

SENATE BILL No. 92

January 26, 2005, Introduced by Senators BISHOP, KUIPERS, ALLEN, GEORGE, GILBERT, CASSIS, GARCIA, SANBORN, CROPSEY, VAN WOERKOM, TOY and GOSCHKA and referred to the Committee on Finance.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
(MCL 206.1 to 206.532) by adding section 272.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 272. (1) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31,
2 2005, AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), A
3 TAXPAYER MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY THIS ACT FOR
4 THE SUM OF ALL OF THE FOLLOWING:

5 (A) THAT PORTION OF A TAXPAYER'S EQUITY INVESTMENT IN A
6 QUALIFIED BUSINESS, AS PROVIDED IN SUBSECTION (2). A TAXPAYER SHALL
7 NOT CLAIM A CREDIT UNDER THIS SUBDIVISION FOR THE EQUITY
8 INVESTMENT OF A PARTNERSHIP, LIMITED LIABILITY COMPANY, S
9 CORPORATION, ESTATE, OR TRUST ELECTING TO HAVE INCOME TAXED
10 DIRECTLY TO THE TAXPAYER. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER
11 THIS SECTION EXCEEDS THE TAX LIABILITY OF THE TAXPAYER FOR THE TAX

1 YEAR, THAT PORTION OF THE CREDIT THAT EXCEEDS THE TAX LIABILITY
2 SHALL BE REFUNDED.

3 (B) THAT PORTION OF A TAXPAYER'S EQUITY INVESTMENT, AS
4 PROVIDED IN SUBSECTION (2), IN A COMMUNITY-BASED SEED CAPITAL
5 COMPANY. A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SUBDIVISION
6 FOR AN INVESTMENT OF A PARTNERSHIP, LIMITED LIABILITY COMPANY, S
7 CORPORATION, ESTATE, OR TRUST ELECTING TO HAVE INCOME TAXED
8 DIRECTLY TO THE TAXPAYER. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER
9 THIS SECTION EXCEEDS THE TAX LIABILITY OF THE TAXPAYER FOR THE TAX
10 YEAR, THAT PORTION OF THE CREDIT THAT EXCEEDS THE TAX LIABILITY
11 SHALL BE REFUNDED.

12 (C) A TAXPAYER MAY CLAIM A CREDIT UNDER THIS SUBDIVISION FOR
13 AN AMOUNT OF THE EQUITY INVESTMENT IN A COMMUNITY-BASED SEED
14 CAPITAL COMPANY OF A PARTNERSHIP, LIMITED LIABILITY COMPANY, S
15 CORPORATION, ESTATE, OR TRUST ELECTING TO HAVE INCOME TAXED
16 DIRECTLY TO THE TAXPAYER BASED UPON THE PRO RATA SHARE OF THE
17 TAXPAYER'S EARNINGS FROM THE INVESTMENT OF THE PARTNERSHIP, LIMITED
18 LIABILITY COMPANY, S CORPORATION, ESTATE, OR TRUST. IF THE AMOUNT
19 OF THE CREDIT ALLOWED UNDER THIS SECTION EXCEEDS THE TAX LIABILITY
20 OF THE TAXPAYER FOR THE TAX YEAR, THAT PORTION OF THE CREDIT THAT
21 EXCEEDS THE TAX LIABILITY SHALL NOT BE CARRIED FORWARD OR REFUNDED.
22 THE EXCESS SHALL NOT BE REFUNDED, BUT MAY BE CARRIED FORWARD AS AN
23 OFFSET TO THE TAX LIABILITY IN SUBSEQUENT TAX YEARS FOR 10 TAX
24 YEARS OR UNTIL THE EXCESS CREDIT IS USED UP, WHICHEVER OCCURS
25 FIRST. A CREDIT UNDER THIS SUBDIVISION SHALL NOT BE CARRIED BACK TO
26 A TAX YEAR BEFORE THE TAX YEAR IN WHICH THE TAXPAYER FIRST CLAIMS
27 THE CREDIT.

