansion of an existing business, or whether it relocated from outside of this state.

(e) An evaluation of the aggregate return on investment that this state realizes on the actual qualified new jobs and actual qualified investment made by qualified businesses.

(6) The report described in subsection (1) must also include, but is not limited to, all of the following for all actions under chapter 8B:

(a) For tourism promotion efforts, all of the following:

(i) An itemized list, by market, of how much was spent, types of media purchased, and target of the tourism promotion campaign.

(ii) The return on investment analysis that utilizes existing baseline data and compares results with prior outcome evaluations funded by Travel Michigan.

(b) For business development efforts, all of the following:

(i) An itemized list, by market, of how much was spent, types of media purchased, and target of the business promotion campaign.

(ii) A performance analysis that compares the program or campaign objectives and outcome of the campaign or program.

(7) The report described in subsection (1) must also include, but is not limited to, all of the following for all actions under section 90d:

(a) The total actual amount of private investment attracted under section 90d as reported to the fund.

(b) The actual amount of the community revitalization incentives made under chapter 8C separately for each project.

(c) The total actual amount of square footage revitalized or added for each project approved under section 90d as reported to the fund. When reporting square footage, the person must report the square footage by category, including, but not limited to, commercial, residential, or retail.

(d) The aggregate increase in taxable value of all property subject to a written agreement under chapter 8C when established and recorded by the local units of government and as reported to the fund.

(e) The total actual number of residential units revitalized or added for each project approved under section 90d as reported to the fund.

(f) Each project that received a community revitalization incentive outside the fund program standards and guidelines and why the variance was given.

(8) Beginning on and after January 1, 2012, on a monthly basis the fund shall provide exact copies of all information regarding all actions under chapter 8C that is provided to board members of the fund for the purpose of monthly board meetings, subject to confidentiality under section 5, to each of the following and post that information on the fund's website:

(a) The chairperson and minority vice-chairperson of the house commerce and tourism committee.

(b) The chairperson and minority vice-chairperson of the house appropriations subcommittee on general government.

(c) The chairperson and minority vice-chairperson of the senate economic and small business development committee.

(d) The chairperson and minority vice-chairperson of the senate appropriations subcommittee on general government.

(9) The report described in subsection (1) must also include a summary of the approximate administrative costs used to administer the programs and activities authorized in the following sections:

(a) Section 88b.

(b) Section 88h.

(c) Section 90b.

(10) The report described in subsection (1) must also include, but is not limited to, all of the following for all actions for business incubators approved by the fund after January 14, 2015:

(a) The number of new jobs created and projected new job growth by current clients of the business incubator.

(b) Amounts of other funds leveraged by current clients of the business incubator.

(c) Increases in revenue for current clients of the business incubator.

(11) The report described in subsection (1) must also include the actual repayments received by the fund for failure to comply with clawback provisions of the written agreement under all of the following:

(a) Section 78.

(b) Section 88d.

(c) Section 88k.

(d) Section 88q.

(e) Section 88r.

(f) Section 90b.

(12) Beginning on July 1, 2015, the fund shall post on the fund's website a list of each contract, agreement, or other written loan or grant documentation for financial assistance under sections 88r and 90b that the fund entered into or modified in the immediately preceding fiscal year.

(13) Beginning on July 1, 2015, the fund shall post and update periodically all of the following on its website for all loans made under sections 88r and 90b:

- (a) A description of the project for which the loan was made.
- (b) The total amount of the loan.
- (c) Whether payments on the loan balance are current or delinquent.
- (d) The interest rate of the loan.

(14) Beginning July 1, 2015, the report described in subsection (1) shall also contain all of the following for each program that provides financial assistance under this act that requires a site visit:

- (a) A copy of the site visit guidelines for that program.
- (b) The number of site visits conducted under that program.
- (c) The chief compliance officer shall review and evaluate compliance with the site visit guidelines.

(15) The fund shall post on its website and update periodically all of the information described in subsection (14).

