

Legislative Analysis



MAKE IT IN MICHIGAN FUND

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

House Bills 5095 and 5107 as reported from committee
Sponsor: Rep. Joey Andrews

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

House Bills 5104 (H-1), 5105, and 5106 (H-1) as reported
Sponsor: Rep. Jason Hoskins

Committee: Economic Development and Small Business
Complete to 2-7-24

SUMMARY:

House Bills 5104 and 5106 would amend the Michigan Strategic Fund Act and the Michigan Trust Fund Act, respectively, to replace the Strategic Outreach and Attraction Reserve (SOAR) Fund with the “Make it in Michigan” Fund.¹ House Bills 5095, 5105, and 5107 would make complementary changes to other acts to reflect the transition to the Make it in Michigan Fund.

House Bill 5104 would amend the Michigan Strategic Fund Act to operate the Critical Industry program (CIP), the Michigan Strategic Site Readiness program (SSRP), and the new Michigan 360 program under the Make it in Michigan Fund program. The bill would create the Michigan 360 program, require the programs to be funded through the Make it in Michigan Fund rather than the SOAR Fund, and make other modifications to the existing programs as described below. It would also expand the Michigan Strategic Fund (MSF) board of directors to include four nonvoting members from the Senate and House of Representatives and would modify the requirements for the MSF’s annual report.

The bill would not apply to projects that were awarded economic assistance under the CIP or SSRP before the bill’s effective date.

Nonvoting MSF board members

The majority chair and minority vice chair of a Senate standing committee, selected by the Senate majority leader, and the majority chair and minority vice chair of a House standing committee, selected by the speaker of the House, would serve as nonvoting members on the MSF board of directors. The nonvoting members would serve a two-year term, and new members would have to be appointed at the end of the term. Nonvoting members would not be counted for purposes of determining a quorum of the board or for determining whether a majority vote of the MSF board has been achieved.

Make it in Michigan programs

Under House Bill 5104, the Critical Industry program, the Strategic Site Readiness program, and the Michigan 360 program would be considered the three “Make it in Michigan” programs. In determining whether to provide economic assistance for a project under the CIP, SSRP, or

¹ The Strategic Outreach and Attraction Reserve Fund was created in 2021 to fund Michigan’s economic development incentives through the Critical Industry program and the Michigan Strategic Site Readiness program. See Public Acts 134, 136, 137, and 143 of 2021: <http://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-0769-896200FB.pdf>.

Michigan 360, the MSF would have to determine how the assistance under all of the Make it in Michigan programs can be combined into a singular offer package to best achieve both of the following goals:

- Ensure that traditional economic development tools are packaged with targeted investments in the communities where the investments are located, housing, workforce development, education, and wraparound services.
- Ensure that economic assistance provided under the programs will benefit Michigan communities and residents even if a company's commitment fails to materialize, a business decision changes, or a company falls short of its stated goals.

The MSF would have to identify the site that is the best location for a particular project in consultation with the eligible company, both for the success of the business and for the impact to the economy and growth of the community. It would also have to engage with the governing body of the municipality where the site is located to collaboratively build an offer package and identify investments for eligible activities under the Michigan 360 program that align with the project's needs and directly support the residents of the community.

The MSF would have to prioritize providing economic assistance under the Make it in Michigan programs to projects that, including any connected Michigan 360 investments, will enable progress towards the state's economic justice and climate goals (see **Background**, below).

Make it in Michigan and MSF reports

The MSF would have to provide a quarterly report on the activities of the Make it in Michigan fund programs to the Senate Economic and Community Development committee and the House Economic Development and Small Business committee that includes a description of each project receiving economic assistance, in addition to all of the following for each project:

- The MSF's written analysis of the criteria for awarding the assistance under each Make it in Michigan program.
- A written explanation of how the offer package achieves the two goals of the Make it in Michigan program, as described above.
- A progress update that includes:
 - The amount of total project investment under the CIP and SSRP and amount of economic assistance provided under each program.
 - A description of any benchmarks or other conditions that must be met.
 - The status of each benchmark or condition.
 - The amount of money disbursed to date for the project and the date of each disbursement. (If a disbursement is related to the satisfaction of a benchmark or other condition, a description of that benchmark or condition would have to be included.)
 - A description of future projected installments, including the projected amount and any benchmarks that must be met to receive the installment.
 - Whether money has been paid to the MSF pursuant to a clawback or repayment provision, including a description of the reason for clawback or repayment and the amount paid.

MSF's annual report would generally have to include the status of each CIP, SSRP, and Michigan 360 project and how the project's progress reasonably satisfies the specific criteria for its respective program and the overall Make it in Michigan criteria, as described below.

(Currently, the report must include the activities of the CIP and SSRP as a whole.²) Reporting on the Michigan 360 program would have to include the status of the eligible activities under the program, the project to which those eligible activities relate, and a description of how the progress of those activities satisfies the Michigan 360 and Make it in Michigan program criteria.

