

HOUSE BILL NO. 5099

October 05, 2023, Introduced by Reps. Hood, Hoskins, Rogers, Grant, Tsernoglou, Rheingans, Pohutsky, O'Neal, Byrnes, Andrews, Conlin, Puri and Martus and referred to the Committee on Economic Development and Small Business.

A bill to amend 1984 PA 270, entitled "Michigan strategic fund act," by amending the title and section 9 (MCL 125.2009), the title as amended by 2005 PA 225 and section 9 as amended by 2021 PA 136, and by adding chapter 8F.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act relating to the economic development of this state; to
3 create the Michigan strategic fund and to prescribe its powers and
4 duties; to transfer and provide for the acquisition and succession

1 to the rights, properties, obligations, and duties of the job
 2 development authority and the Michigan economic development
 3 authority to the Michigan strategic fund; to provide for the
 4 expenditure of proceeds in certain funds to which the Michigan
 5 strategic fund succeeds in ownership; to provide for the issuance
 6 of, and terms and conditions for, certain notes and bonds of the
 7 Michigan strategic fund; to create certain boards and funds; to
 8 create certain permanent funds; to exempt the property, income, and
 9 operation of the fund and its bonds and notes, and the interest
 10 thereon, from certain taxes; to provide for the creation of certain
 11 centers within and for the purposes of the Michigan strategic fund;
 12 to provide for the creation and funding of certain accounts for
 13 certain purposes; to impose certain powers and duties upon certain
 14 officials, departments, and authorities of this state; to make
 15 certain loans, grants, and investments; **to provide qualifications**
 16 **for and determine eligibility for tax credits and other incentives**
 17 **for authorized businesses and for qualified taxpayers; to assess**
 18 **and collect certain fees;** to provide penalties; to make an
 19 appropriation; and to repeal acts and parts of acts.

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

- 1 (a) A list of entities that received financial assistance.
- 2 (b) The type of project or product being financed.
- 3 (c) The amount and type of financial assistance.
- 4 (d) For each separate form of financial assistance, all of the
5 following:
- 6 (i) The number of new jobs committed or projected when the
7 financial assistance was applied for.
- 8 (ii) The number of retained jobs committed or projected when
9 the financial assistance was applied for.
- 10 (iii) The actual number of new jobs created that are not
11 temporary employees.
- 12 (iv) The actual number of retained jobs that are not temporary
13 employees.
- 14 (v) The average annual salary of the new jobs created that are
15 not temporary employees.
- 16 (vi) The average annual salary of the retained jobs that are
17 not temporary employees.
- 18 (e) The duration of the financial assistance.
- 19 (f) The amount of financial support other than state
20 resources.
- 21 (g) Money or other revenue or property returned to the fund,
22 including any repayments through a clawback provision in the
23 agreement.
- 24 (h) The status of all loans of the fund.
- 25 (i) A list of all entities that are in bankruptcy, ~~that of~~
26 **which** the fund has received actual notice, ~~of,~~ filed by a direct
27 recipient of an active single incentive of ~~at least~~ **not less than**
28 \$500,000.00. In addition, the fund shall, within 120 days after the
29 fund receives notice, provide a report of the notice of bankruptcy

1 on its website and ~~shall~~ forward the report to each of the
2 following:

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

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

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

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

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

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

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

14 (k) Any other information as required ~~in~~ **by** this section.

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

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

29 (4) The report described in subsection (1) must also contain

1 all of the following that are related to a 21st century investment
2 made by the fund board under chapter 8A:

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

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

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

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

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

19 (b) The total actual number of new jobs created under section
20 88r as reported to the fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the fund.

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

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

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

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

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

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

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

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

25 (a) Section 88b.

26 (b) Section 88h.

27 (c) Section 90b.

28 (10) The report described in subsection (1) must also include,
29 but is not limited to, all of the following for all actions for

1 business incubators approved by the fund after January 14, 2015:

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

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

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

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

12 (a) Section 78.

13 (b) Section 88d.

14 (c) Section 88k.

15 (d) Section 88q.

16 (e) Section 88r.

17 (f) Section 90b.

18 (12) Beginning on July 1, 2015, the fund shall post on the
19 fund's website a list of each contract, agreement, or other written
20 loan or grant documentation for financial assistance under sections
21 88r and 90b that the fund entered into or modified in the
22 immediately preceding fiscal year.

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

26 (a) A description of the project for which the loan was made.

27 (b) The total amount of the loan.

28 (c) Whether payments on the loan balance are current or
29 delinquent.

1 (d) The interest rate of the loan.

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

6 (a) A copy of the site visit guidelines for that program.

7 (b) The number of site visits conducted under that program.

8 (c) The chief compliance officer shall review and evaluate
9 compliance with the site visit guidelines.

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

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

16 (a) The name of the authorized business.

17 (b) The number of certified new jobs required to be
18 maintained.