(16) The report described in subsection (1) must also include, but is not limited to, all of the following for all written agreements related to the good jobs for Michigan program created under chapter 8D:

- (a) The name of the authorized business.
- (b) The number of certified new jobs required to be maintained.
- (c) The amount and duration of the withholding tax capture revenues.

(17) The report described in subsection (1) must also include the activities of the critical industry program described in section 88s.

(18) The report described in subsection (1) must also include the activities of the Michigan strategic site readiness program described in section 88t.

(19) As used in this section, "financial assistance" means grants, loans, other economic assistance, and any other incentives or assistance under this act.

Sec. 88t. (1) The fund shall create and operate the Michigan strategic site readiness program. The fund shall use the program money transferred from the strategic outreach and attraction reserve fund created in section 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254, or money appropriated to the program to make grants, loans, or other economic assistance under this program.

(2) The fund shall expend money allocated to the Michigan strategic site readiness program only to provide grants, loans, and other economic assistance for eligible applicants to conduct eligible activities for the purpose of creating investment-ready sites to attract and promote investment in this state for eligible activities on, or related to, strategic sites and mega-strategic sites. The program must provide for a detailed application, approval, and compliance process that is also published and available on the fund's website. The detailed application, approval, and compliance process must, at a minimum, provide for all of the following:

(a) An eligible applicant may apply for a grant, loan, or other economic assistance in a form and manner determined by the fund.

(b) The fund shall establish separate application criteria for mega-strategic sites and for strategic sites that are not mega-strategic sites and for sites that have, and that do not have, a specifically identified end user.

(3) Before approving an application under this section, the fund shall consider and document, at a minimum, all of the following criteria to the extent reasonably applicable as reasonably determined by the fund board to the type of project proposed before entering into a written agreement for a grant, loan, or other economic assistance as provided under this program:

(a) The importance of the project or eligible activities 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 and this state.

(c) The amount of local community and financial support for the project.

(d) The amount of any other economic assistance or support provided by this state for the project.

(e) The amount of any other economic assistance or support provided by the federal government for the project including, but not limited to, federal appropriations or tax credits.

(f) The amount of any private funds or investments for the project including the applicant's own investments in the project.

(g) The applicant's financial need for a grant, loan, or other economic assistance under this program.

(h) The extent of reuse of vacant buildings, public or private, reuse of historic resources, and redevelopment of blighted property.

(i) Creation or retention of qualified jobs as a result of a technological shift in product or production at the project location and within this state.

(j) Whether and how the project is financially and economically sound.

(k) Whether and how the project converts abandoned public buildings to private use.

(l) Whether and how the project promotes sustainable development.

(m) Whether and how the project involves the rehabilitation of a historic resource.

(n) Whether and how the project addresses areawide redevelopment.

(o) Whether and how the project addresses underserved markets of commerce.

(p) The level and extent of environmental contamination.

(q) Whether and how the project will compete with or affect existing Michigan businesses within the same industry.

(r) Whether and how the project's proximity to rail and utility will impact performance of the project and maximize energy and logistics needs in the community in which it is located and in this state.

(s) The risk of obsolescence of the project, products, and investments in the future.

(t) The overall return on investment to this state.

(u) Whether the proposed strategic site or mega-strategic site is incorporated into a strategic plan of a political subdivision of this state.

(v) Any other additional criteria approved by the fund board that are specific to each individual project and are consistent with the purpose of this program.

(4) If the fund determines, after the considerations under subsection (3), to provide a grant, loan, or other economic assistance to an eligible applicant under this program, the fund shall enter into a written agreement with the eligible applicant that includes in a clear and concise manner all of the terms and conditions related to the grant, loan, or other economic assistance as determined and documented by the fund board, including, but not limited to, the following:

(a) Specific dates and benchmarks for the eligible applicant to receive a grant, loan, or other economic assistance under this program, including conditions for the disbursement of funds in installments.