Michigan 360

House Bill 5104 would create the Michigan 360 program, which would be operated and implemented by the authorized employees, officers, and agents of the MSF, including employees of the Department of Labor and Economic Opportunity (LEO).³ Money could be spent from the program for *qualified investments* to *eligible applicants* to support *eligible activities* related to projects under either the CIP or SSRP, and Michigan 360 investments would have to be made at the same time as and in connection with an award under either of those programs. An investment under the Michigan 360 program would have to be *at least 20%* of the total amount of economic assistance provided under the Make it in Michigan Fund programs for a project.

With respect to the Michigan 360 program, a *qualified investment* would mean a grant, loan, or other community economic and development assistance for a project subject to a written agreement under the Michigan 360 program. A qualified investment would have to be for eligible activities related to an award under the CIP or the SSRP.

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

- A political subdivision of Michigan, including a county, city, village, township, charter township, or instrumentality of any of those bodies.
- A college, university, community college, or junior college in Michigan.
- A nonprofit corporation or community advocacy group.
- A *community development financial institution* or coalition of community development financial institutions that has previously provided services in Michigan.
- A local professional or technical service provider.
- A local economic development corporation.
- A local or county land bank or the State Land Bank Authority.

Community development financial institution would mean that term as defined by 12 USC 470.⁴ Generally, it means a person other than an individual who has a primary mission of promoting community development; serves an investment area or targeted population; provides development services in conjunction with equity investments or loans (either directly or through an affiliate); maintains accountability to residents of its investment area or targeted population; and is not an agency or instrumentality of the United States, a state, or a political subdivision of a state.

² The report for the CIP would have to include, for each separate qualified investment, the *median* annual salary of the qualified jobs created or retained, rather than the average annual salary.

³ The bill would state that the legislature finds and declares that the funding provided under the Michigan 360 program is for the public purpose and serves the health, safety, and general welfare of Michigan residents.

⁴ See: <https://www.govinfo.gov/content/pkg/USCODE-2021-title12/pdf/USCODE-2021-title12-chap47-subchapI-sec4702.pdf>.

With respect to a proposed project considered under the Michigan 360 program, *eligible activities* would mean expenses that arise out of or are related to the following:

- Main street and placemaking activities and activities to create walkable communities.
- Support for the growth of small and micro businesses, business hubs, and technology collaborative spaces in the state.
- Workforce-related activities that will improve productivity, competitiveness, and inclusiveness of the workforce to meet the needs of employers or potential employers.
- Expansion or development of community services, including mental or behavioral health services and educational and youth programming at no cost or low cost to the community and employees.
- Hard infrastructure improvements in the community but not at the project site, including water infrastructure, transportation, roads, bridges, rail-grade separation, other community and regional connectors, weatherization infrastructure, and electric vehicle charging infrastructure.
- Local housing market analysis and other analysis to determine current and future housing and community needs and assistance in addressing identified needs as a result of the project.
- Expansion or development of housing to meet housing needs identified by the local housing market analysis. Housing investments would have to prioritize housing that is less than 60% of the regional median household income.
- Expansion or development of community resources, including broadband access, clean energy, energy efficiency tools, and green space preservation.
- Administrative fees for administrative costs incurred by the eligible applicant and any subrecipients of an eligible applicant relating to administering the funding provided under the program, up to 5% of the qualified investment.

The MSF would have to adopt an application, approval, and compliance process for the program and then publish the process on its website or the website of the Michigan Economic Development Corporation (MEDC). The application, approval, and compliance process for the CIP and SSRP, both of which currently must be published on the MSF website, could also instead be published on the MEDC website.

Michigan 360 criteria

Before entering into a written agreement for a qualified investment under the Michigan 360 program, the MSF would have to consider and document all of the following criteria:

- The potential economic impact of the project to the community and the state.
- The degree to which the proposed project is a priority for the local unit of government in which the investment will be made.
- Whether the project will act as a catalyst for additional economic growth in the community and in the state.
- Whether the eligible activities as defined for the proposed project will invest in transportation or infrastructure support in the community.
- Whether the proposed eligible activities will support workforce training and development needs in the community.
- The extent to which the proposed eligible activities will support the growth of local downtowns, central business districts, small businesses, or local business hubs.

- Whether the eligible activities as defined for the proposed project will support the child care needs of the community required to support the local workforce.
- Whether the proposed eligible activities will provide local housing to support growth in the community related to the project.
- Whether the proposed eligible activities will reuse vacant buildings or historic resources, or whether the proposed activities will redevelop blighted property.
- Whether the proposed eligible activities will support or enable progress toward the following core policy priorities, as defined by guidelines issued under the federal Justice40 initiative:⁵
 - Engaging with local stakeholders, including the governing bodies of communities and labor unions.
 - Investing in the Michigan workforce.
 - Advancing diversity, equity, inclusion, and accessibility.
 - Benefiting disadvantaged communities under the Justice40 initiative.
- The extent to which the proposed eligible activities will attempt to coordinate with existing resources and programs in Michigan, including the MichiganWorks! One-Stop Service Center system,⁶ the Michigan High-Speed Internet Office,⁷ the Michigan State Housing Development Authority (MSHDA), state and local land banks, and the Michigan Department of Transportation (MDOT).

Written agreements

If the MSF determines that the project and related eligible activities reasonably satisfy the applicable criteria after a holistic evaluation and decides to award a qualified investment to an eligible applicant, it would have to enter into a written agreement with the applicant that includes the following, in addition to any other terms and conditions related to the investment:

- The amount of the total qualified investment to be awarded.
- Specific dates and benchmarks for the applicant to receive the investment, including any conditions for the disbursement of money in installments.
- Specific terms relating to measurable outcomes, proration of payments for partial performance, and clawback and specific repayment provisions for noncompliance.
- An audit provision requiring the MSF to verify that the required benchmarks have been satisfied.
- A provision requiring the applicant to provide the data described in the agreement to the MSF to comply with legislative reporting requirements.

A project and its related eligible activities would not be required to satisfy all the criteria for the MSF to determine that the goals of the Michigan 360 program would be met by the project.

Before entering into the agreement, the MSF would have to submit a copy of the negotiated terms of the agreement and its written analysis of the criteria to the four legislators who serve as nonvoting members of the MSF board, the Senate majority leader, the speaker of the House, and the chairs of the Senate and House appropriations committees.

⁵ The initiative, created by Executive Order 14008, is an environmental justice program aiming to ensure that 40% of overall benefits of certain federal investments go to disadvantaged communities. For the White House's initial guidance on the Justice40 initiative, see: <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

⁶ <https://www.michiganworks.org/michigan-works-network>.

⁷ <https://www.michigan.gov/leo/bureaus-agencies/mihi>.

The MSF could not provide economic assistance under the CIP or the SSRP unless economic assistance is provided under the Michigan 360 program in an amount that is not less than 20% of the total amount of economic assistance provided for a project under the Make it in Michigan Fund programs.

Administrative fee

House Bill 5104 would require the MSF to retain 5% of the amount of a qualified investment or other economic assistance awarded to a qualified business for any additional administrative expenses of the Michigan 360 program.

Limitations on disbursements

The MSF could not disburse money to an eligible applicant for a qualified investment under the Michigan 360 program if any of the following apply:

- The applicant has not fully repaid all money subject to a clawback or that is required to be repaid under any agreement with the MSF or MEDC.
- The eligible applicant is in default on any grant, loan, investment, or other economic assistance made or guaranteed by the MSF or MEDC.

Clawbacks

All money paid to the MSF pursuant to a clawback or a specific repayment provision for a qualified investment under the Michigan 360 program would be deposited into the general fund, and any money allocated to the program that remains unexpended, unallocated, or unobligated at the end of a fiscal year would revert to the Make it in Michigan Fund.

Currently, all money paid to the MSF pursuant to a clawback or repayment provision for a project receiving money from the CIP or the SSRP is deposited in the SOAR Fund, and all money allocated to the programs that remains unexpended, unallocated, or unobligated at the end of a fiscal year would revert back to the SOAR Fund. House Bill 5104 would instead provide that this money would be deposited into the general fund and would revert to the Make it in Michigan Fund, as applicable, and would remove requirements that the MSF cannot use money allocated to these programs for administrative purposes.

Modification requests

A request to modify an existing written agreement under the Michigan 360 program would have to include the specific provision of the agreement to be modified and the rationale for the modification. If the MSF receives such a request, it would have to provide a copy to the four legislators who serve as nonvoting members of the MSF board, the Senate majority leader, the speaker of the House, the chairs of the Senate and House appropriations committees, the governor, the clerk of the House, the secretary of the Senate, and the Senate and House Fiscal Agencies within five business days of receiving it and before amending the agreement. The MSF would also have to provide public notice of the proposed amendments and publish them on its website at least one business day before holding a public hearing on the amendments.

If the MSF amends an existing agreement, it would have to notify the officers and entities listed above within one business day of the modification.

Reporting requirements

By March 15 of each year, the MSF would have to send a report to each member of the legislature, the governor, the clerk of the House, the secretary of the Senate, and the Senate and

House Fiscal Agencies that describes the activities of the Michigan 360 program. The report would have to include a list of applicants that received a qualified investment, in addition to the following information for each investment:

- A description of the associated project.
- The amount and type of qualified investment.
- A description of any installments that have been paid and a description of projected future installments.
- A description of community engagement in connection with the project.
- The status of the progress of eligible activities.
- A description of all required benchmarks for the eligible activities in accordance with the written agreement, and the status of those benchmarks.

Critical Industry program⁸

The MSF operates the CIP and uses money transferred from the SOAR Fund or other appropriated money to make *qualified investments* to *qualified businesses* for deal-closing, gap financing, or other economic assistance to create or retain *qualified jobs* as a result of a technological shift in product or production⁹ or make capital investments, or both, as determined by the MSF board.¹⁰

With respect to the Critical Industry program, a *qualified investment* means a grant, loan, or other economic assistance for a project subject to a written agreement with a qualified business under the CIP. It includes grants, loans, and other economic assistance for the creation or retention of qualified jobs *as a result of a technological shift in product or production*, infrastructure improvements, other capital investments, the purchase or acquisition of heavy machinery, or other assistance.¹¹ House Bill 5104 would delete the italicized language and instead provide that a qualified investment includes assistance for the creation or retention of qualified jobs *that the MSF determines are critical to the economic growth and development of the state*.

Qualified business means a business located or operating in Michigan or a business that will locate or operate in Michigan as determined by the MSF board. A qualified business may include more than one business, as determined by the MSF board.

Qualified job means a job performed by a Michigan resident whose state income taxes are withheld by an employer, by an employee leasing company or professional employer organization on behalf of the employer, or by an individual who is not a Michigan resident and is employed by a business at a project location that is in

⁸ For an overview of the Critical Industry Program, see: <https://www.michiganbusiness.org/services/incentives-and-taxes/cip/>.

⁹ The bill would delete requirements that an eligible job must be created or retained as a result of a technological shift in product or production. Instead, the MSF would determine whether a job is critical to the economic growth and development of the state.

¹⁰ House Bill 5104 would specify that the program is operated and implemented by the authorized employees, officers, and agents of the MSF, which could include employees of the MEDC.

¹¹ The term also includes a grant, loan, or other economic assistance for job training opportunities or workforce development and education.

Michigan, as determined and verified by the MSF. (House Bill 5104 would specify that qualified jobs must be permanent and full-time jobs.¹²)

CIP criteria

The following would be added to the list of criteria that the MSF must consider and document before entering into a written agreement for a qualified investment under the CIP:¹³

- Whether the project will catalyze economic growth in Michigan and the community in which it is located.¹⁴
- The amount of any other economic assistance or support provided by the state for the project.
- The amount of any other economic assistance or support provided by the federal government for the project, including grants, loans, appropriations, or tax credits.
- The amount of any private funds, investments, or contributions for the project, including the qualified business's own investments in the project.
- Whether the qualified jobs associated with the project are at or above the median hourly wage of the prosperity region in which the project is or will be located.¹⁵
- The extent to which the applicant will leverage the local skilled workforce LEO programs for the development and construction at the project location.
- Whether the proposed project is or will be located in a qualified opportunity zone,¹⁶ a HUBZone,¹⁷ or a county, city, village, or township with an unemployment rate exceeding the average statewide unemployment rate; or, if the project is not or will not be located in one of those areas, whether the project will be located in a city, county, village, or township experiencing consistent population growth that has a median income higher than the statewide median income.
- Whether the proposed project is or will be located in a county, city, village, or township that is or is projected to be impacted by industry or technological shifts.
- The business's plan for remediating any environmental contamination that exists for a certain project.¹⁸
- Whether the project will result in equitable job growth based on providing training and advancement opportunities for employees.
- Whether the qualified business provides employer-sponsored benefits, including health care coverage, retirement savings, paid family and medical leave, housing assistance, and child care.
- The extent to which the qualified business engages or is engaged with the community in which the project is or will be located.

¹² This provision would also apply to qualified jobs under the SSRP, which requires the consideration of the qualified jobs to be created or retained for an applicant under that program with a specifically identified end user.

¹³ The current criteria can be found here:

<https://www.michiganbusiness.org/48f6cb/globalassets/documents/reports/fact-sheets/critical-industry-program-guidelines.pdf>. One of these criteria, which is also included in the criteria for the SSRP, is whether the project promotes *sustainable development*, which HB 5104 would define as development that uses natural resources responsibly, minimizes ecological and environmental impacts, and improves community resilience to natural disasters while preserving the ability of future generations to meet their own needs.

¹⁴ The MSF must currently consider whether the project will catalyze revitalization.

¹⁵ See: <https://www.michigan.gov/msp/-/media/Project/Websites/msp/about/Posts.pdf?rev=46168c88d77d4dec9c2e940780f884a7>.

¹⁶ See: <https://michigan.maps.arcgis.com/apps/webappviewer/index.html?id=8b1413d59b8d420faaf5217a5ab52851>.

¹⁷ See: <https://maps.certify.sba.gov/hubzone/map#center=44.722800,-103.249700&zoom=4>.

¹⁸ The MSF must currently consider the level and extent of the contamination.

- Whether the employees have the right to self-organization; to form, join, or assist labor organizations; to participate in collective bargaining through representatives of their own choosing; and to engage in other concerned activities for the purpose of collective bargaining or other mutual aid or protection.
- Whether the qualified business has downsized or permanently laid off workers within this state within two years of the potential award and, if downsizing or permanent layoffs occurred, the salary range of the affected employees. The MSF would have to consider the net job loss or gain and the overall impact on net median income when determining whether to award a qualified investment.
- The extent to which the proposed project will attempt to coordinate with Michigan's existing resources and programs, including the following:
 - The MichiganWorks! One-Stop Service Center system for hiring, employment, workforce development, and other similar needs.
 - The Michigan High-Speed Internet Office for community infrastructure investments to expand access to, increase the affordability of, or otherwise improve high-speed internet services.
 - MSHDA for community housing needs and planning, implementation, and other activities in connection with those needs.
 - The State Land Bank Authority and county and local land banks for land acquisition and other land needs for community investment and planning, implementation, and other activities in connection with these land needs.
 - MDOT for transportation needs and planning, implementation, and other activities in connection with those needs.

