

Act No. 145
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senator Kowall

ENROLLED SENATE BILL No. 929

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 and funding 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 sections 4, 9, 88b, 88c, 88h, 88k, and 90b (MCL 125.2004, 125.2009, 125.2088b, 125.2088c, 125.2088h, 125.2088k, and 125.2090b), section 4 as amended by 2010 PA 271, section 9 as amended by 2011 PA 291, section 88b as amended by 2011 PA 250, sections 88c and 88h as amended by 2011 PA 251, section 88k as added by 2005 PA 215, and section 90b as added by 2011 PA 252.

The People of the State of Michigan enact:

Sec. 4. As used in this act:

(a) "Board" means the board of directors of the Michigan strategic fund, except where the context clearly requires a different definition.

(b) "Economic development project" means an endeavor related to industrial, commercial, or agricultural enterprise. Economic development project includes, but is not limited to, a theme or recreation park; agricultural or forestry production, harvesting, storage, or processing facilities or equipment; and the use of equipment or facilities designed to produce energy from renewable resources. Economic development project does not include that portion of an endeavor devoted to the sale of goods at retail, except that, as used in relation to the fund insuring a transaction entered into by a depository institution, and as used in relation to a loan by the fund to a minority owned business, an economic development project may include that portion of an endeavor devoted to the sale of goods at retail. Economic development project does not include that portion of an endeavor devoted to housing or a program or activity authorized under chapter 8A.

(c) "Financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office in this state under the laws of this state or the United States.

(d) “Fund” means the Michigan strategic fund created under section 5, except where the context clearly requires a different definition.

(e) “Green chemistry” means chemistry and chemical engineering to design chemical products or processes that reduce or eliminate the use or generation of hazardous substances, while producing high-quality products through safe and efficient manufacturing processes. Green chemistry is guided by the following 12 principles:

(i) Prevent waste: Design chemical syntheses to prevent waste, leaving no waste to treat or clean up.

(ii) Design safer chemicals and products: Design chemical products to be fully effective, yet have little or no toxicity.

(iii) Design less hazardous chemical syntheses: Design syntheses to use and generate substances with little or no toxicity to humans and the environment.

(iv) Use renewable feedstocks: Use raw materials and feedstocks that are renewable rather than depleting. Renewable feedstocks are often made from agricultural products or are the wastes of other processes; depleting feedstocks are made from fossil fuels, including petroleum, natural gas, or coal, or are mined.

(v) Use catalysts, not stoichiometric reagents: Minimize waste by using catalytic reactions. Catalysts are used in small amounts and can carry out a single reaction many times. They are preferable to stoichiometric reagents, which are used in excess and work only once.

(vi) Avoid chemical derivatives: Avoid using blocking or protecting groups or any temporary modifications if possible. Derivatives use additional reagents and generate waste.

(vii) Maximize atom economy: Design syntheses so that the final product contains the maximum proportion of the starting materials. There should be few, if any, wasted atoms.

(viii) Use safer solvents and reaction conditions: Avoid using solvents, separation agents, or other auxiliary chemicals. If these chemicals are necessary, use innocuous chemicals.

(ix) Increase energy efficiency: Run chemical reactions at ambient temperature and pressure whenever possible.

(x) Design chemicals and products to degrade after use: Design chemical products to break down to innocuous substances after use so that they do not accumulate in the environment.

(xi) Analyze in real-time to prevent pollution: Include in-process real-time monitoring and control during syntheses to minimize or eliminate the formation of by-products.

(xii) Minimize the potential for accidents: Design chemicals and their forms, including solid, liquid, or gas, to minimize the potential for chemical accidents, including explosions, fires, and releases to the environment.

(f) “Michigan economic development corporation” or “MEDC” means the Michigan economic development corporation, the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, and subsequently amended, between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the fund.

(g) “Municipality” means a county, city, village, township, port district, development organization, institution of higher education, community or junior college, or subdivision or instrumentality of any of the legal entities listed in this subdivision.

(h) “Person” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, profit or nonprofit corporation including a public or private college or university, public utility, municipality, local industrial development corporation, economic development corporation, or other association of persons organized for agricultural, commercial, or industrial purposes.

