

MICHIGAN STRATEGIC FUND ACT (EXCERPT)
Act 270 of 1984

125.2088s Critical industry program.

Sec. 88s.

(1) The fund shall create and operate the critical industry program. The fund shall use money transferred from the strategic outreach and attraction reserve fund created in section 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254, or money appropriated to the program to make qualified investments to qualified businesses.

(2) The fund shall expend money allocated to the Michigan critical industry program only to provide 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 production or make capital investments, or both, as determined by the fund board. The program must provide for a detailed application, approval, and compliance process that is also published and available on the fund's website.

(3) The fund shall consider and document at a minimum all of the following criteria to the extent reasonably applicable as reasonably determined by the fund board to the type of project proposed before entering into a written agreement for a qualified investment as provided under subsection (4):

- (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 and this state.
- (c) The amount of local community and financial support for the project.
- (d) The applicant's financial need for a qualified investment from the critical industry program.
- (e) The extent of reuse of vacant buildings, public or private, reuse of historic resources, and redevelopment of blighted property.
- (f) Creation or retention of qualified jobs as a result of a technological shift in product or production at the project location and within this state.
- (g) The level of other public funds including, but not limited to, the appropriation of federal or state funds and any federal or state tax credits.
- (h) The level of any private funds, investments, or contributions into the project including, but not limited to, the qualified business's own investments in the project.
- (i) Whether and how the project is financially and economically sound.
- (j) Whether and how the project promotes sustainable development.
- (k) Whether and how the project involves the rehabilitation of a historic resource.
- (l) Whether and how the project addresses areawide redevelopment and the overall economic benefit to the existing supply chain.
- (m) The level and extent of environmental contamination.
- (n) Whether and how the project will compete with or affect existing Michigan businesses within the same industry.
- (o) Whether and how the project's proximity to rail and utility will impact performance of the project and maximize energy and logistics needs in the community in which it is located and in this state.
- (p) The risk of obsolescence of the project, products, and investments in the future.
- (q) The overall return on investment to this state.
- (r) Whether and how the project addresses food supply challenges.
- (s) Any other additional criteria approved by the board that are specific to each individual project and are consistent with the purpose of this program.

(4) If the fund determines, after making the considerations under subsection (3), to award a qualified investment to a qualified business under this program, the fund shall enter into a written agreement with the qualified business that includes in a clear and concise manner all of the terms and conditions relating to the qualified investment as determined and documented by the fund board, including, but not limited to, the following:

- (a) Specific time frames and benchmarks to be met before the qualified business receives a disbursement in installments under the critical industry program pursuant to the approved qualified investment.
- (b) Specific terms relating to the required creation or retention of qualified jobs as a result of a technological shift in product or production at the project location and within this state, including measurable outcomes, proration of payments for partial performance, clawback and specific repayment provisions for breach of the agreement, or for failure to meet measurable outcomes.
- (c) Specific penalties for noncompliance with the written agreement as determined by the fund.
- (d) A provision that all money that is subject to a clawback or required to be repaid under a specific repayment provision must be paid within 90 days of notification by the fund. Any amounts not paid within that 90-day period are subject to a penalty of 1% per month, prorated on a daily basis.

(e) A provision that this state shall have a security interest as defined in section 1201(2)(ii) of the uniform commercial code, 1962 PA 174, MCL 440.1201, to the extent of the qualified investment. This provision does not apply if it conflicts with any contractual obligation of the qualified business or any federal or state bankruptcy or insolvency laws.

(f) A provision that the qualified business will provide the data described in the written agreement that are necessary for the fund to report to the legislature as required under this program.

(g) A provision that the qualified business may enter into direct agreements with workforce training providers, when appropriate, as determined by the fund to meet the workforce requirements of a qualified investment.

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

(6) If the fund board seeks to make a determination as to whether a qualified investment approved under this program represents a fair exchange of value for value, the fund may consider the total value to this state of the qualified investment and the best interests of this state, including, but not limited to, any positive economic impact to this state likely to be generated by the qualified business pursuant to the written agreement for a qualified investment, especially economic impact resulting in the location of a high-economic-impact business facility in this state, increased capital investment in this state, and the creation or retention of qualified jobs as a result of a technological shift in product or production in this state.

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

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

- (a) A list of qualified businesses that received a qualified investment.
- (b) The type of project or product approved for a qualified investment.
- (c) The amount and type of qualified investment.
- (d) For each separate form of qualified investment, all of the following:
 - (i) The number of qualified jobs committed or projected to be created or retained as a result of a technological shift in product or production when the qualified investment was applied for.
 - (ii) The actual number of qualified jobs created or retained as a result of a technological shift in product or production that are not temporary employees.
 - (iii) The average annual salary of the qualified jobs created or retained as a result of a technological shift in product or production that are not temporary employees.
- (e) The duration of the qualified investment.
- (f) The amount of other financial assistance other than state resources.
- (g) Money or other revenue or property returned to the strategic outreach and attraction reserve fund, created in section 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254, including any clawbacks and repayments due to a breach of the written agreement.

(9) If the fund fails to transmit the report as required in subsection (8) on or before March 15, the fund board shall not disburse funds for a qualified investment under this program until it transmits the report as required under subsection (8).

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

(11) As used in this section:

- (a) "Critical industry program" or "program" means the critical industry program created in subsection (1).

(b) "Qualified business" means a business that is located in or operates in this state or will locate or will operate in this state as determined by the fund board. A qualified business may include more than 1 business as determined by the fund board.

(c) "Qualified investment" means a grant, loan, or other economic assistance for a project subject to a written agreement with a qualified business under this program. Qualified investment includes a grant, loan, or other economic assistance for 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, including, but not limited to, an agreement providing for assistance via the transportation economic development fund created under section 2 of 1987 PA 231, MCL 247.902. Qualified investment also includes a grant, loan, or other economic assistance for job training opportunities or workforce development and education, or both.

(d) "Qualified job" means a job performed by an individual who is a resident of this state whose Michigan income taxes are withheld by an employer, or an employee leasing company or professional employer organization on behalf of the employer, or by an individual who is not a resident of this state and is employed by a business at a project location that is located in this state, as determined and verified by the fund.

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Popular Name: Strategic Fund