(b) For a grant, loan, or other economic assistance provided to a person identified as the end user of the site, a clawback and specific repayment provision if the person fails to comply with the provisions of the written agreement.

(c) A provision that all money that is subject to clawback or required to be repaid under a specific repayment provision must be paid within 90 days of notification by the fund. Any amounts not paid within that 90-day period are subject to a penalty of 1% per month, prorated on a daily basis.

(d) A provision that this state shall have a security interest as defined in section 1201(2)(ii) of the uniform commercial code, 1962 PA 174, MCL 440.1201, to the extent of the grant, loan, or other economic assistance provided under this program. This provision does not apply if it conflicts with any contractual obligation of the eligible applicant or any federal or state bankruptcy or insolvency laws.

(e) An audit provision that requires the fund to verify that the established benchmarks for the project have been met.

(5) In addition to the considerations under subsection (3), in determining whether to approve a grant, loan, or other economic assistance for a strategic site for which an end user has not been specifically identified, the fund shall consider and document, as reasonably determined by the fund board, at a minimum all of the following:

(a) The degree to which the proposed site demonstrates a high level of competitiveness for future development, considering and documenting all of the following:

(i) Whether the proposed site is currently assembled.

(ii) Whether the proposed site is under site control.

(iii) Whether the proposed site is of a size, configuration, location, and condition that makes the site substantially ready for marketing and competitive for development upon completion of the grant, loan, or other economic assistance proposed to be offered under this program and demonstrated matching contributions.

(b) Whether the proposed investment will result in the elimination of blight and the remediation of environmental contamination.

(c) The degree of local matching contributions.

(d) Whether the award will promote geographic equity in the distribution of funds between different areas of this state.

(e) Whether the eligible applicant has pursued all available cost-containment measures.

(6) In determining whether to approve a grant, loan, or other economic assistance for a mega-strategic site for which an end user has not been specifically identified, the fund shall consider and document, in addition to the criteria in subsections (3) and (5)(a), at a minimum all of the following criteria related to the strategic basis for the investment and feasibility of the investment:

(a) Whether the proposed mega-strategic site is supported by a strategic analysis that supports the demand for that site.

(b) The feasibility of proposed land acquisition.

(c) Utility and transportation availability, and the feasibility of necessary utility and transportation improvements.

(d) Workforce availability and training capability.

(e) Environmental and topographical conditions, and the feasibility of necessary site improvements to address environmental and topographical conditions.

(7) In addition to the considerations under subsection (3), in determining whether to approve a grant, loan, or other economic assistance for a project for which an end user has been specifically identified, the fund shall consider and document, as reasonably determined by the fund board, all of the following:

(a) The strategic economic importance of the project to the community in which it is located and to this state.

(b) Whether the financial assistance is needed to secure the project in this state.

(c) The degree to which the project is a priority for the local governmental unit or local economic development corporation in the jurisdiction of which the site is located.

(d) The level of creation or retention of qualified jobs as a result of a technological shift in product or production.

(e) Whether the qualified jobs created or retained as a result of a technological shift in product or production equal or exceed the average wage for the county in which the project is located.

(f) The level of capital investment.

(g) The evidence of the end user's commitment to the site.

(8) If the fund receives a request to modify an existing written agreement for a grant, loan, or other economic assistance under this program, the fund must provide a copy of that requested modification to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies within 5 business days of the receipt of the modification request. In addition to the copy of the request for modification, the notice provided under this subsection must also include the specific provisions to be modified and the rationale for considering the modification. Before the fund modifies an existing written agreement for a grant, loan, or other economic assistance under this program, the fund must give notice of the proposed amendments and publish them on the fund's internet website at least 1 business day prior to a public hearing on the proposed amendments. If the fund approves and modifies an existing written agreement under this subsection, the fund must provide a copy of that amended written agreement to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies within 1 business day of the modification.

(9) In making an award for a mega-strategic site under this program that does not have a specifically identified end user, the fund, working in collaboration with the eligible applicant, shall prepare 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 must have the objective of establishing a certified mega-strategic site under a nationally recognized third-party certification program.