19 (c) The amount and duration of the withholding tax capture
20 revenues.

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

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

27 **(19) The report described in subsection (1) must also include,**
28 **but is not limited to, all of the following for all written**
29 **agreements related to the research and development tax credit**

1 program created under chapter 8F:

2 (a) The name of the authorized business.

3 (b) The amount and duration of authorized research and
4 development tax credits.

5 (c) A description of the authorized business's investment in
6 research and development that is the basis for the research and
7 development tax credit.

8 (20) ~~(19)~~—As used in this section, "financial assistance"
9 means grants, loans, other economic assistance, and any other
10 incentives or assistance under this act.

11 **CHAPTER 8F**

12 **Sec. 90t.** The fund has the powers necessary or convenient to
13 carry out and effectuate the purposes of this chapter, including,
14 but not limited to, all of the following:

15 (a) To authorize eligible businesses to receive research and
16 development tax credits to foster research and development in this
17 state.

18 (b) To determine which businesses qualify for research and
19 development tax credits under this chapter.

20 (c) To determine the amount and duration of research and
21 development tax credits authorized under this chapter.

22 (d) To issue certificates and enter into written agreements
23 specifying the conditions under which research and development tax
24 credits are authorized under this chapter and the circumstances
25 under which those research and development tax credits may be
26 reduced or terminated.

27 (e) To charge and collect reasonable administrative fees.

28 (f) To assist an eligible business in obtaining the benefits
29 of a research and development tax credit or the research and

1 development tax credit program.

2 (g) To delegate to the chairperson of the fund, staff, or
3 others the functions and powers it considers necessary and
4 appropriate to administer the research and development tax credit
5 program.

6 Sec. 90u. As used in this chapter:

7 (a) "Authorized business" means an eligible business that has
8 met the requirements of this chapter and with which the fund has
9 entered into a written agreement for a research and development tax
10 credit.

11 (b) "Base amount" means the average annual amount of research
12 and development expenses incurred by the eligible business in this
13 state during the 3 tax years immediately preceding the first tax
14 year for which the research and development credit is being claimed
15 under the written agreement. An eligible business with no prior
16 research and development spending in this state has a base amount
17 of zero. The base amount remains the same for the duration of a
18 written agreement.

19 (c) "Certificate of tax credit" means the certificate of tax
20 credit issued to an authorized business by the fund under section
21 90x to verify that the authorized business is eligible for a
22 research and development tax credit.

23 (d) "Eligible business" means a business that proposes to
24 increase research and development spending in this state through
25 projects that have the potential for significant technological
26 advancements, job creation, and positive economic impact as
27 follows:

28 (i) For a business with 250 or more employees, an increase of
29 at least \$500,000.00 per year above the base amount.

1 (ii) For a business with less than 250 employees, an increase
2 of at least \$100,000.00 per year above the base amount.

3 (e) "Qualified research" means that term as defined in 26 USC
4 41.

5 (f) "Qualified research services" means qualified services as
6 that term is defined in 26 USC 41.

7 (g) "Qualified research supplies" means supplies as that term
8 is defined in 26 USC 41 that are used in the conduct of qualified
9 research.

10 (h) "Research and development expenses" means qualified
11 research expenses as that term is defined in 26 USC 41.

12 (i) "Research and development spending" means spending for
13 research and development expenses.

14 (j) "Research and development tax credit" means a research and
15 development tax credit allowed under section 277, 277a, 277b, 677,
16 677a, or 677b of the income tax act of 1967, 1967 PA 281, MCL
17 206.277, 206.277a, 206.277b, 206.677, 206.677a, and 206.677b.

18 (k) "Research and development tax credit program" means the
19 research and development tax credit program created under section
20 90v.

21 (l) "Written agreement" means a written agreement made between
22 the eligible business and the fund under this chapter.

23 Sec. 90v. (1) The fund shall create and operate the research
24 and development tax credit program to authorize the receipt of
25 research and development tax credits by authorized businesses. The
26 fund shall develop and use a detailed application, approval,
27 compliance, and certification process published and available on
28 the fund's website.

29 (2) An eligible business may apply to the fund, in the form

1 and manner prescribed by the fund, to enter into a written
2 agreement under section 90w that authorizes the receipt of a
3 research and development tax credit.

4 (3) The fund may request information, in addition to that
5 contained in an application, if needed to permit the fund to
6 discharge its responsibilities under this chapter.

7 Sec. 90w. (1) After receipt of an application under section
8 90v, the fund may enter into a written agreement with an eligible
9 business for research and development tax credits if the fund
10 determines that all of the following are met:

11 (a) The eligible business proposes to invest in and maintain
12 research and development spending in this state that is above the
13 base amount as follows:

14 (i) For a business with 250 or more employees, an increase of
15 at least \$500,000.00 per year above the base amount.

16 (ii) For a business with less than 250 employees, an increase
17 of at least \$100,000.00 per year above the base amount.