Under the bill, the following criteria would no longer have to be considered:

- The level of other public funds, including the appropriation of federal or state funds and any federal or state tax credits.
- The level of any private funds, investments, or contributions into the project, including the qualified business's own investments in the project.
- Whether and how the project involves the rehabilitation of a historic resource.
- Whether and how the project's proximity to rail and utility will affect its performance and maximize energy and logistical needs in the community in which it is located and in Michigan.
- The risk of obsolescence of the project, products, and investments in the future.
- Whether and how the project addresses food supply challenges.
- Any other additional criteria approved by the MSF board that are specific to an individual project and consistent with the purpose of the critical industry program.

Additionally, instead of the importance of a project for the community in which it is located, the MSF would have to consider the project's potential economic impact for that community and the state.

A project would have to reasonably satisfy any applicable criteria to be eligible to receive a qualified investment under the CIP. To make this determination, the MSF would have to make a holistic evaluation of the applicable criteria to determine if the goals of the CIP will be met. A project would not have to satisfy all of the criteria to receive an investment.

Written agreements

If the MSF decides to award a qualified investment to a qualified business, it must enter a written agreement with the business that includes the following, in addition to any other terms and conditions related to the investment:

- Specific dates and benchmarks for the business to receive the investment, including any conditions for the disbursement of money in installments.
- Specific terms relating to the required qualified job creation or the retention of qualified jobs, including measurable outcomes, prorated payments for partial performance, and clawback or specific repayment provisions for noncompliance.
- Specific penalties for noncompliance, as determined by the MSF.
- A provision that all money subject to a clawback or that is required to be repaid under a specific repayment provision must be paid within 90 days after notification from the MSF, and any amounts not paid within that period will be subject to a 1% monthly penalty, prorated daily.
- A provision that the state may have a *security interest* to the extent of the investment, as determined by the MSF board, unless doing so conflicts with any contractual obligation of the qualified business or with any applicable bankruptcy or insolvency laws.
- A requirement that the business provide all data necessary for the MSF's annual legislative reports.
- A provision authorizing the business to enter into direct agreements with workforce training providers to meet the qualified investment's workforce requirements, as the MSF determines to be appropriate.
- A provision that there are no proceedings pending before any government commission, board, bureau, or other administrative agency or tribunal to the applicant's knowledge that would have a materially adverse effect on the project or the performance of the applicant's obligations under the written agreement.

Security interest would mean, as defined in the Uniform Commercial Code, an interest in personal property or fixtures that secures payment or performance of an obligation.

House Bill 5104 would additionally require the written agreement to include the total amount of the qualified investment to be awarded and an audit provision requiring the MSF to verify that the benchmarks required for the project have been satisfied.

Before entering into an agreement, the MSF would have to submit a copy of the negotiated terms of the agreement and a written analysis of the criteria considered for both the CIP and the Make it in Michigan Fund to the four nonvoting legislators on the MSF board, in addition to the Senate majority leader, the speaker of the House, and the chairs of the Senate and House appropriations committees.

Administrative fee

House Bill 5104 would require the MSF to retain 5% of the amount of a qualified investment or other economic assistance awarded to a qualified business for any additional administrative expenses of the CIP.

Modification requests

Currently, if the MSF receives a request to modify an existing written agreement for an investment under the CIP, it must provide a copy of the request to each member of the legislature, the governor, the clerk of the House, the secretary of the Senate, and the Senate and House Fiscal Agencies within five business days of receiving the request. House Bill 5104 would instead require the MSF to provide a copy of the request to the four nonvoting legislators on the MSF board, the Senate majority leader, the speaker of the House, and the chairs of the Senate and House appropriations committees, rather than all members of the legislature, and would specify that the copy of the modification would have to be provided before the MSF amends the written agreement. (If the MSF approves a modified agreement, a copy of the new agreement must be provided to the officers and entities listed above within one business day. House Bill 5104 would provide that the only legislators required to receive a copy of the modification would be those listed above.)

Michigan Strategic Site Readiness program¹⁹

The MSF operates the SSRP and uses money transferred from the SOAR Fund or other appropriated money to provide economic assistance to *eligible applicants* to create investment-ready sites to attract and promote investments for *eligible activities* on or related to strategic sites and mega-strategic sites.²⁰

Eligible applicant means an applicant that is one of the following:

- A political subdivision of the state, including a county, city, village, township, or charter township or an instrumentality of any of those political subdivisions.²¹
- A local economic development corporation or similar authority.
- An owner of the site for which the improvements are proposed that is not its end user, as long as the end user applies jointly with another applicant.
- An end user, when applicable.