(i) “Project” means an economic development project and, in addition, means the acquisition, construction, reconstruction, conversion, or leasing of an industrial, commercial, retail, agricultural, or forestry enterprise, or any part of these, to carry out the purposes and objectives of this act and of the fund, including, but not limited to, acquisition of land or interest in land, buildings, structures, or other planned or existing planned improvements to land including leasehold improvements, machinery, equipment, or furnishings which include, but are not limited to, the following: research parks; office facilities; engineering facilities; research and development laboratories; warehousing facilities; parts distribution facilities; depots or storage facilities; port facilities; railroad facilities, including trackage, right of way, and appurtenances; airports; water and air pollution control equipment or waste disposal facilities; theme or recreational parks; equipment or facilities designed to produce energy from renewable resources; farms, ranches, forests, and other agricultural or forestry commodity producers; agricultural harvesting, storage, transportation, or processing facilities or equipment; grain elevators; shipping heads and livestock pens; livestock; warehouses; wharves and dock facilities; water, electricity, hydro electric, coal, petroleum, or natural gas provision facilities; dams and irrigation facilities; sewage, liquid, and solid waste collection, disposal treatment, and drainage services and facilities. Project does not include a program or activity authorized under chapter 8A.

(j) “Private sector” means other than the fund, a state or federal source, or an agency of a state or the federal government.

Sec. 9. (1) The fund shall transmit to the legislature annually a status report of its activities. The report shall include, but not be limited to, information on name and location of all applicants, amount and type of financial assistance being requested, type of project or product being financed, number of net jobs created or retained, duration of financial assistance, amount of financial support other than state resources, and the status of any loans of the fund, excluding industrial development revenue loans, which are in default. The report shall not include information exempt from disclosure under section 5.

(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 status report described in subsection (1) and 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 status report and audit available to the public on the fund's website.

Sec. 88b. (1) The fund shall create and operate programs authorized under this chapter. The fund board shall determine the annual allocation of money for programs authorized under this chapter and make authorized expenditures or investments from the investment fund of the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, as authorized under this chapter for programs and activities authorized under this chapter.

(2) Money transferred or appropriated by law to the fund for the purposes of carrying out this chapter or chapter 8C shall be expended or invested by the fund as authorized by law for the following purposes:

(a) 21st century investments.

(b) Grants and loans approved by the commercialization board under section 88k.

(c) Other programs or activities authorized under this chapter.

(d) For promotion of tourism in this state. For fiscal year 2010-2011 only, \$20,000,000.00 for the promotion of tourism in this state from funds appropriated in the jobs for Michigan investment program - 21st century jobs fund line in section 109 of 2010 PA 191 with not less than \$1,500,000.00 to be used for the 2010-2011 winter advertisement buy. For all funds used for promotion of tourism in this state under this subdivision, the fund shall report to the legislature at the same time and in the same manner as provided in section 89d.

(e) Grants, loans, or other economic assistance under section 88r and community revitalization incentives under chapter 8C.

(3) Not more than 4% of the annual appropriation as provided by law from the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be used for the purposes of administering the programs and activities authorized under this chapter. However, the fund and the fund board shall not use more than 3% of the annual appropriation for administering the programs and activities authorized under this chapter unless the fund board by a 2/3 vote authorizes the additional 1% for administration. The MEDC may charge actual and reasonable fees for costs associated with loans, grants, or other economic assistance under this chapter. These fees are in addition to an amount of the appropriation used for administering the programs and activities authorized under this chapter.

(4) Not more than 5% of the annual appropriation as provided by law from the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be used for business development and business marketing costs. Not less than 80% of the funds committed for business development and business marketing costs shall be targeted to persons or entities outside of this state. No funds may be used for any business development and business marketing effort that includes a reference to or the image or voice of an elected state officer or a candidate for elective state office and that is targeted to a media market in Michigan.

(5) The fund shall not use any money appropriated or transferred for purposes authorized under this chapter to acquire interests in or improve real property. The restriction under this subsection does not prohibit the fund from taking a security interest in real property. The restriction under this subsection applies only to the fund and not to recipients of expenditures or investments under this chapter.