1 (2) THE AMOUNT OF THE CREDIT UNDER THIS SECTION DETERMINED
2 UNDER SUBSECTION (1) (A) AND (B) SHALL NOT EXCEED 20% OF THE
3 TAXPAYER'S TOTAL INVESTMENT. THE MAXIMUM AMOUNT OF A CREDIT UNDER
4 THIS SECTION FOR INVESTMENT BY AN INVESTOR IN ANY 1 QUALIFIED
5 BUSINESS IS \$50,000.00. EACH INVESTOR AND ALL AFFILIATES OF THE
6 INVESTOR SHALL NOT CLAIM A TOTAL OF ALL CREDITS UNDER THIS SECTION
7 FOR MORE THAN 5 DIFFERENT INVESTMENTS IN 5 DIFFERENT QUALIFIED
8 BUSINESSES FOR ANY 1 TAX YEAR. THE AMOUNT OF A CREDIT UNDER THIS
9 SECTION DETERMINED UNDER SUBSECTION (1) (C) SHALL NOT EXCEED 20% OF
10 THE TAXPAYER'S TOTAL INVESTMENT AND SHALL NOT EXCEED A TOTAL OF
11 \$250,000.00 IN ANY 1 QUALIFIED BUSINESS.

12 (3) A CREDIT UNDER THIS SECTION SHALL BE CLAIMED ONLY IN A TAX
13 YEAR IN WHICH THE REALIZED RETURN ON AN INVESTMENT UNDER SUBSECTION
14 (1) IS LESS THAN ZERO FOR THAT TAX YEAR.

15 (4) AN INVESTMENT IS CONSIDERED TO HAVE BEEN MADE ON THE SAME
16 DATE AS THE DATE OF ACQUISITION OF THE EQUITY INTEREST. FOR
17 PURPOSES OF THIS SECTION, THE DATE OF ACQUISITION IS THE SAME AS
18 THE DATE OF ACQUISITION OF THE EQUITY INTEREST UNDER THE INTERNAL
19 REVENUE CODE. INVESTMENTS MADE BEFORE JANUARY 1, 2006 SHALL NOT
20 QUALIFY FOR A TAX CREDIT UNDER THIS SECTION.

21 (5) THE TOTAL OF ALL CREDITS TO ALL TAXPAYERS FOR ALL TAX
22 YEARS UNDER THIS SECTION SHALL NOT EXCEED \$10,000,000.00.

23 (6) A CREDIT ALLOWED UNDER THIS SECTION SHALL NOT BE CLAIMED
24 FOR ANY TAX YEAR THAT BEGINS BEFORE JANUARY 1, 2008.

25 (7) A CREDIT ALLOWED UNDER THIS SECTION IS NONTRANSFERABLE AND
26 SHALL NOT BE TRANSFERRED TO ANY OTHER TAXPAYER.

27 (8) A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SECTION FOR

1 THE SAME INVESTMENT USED AS A BASIS FOR A CREDIT UNDER SECTION 37E.

2 (9) THE MICHIGAN CAPITAL INVESTMENT BOARD IS CREATED IN THE
3 DEPARTMENT. THE MICHIGAN CAPITAL INVESTMENT BOARD SHALL DO ALL OF
4 THE FOLLOWING:

5 (A) DEVELOP AN APPLICATION PROCESS FOR TAX CREDIT CERTIFICATES
6 FOR CREDITS ALLOWED UNDER THIS SECTION.

7 (B) DETERMINE THE DISTRIBUTION OF CREDITS TO INVESTORS UNDER
8 THIS SECTION.

9 (C) DEVELOP PROCEDURES FOR THE QUALIFICATION AND
10 ADMINISTRATION OF QUALIFIED BUSINESSES AND COMMUNITY-BASED SEED
11 CAPITAL COMPANIES.

12 (D) DEVELOP APPLICATION FORMS AND DISTRIBUTE COPIES OF THE
13 APPLICATION FORMS TO ALL COMMUNITY-BASED SEED CAPITAL COMPANIES AND
14 POTENTIAL INDIVIDUAL INVESTORS.

15 (10) FOR AN EQUITY INVESTMENT TO QUALIFY FOR A CREDIT UNDER
16 THIS SECTION, THE BUSINESS IN WHICH THE EQUITY INVESTMENT IS MADE
17 SHALL, WITHIN 100 DAYS OF THE DATE OF THE FIRST INVESTMENT, NOTIFY
18 THE BOARD OF THE NAMES, ADDRESSES, TAXPAYER IDENTIFICATION NUMBERS,
19 SHARES ISSUED, CONSIDERATION PAID FOR THE SHARES, AND THE AMOUNT OF
20 ANY CREDITS OF ALL SHAREHOLDERS WHO MAY INITIALLY QUALIFY FOR THE
21 CREDITS UNDER THIS SECTION. THE LIST OF SHAREHOLDERS WHO MAY
22 QUALIFY FOR THE CREDITS SHALL BE AMENDED AS NEW EQUITY INVESTMENTS
23 ARE SOLD OR AS ANY INFORMATION ON THE LIST CHANGES.