With respect to a site that is the subject of a SSRP application, *eligible activities* mean land acquisition;²² site preparation and improvement; infrastructure improvements that directly benefit the site; demolition, construction, alteration, rehabilitation, or improvement of buildings on the site; environmental remediation; and architectural, engineering, surveying, and similar professional fees. House Bill 5104 would provide that the term also includes administrative fees for administrative costs incurred by the MSF related to administering the funding provided under the program, for up to 5% of the amount of the economic assistance awarded to an eligible applicant.

¹⁹ For an overview of the Michigan Strategic Site Readiness Program, see: <https://www.michiganbusiness.org/services/incentives-and-taxes/ssrp/>.

²⁰ House Bill 5104 would specify that the program is operated and implemented by the authorized employees, officers, and agents of the MSF, which could include employees of the MEDC.

²¹ House Bill 5104 would allow a land bank to enter into a written agreement with the MSF, if determined to be necessary.

²² House Bill 5104 would specify that include land holding costs are a part of land acquisition and assembly. Additionally, subject to MSF approval, local and regional economic development organizations could use money from the program to acquire real property or interests in real property.

SSRP criteria

The following would be added to the list of criteria that the MSF must consider and document before entering into a written agreement for a qualified investment under the SSRP:²³

- The potential economic impact of the project to the state.
- Whether the project will catalyze economic growth in Michigan and the community in which it is located.²⁴
- The extent to which the applicant will leverage the local skilled workforce and LEO programs for the development and construction at the project location.
- The business's plan for remediating any environmental contamination that exists for a certain project.²⁵
- Whether the project is or will be located in a county, city, village, or township that is or is projected to be impacted by industry or technological shifts.
- The strategic economic importance of the project to the community in which it is located and to Michigan.
- Whether financial assistance is needed to secure the project in Michigan.
- 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.
- The level of capital investment.
- The evidence of the end user's commitment to the site.

Under the bill, the following criteria would no longer have to be considered:

- The importance of the project or eligible activities to the community in which it is located.
- Whether the proposed strategic site or mega-strategic site is incorporated into a strategic plan of a political subdivision of Michigan.
- Whether and how the project converts abandoned public buildings to private use.
- Whether and how the project involves the rehabilitation of a historic resource.
- Whether and how the project addresses underserved markets of commerce.
- Whether and how the project will compete with or affect existing Michigan businesses within the same industry.
- The risk of obsolescence of the project, products, and investments in the future.
- Any other additional criteria approved by the MSF board that are specific to each individual project and are consistent with the purpose of the program.

A project would have to reasonably satisfy the applicable criteria to be eligible to receive economic assistance under the SSRP. To make this determination, the MSF would have to make a holistic evaluation of the applicable criteria to determine if the goals of the SSRP will be met. A project would not have to satisfy all of the criteria to receive an investment.

There would no longer be separate criteria for certain sites or for whether there is an identified end user for a project, and all projects would be evaluated under the criteria listed above.

²³ The current criteria can be found here:

<https://www.michiganbusiness.org/48fd7b/globalassets/documents/reports/fact-sheets/strategic-site-readiness-program-guidelines.pdf>. Different criteria apply for certain sites and for whether an end user for the site has been identified.

²⁴ The MSF must currently consider whether the project will catalyze revitalization.

²⁵ The MSF must currently consider the level and extent of the contamination.

Written agreements

If the MSF decides to provide a grant, loan, or other economic assistance to an eligible applicant under the program, it must enter into a written agreement with the applicant that includes the terms and conditions related to the economic assistance.

In addition to the current requirements for the written agreement, House Bill 5104 would require the agreement to include the amount of the grant, loan, or other economic assistance to be awarded and a provision requiring the applicant to provide all necessary data for the MSF to comply with the act's reporting requirements.

Before entering into an agreement, the MSF would have to submit a copy of the negotiated terms of the agreement and a written analysis of the criteria considered for both the SSRP and the Make it in Michigan Fund to the four nonvoting legislators on the MSF board, in addition to the Senate majority leader, the speaker of the House, and the chairs of the Senate and House appropriations committees.

Administrative fee

House Bill 5104 would require the MSF to retain 5% of the amount of a grant, loan, or other economic assistance awarded to an eligible applicant for any additional administrative expenses of the SSRP.

Modification requests

Currently, if the MSF receives a request to modify an existing written agreement for an investment under the SSRP, it must provide a copy of the request to each member of the legislature, the governor, the clerk of the House, the secretary of the Senate, and the Senate and House Fiscal Agencies within five business days of receiving the request. House Bill 5104 would instead require the MSF to provide a copy of the request to the four nonvoting legislators on the MSF board, the Senate majority leader, the speaker of the House, and the chairs of the Senate and House appropriations committees, rather than all members of the legislature, and would specify that the copy of the modification would have to be provided before the MSF amends the written agreement. (If the MSF approves a modified agreement, a copy of the new agreement must be provided to the officers and entities listed above within one business day. House Bill 5104 would provide that the only legislators required to receive a copy of the modification would be those listed above.)