(6) The fund board may select all vendors for all expenditures and for program awards under this chapter by issuing a request for proposal or an alternative competitive process as determined by the fund board. At a minimum, the request for proposal shall require the responding entities to disclose any conflict of interest, disclose any criminal convictions, disclose any investigations by the internal revenue service or any other federal or state taxing body or court, disclose any litigation involving the entity, and maintain records and evidence pertaining to work performed. The fund board shall establish a standard process to evaluate proposals submitted as a result of a request for proposal and appoint a committee to review the proposals. The fund or the fund board shall not appoint or designate any person paid or unpaid to a committee to review proposals if that person has a conflict of interest with any potential vendors as determined by the office of the chief compliance officer established in section 88i.

(7) Application fees received for programs and activities authorized under this chapter or chapter 8C may be used by the fund for administering the programs and activities authorized under this chapter or chapter 8C. The restrictions on expenditures under subsection (3) do not apply to expenditure of application fee revenue under this subsection.

Sec. 88c. (1) The fund board shall exercise the duties of a fiduciary with respect to 21st century investments consistent with the purposes of this chapter. The prudent investor rule shall be applied by the fund board and any agent of the fund board in the management of 21st century investments. The prudent investor rule as applied to 21st century investments means that in making 21st century investments, the fund board shall exercise the judgment and care under the circumstances then prevailing that an institutional investor of ordinary prudence, discretion, and intelligence would exercise in similar circumstances in a like position. The fund board shall maintain a reasonable diversification among 21st century investments consistent with the requirements of this chapter.

(2) The fund board shall select qualified private equity funds, qualified venture capital funds, and qualified mezzanine funds by issuing a request for proposal. At a minimum, the request for proposal shall require a responding entity to disclose any conflict of interest, disclose any criminal convictions, disclose any investigations by the internal revenue service, the securities and exchange commission, or any other federal or state taxing or securities regulatory body, or court, or pertinent litigation regarding the conduct of the person or entity. The fund board shall establish a standard process to evaluate proposals submitted as a result of a request for proposal and appoint a committee to review the proposals.

(3) The fund board shall ensure that a recipient of money under sections 88d, 88e, 88f, 88g, 88q, and 88r and chapter 8C agrees as a condition of receiving the money not to use the money for any of the following:

(a) The development of a stadium or arena for use by a professional sports team.

(b) The development of a casino regulated by this state under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226, a casino at which gaming is conducted under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or property associated or affiliated with the operation of either type of casino described in this subdivision, including, but not limited to, a parking lot, hotel, motel, or retail store.

(4) The fund board shall establish requirements to ensure that money expended under sections 88d, 88e, 88f, 88g, 88q, and 88r and chapter 8C shall not be used for any of the following:

(a) Provision of money to a person who has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees as determined by the board, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(b) Provision of money to a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(c) Provision of money to a business enterprise to induce qualified businesses or small businesses to leave this state.

(d) Provision of money that would contribute to the violation of internationally recognized workers rights, as defined in section 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a country other than the United States, including any designated zone or area in that country.

(e) Provision of money to a corporation or an affiliate of the corporation who is incorporated in a tax haven country after September 11, 2001, while maintaining the United States as the principal market for the public trading of the corporation's stock. As used in this section, "tax haven country" includes a country with tax laws that facilitate avoidance by a corporation or an affiliate of the corporation of United States tax obligations, including Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the principality of Liechtenstein, the principality of Monaco, and the Republic of the Seychelles.

(5) Before adopting a resolution that establishes or substantially changes a 21st century investment program, including any fees, charges, or penalties attached to that program, the fund board shall give notice of the proposed resolution to the governor, to the clerk of the house of representatives, to the secretary of the senate, to members of the senate and house of representatives appropriation committees, and to each person who requested from the fund in writing or electronically to be notified regarding proposed resolutions. The notice and proposed resolution and all attachments shall be published on the fund's internet website at least 10 days prior to the date that the proposed resolution is considered by the fund board. The fund board shall hold a public hearing and offer a person an opportunity to present data, views, questions, and arguments. Members of the fund board or 1 or more persons designated by the fund board who have knowledge of the subject matter of the proposed resolution shall be present at the public hearing and shall participate in the discussion of the proposed resolution. The fund board may act on the proposed resolution on the day of the public hearing. The fund board shall produce a final decision document that describes the basis for its

decision. The final resolution and all attachments and the decision document shall be provided to the governor, to the clerk of the house of representatives, to the secretary of the senate, and to members of the senate and house of representatives appropriation committees and shall be published on the fund's internet website.