24 (11) A BUSINESS SHALL APPLY TO THE BOARD TO BE DESIGNATED AS A
25 QUALIFIED BUSINESS. TO BE DESIGNATED AS A QUALIFIED BUSINESS, A
26 BUSINESS SHALL MEET ALL OF THE FOLLOWING CRITERIA:

27 (A) THE PRINCIPAL BUSINESS OPERATIONS OF THE BUSINESS ARE

1 LOCATED IN THIS STATE.

2 (B) THE BUSINESS HAS BEEN IN OPERATION FOR 3 YEARS OR LESS.

3 (C) OTHER CRITERIA THAT THE BOARD DETERMINES WILL INCREASE THE
4 PROBABILITY OF SUCCESS OF THE QUALIFIED BUSINESS.

5 (D) THE BUSINESS IS NOT A BUSINESS ENGAGED PRIMARILY IN RETAIL
6 SALES, REAL ESTATE, OR THE PROVISION OF HEALTH CARE OR OTHER
7 PROFESSIONAL SERVICES BUT IS A BUSINESS THAT FOCUSES ON AREAS
8 INCLUDING, BUT NOT LIMITED TO, ALTERNATIVE ENERGY TECHNOLOGY,
9 TECHNOLOGY AS ADDRESSED BY THE MICHIGAN TRI-TECHNOLOGY CORRIDOR
10 INITIATIVE, AND MICHIGAN LIFE SCIENCES CORRIDOR INITIATIVE HIGH-
11 TECHNOLOGY ACTIVITY.

12 (E) THE BUSINESS HAS A PREINVESTMENT VALUATION OF
13 \$10,000,000.00 OR LESS.

14 (F) THE BUSINESS HAS SECURED TOTAL EQUITY OR NEAR EQUITY
15 FINANCING EQUAL TO AT LEAST \$250,000.00 WITHIN 24 MONTHS AFTER THE
16 FIRST DATE ON WHICH EQUITY INVESTMENTS QUALIFYING FOR CREDITS UNDER
17 THIS SECTION ARE MADE.

18 (12) A QUALIFIED BUSINESS SHALL NOTIFY THE BOARD IN A TIMELY
19 MANNER OF ANY CHANGES IN THE QUALIFICATIONS OF THE BUSINESS OR IN
20 THE ELIGIBILITY OF INVESTORS TO CLAIM A CREDIT UNDER THIS SECTION.

21 (13) A COMMUNITY-BASED SEED CAPITAL COMPANY SHALL APPLY TO THE
22 BOARD FOR ELIGIBILITY UNDER THIS SECTION. AN INVESTMENT IN A
23 COMMUNITY-BASED SEED CAPITAL COMPANY QUALIFIES FOR A CREDIT UNDER
24 THIS SECTION IF, IN ADDITION TO ALL OTHER REQUIREMENTS UNDER THIS
25 SECTION, THE BOARD DETERMINES THAT THE FOLLOWING REQUIREMENTS ARE
26 MET:

27 (A) THE COMMUNITY-BASED SEED CAPITAL COMPANY MEETS ALL OF THE

1 FOLLOWING CRITERIA:

2 (i) THE COMPANY IS A LIMITED PARTNERSHIP OR LIMITED LIABILITY
3 COMPANY.

4 (ii) THE COMPANY HAS, ON OR AFTER JANUARY 1, 2005, A TOTAL OF
5 BOTH CAPITAL COMMITMENTS FROM INVESTORS AND INVESTMENTS IN
6 QUALIFIED BUSINESSES OF AT LEAST \$250,000.00 BUT NOT MORE
7 THAN \$10,000,000.00.

8 (B) THE COMMUNITY-BASED SEED CAPITAL COMPANY HAS NO FEWER THAN
9 5 INDIVIDUAL INVESTORS WHO ARE NOT AFFILIATES, WITH NO SINGLE
10 INVESTOR AND AFFILIATES OF THAT INVESTOR THAT TOGETHER OWN A TOTAL
11 OF MORE THAN 35% OF THE OWNERSHIP INTERESTS OUTSTANDING IN THE
12 COMPANY.