Deleted provisions

The bill would remove a provision that requires the MSF to prepare a mega-strategic site investment strategy and spending plan in collaboration with an eligible applicant when awarding economic assistance under the SSRP for a mega-strategic site with no identified end user.

It would also remove a provision allowing the MSF to make grants and provide technical assistance to local economic development corporations through the SSRP to create an inventory of development-ready sites.

The bill is tie-barred to House Bill 5106, which means that it cannot go into effect unless HB 5106 is also enacted.

MCL 125.2005 et seq.

House Bill 5105 would amend 1921 PA 2, which created the State Administrative Board and enumerates several of its powers and duties. Under the act, the board may inter-transfer funds within the appropriation for a particular department, board, commission, officer, or institution, although it does not have the power to transfer to a state department, board, commission, officer, or institution any sum from the amount appropriated by the legislature for another purpose.

The bill would add that the State Administrative Board may not transfer or inter-transfer any funds that are appropriated to or deposited in the Make it in Michigan Fund, rather than the SOAR Fund, or any funds appropriated or transferred for the Michigan 360 program.

The bill is tie-barred to House Bills 5104 and 5106, which means that it cannot go into effect unless both HBs 5104 and 5106 are enacted.

MCL 17.3

House Bill 5106 would amend the Michigan Trust Fund Act to rename the SOAR Fund as the Make it in Michigan Fund.

The Make it in Michigan Fund would be created and operated under the same provisions as the SOAR Fund, and the same annual reporting requirements would apply. Money in the fund could only be spent pursuant to an appropriation or legislative transfer for the Critical Industry program, the Michigan Strategic Site Readiness program, or the Michigan 360 program.

The state treasurer could invest money in the Make it in Michigan Fund as follows:

- As part of the common cash of the state, if the money is separately accounted for.
- In an investment for surplus funds authorized under 1855 PA 105, an act that addresses how surplus funds in the state treasury can be invested.
- In an obligation issued by any state, political subdivision, or instrumentality of the United States.
- In an 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 that is not in default as to principal or interest.
- In another investment authorized by law.

The bill is tie-barred to House Bill 5104, which means that it cannot go into effect unless HB 5104 is also enacted.

MCL 12.252 and 12.254

House Bill 5107 would amend the Income Tax Act to update a reference to the SOAR Fund to reflect its renaming as the Make it in Michigan Fund. The bill would also remove a provision that would have deposited \$800.0 million into the Michigan Taxpayer Rebate Fund if the law adding that provision had taken effect before April 18, 2023.

The bill is tie-barred to House Bill 5106, which means that it cannot go into effect unless HB 5106 is also enacted.

MCL 206.695

House Bill 5095 would amend the Economic Development Incentive Evaluation Act to include the Make it in Michigan Fund and the three Make it in Michigan Fund programs in the list of incentives that must be periodically evaluated.²⁶ The act requires the Department of Technology, Management, and Budget (DTMB) to contract with a private entity, nonprofit entity, or academic institution for the evaluation of economic development incentives.

The bill would provide that an economic development incentive under the Make it in Michigan Fund or any of its programs would include any economic assistance provided for a project partially or wholly funded by money from the Make it in Michigan Fund or for a project partially funded, wholly funded, or otherwise incentivized under any of the Make it in Michigan programs.

The bill is tie-barred to House Bills 5104 and 5106, which means that it cannot go into effect unless both HBs 5104 and 5106 are enacted.

MCL 18.1753

BACKGROUND:

As described in House Bill 5104, Michigan's economic justice and climate goals include the following:

- Lifting families out of working poverty.
- Having 60% of Michigan residents who are at least 25 years of age hold a postsecondary degree or certificate by 2030.
- Securing low- or no-cost child care for 150,000 families.
- Becoming a top ten state for small business growth, revenue growth, and venture capital funding.
- Building 75,000 new or rehabilitated housing units.
- Raising the median household income for Michigan residents.
- Increasing the state's population and workforce.
- Prioritizing brownfield sites and disadvantaged communities under the Justice 40 initiative.
- Building energy-efficient sites and utilizing clean energy.
- Building and increasing electric vehicle infrastructure.
- Building and increasing public transit.
- Reducing carbon emissions and increasing recycling.
- Protecting the state's land and water.

Note that a fund named the Make it in Michigan Competitiveness Fund was created in boilerplate under section 891 of Article 5 of 2023 PA 119, and appropriated \$286.8 million GF/GP to the Department of Technology, Management, and Budget for FY 2023-24. The Make it in Michigan Competitiveness Fund was created to leverage federal funding opportunities. The bills would not affect the provisions and restrictions related to the Make it in Michigan Competitiveness Fund, which include authorization for the State Administrative Board to inter-transfer money from the fund to existing line items upon notification to and approval from the House and Senate appropriations committees.

²⁶ For a summary of the act, see: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6052-6E8F4E1D.pdf>.