(6) The notice described in subsection (5) shall include all of the following:

(a) A copy of the proposed resolution and all attachments.

(b) A statement that the addressee may express any data, views, or arguments regarding the proposed resolution.

(c) The address to which written comments may be sent and the date by which comments must be mailed or electronically transmitted, which date shall not be before the date of the public hearing.

(d) The date, time, and place of the public hearing.

(7) The fund board shall employ or contract with a fund manager or other persons it considers necessary to implement this section. The person employed or contracted under this subsection shall have not less than 10 years' experience in commercial lending, private equity, mezzanine funding, or venture capital. The person employed or contracted under this section shall exercise the duties of a fiduciary toward investments from the investment fund under this section. Management fees payable by the fund and other investors in a qualified private equity fund, a qualified mezzanine fund, or a qualified venture capital fund shall be considered an investment expense and not an administrative cost incurred by the fund.

(8) Subject to subsection (9), a record received, prepared, used, or retained by an investment fiduciary in connection with an investment or potential investment of the investment fund that relates to investment information pertaining to a portfolio company in which the investment fiduciary has invested or has considered an investment that is considered by the portfolio company and acknowledged by the investment fiduciary as confidential, or that relates to investment information whether prepared by or for the investment fiduciary regarding loans and assets directly owned by the investment fiduciary and acknowledged by the investment fiduciary as confidential, is exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, if at least annually the fund provides to the fund board, and makes available to the public, a report of fund investments during the prior state fiscal year that includes all of the following:

(a) The name of each portfolio company in which the investment fund invested during the reporting period.

(b) The aggregate amount of money invested by the investment fund in portfolio companies during the reporting period.

(c) The rate of return realized during the reporting period on the investments of the investment fund in portfolio companies.

(d) The source of any public funds invested by the investment fund in portfolio companies during the reporting period.

(9) If a record described in subsection (8) is an agreement or instrument to which an investment fiduciary is a party, only those parts of the record that contain investment information are exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) As used in subsections (8) and (9):

(a) "Investment fiduciary" means a person who exercises any discretionary authority or control over an investment of the investment fund or renders investment advice for the fund for a fee or other direct or indirect compensation.

(b) "Investment information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause a portfolio company or an investment fiduciary significant competitive harm. Investment information includes, but is not limited to, financial performance data and projections, financial statements, list of coinvestors and their level of investment, product and market data, rent rolls, and leases.

(c) "Portfolio company" means an entity in which an investment fiduciary has made or considered an investment on behalf of the investment fund.

(d) "Record" means all or part of a writing, as that term is defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232.

Sec. 88h. (1) The jobs for Michigan investment fund is created within the fund as a permanent fund authorized by section 19 of article IX of the state constitution of 1963. Money in the investment fund at the close of the fiscal year shall remain in the investment fund and shall not lapse to the general fund. Money in the investment fund shall not be transferred to another governmental entity or a separate legal entity and public body corporate established under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, except as authorized in this chapter.

(2) Money or other assets deposited in the investment fund shall be held as permanent funds as provided under section 19 of article IX of the state constitution of 1963 and invested only as authorized under this chapter, including, but not limited to, investments in the stock of a company, association, or corporation.

(3) The investment fund shall be invested as authorized under this chapter for the benefit of the people of the state of Michigan and for the purpose of creating incentives for the following in this state:

- (a) Retaining or creating jobs.
- (b) Increasing capital investment activity.
- (c) Increasing commercial lending activity.
- (d) Encouraging the development and commercialization of competitive edge technologies.
- (e) Revitalizing Michigan communities.

(4) Funds or other assets of the investment fund also may be invested in debt instruments or debt obligations for loans or guarantees authorized under this chapter.

(5) The investment fund shall consist of all of the following:

(a) Any funds appropriated to, transferred to, or deposited in the investment fund from the 21st century jobs trust fund under the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260.

(b) Earnings, royalties, return on investments, return of principal, payments made, or other money received by or payable to the fund under agreements related to grants, loans, investments, or expenditures by the fund under this chapter or chapter 8C.

(c) Assets, property, money, earnings, royalties, return on investments, return of principal, payments made, or other money owed, received by, or payable to the fund or the Michigan economic development corporation under agreements related to grants, loans, investments, or other payments funded by appropriations from the state general fund or tobacco settlement revenue under 1 or more of the following:

(i) Section 418 of 1999 PA 120, commonly known as the health and aging research and development initiative or the Michigan life sciences corridor initiative, or any successor program.

(ii) Section 410 of 2000 PA 292, commonly known as the health and aging research and development initiative or the Michigan life sciences corridor initiative, or any successor program.

(iii) Section 410 of 2001 PA 80, commonly known as the health and aging research and development initiative or the Michigan life sciences corridor initiative, or any successor program.

(iv) Section 410 of 2002 PA 517, commonly known as the Michigan life sciences corridor initiative, or any successor program.

(v) Section 410 of 2003 PA 169, commonly known as the Michigan life sciences and technology tri-corridor initiative, or any successor program.

(vi) Section 510 of 2004 PA 354, commonly known as the Michigan technology tri-corridor and life sciences initiative, or any successor program.

(vii) Section 801 of 2005 PA 11, commonly known as the technology tri-corridor and life sciences initiative, or any successor program.

(viii) Section 381(1)(c) of 2003 PA 173, providing for payments to the life sciences commercial development fund.

(d) Money or assets received by the state treasurer or the fund from any source for deposit in the investment fund.

(e) Interest and earnings on any funds or other assets deposited in the investment fund or other net income of the investment fund.

(6) The net income of the investment fund may be expended by the fund only for purposes authorized under this chapter or chapter 8C pursuant to an appropriation authorized by law. As used in this section, the net income of the investment fund shall be computed annually as of the last day of the state fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses.

(7) The fund board shall be the trustees of the investment fund and shall direct the investment and reinvestment of the funds and assets of the investment fund as consistent with the objectives of this chapter or chapter 8C.

(8) The fund board may establish restricted subaccounts within the investment fund as necessary to administer the investment fund. The fund board may contract with the state treasurer to assist the fund board in administering the investment fund. The fund board may authorize money in the investment fund not invested as authorized under sections 88d, 88e, 88f, 88g, 88q, and 88r and chapter 8C to be managed by the state treasurer as part of the common cash fund of this state under 1967 PA 55, MCL 12.51 to 12.53. Money managed by the state treasurer under this subsection shall be separately accounted for by the state treasurer. When authorized under this subsection, the state treasurer may invest the funds or assets of the investment fund in any investment authorized under 1855 PA 105, MCL 21.141 to 21.147, for surplus funds of this state, in obligations issued by any state or political subdivision or instrumentality of the United States, or in any obligation issued, assumed, or guaranteed by a solvent entity created or existing under the laws of the United States or of any state, district, or territory of the United States, which are not in default as to principal or interest.

(9) A member of the fund board or officer of the fund shall not gain from any investment of funds or assets of the investment fund. A member of the fund board or officer of the fund shall not have any direct or indirect interest in an investment of funds or assets of the investment fund. A member of the fund board or person connected with the investment fund directly or indirectly, for himself or herself, or as an agent or partner of others, shall not borrow any of the funds or assets of the investment fund or in any manner use funds or assets of the investment fund except as authorized under this chapter. A member of the fund board or officer of the fund shall not become an endorser or surety or become in any manner an obligor for money loaned by or borrowed from the investment fund. Failure to comply with this subsection constitutes misconduct in office subject to removal under section 94. In addition to any other sanction, a person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

Sec. 88k. (1) The strategic economic investment and commercialization board is created within the fund. The commercialization board shall exercise its powers, duties, and decision-making authority under this chapter independently of the fund, the fund board, and the department of treasury.

(2) The commercialization board shall award grants and loans from the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.256, and the investment fund only for basic research, applied research, university technology transfer, and commercialization of products, processes, and services to encourage the development of competitive edge technologies to create jobs in this state.

(3) Subject to subsection (2), the fund as determined by the commercialization board shall establish a competitive process to award grants and make loans for competitive edge technologies. The competitive process shall include, but is not limited to, the following:

(a) A provision that the applications must be reviewed by a joint-evaluation committee. Scientific and technical merit, personnel expertise, commercial merit, and the ability to leverage additional funding may be given equal weight in the review and scoring process as determined by the fund board.

(b) A preference for proposals that can contribute to the development of economic diversification or the creation of employment opportunities in this state.

(c) A provision that out-of-state business must have a significant existing or proposed business presence in this state.

(d) A provision that the program will utilize contracts with measurable milestones, clear objectives, provisions to revoke awards for breach of contract, and repayment provisions for loans given to qualified businesses that leave Michigan within 3 years of the execution of the contract or otherwise breach the terms of the contract.

(e) A provision that the applicant leverage other resources as a condition of the grant or loan. If an applicant is seeking a grant or a loan under this chapter to match federal funds for small business innovation research or small business technology transfer programs, the grant or loan under this chapter shall not exceed 25% of the federal funds and must leverage third-party commercialization funding at both the phase I and phase II levels.

(f) Limit overhead rates, administrative fees, and management fees for recipients of awards to not more than 25% of the award.

(g) Except as provided in subdivision (e), a provision that grants can only be awarded to Michigan institutions of higher education, Michigan nonprofit research institutions, and Michigan nonprofit corporations.

(h) A preference for collaborations between institutions of higher education, Michigan nonprofit research institutions, Michigan nonprofit corporations, and qualified businesses.

(i) A provision authorizing the award of grants to institutions of higher education to serve as match to promote or secure the award and receipt of competitively awarded federal research grants related to competitive edge technologies. A matching grant shall not exceed 10% of the amount of the competitively awarded federal research grants received.

(j) A provision encouraging the redevelopment of existing scientific wet lab space for the commercialization of life science technology.

(k) A preference for proposals that meet 1 or more of the following:

(i) Forecast revenues within 2 years.

(ii) Have outside investments from investors with experience and management teams with experience in the industry targeted by the proposal.

(iii) Have outside directors with expertise in the industry targeted by the proposal.

(4) The commercialization board shall establish standards to ensure that money expended under this chapter will result in economic benefit to this state and ensure that a major share of the business activity resulting from the expenditures occurs in this state.

(5) The commercialization board shall ensure that a recipient of money expended under this chapter agrees as a condition of receiving the money not to use the money for any of the following:

(a) The development of a stadium or arena for use by a professional sports team.

(b) The development of a casino regulated by this state under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226, a casino at which gaming is conducted under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or property associated or affiliated with the operation of either type of casino described in this subdivision, including, but not limited to, a parking lot, hotel, motel, or retail store.

(6) The commercialization board shall establish requirements to ensure that money expended under this section shall not be used for any of the following:

(a) Grants or loans to a person who has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. As used in this subdivision, if a person is a business entity, then person includes affiliates, subsidiaries, officers, directors, managerial employees as determined by the fund board, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(b) Grants or loans to a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes. As used in this subdivision, if a person is a business entity, then person includes affiliates, subsidiaries, officers, directors, managerial employees as determined by the fund board, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(c) Grants or loans to induce a qualified business or a small business to leave this state.

(d) Grants or loans that would contribute to the violation of internationally recognized workers rights, as defined in section 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a country other than the United States, including any designated zone or area in that country.

(e) Grants or loans to a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United States as the principal market for the public trading of the corporation's stock. As used in this section, "tax haven country" includes a country with tax laws that facilitate avoidance by a corporation or an affiliate of the corporation of United States tax obligations, including Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.

(7) When the commercialization board approves a grant or a loan under this chapter, the commercialization board shall state the specific objective reasons the applicant was selected over other applicants for a grant or loan under this chapter.

(8) After March 31, 2006, before adopting a resolution that establishes or substantially changes a program operated by the commercialization board, including any fees, charges, or penalties attached to that program, the commercialization board shall give notice of the proposed resolution to the governor, to the secretary of the senate, to the clerk of the house of representatives, to members of the senate and house of representatives standing committees on appropriations, and to each person who requested from the fund in writing or electronically to be notified regarding proposed resolutions. The notice and proposed resolution and all attachments shall be published on the fund's internet website at least 10 days prior to the date that the proposed resolution is considered by the commercialization board. The commercialization board shall hold a public hearing not sooner than 14 days and not longer than 30 days from the date notice of a proposed resolution is given and offer a person an opportunity to present data, views, questions, and arguments. Commercialization board members or 1 or more persons designated by the commercialization board who have knowledge of the subject matter of the proposed resolution shall be present at the public hearing and shall participate in the discussion of the proposed resolution. The commercialization board may act on the proposed resolution on the day of the public hearing. The commercialization board shall produce a final decision document that describes the basis for its decision. The final resolution and all attachments and the decision document shall be provided to the governor, to the secretary of the senate, to the clerk of the house of representatives, and to members of the senate and house of representatives standing committees on appropriations and shall be published on the fund's internet website.

(9) The notice described in subsection (8) shall include all of the following:

(a) A copy of the proposed resolution and all attachments.

(b) A statement that the addressee may express any data, views, or arguments regarding the proposed resolution.

(c) The address to which written comments may be sent and the date by which comments must be mailed or electronically transmitted, which date shall not be before the date of the public hearing.

(d) The date, time, and place of the public hearing.

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

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

(3) Funds appropriated for programs under this chapter shall be placed in the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260.

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

- (a) The importance of the project to the community in which it is located.
- (b) If the project will act as a catalyst for additional revitalization of the community in which it is located.
- (c) The amount of local community and financial support for the project.
- (d) The applicant's financial need for a community revitalization incentive.
- (e) The extent of reuse of vacant buildings, reuse of historical buildings, and redevelopment of blighted property.
- (f) Creation of jobs.
- (g) The level of private sector and other contributions, including, but not limited to, federal funds and federal tax credits.
- (h) Whether the project is financially and economically sound.
- (i) Whether the project increases the density of the area.
- (j) Whether the project promotes mixed-use development and walkable communities.
- (k) Whether the project converts abandoned public buildings to private use.
- (l) Whether the project promotes sustainable development.
- (m) Whether the project involves the rehabilitation of a historic resource.
- (n) Whether the project addresses areawide redevelopment.
- (o) Whether the project addresses underserved markets of commerce.
- (p) The level and extent of environmental contamination.
- (q) If the rehabilitation of the historic resource will meet the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, 36 CFR 67.
- (r) Whether the project will compete with or effect existing Michigan businesses within the same industry.
- (s) Any other additional criteria approved by the board that are specific to each individual project and are consistent with the findings and intent of this chapter.

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

(6) The amount of community revitalization incentives that the board may approve for a single project shall not exceed 25% of a project's eligible investment up to \$10,000,000.00. A community revitalization loan shall not exceed \$10,000,000.00 and a community revitalization grant shall not exceed \$1,000,000.00. However, a combination of loans, grants, and other economic assistance under this chapter shall not exceed \$10,000,000.00 per project. The board may not approve \$10,000,000.00 per project in community revitalization incentives to more than 3 projects per fiscal year. The board shall approve not less than 5 projects of \$1,000,000.00 or less per project per fiscal year. If, after reviewing all applications in a fiscal year, the fund determines that less than 5 projects warranted an award of \$1,000,000.00 or less, this subsection shall not apply.

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

(8) Not more than 4% of the annual appropriation as provided by law from the 21st century jobs trust fund established in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be used for the purposes of administering the programs and activities authorized under this chapter. However, the fund and the fund board shall

not use more than 3% of the annual appropriation for administering the programs and activities authorized under this chapter unless the fund board by a 2/3 vote authorizes the additional 1% for administration. The MEDC may charge actual and reasonable fees for costs associated with the community revitalization incentive authorized under this chapter. These fees are in addition to an amount of the appropriation used for administering the programs and activities authorized under this chapter.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

.....
Governor