13 (C) THE COMMUNITY-BASED SEED CAPITAL COMPANY NOTIFIES THE
14 BOARD WITHIN 120 DAYS AFTER THE DATE OF THE FIRST INVESTMENT OF THE
15 NAMES, ADDRESSES, TAXPAYER IDENTIFICATION NUMBERS, EQUITY INTERESTS
16 ISSUED, CONSIDERATION PAID FOR THE INTERESTS, AND THE AMOUNT OF ANY
17 CREDITS UNDER THIS SECTION, OF ALL LIMITED PARTNERS OR MEMBERS WHO
18 MAY INITIALLY QUALIFY FOR THE CREDITS UNDER THIS SECTION, AND THE
19 EARLIEST YEAR IN WHICH THE TAX CREDITS MAY BE CLAIMED. THE LIST OF
20 LIMITED PARTNERS OR MEMBERS WHO QUALIFY FOR THE CREDITS UNDER THIS
21 SECTION SHALL BE AMENDED WHEN NEW EQUITY INTERESTS ARE SOLD OR WHEN
22 ANY INFORMATION ON THE LIST CHANGES.

23 (14) IF THE BOARD DETERMINES THAT THE BUSINESS IS A QUALIFIED
24 BUSINESS OR THAT AN INVESTMENT IN A COMMUNITY-BASED SEED CAPITAL
25 COMPANY IS ELIGIBLE FOR A CREDIT UNDER THIS SECTION, THE BOARD
26 SHALL ISSUE A TAX CREDIT CERTIFICATE TO BE ATTACHED TO THE
27 TAXPAYER'S ANNUAL RETURN REQUIRED UNDER THIS ACT. THE TAX CREDIT

1 CERTIFICATE SHALL CONTAIN THE TAXPAYER'S NAME, ADDRESS, TAX
2 IDENTIFICATION NUMBER, THE AMOUNT OF CREDIT, THE NAME OF THE
3 QUALIFIED BUSINESS OR COMMUNITY-BASED SEED CAPITAL COMPANY, AND
4 OTHER INFORMATION REQUIRED BY THE DEPARTMENT. A COMMUNITY-BASED
5 SEED CAPITAL COMPANY SHALL NOTIFY THE BOARD IN A TIMELY MANNER OF
6 ANY CHANGES IN THE QUALIFICATIONS OF THE COMMUNITY-BASED SEED
7 CAPITAL COMPANY, IN THE QUALIFICATIONS OF ANY QUALIFIED BUSINESS IN
8 WHICH THE COMPANY HAS INVESTED, OR IN THE ELIGIBILITY OF LIMITED
9 PARTNERS OR MEMBERS TO REDEEM THE TAX CREDITS IN ANY YEAR.

10 (15) IF A TAXPAYER DOES NOT CLAIM ALL OF THE AMOUNT OF CREDIT
11 ALLOWED BY THE TAXPAYER'S TAX CREDIT CERTIFICATE IN THE FIRST 5 TAX
12 YEARS BEGINNING WITH THE TAX YEAR IN WHICH THE TAX CREDIT
13 CERTIFICATE WAS ISSUED, THE TAX CREDIT CERTIFICATE EXPIRES AND IS
14 VOID, AND NO FURTHER CREDITS SHALL BE CLAIMED BASED ON THAT TAX
15 CREDIT CERTIFICATE. IN YEARS FOLLOWING THE TAX YEAR IN WHICH A TAX
16 CREDIT CERTIFICATE EXPIRES, THE DEPARTMENT SHALL ISSUE NEW TAX
17 CREDIT CERTIFICATES UNDER SUBSECTION (14) FOR THE TOTAL AMOUNT OF
18 TAX CREDITS THAT EXPIRED, BUT THE TOTAL OF ALL CREDITS FOR ALL
19 TAXPAYERS FOR ALL YEARS SHALL NOT EXCEED THE MAXIMUM UNDER
20 SUBSECTION (5).

21 (16) AN INVESTOR IN A COMMUNITY-BASED SEED CAPITAL COMPANY MAY
22 CLAIM A CREDIT UNDER THIS SECTION ONLY FOR THE INVESTOR'S
23 INVESTMENT IN THE COMMUNITY-BASED SEED CAPITAL COMPANY AND
24 MAY CLAIM ANY ADDITIONAL CREDIT FOR THE INVESTOR'S SHARE OF
25 INVESTMENTS IN A QUALIFIED BUSINESS MADE BY THE COMMUNITY-BASED
26 SEED CAPITAL COMPANY. HOWEVER, AN INVESTOR IN A COMMUNITY-BASED
27 SEED CAPITAL COMPANY SHALL NOT CLAIM A CREDIT UNDER THIS SECTION

1 FOR A SEPARATE DIRECT INVESTMENT MADE BY THE INVESTOR IN THE SAME
2 QUALIFIED BUSINESS IN WHICH THE COMMUNITY-BASED SEED CAPITAL
3 COMPANY INVESTS.