The Strategic Outreach and Attraction Reserve Fund was created in 2021 to fund Michigan's economic development incentives through the Critical Industry program and the Michigan Strategic Site Readiness program.¹ The SOAR Fund has received over \$2.0 billion in deposits since its creation and has been credited with attracting major investments for electric vehicle battery projects to the state. However, the program has also received criticism for not doing enough to create good-paying jobs, attract new residents, and ensure that companies receiving the incentives follow through on the projects.

BRIEF DISCUSSION:

Supporters of the bills argue that they would take a more holistic approach to economic development incentives while retaining several elements from the current SOAR program to provide consistency and predictability for the business community. The changes proposed by the bills would require an increased level of transparency and community involvement in the process, which would restore public trust in the process. New criteria for the incentives, strengthened clawback provisions, and increased reporting requirements would ensure that projects incentivized by the Make it in Michigan programs will have the support of the communities that they will be located in and will benefit those communities even if a company's investment falls through.

Opponents of the bills, however, argue that the Make it in Michigan program would limit the state's ability to compete for large investments. The additional criteria proposed by the bills would make the application process overly complicated and would leave some companies ineligible for the incentives, so businesses will choose to invest elsewhere. Additionally, reserving 20% of the incentive for Michigan 360 projects would make it more difficult for Michigan to compete with states that may be able to offer companies more in cash incentives.

FISCAL IMPACT:

The bills would increase costs to the Department of Labor and Economic Opportunity by an indeterminate amount. The amount of any increased costs would be related to the various additional administrative and new programming costs required under the bills' provisions.

House Bill 5104 would increase costs for LEO for additional administrative responsibilities, including requiring additional reporting requirements concerning the Critical Industry Program, the Michigan Strategic Site Readiness Program (MSSRP), and the new Michigan 360 Program, as well as requiring the MSF Board to consider and document a variety of additional criteria before entering into written agreements for qualified investments. The bill also directs LEO to create and operate the new Michigan 360 program. Under the bill's provisions, the amount of an award under these three programs will be reduced by 5% to be retained by the MSF for additional administrative expenses. Any additional costs to the department would be from any expenses that exceed the 5% amount of funding that would be retained from awards for these three programs.

The amount of additional state expenditures by the new Michigan 360 Program would be determined by the amount of funding appropriated by the legislature for the program.

Under the provisions of the bill, the state may see an increase in general fund revenues. Current law requires that all money paid to the MSF for a clawback or specific repayment provision

for a grant, loan, or other economic assistance under the CIP or the MSSRP must be deposited into the Strategic Outreach and Attraction Reserve Fund. The bill changes this language to require that this funding must be deposited into the state general fund, instead of the SOAR Fund. Current law also requires that any unexpended, unallocated, or unobliged funding remaining in the fund at the end of the fiscal year must revert to the SOAR Fund. The bill changes this language to require that this funding must be deposited in the Make It In Michigan Fund, instead of the SOAR Fund.

The bill also requires that four additional nonvoting members be added to the Michigan Strategic Fund Board of Directors. Because the MSF Act requires that members of the MSF Board of Directors serve without compensation, but allows reimbursement for members' travel and expenses, the amount of any increased costs to LEO for these new four members would be limited to the amount of any reimbursement for travel and expenses they receive.

House Bill 5106 would create the Make It In Michigan Fund within LEO. The Department of Treasury would direct the fund's investments, but LEO would be the administrator of the fund. The bill would create an indeterminate amount of additional administrative costs for LEO related to the administration of the new fund.

While the Make it in Michigan Fund would generally replace the Strategic Outreach and Attraction Reserve Fund and adopt most of the same provisions, the bill would specify certain investment options for money in the fund. It is unclear whether this would authorize investments that were not otherwise allowed under the SOAR Fund. To the extent that it does, it could change the availability of funds and/or the return on investments.

POSITIONS:

Representatives of the following entities testified in support of HBs 5104 to 5107 (10-24-23):

- Ann Arbor SPARK
- Invest Detroit
- Michigan League for Public Policy

A representative of the Detroit Regional Partnership testified in support of House Bill 5104. (10-24-23)

The Community Economic Development Association of Michigan indicated support for the bills. (10-31-23)

The following entities indicated support for House Bills 5104 to 5107:

- Metropolitan Affairs Coalition (10-24-23)
- Michigan Municipal League (10-31-23)
- Michigan Townships Association (10-24-23)
- Rocket Companies (10-31-23)
- Southeast Michigan Council of Governments (10-24-23)

The Mackinac Center for Public Policy indicated support for House Bill 5095. (10-24-23)

Representatives of the following entities testified in opposition to the bills (10-24-23):

- General Motors
- Michigan Manufacturers Association

The Mackinac Center for Public Policy indicated opposition to House Bills 5104 to 5107.
(10-24-23)

Legislative Analyst: Holly Kuhn
Fiscal Analysts: Viola Bay Wild
Ben Gielczyk
Michael Cnossen

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