18 (b) The eligible business's plans for investment in research
19 and development in this state are economically sound.

20 (c) The investment in research and development by the eligible
21 business will benefit the people of this state by increasing
22 opportunities and strengthening the economy of the state.

23 (2) If the fund determines that the eligible business
24 satisfies all of the requirements under subsection (1), subject to
25 section 90z, the fund shall determine the amount and duration of
26 the research and development tax credit to be authorized under this
27 chapter and shall enter into a written agreement as provided in
28 this section.

29 (3) A written agreement between an eligible business and the

1 fund must include, but is not limited to, all of the following:

2 (a) A description of the business location that is the subject
3 of the agreement.

4 (b) Conditions on which the authorized business designation is
5 made.

6 (c) The duration of the agreement and the amount of the
7 research and development tax credit that may be claimed each tax
8 year for the duration of the agreement, including the calculation
9 of the base amount.

10 (d) A statement by the eligible business that a violation of
11 the written agreement may result in the revocation of the
12 designation as an authorized business or the loss or reduction of
13 the research and development tax credit.

14 (e) A statement by the eligible business that a
15 misrepresentation in the application may result in the revocation
16 of the designation as an authorized business and eligibility to
17 claim the research and development tax credit.

18 (4) On execution of a written agreement, an eligible business
19 is an authorized business. The fund shall provide a copy of each
20 written agreement to the department of treasury. On execution of
21 the written agreement, the research and development tax credit as
22 specified in this chapter and in the written agreement is binding
23 on this state.

24 (5) If there is a proposed reorganization, merger, or other
25 change of ownership of the authorized business for which
26 reimbursement will continue pursuant to a written agreement, the
27 approval of the fund is required before the assignment or transfer
28 of the written agreement.

29 Sec. 90x. (1) An authorized business is eligible for a

1 research and development tax credit as provided in the written
2 agreement.

3 (2) The fund shall issue a certificate of tax credit each year
4 to an authorized business that is eligible for a research and
5 development tax credit. The certificate of tax credit must state
6 all of the following:

7 (a) That the eligible business is an authorized business.

8 (b) The amount of the research and development tax credit for
9 the designated tax year.

10 (c) The authorized business's federal employer identification
11 number or the Michigan department of treasury number assigned to
12 the authorized business.

13 (3) The fund shall provide the department of treasury with a
14 copy of each certificate of tax credit issued under this section.

15 Sec. 90y. In determining whether qualified research and
16 development expenses are incurred in this state, the fund and the
17 department of treasury shall consider all of the following factors:

18 (a) The place where the qualified research services are
19 performed or the qualified research is conducted.

20 (b) The residence or business location of the person or
21 persons performing the qualified research services or conducting
22 the qualified research.

23 (c) The place where qualified research supplies are consumed.

24 (d) Any other factors relevant to determining where qualified
25 research occurred.

26 Sec. 90z. (1) The fund shall not enter into written agreements
27 that authorize more than \$100,000,000.00 in total research and
28 development credits under this chapter for a single calendar year.
29 To the extent the fund receives applications from eligible

1 businesses with less than 250 employees, not less than
2 \$25,000,000.00 of the \$100,000,000.00 each calendar year must be
3 approved for those eligible businesses.

4 (2) In determining the amount of the research and development
5 credit to be authorized under the written agreement, the fund shall
6 comply with amounts and limitations established under section 277,
7 277a, 277b, 677, 677a, or 677b of the income tax act of 1967, 1967
8 PA 281, MCL 206.277, 206.277a, 206.277b, 206.677, 206.677a, and
9 206.677b, whichever is applicable. The fund shall not enter into a
10 written agreement under this chapter with a duration of more than 5
11 years.

12 Sec. 90aa. (1) An authorized business shall file any returns
13 and reports required under the written agreement, this chapter, or
14 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.847, and
15 shall provide any other information reasonably requested by the
16 fund or the department of treasury.

17 (2) The fund may charge an authorized business a reasonable
18 fee for administrative expenses. The fee must not exceed 5% of the
19 amount of the research and development tax credit received by the
20 authorized business.

21 Sec. 90bb. (1) After a written agreement expires, the eligible
22 business that was party to the written agreement may reapply under
23 section 90v, but the base amount must be recalculated and a new
24 written agreement executed.

25 (2) As used in this section, "expires" means a written
26 agreement terminates on its scheduled expiration date. Expires does
27 not include the termination of a written agreement due to a breach
28 of the written agreement by the eligible business.

29 Enacting section 1. This amendatory act does not take effect

1 unless all of the following bills of the 102nd Legislature are
2 enacted into law:

3 (a) Senate Bill No. _____ or House Bill No. 5100 (request no.
4 03343'23).

5 (b) Senate Bill No. _____ or House Bill No. 5101 (request no.
6 03631'23).

7 (c) Senate Bill No. _____ or House Bill No. 5102 (request no.
8 04159'23).