4 (17) ON OR BEFORE APRIL 1 EACH YEAR, THE BOARD SHALL PUBLISH
5 AN ANNUAL REPORT OF THE ACTIVITIES CONDUCTED UNDER THIS SECTION AND
6 SHALL SUBMIT THE REPORT TO THE GOVERNOR AND THE LEGISLATURE. THE
7 REPORT SHALL INCLUDE A LISTING OF ELIGIBLE QUALIFIED BUSINESSES, A
8 LIST OF ELIGIBLE COMMUNITY-BASED SEED CAPITAL COMPANIES, THE NUMBER
9 OF TAX CREDIT CERTIFICATES ISSUED BY THE BOARD AND THE TOTAL AMOUNT
10 OF CREDITS AUTHORIZED BY THOSE CERTIFICATES, AND THE TOTAL AMOUNT
11 OF CREDITS CLAIMED UNDER THIS SECTION FOR THE IMMEDIATELY PRECEDING
12 CALENDAR YEAR.

13 (18) AS USED IN THIS SECTION:

14 (A) "ALTERNATIVE ENERGY TECHNOLOGY" MEANS THAT TERM AS DEFINED
15 IN SECTION 2(D) OF THE MICHIGAN NEXT ENERGY AUTHORITY ACT, 2002 PA
16 593, MCL 207.822.

17 (B) "BOARD" OR "MICHIGAN CAPITAL INVESTMENT BOARD" MEANS THE
18 MICHIGAN CAPITAL INVESTMENT BOARD CREATED IN SUBSECTION (9).

19 (C) "COMMUNITY-BASED SEED CAPITAL COMPANY" MEANS A FLOW-
20 THROUGH ENTITY, THE PRINCIPAL BUSINESS OPERATIONS OF WHICH ARE
21 LOCATED IN THIS STATE, FORMED SOLELY FOR THE PURPOSE OF INVESTING
22 IN A SINGLE QUALIFIED BUSINESS.

23 (D) "FLOW-THROUGH ENTITY" MEANS AN S CORPORATION, PARTNERSHIP,
24 LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, OR LIMITED
25 LIABILITY COMPANY. FLOW-THROUGH ENTITY DOES NOT INCLUDE A PUBLICLY
26 TRADED PARTNERSHIP AS THAT TERM IS DEFINED IN SECTION 7704 OF THE
27 INTERNAL REVENUE CODE THAT HAS EQUITY SECURITIES REGISTERED WITH

1 THE SECURITIES AND EXCHANGE COMMISSION UNDER SECTION 12 OF TITLE I
2 OF THE SECURITIES EXCHANGE ACT OF 1934, CHAPTER 404, 48 STAT. 881,
3 15 USC 78l.

4 (E) "HIGH-TECHNOLOGY ACTIVITY" MEANS THAT TERM AS DEFINED IN
5 SECTION 3 OF THE MICHIGAN ECONOMIC GROWTH AUTHORITY ACT, 1995 PA
6 24, MCL 207.803.

7 (F) "INVESTOR" MEANS AN INDIVIDUAL WHO MAKES A CASH INVESTMENT
8 IN A QUALIFIED BUSINESS OR A PERSON WHO MAKES A CASH INVESTMENT IN
9 A COMMUNITY-BASED SEED CAPITAL COMPANY. INVESTOR DOES NOT INCLUDE A
10 PERSON WHO IS A CURRENT OR PREVIOUS OWNER, MEMBER, OR SHAREHOLDER
11 IN A QUALIFIED BUSINESS.

12 (G) "NEAR EQUITY" MEANS DEBT THAT MAY BE CONVERTED TO EQUITY
13 AT THE OPTION OF THE DEBT HOLDER AND ROYALTY AGREEMENTS.

14 (H) "QUALIFIED BUSINESS" MEANS A BUSINESS THAT MEETS THE
15 CRITERIA IN SUBSECTION (11).

16 (I) "REALIZED RETURN" MEANS THE CHANGE IN VALUE OF THE
17 INVESTMENT THAT IS ACTUALLY EARNED OVER THE INVESTMENT PERIOD,
18 INCLUDING ALL DISTRIBUTIONS MADE DURING THE INVESTMENT PERIOD.