(10) The fund shall post on its website or post on the website of the Michigan economic development corporation, not less than every 3 months, the name of the eligible applicant or applicants, the location of each site that received a grant, loan, or other economic assistance under this program in that period, and the amount of the grant, loan, or other economic assistance.

(11) Notwithstanding anything to the contrary in this section, the program may make grants and provide technical assistance to local economic development corporations for the purpose of creating an inventory of development-ready sites, provided that the inventory shall utilize nationally recognized criteria to identify the readiness of those sites for investment, and provided further that the fund shall maintain a comprehensive inventory of those sites on its website. The inventory maintained on the website shall include in an interactive and user-friendly manner a listing of all local and state development-ready sites and any pictures, maps, and other documentation related to those sites.

(12) The fund board shall not disburse money from the program for a grant, loan, or other economic assistance to an eligible applicant if that eligible applicant has not fully repaid all money subject to clawback or required to be repaid under a specific repayment provision as provided in any written agreement under this act or if that eligible applicant is in default on any grant, loan, or other economic assistance made or guaranteed by this state. All money paid to the fund pursuant to a clawback or specific repayment provision for a grant, loan, or other economic assistance under this program shall be deposited in the strategic outreach and attraction reserve fund created in section 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254. The fund shall not use money allocated to the program for administrative purposes. Any money that is allocated to the program that remains unexpended, unallocated, or unobligated at the end of the fiscal year shall revert back to the strategic outreach and attraction reserve fund created in section 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254.

(13) Not later than March 15 of each year, the fund shall transmit to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies a report on the activities of the Michigan strategic site readiness fund. The report must include the following:

- (a) A list of eligible applicants that received a grant, loan, or other economic assistance.
- (b) The type of project or eligible activities approved for an award under this program.
- (c) The amount and type of each award.
- (d) The duration of the grant, loan, or other economic assistance.
- (e) The amount of other financial assistance other than state resources.

(f) Money or other revenue or property returned to the strategic outreach and attraction reserve fund, including any clawbacks and repayments due to a breach of the written agreement.

(14) If the fund fails to transmit the report as required in subsection (13) on or before March 15, the fund board shall not disburse money for a grant, loan, or other economic assistance under this program until it transmits the report as required under subsection (13).

(15) The legislature finds and declares that funding provided under this program is for a public purpose and serves the health, safety, and general welfare of the residents of this state.

(16) As used in this section:

(a) "Eligible activities" means, with respect to a site that is the subject of an application under this program, 1 or more of the following:

(i) Land acquisition and assembly.

(ii) Site preparation and improvement.

(iii) Infrastructure improvements that directly benefit the site, including, but not limited to, 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.

(vi) Architectural, engineering, surveying, and similar professional fees.

(b) "Eligible applicant" means an applicant that is 1 or more of the following:

(i) A political subdivision of this state, including, but not limited to, a county, city, village, township, charter township, or instrumentality of a county, city, village, township, or charter township.

(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 subparagraph (i) or (ii).

(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.

(c) "End user" means 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.

(d) "Mega-strategic site" means a strategic site that is or will be used for a large industrial project.

(e) "Michigan strategic site readiness program" or "program" means the Michigan strategic site readiness program created in subsection (1).

(f) "Qualified job" means a job performed by an individual who is a resident of this 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 this state and is employed by a business at a project location that is located in this state, as determined and verified by the fund.

(g) "Strategic site" means a site, whether publicly or privately owned, that is, or subsequent to a proposed acquisition will be, used for manufacturing or other commercial use.

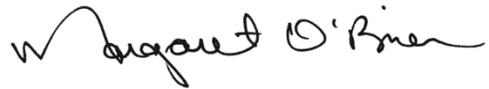
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

- (a) Senate Bill No.769.
- (b) Senate Bill No.771.
- (c) House Bill No.4082.
- (d) House Bill No.5351.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor