

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. 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 no sooner than 14 days after 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.

125.2088/ Commercialization board; membership; appointment; terms; vacancy; chairperson, vice-chairperson, and secretary; oath of office; compensation; reimbursement for expenses; organization; quorum; business conducted at public meetings.

Sec. 88/. (1) The commercialization board shall consist of 19 members, as provided under subsections (2) and (3).

(2) The commercialization board shall include each of the 2 following voting ex officio members:

(a) The director of the department of labor and economic growth or his or her designee from within the department of labor and economic growth.

(b) The state treasurer or his or her designee from within the department of treasury.

(3) The commercialization board shall include the following 17 members appointed by the governor with, except for the individuals described in subdivisions (c) and (d), the advice and consent of the senate:

(a) Seven members representing business with expertise, knowledge, skill, or experience in venture capital investments, business finance, bringing competitive edge technology products to market, or representing a qualified business.

(b) A member representing the Van Andel institute, a Michigan charitable trust, MICS 13607, or a successor organization.

(c) One member appointed from a list of 2 or more individuals selected by the majority leader of the senate representing qualified businesses or persons with business, technological, or financial experience related to competitive edge technology.

(d) One member appointed from a list of 2 or more individuals selected by the speaker of the house of representatives representing qualified businesses or persons with business, technological, or financial experience related to competitive edge technology.

(e) A member representing Michigan state university.

(f) A member representing the university of Michigan.

(g) A member representing Wayne state university.

(h) A member representing western Michigan university.

(i) A member representing Michigan technological university.

(j) A member representing a public university in Michigan other than Michigan state university, the university of Michigan, Wayne state university, western Michigan university, or Michigan technological university.

(k) A member representing automation alley, a Michigan nonprofit corporation incorporated on May 21, 1998, or a successor organization.

(4) Of the members of the commercialization board initially appointed under subsection (3), 5 members shall be appointed for terms expiring on December 31, 2006, 5 members shall be appointed for terms expiring on December 31, 2007, 5 members shall be appointed for terms expiring on December 31, 2008, and 2 members shall be appointed for terms expiring on December 31, 2009. After the expiration of the initial appointment terms provided for by this subsection, members of the commercialization board shall be appointed for terms of 4 years.

(5) For members of the commercialization board appointed under subsection (3), a vacancy on the commercialization board occurring other than by expiration of a term shall be filled in the same manner as the original appointment for the balance of the unexpired term. A member of the commercialization board shall hold office until a successor has been appointed and qualified. A member of the commercialization board is eligible for reappointment. State employees are not eligible to serve as members appointed under subsection (3). As used in this subsection, "state employees" does not include an officer or employee of a state institution of higher education.

(6) The governor shall designate 1 of the members of the commercialization board to serve as its chairperson at the pleasure of the governor. The commercialization board shall select from among its members a member to serve as vice-chairperson and a member to serve as secretary.

(7) Upon appointment to the commercialization board under this section and upon the taking and filing of the constitutional oath of office prescribed in section 1 of article XI of the state constitution of 1963, a member shall enter the office and exercise the duties of the office.

(8) Members of the commercialization board shall serve without compensation, but may be reimbursed for actual and necessary expenses.

(9) Upon the initial appointment of members under this section, the commercialization board shall organize and adopt its own policies, procedures, schedule of regular meetings, and a regular meeting date, place, and time.

(10) The commercialization board may act only by resolution approved by a majority of commercialization board members appointed and serving. A majority of the members of the commercialization board appointed and serving shall constitute a quorum for the

transaction of business. The commercialization board shall meet in person or by means of electronic communication devices that enable all participants in the meeting to communicate with each other.

(11) The commercialization board shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and shall be published on the fund's internet website.

125.2088m Member, employee, or agent of commercialization board; conduct.

Sec. 88m. (1) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, members of the commercialization board are considered public servants subject to 1968 PA 317, MCL 15.321 to 15.330, and public officers subject to 1973 PA 196, MCL 15.341 to 15.348. An officer or an employee of a state institution of higher education may at the same time also hold the public office of member of the commercialization board as authorized under section 88(3)(d) and the officer or employee shall not be deemed to hold 2 or more incompatible offices at the same time. A member of the commercialization board shall discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of this state, and with the degree of diligence, care, and skill that a fiduciary would exercise under similar circumstances in a like position. In discharging duties of the office, a member of the commercialization board when acting in good faith may rely upon the report of an independent expert or independent peer review expert or upon financial statements of the commercialization board represented to the member of the commercialization board by the officer of the commercialization board having charge of its books or accounts or stated in a written report by the auditor general.

(2) A member of the commercialization board shall not make or participate in making, or in any way attempt to use his or her position as a member of the commercialization board to influence, a matter before the fund board or the commercialization board regarding a loan, grant, or other expenditure under this chapter to his or her employer.

(3) An independent peer review expert shall not have any financial interest in a recipient of investment fund proceeds under this chapter.

(4) A member, employee, or agent of the commercialization board shall not engage in any conduct that constitutes a conflict of interest and shall immediately advise the commercialization board in writing of the details of any incident or circumstances that may present the existence of a conflict of interest with respect to the performance of the commercialization board-related work or duty of the member, employee, or agent of the commercialization board.

(5) A member of the commercialization board who has a conflict of interest related to any matter before the commercialization board shall disclose the conflict of interest before the commercialization board takes any action with respect to the matter, which disclosure shall become a part of the record of the commercialization board's official proceedings. The member with the conflict of interest shall refrain from doing all of the following with respect to the matter that is the basis of the conflict of interest:

(a) Voting in the commercialization board's proceedings related to the matter.

(b) Participating in the commercialization board's discussion of and deliberation on the matter.

(c) Being present at the meeting when the discussion, deliberation, and voting on the matter take place.

(d) Discussing the matter with any other commercialization board member.

(6) Failure of a member to comply with subsection (5) constitutes misconduct in office subject to removal under section 94.

(7) When authorizing expenditures and investments under this act, the commercialization board shall not consider whether a recipient has made a contribution or expenditure under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

125.2088n Audits; reports.

Sec. 88n. (1) In addition to any audit requirements under section 9, not later than May 1, 2007 and each subsequent May 1, the auditor general shall conduct and report a financial postaudit of the commercialization board, the fund, and the investment fund for the immediately preceding fiscal year. Not less than once every 3 years beginning not later than October 1, 2007, the auditor general shall conduct and report a performance postaudit of the commercialization board, the fund, and the investment fund. The results of the performance postaudit and the postaudit of financial transactions and accounts shall be published on the internet and disseminated by other means in a manner determined by the fund to advise the citizens of this state of the result of the audits. Copies of the audits shall be provided to the governor, the clerk of the house of representatives, the secretary of the senate, and the chairpersons of the senate and house of representatives standing committees on appropriations.

(2) The auditor general may employ an independent public accounting firm to conduct the audits described in this section. The costs of the auditor general or of the independent public accounting firm in conducting the audits described in this chapter shall be funded by money in the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.256, as provided in an appropriation. Prior to employing the services of an independent public accounting firm under this section, the auditor general shall require the entity to disclose any conflict of interest, criminal convictions, investigations by the internal revenue service or other federal or state taxing body or court, and any pertinent litigation regarding the conduct of the entity.

(3) All contracts approved by the fund for 21st century investments and all contracts approved by the commercialization board for grants or loans under this chapter shall contain a provision that the auditor general has access to the books and records, including financial records and all other information and data relevant to the terms of the contract related to the use of the grant, loan, or 21st century investment.

(4) If the fund board or the commercialization board has a reasonable belief that a breach of contract has occurred, the fund has the right to have the recipient's annual financial statements separately audited by an independent certified public accountant at its sole cost and expense. If the audit reveals that a breach of contract has occurred, the recipient shall reimburse the fund for the fees and expenses incurred to perform the audit.

(5) In addition to any reporting requirements under section 9, not later than March 31, 2007 and each subsequent March 31, the commercialization board and the fund shall report to the governor, the clerk of the house of representatives, the secretary of the senate, and the chairpersons of the senate and house of representatives standing committees on appropriations. The report shall contain all of the following for the immediately preceding fiscal year that are related to a grant or loan made by the fund as determined by the commercialization board:

(a) A list of entities that received funding, the amount received, and the type of funding.

(b) The number of new patents, copyrights, or trademarks applied for and issued.

- (c) The number of new start-up businesses.
- (d) The number of new jobs and projected new job growth.
- (e) Amounts of other funds leveraged.
- (f) Money or other revenue or property returned to the investment fund.
- (g) The total number of new licensing agreements by institution and the number of new licensing agreements entered into with Michigan based firms.
- (h) Products commercialized.

(6) Not later than March 31, 2007 and each subsequent March 31, the fund shall report to the governor, the clerk of the house of representatives, the secretary of the senate, and the chairpersons of the senate and house of representatives standing committees on appropriations. The report shall contain all of the following for the immediately preceding fiscal year that are related to a 21st century investment made by the fund board:

- (a) A list of entities that received funding, the amount received, and the type of funding.
 - (b) The amount of qualified venture capital fund investments, qualified mezzanine fund investments, and qualified private equity fund investments under management in this state, including year-to-year growth.
 - (c) The value of loan enhancement program investments, qualified private equity fund investments, qualified mezzanine fund investments, and qualified venture capital investments in qualified businesses, including year-to-year growth.
 - (d) A statement of the amount of money received by or returned to the investment fund under this chapter.
 - (e) A statement of the loan enhancement activity of the fund board under this chapter.
 - (f) A statement of the amount of money in each loan reserve fund established under the small business capital access program required under this chapter.
 - (g) Any recommendations for needed changes and any other information the board believes would be of interest to the governor, the legislature, and the public.
- (7) As a condition of receiving funding under this chapter, the fund shall require a recipient to agree to provide to the fund the information necessary for the fund to produce the reports required under this section.

125.2088o University technology transfer; program to assist institutions of higher education.

Sec. 88o. The fund shall create and operate a program to assist institutions of higher education with university technology transfer, including, but not limited to, the transfer of competitive edge technology research to the private sector for commercialization.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) Senate Bill No. 298.
- (b) Senate Bill No. 359.
- (c) Senate Bill No. 521.
- (d) Senate Bill No. 633.
- (e) House Bill No. 4342.
- (f) House Bill No. 4972.

- (g) House Bill No. 4973.
- (h) House Bill No. 5047.
- (i) House Bill No. 5048.
- (j) House Bill No. 5108.
- (k) House Bill No. 5109.

This act is ordered to take immediate effect.

Approved November 21, 2005.

Filed with Secretary of State November 21, 2005.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:

Senate Bill No. 298 was filed with the Secretary of State November 21, 2005, and became 2005 PA 212, Eff. Jan. 1, 2006.

Senate Bill No. 359 was filed with the Secretary of State November 21, 2005, and became 2005 PA 213, Imd. Eff. Nov. 21, 2005.

Senate Bill No. 521 was filed with the Secretary of State November 21, 2005, and became 2005 PA 214, Imd. Eff. Nov. 21, 2005.

Senate Bill No. 633 was filed with the Secretary of State November 21, 2005, and became 2005 PA 216, and was not enacted into law during the 2005 legislative session.

House Bill No. 4342 was filed with the Secretary of State November 21, 2005, and became 2005 PA 221, and was not enacted into law during the 2005 legislative session.

House Bill No. 4972 was filed with the Secretary of State November 21, 2005, and became 2005 PA 222, and was not enacted into law during the 2005 legislative session.

House Bill No. 4973 was filed with the Secretary of State November 21, 2005, and became 2005 PA 223, and was not enacted into law during the 2005 legislative session.

House Bill No. 5047 was filed with the Secretary of State November 21, 2005, and became 2005 PA 225, Imd. Eff. Nov. 21, 2005.

House Bill No. 5048 was filed with the Secretary of State November 21, 2005, and became 2005 PA 226, Imd. Eff. Nov. 21, 2005.

House Bill No. 5108 was filed with the Secretary of State November 21, 2005, and became 2005 PA 231, and was not enacted into law during the 2005 legislative session.

House Bill No. 5109 was filed with the Secretary of State November 21, 2005, and became 2005 PA 232, Imd. Eff. Nov. 21, 2005.

[No. 216]

(SB 633)

AN ACT to amend 1975 PA 228, entitled “An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation,” by amending section 31 (MCL 208.31), as amended by 1999 PA 115.

The People of the State of Michigan enact:

Sec. 31. (1) Except as provided in subsections (5) and (6), there is levied and imposed a specific tax upon the adjusted tax base of every person with business activity in this state that is allocated or apportioned to this state at the following rates for the specified periods:

(a) Before October 1, 1994, 2.35%.

(b) After September 30, 1994 and before January 1, 1999, 2.30%.

(c) Beginning January 1, 1999 and each January 1 after 1999, the rate under this subsection shall be reduced as provided in subsection (5).

(d) Beginning January 1, 2009, the rate under this subsection shall be 1.85%.

(2) As used in this section, “adjusted tax base” means the tax base allocated or apportioned to this state pursuant to chapter 3 with the adjustments prescribed by sections 23

and 23b and the exemptions prescribed by section 35. If a taxpayer reduces the adjusted tax base under this subsection, the taxpayer is not entitled to the adjustment provided in subsection (4) for the same taxable year. This subsection does not apply to an adjusted tax base under section 22a. For the specified years and except as otherwise provided in subsection (6), if the adjusted tax base exceeds the following percentages of the sum of gross receipts plus the adjustments provided in section 23b(a) to (g), apportioned or allocated to Michigan with the apportionment fraction calculated pursuant to chapter 3, the adjusted tax base may, at the option of the taxpayer, be reduced by that excess:

(a) Before January 1, 2009, 50.0%.

(b) Beginning on and after January 1, 2009, 51.4%.

(3) The tax levied under this section and imposed is upon the privilege of doing business and not upon income.

(4) In lieu of the reduction provided in subsection (2), a person may elect to reduce the adjusted tax base pursuant to this subsection. For purposes of computing the deduction allowed by this subsection, as effective for the respective tax year, compensation does not include amounts of compensation exempt from tax under section 35(1)(e). This subsection does not apply to an adjusted tax base under section 22a. Except as otherwise provided in subsection (6), a person may elect to reduce the adjusted tax base by the percentage that the compensation divided by the tax base exceeds the following percentages for the specified years and the deduction shall not exceed the following percentages of the adjusted tax base:

(a) Before January 1, 2009, the percentage that compensation divided by the tax base exceeds 63% and the deduction shall not exceed 37% of adjusted tax base.

(b) Beginning on and after January 1, 2009, the percentage that compensation divided by the tax base exceeds 64.7% and the deduction shall not exceed 35.3% of adjusted tax base.

(5) If the comprehensive annual financial report of this state for a state fiscal year, published pursuant to section 494 of the management and budget act, 1984 PA 431, MCL 18.1494, reports an ending balance of more than \$250,000,000.00 in the countercyclical budget and economic stabilization fund created under section 351 of the management and budget act, 1984 PA 431, MCL 18.1351, for that state fiscal year, the tax rate under this section shall be reduced by 0.1 percentage point on the January 1 following the end of the state fiscal year for which the report was issued.

(6) All of the following apply for tax years beginning on and after January 1, 2009:

(a) A taxpayer may elect to reduce its tax base using the percentage allowed under subsection (2)(a) if the taxpayer calculates tax liability using the rate determined pursuant to subsection (1)(c).

(b) A taxpayer may elect to reduce its tax base and claim a deduction using the percentages allowed under subsection (4)(a) if the taxpayer calculates tax liability using the rate determined pursuant to subsection (1)(c).

(7) The department shall annualize the rate under this section as necessary, and the applicable annualized rate shall be imposed.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

(a) House Bill No. 4342.

- (b) House Bill No. 4972.
- (c) House Bill No. 4973.
- (d) House Bill No. 4980.
- (e) House Bill No. 5095.
- (f) House Bill No. 5096.
- (g) House Bill No. 5097.
- (h) House Bill No. 5098.
- (i) House Bill No. 5106.
- (j) House Bill No. 5107.
- (k) House Bill No. 5108.

This act is ordered to take immediate effect.

Approved November 21, 2005.

Filed with Secretary of State November 21, 2005.

Compiler's note: House Bill Nos. 5096 and 5107, referred to in enacting section 1, were vetoed by the governor November 21, 2005; therefore, this act does not take effect.

[No. 217]

(SB 664)

AN ACT to amend 1972 PA 284, entitled "An act to provide for the organization and regulation of corporations; to prescribe their duties, rights, powers, immunities and liabilities; to provide for the authorization of foreign corporations within this state; to prescribe the functions of the administrator of this act; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," by amending section 131 (MCL 450.1131), as amended by 2001 PA 57.

The People of the State of Michigan enact:

450.1131 Submission of document; delivery; filing; return of copy; public inspection; maintaining records or files; copies of documents and destroying originals; facsimile or electronic transmission as original; effective date of document; fees.

Sec. 131. (1) A document required or permitted to be filed under this act shall be submitted by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator may establish a procedure for accepting delivery of a document submitted under this subsection by facsimile or other electronic transmission. However, by December 31, 2006, the administrator shall establish a procedure for accepting delivery of a document submitted under this subsection by electronic mail or over the Internet. Beginning January 1, 2007, the administrator shall accept delivery of documents submitted by electronic mail or over the Internet.

(2) If a document submitted under subsection (1) substantially conforms to the requirements of this act, the administrator shall endorse upon it the word "filed" with his or her official title and the date of receipt and of filing and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in

his or her office. If requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in the endorsement on the document.

(3) The administrator shall return a copy of a document filed under subsection (2), other than an annual report, or, at his or her discretion, the original, to the person who submitted it for filing. The administrator shall mark the filing date on the copy or original before returning it or, if the document was submitted by electronic mail or over the Internet, may provide proof of the filing date to the person who submitted the document for filing in another manner determined by the administrator.

(4) The records and files of the administrator relating to domestic and foreign corporations shall be open to reasonable inspection by the public. The administrator may maintain records or files either in their original form or in photostatic, micrographic, photographic, optical disc media, or other reproduced form.

(5) The administrator may make copies of any documents filed under this act or any predecessor act by photostatic, micrographic, photographic, optical disc media, or other reproduced form and may destroy the originals of the copied documents. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the administrator, including a copy sent by facsimile or other electronic transmission, is considered an original for all purposes and is admissible in evidence in like manner as an original.

(6) A document filed under subsection (2) is effective at the time it is endorsed unless a subsequent effective time, not later than 90 days after the date of delivery, is set forth in the document.

(7) The administrator shall charge 1 of the following nonrefundable fees if expedited filing of a document by the administrator is requested and the administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law:

(a) For any filing that a person requests the administrator to complete within 1 hour on the same day as the day of the request, \$1,000.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(b) For any filing that a person requests the administrator to complete within 2 hours on the same day as the day of the request, \$500.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(c) Except for a filing request under subdivision (a) or (b), for the filing of any formation or qualification document that a person requests the administrator to complete on the same day as the day of the request, \$100.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(d) Except for a filing request under subdivision (a) or (b), for the filing of any other document concerning an existing domestic corporation or a qualified foreign corporation that a person requests the administrator to complete on the same day as the day of the request, \$200.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(e) For the filing of any formation or qualification document that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$50.00.

(f) For the filing of any other document concerning an existing domestic corporation or a qualified foreign corporation that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$100.00.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2006.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 298 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved November 21, 2005.

Filed with Secretary of State November 21, 2005.

Compiler's note: Senate Bill No. 298, referred to in enacting section 2, was filed with the Secretary of State November 21, 2005, and became 2005 PA 212, Eff. Jan. 1, 2006.

[No. 218]**(SB 665)**

AN ACT to amend 1993 PA 23, entitled "An act to provide for the organization and regulation of limited liability companies; to prescribe their duties, rights, powers, immunities, and liabilities; to prescribe the powers and duties of certain state departments and agencies; and to provide for penalties and remedies," by amending section 104 (MCL 450.4104), as amended by 2002 PA 686.

The People of the State of Michigan enact:

450.4104 Documents; filing; delivery; endorsement; returning copy; inspection by public; copies admissible in evidence; effective date; form; fees.

Sec. 104. (1) A document required or permitted to be filed under this act shall be submitted by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator may establish a procedure for accepting delivery of a document submitted under this subsection by facsimile or other electronic transmission. However, by December 31, 2006, the administrator shall establish a procedure for accepting delivery of a document submitted under this subsection by electronic mail or over the Internet. Beginning January 1, 2007, the administrator shall accept delivery of documents submitted by electronic mail or over the Internet.

(2) If a document submitted under subsection (1) substantially conforms to the requirements of this act, the administrator shall endorse upon it the word "filed" with his or her official title and the date of receipt and of filing, and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in his or her office. If requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in the endorsement on the document.

(3) The administrator shall return a copy of a document filed under subsection (2), or, at his or her discretion, the original, to the person who submitted it for filing. The administrator shall mark the filing date on the copy or original before returning it or, if the document was submitted by electronic mail or over the Internet, may provide proof of

the filing date to the person who submitted the document for filing in another manner determined by the administrator.

(4) The records and files of the administrator relating to domestic and foreign limited liability companies shall be open to reasonable inspection by the public. The administrator may maintain the records or files either in their original form or in a photostatic, micrographic, photographic, optical disc media, or other reproduced form.

(5) The administrator may make copies of any documents filed under this act or any predecessor act by a photostatic, micrographic, photographic, optical disc media, or other process, and may destroy the originals of the copied documents. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the administrator, including a copy sent by facsimile or other electronic transmission, is considered an original for all purposes and is admissible in evidence in like manner as an original.

(6) A document filed under subsection (2) is effective at the time it is endorsed unless a subsequent effective time is set forth in the document that is not later than 90 days after the date of delivery.

(7) The administrator may require that a person submit a document described in subsection (1) on a form prescribed by the administrator.

(8) The administrator shall charge 1 of the following nonrefundable fees if expedited filing of a document by the administrator is requested and the administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law:

(a) For any filing that a person requests the administrator to complete within 1 hour on the same day as the day of the request, \$1,000.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(b) For any filing that a person requests the administrator to complete within 2 hours on the same day as the day of the request, \$500.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(c) Except for a filing request under subdivision (a) or (b), for the filing of any formation or qualification document that a person requests the administrator to complete on the same day as the day of the request, \$100.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(d) Except for a filing request under subdivision (a) or (b), for the filing of any other document concerning an existing domestic limited liability company or a qualified foreign limited liability company that a person requests the administrator to complete on the same day as the day of the request, \$200.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(e) For the filing of any formation or qualification document that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$50.00.

(f) For the filing of any other document concerning an existing domestic limited liability company or a qualified foreign limited liability company that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$100.00.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2006.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 298 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved November 21, 2005.

Filed with Secretary of State November 21, 2005.

Compiler's note: Senate Bill No. 298, referred to in enacting section 1, was filed with the Secretary of State November 21, 2005, and became 2005 PA 212, Eff. Jan. 1, 2006.

[No. 219]**(SB 666)**

AN ACT to amend 1982 PA 162, entitled "An act to revise, consolidate, and classify the laws relating to the organization and regulation of certain nonprofit corporations; to prescribe their duties, rights, powers, immunities, and liabilities; to provide for the authorization of foreign nonprofit corporations within this state; to impose certain duties on certain state departments; to prescribe fees; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," by amending section 131 (MCL 450.2131), as amended by 1992 PA 198.

The People of the State of Michigan enact:

450.2131 Submission of documents; delivery; endorsement; indexing; preparing and returning copy or original; public inspection; maintenance of records and files; effective date of document; fees.

Sec. 131. (1) A document required or permitted to be filed under this act shall be submitted by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator may establish a procedure for accepting delivery of a document submitted under this subsection by facsimile or other electronic transmission. However, by December 31, 2006, the administrator shall establish a procedure for accepting delivery of a document submitted under this subsection by electronic mail or over the internet. Beginning January 1, 2007, the administrator shall accept delivery of documents submitted by electronic mail or over the internet.

(2) If a document submitted under subsection (1) substantially conforms to the requirements of this act, the administrator shall endorse upon it the word "filed" with the administrator's official title and the dates of receipt and of filing, and shall file and index the document or a reproduction of the document pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, in the administrator's office. If requested at the time of the delivery of the document to the administrator's office, the administrator shall include the hour of filing in the endorsement on the document.

(3) The administrator shall return a copy of a document filed under subsection (2), other than an annual report, or, at his or her discretion, the original, to the person who submitted the document for filing. The administrator shall mark the filing date on the copy or original before returning it or, if the document was submitted by electronic mail or over the internet, may provide proof of the filing date to the person who submitted the document for filing in another manner determined by the administrator.

(4) The records and files of the administrator relating to corporations shall be open to reasonable inspection by the public. The administrator may maintain the records or files either in their original form or in the form of reproductions pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406.

(5) The administrator may make copies of any documents filed under this act, or any predecessor act, pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, and may destroy the originals of the reproduced documents.

(6) A document filed under subsection (2) is effective at the time it is endorsed unless a subsequent effective time, not later than 90 days after the date of delivery, is set forth in the document.

(7) The administrator shall charge 1 of the following nonrefundable fees if expedited filing of a document by the administrator is requested and the administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law:

(a) For any filing that a person requests the administrator to complete within 1 hour on the same day as the day of the request, \$1,000.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(b) For any filing that a person requests the administrator to complete within 2 hours on the same day as the day of the request, \$500.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(c) Except for a filing request under subdivision (a) or (b), for the filing of any formation or qualification document that a person requests the administrator to complete on the same day as the day of the request, \$100.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(d) Except for a filing request under subdivision (a) or (b), for the filing of any other document concerning an existing domestic corporation or a qualified foreign corporation that a person requests the administrator to complete on the same day as the day of the request, \$200.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(e) For the filing of any formation or qualification document that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$50.00.

(f) For the filing of any other document concerning an existing domestic corporation or a qualified foreign corporation that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$100.00.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2006.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 298 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved November 21, 2005.

Filed with Secretary of State November 21, 2005.

[No. 220]**(SB 667)**

AN ACT to amend 1982 PA 213, entitled “An act to authorize the formation of limited partnerships; to define the rights and liabilities of the partners, the relation of partners to each other, and to persons dealing with limited partnerships; to provide for the dissolution and winding up of limited partnerships; to provide for registration of foreign limited partnerships; to provide certain causes of action; to impose certain duties on certain state departments; to make uniform the law relating to limited partnerships; and to repeal certain acts and parts of acts,” by amending section 206 (MCL 449.1206), as amended by 1992 PA 110.

The People of the State of Michigan enact:

449.1206 Documents; filing; submission; delivery; endorsement; return of copy or original; public inspection; records or files; effective date of documents; forms; fees.

Sec. 206. (1) A document required or permitted to be filed under this act shall be submitted by delivering the document to the administrator together with the fees and accompanying documents required by law. A person who executes a certificate as an attorney in fact, agent, or fiduciary is not required to provide evidence of his or her authority as a prerequisite to filing. The administrator may establish a procedure for accepting delivery of a document submitted under this subsection by facsimile or other electronic transmission. However, by December 31, 2006, the administrator shall establish a procedure for accepting delivery of a document filed under this subsection by electronic mail or over the Internet. Beginning January 1, 2007, the administrator shall accept delivery of documents submitted by electronic mail or over the Internet.

(2) If a document submitted under subsection (1) substantially conforms to the requirements of this act, the administrator shall endorse upon it the word “filed” with his or her official title and the dates of receipt and of filing, and shall file and index the document or a reproduction of the document pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, in his or her office. If requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in the endorsement on the document.

(3) The administrator shall return a copy of a document filed under subsection (1), or at his or her discretion the original, to the person who submitted the document for filing. The administrator shall mark the filing date on the copy or original before returning it or, if the document was submitted by electronic mail or over the Internet, may provide proof of the filing date to the person who submitted the document for filing in another manner determined by the administrator.

(4) The records and files of the administrator relating to limited partnerships shall be open to reasonable inspection by the public. The administrator may maintain records or files either in their original form or in the form of reproductions pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406.

(5) The administrator may make copies of any documents filed under this act, or any predecessor act, pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, and may destroy the originals of the reproduced documents.

(6) A document filed under subsection (2) is effective at the time it is endorsed unless a subsequent effective time, not later than 90 days after the date of delivery, is set forth in the document.

(7) The administrator may require that a person submit a document described in subsection (1) on a form prescribed by the administrator.

(8) The administrator shall charge 1 of the following nonrefundable fees if expedited filing of a document by the administrator is requested and the administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law:

(a) For any filing that a person requests the administrator to complete within 1 hour on the same day as the day of the request, \$1,000.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(b) For any filing that a person requests the administrator to complete within 2 hours on the same day as the day of the request, \$500.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(c) Except for a filing request under subdivision (a) or (b), for the filing of any formation or qualification document that a person requests the administrator to complete on the same day as the day of the request, \$100.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(d) Except for a filing request under subdivision (a) or (b), for the filing of any other document concerning an existing domestic limited partnership or a qualified foreign limited partnership that a person requests the administrator to complete on the same day as the day of the request, \$200.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(e) For the filing of any formation or qualification document that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$50.00.

(f) For the filing of any other document concerning an existing domestic limited partnership or a qualified foreign limited partnership that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, \$100.00.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2006.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 298 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved November 21, 2005.

Filed with Secretary of State November 21, 2005.

Compiler's note: Senate Bill No. 298, referred to in enacting section 2, was filed with the Secretary of State November 21, 2005, and became 2005 PA 212, Eff. Jan. 1, 2006.

[No. 221]

(HB 4342)

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on

certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation,” by amending section 4 (MCL 208.4), as amended by 2003 PA 240; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 4. (1) “Casual transaction” means a transaction made or engaged in other than in the ordinary course of repeated and successive transactions of a like character, except that a transaction made or engaged in by a person that is incidental to that person’s regular business activity is a business activity within the meaning of this act.

(2) “Commissioner” means the department.

(3) Except as otherwise provided in subsection (4), “compensation” means all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayers. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer’s method of accounting for federal income tax purposes, payments to state and federal unemployment compensation funds, payments under the federal insurance contribution act and similar social insurance programs, payments, including self-insurance, for worker’s compensation insurance, payments to individuals not currently working, payments to dependents and heirs of individuals because of current or former labor services rendered by those individuals, payments to a pension, retirement, or profit sharing plan, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payments of fees for the administration of health and welfare and noninsured benefit plans. Compensation does not include any of the following:

(a) Discounts on the price of the taxpayer’s merchandise or services sold to the taxpayer’s employees, officers, or directors that are not available to other customers.

(b) Payments to an independent contractor.

(c) For tax years beginning after December 31, 1994, payments to state and federal unemployment compensation funds.

(d) For tax years beginning after December 31, 1994, the employer’s portion of payments under the federal insurance contributions act, chapter 21 of subtitle C of the internal revenue code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 USC 3201 to 3233, and similar social insurance programs.

(e) For tax years beginning after December 31, 1994, payments, including self-insurance payments, for worker’s compensation insurance or federal employers’ liability act insurance pursuant to chapter 149, 35 Stat. 65, 45 USC 51 to 60.

(f) For tax years beginning after December 31, 2003, the following payments under health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state and payments of fees for the administration of health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state for the specified years:

(i) For tax years that begin after December 31, 2003 and before January 1, 2005, 5%.

- (ii) For tax years that begin after December 31, 2004 and before January 1, 2006, 20%.
- (iii) For tax years that begin after December 31, 2005 and before January 1, 2007, 40%.
- (iv) For tax years that begin after December 31, 2006 and before January 1, 2009, 50%.
- (v) For tax years that begin after December 31, 2008 and before January 1, 2010, 60%.
- (vi) For tax years that begin after December 31, 2009 and before January 1, 2011, 70%.
- (vii) For tax years that begin after December 31, 2010 and before January 1, 2012, 80%.
- (viii) For tax years that begin after December 31, 2011 and before January 1, 2013, 90%.
- (ix) For tax years that begin after December 31, 2012, 100%.

(4) For tax years that begin after December 31, 2003, for purposes of determining compensation of a professional employer organization, compensation includes payments by the professional employer organization to the officers and employees of an entity whose employment operations are managed by the professional employer organization. Compensation of the entity whose employment operations are managed by a professional employer organization does not include compensation paid by the professional employer organization to the officers and employees of the entity whose employment operations are managed by the professional employer organization. As used in this subsection, “professional employer organization” means an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

(a) Maintaining the right of direction and control of employees’ work, although this responsibility may be shared with the other entity.

(b) Paying wages and employment taxes of the employees out of its own accounts.

(c) Reporting, collecting, and depositing state and federal employment taxes for the employees.

(d) Retaining the right to hire and fire employees.

(5) “Department” means the department of treasury.

Enacting section 1. Section 4a of the single business tax act, 1975 PA 228, MCL 208.4a, is repealed.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) House Bill No. 4972.
- (b) House Bill No. 4973.
- (c) House Bill No. 4980.
- (d) House Bill No. 5095.
- (e) House Bill No. 5096.
- (f) House Bill No. 5097.
- (g) House Bill No. 5098.
- (h) House Bill No. 5106.
- (i) House Bill No. 5107.
- (j) House Bill No. 5108.

(k) Senate Bill No. 633.

This act is ordered to take immediate effect.

Approved November 21, 2005.

Filed with Secretary of State November 21, 2005.

Compiler's note: House Bill Nos. 5096 and 5107, referred to in enacting section 2, were vetoed by the governor November 21, 2005; therefore, this act does not take effect.

[No. 222]

(HB 4972)

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," (MCL 208.1 to 208.145) by adding section 35d.

The People of the State of Michigan enact:

Sec. 35d. (1) For tax years beginning on and after January 1, 2006, a person may claim a credit against the tax imposed by this act equal to 15% of the property taxes paid in the tax year by the person on industrial personal property.

(2) A person that is not otherwise required to file a return under this act may claim the credit under this section.

(3) To qualify for the credits under this section for an item of tangible personal property, a person that is otherwise eligible to claim the credit allowed under this section shall file within the time required the statement of personal property described in section 19 of the general property tax act, 1893 PA 206, MCL 211.19, for items of tangible personal property that are classified as industrial personal property for the location at which the tangible personal property that is the basis of the credit allowed under this section is located.

(4) If the credit allowed under this section exceeds the tax liability of the person for the tax year or if the person does not have a tax liability under this act for the tax year, the excess or the amount of the credit shall be refunded or paid to the person. The state treasurer shall establish a reserve account in the department to fund and provide for payment of the amount of refunds or payments for credits under this section that are attributable to the fiscal years ending in the tax years for which credits are claimed.

(5) The credit allowed under this section shall be calculated after application of all other credits allowed under this act.

(6) As used in this section:

(a) "Industrial personal property" means personal property classified as industrial personal property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

(b) “Property taxes” means any of the following:

(i) Taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(ii) Taxes levied under 1974 PA 198, MCL 207.551 to 207.572.

(iii) Taxes levied under the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.

(iv) Any payments made by the taxpayer pursuant to a contract with the Michigan strategic fund in connection with the creation of a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, to the extent that those payments are made by the taxpayer to reimburse all taxing units for property taxes that would otherwise be exempt under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff.

(v) Any payments made by a taxpayer pursuant to a contract with an eligible local assessing district to the extent that those payments are made to reimburse taxing units for property taxes that would otherwise be payable under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157. As used in this subparagraph, “eligible local assessing district” means that term as defined in section 9f of the general property tax act, 1893 PA 206, MCL 211.9f.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) House Bill No. 4342.
- (b) House Bill No. 4973.
- (c) House Bill No. 4980.
- (d) House Bill No. 5095.
- (e) House Bill No. 5096.
- (f) House Bill No. 5097.
- (g) House Bill No. 5098.
- (h) House Bill No. 5106.
- (i) House Bill No. 5107.
- (j) House Bill No. 5108.
- (k) Senate Bill No. 633.

This act is ordered to take immediate effect.

Approved November 21, 2005.

Filed with Secretary of State November 21, 2005.

Compiler's note: House Bill Nos. 5096 and 5107, referred to in enacting section 1, were vetoed by the governor November 21, 2005; therefore, this act does not take effect.

[No. 223]

(HB 4973)

AN ACT to amend 1975 PA 228, entitled “An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on

certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation,” by amending section 45a (MCL 208.45a), as amended by 1999 PA 115.

The People of the State of Michigan enact:

Sec. 45a. (1) Except as provided in subsection (3) and for tax years beginning after December 31, 1998 and before January 1, 2006, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 5%.
- (b) The payroll factor multiplied by 5%.
- (c) The sales factor multiplied by 90%.

(2) For tax years beginning after December 31, 2005, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 2.5%.
- (b) The payroll factor multiplied by 2.5%.
- (c) The sales factor multiplied by 95%.

(3) For tax years beginning after December 31, 1998 and before January 1, 2000 if section 23(e) is not in effect, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 15%.
- (b) The payroll factor multiplied by 15%.
- (c) The sales factor multiplied by 70%.

(4) For purposes of this section, a taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December 31 of that year.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) House Bill No. 4342.
- (b) House Bill No. 4972.
- (c) House Bill No. 4980.
- (d) House Bill No. 5095.
- (e) House Bill No. 5096.
- (f) House Bill No. 5097.
- (g) House Bill No. 5098.
- (h) House Bill No. 5106.

- (i) House Bill No. 5107.
- (j) House Bill No. 5108.
- (k) Senate Bill No. 633.

This act is ordered to take immediate effect.
Approved November 21, 2005.
Filed with Secretary of State November 21, 2005.

Compiler's note: House Bill Nos. 5096 and 5107, referred to in enacting section 1, were vetoed by the governor November 21, 2005; therefore, this act does not take effect.

[No. 224]

(HB 4980)

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending section 4a (MCL 205.54a), as amended by 2004 PA 173.

The People of the State of Michigan enact:

Sec. 4a. (1) Subject to subsection (2), the following are exempt from the tax under this act:

(a) A sale of tangible personal property not for resale to a nonprofit school, nonprofit hospital, or nonprofit home for the care and maintenance of children or aged persons operated by an entity of government, a regularly organized church, religious or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of this state, if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or any restricted group. A sale of tangible personal property to a parent cooperative preschool is exempt from taxation under this act. As used in this subdivision, "parent cooperative preschool" means a nonprofit, nondiscriminatory educational institution, maintained as a community service and administered by parents of children currently enrolled in the preschool, that provides an educational and developmental program for children younger than compulsory school age, that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel, and that is licensed pursuant to 1973 PA 116, MCL 722.111 to 722.128.

(b) A sale of tangible personal property not for resale to a regularly organized church or house of religious worship, except the following:

(i) Sales in activities that are mainly commercial enterprises.

(ii) Sales of vehicles licensed for use on public highways other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of persons for religious purposes.

(c) The sale of food to bona fide enrolled students by a school or other educational institution not operated for profit.

(d) The sale of a vessel designated for commercial use of registered tonnage of 500 tons or more, if produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of the vessel engaged in interstate commerce.

(e) A sale of tangible personal property to persons engaged in a business enterprise and using or consuming the tangible personal property in the tilling, planting, caring for, or harvesting of the things of the soil; in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth; or in the direct gathering of fish, by net, line, or otherwise only by an owner-operator of the business enterprise, not including a charter fishing business enterprise. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land, and subsurface irrigation pipe, if the land tile or irrigation pipe is used in the production of agricultural products as a business enterprise. This exemption includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption also includes grain drying equipment and natural or propane gas used to fuel that equipment for agricultural purposes. This exemption does not include transfers of food, fuel, clothing, or any similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed and becoming a structural part of real estate.

(f) The sale of a copyrighted motion picture film or a newspaper or periodical admitted under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established not less than 2 years, and published not less than once a week. Tangible personal property used or consumed in producing a copyrighted motion picture film, a newspaper published more than 14 times per year, or a periodical published more than 14 times per year, and not becoming a component part of that film, newspaper, or periodical is subject to the tax. Tangible personal property used or consumed in producing a newspaper published 14 times or less per year or a periodical published 14 times or less per year and that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is exempt from the tax under this subdivision. A claim for a refund for taxes paid before January 1, 1999, under this subdivision shall be made before June 30, 1999. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

(g) A sale of tangible personal property to persons licensed to operate commercial radio or television stations if the property is used in the origination or integration of the various sources of program material for commercial radio or television transmission. This subdivision does not include a vehicle licensed and titled for use on public highways or property used in the transmission to or receiving from an artificial satellite.

(h) The sale of a prosthetic device, durable medical equipment, or mobility enhancing equipment.

(i) The sale of a vehicle not for resale to a Michigan nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

(j) Before January 1, 2006, a sale of tangible personal property to inmates in a penal or correctional institution purchased with scrip or its equivalent issued and redeemed by the institution.

(k) A sale of textbooks sold by a public or nonpublic school to or for the use of students enrolled in any part of a kindergarten through twelfth grade program.

(l) A sale of tangible personal property installed as a component part of a water pollution control facility for which a tax exemption certificate is issued pursuant to part 37 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution control facility for which a tax exemption certificate is issued pursuant to part 59 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

(m) The sale or lease of the following to an industrial laundry after December 31, 1997:

(i) Textiles and disposable products including, but not limited to, soap, paper, chemicals, tissues, deodorizers and dispensers, and all related items such as packaging, supplies, hangers, name tags, and identification tags.

(ii) Equipment, whether owned or leased, used to repair and dispense textiles including, but not limited to, roll towel cabinets, slings, hardware, lockers, mop handles and frames, and carts.

(iii) Machinery, equipment, parts, lubricants, and repair services used to clean, process, and package textiles and related items, whether owned or leased.

(iv) Utilities such as electric, gas, water, or oil.

(v) Production washroom equipment and mending and packaging supplies and equipment.

(vi) Material handling equipment including, but not limited to, conveyors, racks, and elevators and related control equipment.

(vii) Wastewater pretreatment equipment and supplies and related maintenance and repair services.

(n) A sale of tangible personal property to a person holding a direct payment permit under section 8 of the use tax act, 1937 PA 94, MCL 205.98.

(2) The tangible personal property under subsection (1) is exempt only to the extent that that property is used for the exempt purpose if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

(a) House Bill No. 4342.

(b) House Bill No. 4972.

(c) House Bill No. 4973.

(d) House Bill No. 5095.

(e) House Bill No. 5096.

(f) House Bill No. 5097.

(g) House Bill No. 5098.

(h) House Bill No. 5106.

- (i) House Bill No. 5107.
- (j) House Bill No. 5108.
- (k) Senate Bill No. 633.

This act is ordered to take immediate effect.
Approved November 21, 2005.
Filed with Secretary of State November 21, 2005.

Compiler's note: House Bill Nos. 5096 and 5107, referred to in enacting section 1, were vetoed by the governor November 21, 2005; therefore, this act does not take effect.

[No. 225]

(HB 5047)

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, notes and bonds of the Michigan strategic fund; 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 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 the state; to provide penalties; and to repeal certain acts and parts of acts,” by amending the title and sections 4, 5, 6, 7, and 13 (MCL 125.2004, 125.2005, 125.2006, 125.2007, and 125.2013), sections 4, 5, 6, and 13 as amended by 1987 PA 278, and by adding section 94 and chapter 8A.

The People of the State of Michigan enact:

TITLE

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 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.

125.2004 Definitions.

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) “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.

(f) “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.

(g) “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, local industrial development corporation, economic development corporation, or other association of persons organized for agricultural, commercial, or industrial purposes.

(h) “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.

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

125.2005 Michigan strategic fund; creation; purposes, powers, duties, and functions generally; appointment, qualifications, and terms of members; chairperson, president, and vice-president; compensation and expenses; delegation of functions and authority; quorum; voting; meetings; conducting business at public meeting; notice; confidentiality; closed sessions; "financial or proprietary information" defined.

Sec. 5. (1) There is created by this act a public body corporate and politic to be known as the Michigan strategic fund. The fund shall be within the department of treasury and shall exercise its prescribed statutory powers, duties, and functions independently of the state treasurer. The statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other funds of the fund, including the functions of budgeting, procurement, personnel, and management-related functions, shall be retained by the fund, and the fund shall be an autonomous entity within the department of treasury in the same manner as the Michigan employment security commission was designated an autonomous entity within the Michigan department of labor under section 379 of the executive organization act of 1965, 1965 PA 380, MCL 16.479.

(2) Except as otherwise provided in this act, the purposes, powers, and duties of the Michigan strategic fund are vested in and shall be exercised by a board of directors.

(3) Except as provided in subsection (4), the board shall consist of the director of the department of labor and economic growth or his or her designee from within the department of labor and economic growth, the state treasurer or his or her designee from within the department of treasury, the chief executive officer of the MEDC, and 6 other members with knowledge, skill, and experience in the academic, business, or financial field, who shall be appointed by the governor with the advice and consent of the senate. None of the 6 members appointed under this section shall be employees of this state. Not less than 5 members of the board appointed under this subsection shall be members of the private sector. Five of the 6 members appointed under this subsection shall serve for fixed terms. Upon completion of each fixed term expiring after December 30, 2005, a member shall be appointed for a term of 4 years. Of the private sector members appointed by the governor for a fixed term, 1 shall be appointed from a list of 3 or more nominees of the speaker of the house of representatives representing persons within the private sector with experience in private equity or venture capital investments, commercial lending, or commercialization of technology and 1 shall be appointed from a list of 3 or more nominees of the senate majority leader representing persons within the private sector with experience in private equity or venture capital investments, commercial lending, or commercialization of technology. A member appointed under this subsection or subsection (4) shall serve until a successor is appointed, and a vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The member appointed under this

subsection and serving without a fixed term shall serve at the pleasure of the governor. Of the members appointed under this subsection and subsection (4), there shall be minority, female, and small business representation. After December 31, 2005, at least 2 of the members of the board shall have experience in private equity or venture capital investments, at least 1 of the members shall have experience in commercial lending, and at least 1 of the members of the board shall have experience in commercialization of technology.

(4) In addition to the 9 members of the board under subsection (3), not later than December 15, 2005, the governor shall appoint, with the advice and consent of the senate, 2 additional members to the board for terms expiring December 31, 2007. The members appointed under this subsection shall be from the private sector and shall have experience in private equity or venture capital investments, commercial lending, or commercialization of technology. From the date of the appointment of the members under this subsection until December 31, 2007, the board shall have 11 members. After December 31, 2007, the board shall have 9 members.

(5) The governor shall designate 1 member of the board to serve as its chairperson. The governor shall designate 1 member of the board to serve as president of the fund and may designate 1 member to serve as vice-president of the fund. The chairperson, president, and vice-president, if a vice-president is designated, shall serve as those officers at the pleasure of the governor.

(6) Members of the board shall serve without compensation for their membership on the board, except that members of the board may receive reasonable reimbursement for necessary travel and expenses.

(7) The board may delegate to its president, vice-president, staff, or others those functions and authority that the board deems necessary or appropriate, which may include the oversight and supervision of employees of the fund. However, responsibilities specifically vested in the board under chapter 8A shall be performed by the board and shall not be transferred to the MEDC.

(8) A majority of the members of the board appointed and serving constitutes a quorum for the transaction of business at a meeting, or the exercise of a power or function of the fund, notwithstanding the existence of 1 or more vacancies. The board may act only by resolution approved by a majority of board members appointed and serving. Voting upon action taken by the board shall be conducted by majority vote of the members appointed and serving. Members of the board may be present in person at a meeting of the board or, if authorized by the bylaws of the board, by use of telecommunications or other electronic equipment. The fund shall meet at the call of the chair and as may be provided in the bylaws of the fund. Meetings of the fund may be held anywhere within the state of Michigan.

(9) The business of the board shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.267, and shall also be provided on an internet website operated by the fund. A record or portion of a record, material, or other data received, prepared, used, or retained by the fund or any of its centers in connection with an application to or with a project or product assisted by the fund or any of its centers or with an award, grant, loan, or investment under chapter 8A that relates to financial or proprietary information submitted by the applicant that is considered by the applicant and acknowledged by the board as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The disclosure of a record concerning investment information described in section 88c

under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is subject to the limitations provided in section 88c. The board may also meet in closed session pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.267, to make a determination of whether it acknowledges as confidential any financial or proprietary information submitted by the applicant and considered by the applicant as confidential. Unless considered proprietary information, the board shall not acknowledge routine financial information as confidential. If the board determines that information submitted to the fund is financial or proprietary information and is confidential, the board shall release a written statement, subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, that states all of the following:

(a) The name and business location of the person requesting that the information submitted be confidential as financial or proprietary information.

(b) That the information submitted was determined by the board to be confidential as financial or proprietary information.

(c) A broad nonspecific overview of the financial or proprietary information determined to be confidential.

(10) The fund shall not disclose financial or proprietary information not subject to disclosure pursuant to subsection (9) without consent of the applicant submitting the information.

(11) Any document to which the fund is a party evidencing a loan, insurance, mortgage, lease, venture, or other type of agreement the fund is authorized to enter into shall not be considered financial or proprietary information that may be exempt from disclosure under subsection (9).

(12) For purposes of subsections (9), (10), and (11), “financial or proprietary information” means information that has not been publicly disseminated or which is unavailable from other sources, the release of which might cause the applicant significant competitive harm.

125.2006 Members, officers, and employees subject to MCL 15.321 to 15.330 or MCL 15.301 to 15.310; discharge of duties by member, officer, employee, or agent; prohibited conduct; conflict of interest; noncompliance; expenditures.

Sec. 6. (1) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, members of the board and officers and employees of the fund are subject to 1968 PA 317, MCL 15.321 to 15.330, or 1968 PA 318, MCL 15.301 to 15.310, as applicable.

(2) A member of the board or officer, employee, or agent of the fund shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties, a member of the board or an officer, employee, or agent, when acting in good faith, may rely upon the opinion of counsel for the fund, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the fund represented to the member of the board or officer, employee, or agent of the fund to be correct by the president or the officer of the fund having charge of its books or account, or stated in a written report by a certified public accountant or firm of certified public accountants fairly to reflect the financial condition of the fund.

(3) A member of the board shall not make, participate in making, or in any way attempt to use his or her position as a member of the board to influence a decision regarding a loan, grant, investment, or other expenditure under this act to his or her employer.

(4) A member, employee, or agent of the board shall not engage in any conduct that constitutes a conflict of interest and shall immediately advise the board in writing of the details of any incident or circumstances that may present the existence of a conflict of interest with respect to the performance of the board-related work or duty of the member, employee, or agent of the board.

(5) A member who has a conflict of interest related to any matter before the board shall disclose the conflict of interest before the board takes any action with respect to the matter, which disclosure shall become a part of the record of the board's official proceedings. The member with the conflict of interest shall refrain from doing all of the following with respect to the matter that is the basis of the conflict of interest:

(a) Voting in the board's proceedings related to the matter.

(b) Participating in the board's discussion of and deliberation on the matter.

(c) Being present at the meeting when the discussion, deliberation, and voting on the matter take place.

(d) Discussing the matter with any other board member.

(6) Failure of a member to comply with subsection (5) constitutes misconduct in office subject to removal under section 94.

(7) When authorizing expenditures and investments under this act, the board shall not consider whether a recipient has made a contribution or expenditure under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

(8) Expenditures under this act shall not be used to finance or influence political activities.

125.2007 Powers and duties of fund.

Sec. 7. The fund shall have the powers and duties provided in this act, the powers delegated by other laws or executive orders, including, but not limited to, the power to:

(a) Sue and be sued; to have a seal and alter the same at pleasure; to have perpetual succession; to make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of its powers; and to make and amend bylaws.

(b) Solicit and accept gifts, grants, loans, and other aids from any person or the federal, state, or a local government or any agency of the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program.

(c) Make grants, loans, and investments; to guarantee and insure loans, leases, bonds, notes, or other indebtedness, whether public or private; and to issue letters of credit.

(d) Construct; acquire by gift, purchase, installment purchase, or lease; and reconstruct, improve, repair, or equip a project or any part of a project.

(e) Borrow money and issue bonds and notes to finance part or all of the project costs of a project, or of a loan under subdivision (r) for an export transaction, and to secure those bonds and notes by mortgage, assignment, or pledge of any of its money, revenues, income, and properties. The authority provided by this subdivision includes, but is not limited to, issuing bonds and notes to acquire and install machinery, equipment, furnishings, and other personal property, notwithstanding that the fund does not own or propose to own or finance the building or land in or near to which the machinery, equipment, furnishings, and other personal property is or is to be located.

(f) Acquire or contract to acquire from any person, municipality, the federal or state government, or any agency of the foregoing, or otherwise, leaseholds, real or personal property or any interest in real or personal property; to own, hold, clear, improve, and rehabilitate and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber leaseholds, real or personal property or any interest in real or personal property, as is convenient for the accomplishment of the purposes of this act and of the fund.

(g) Procure insurance against any loss in connection with the fund's property, assets, or activities.

(h) Invest any money of the fund at the fund's discretion, in any obligations determined proper by the fund, and name and use depositories for its money.

(i) Engage personnel as is necessary and engage the services of private consultants, managers, counsel, auditors, engineers, and scientists for rendering professional management and technical assistance and advice, payable out of any money of the fund legally available for this purpose.

(j) Charge, impose, and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.

(k) Indemnify and procure insurance indemnifying any members of the board from personal loss or accountability from liability asserted by a person on the bonds or notes of the fund or from any personal liability or accountability by reason of the issuance of the bonds, notes, insurance, or guarantees; by reason of acquisition, construction, ownership, or operation of a project; or by reason of any other action taken or the failure to act by the fund.

(l) Enter into a lease for the use or sale of a project. The lease may provide for options to purchase or renew.

(m) Mortgage or create security interests in a project or any part of a project, or in a lease or loan, or in the rents, revenues, or sums to be paid thereunder, in favor of the holders of the bonds or notes issued by the fund.

(n) Convey or release a project or any part of a project to a lessee, purchaser, or borrower under any agreement after provision has been made for the retirement in full of the bonds or notes issued for that project under terms and conditions provided in the agreement or as may be agreed with the holders of the bonds or notes, at any time where the obligation of the lessee, purchaser, or borrower to make the payments prescribed shall remain fixed as provided in the agreement notwithstanding the conveyance or release, or as may otherwise be agreed with the holders of the bonds or notes.

(o) Make loans, participate in the making of loans, undertake commitments to make loans and mortgages, buy and sell loans and mortgages at public or private sale, rewrite loans and mortgages, discharge loans and mortgages, foreclose on a mortgage, commence an action to protect or enforce a right conferred upon the fund by a law, mortgage, loan, contract, or other agreement, bid for and purchase property which was the subject of the mortgage at a foreclosure or other sale, acquire or take possession of the property and in that event complete, administer, pay the principal and interest on obligations incurred in connection with that property, and dispose of and otherwise deal with the property, in a manner as may be necessary or desirable to protect the interests of the fund.

(p) Certify, for the purpose of determining eligible investments for the basis of a single business tax credit, minority venture capital companies, as defined by law.

(q) Except as otherwise provided in this subdivision, to create and operate centers, accounts, and funds as required or permitted by law for the use and disbursement of assets of the fund. The powers granted under this subdivision do not apply to chapter 8A.

(r) To make loans to a financial institution to facilitate financing of all or part of an export related transaction including, but not limited to, pre-export working capital financing and postexport receivable financing.

(s) Do all other things necessary or convenient to achieve the objectives and purposes of the fund, this act, or other laws that relate to the purposes and responsibilities of the fund.

125.2013 Total debt owed to fund; limitation.

Sec. 13. The total debt owed to the fund, excluding rights and royalties under a venture capital agreement or obligations to the fund resulting from an industrial development revenue bond or note, in relation to any 1 project shall at no time exceed 5% of the total assets of the fund, except that upon approval by a 2/3 vote of the board this amount may be increased to not to exceed 10% of the assets of the fund. This section does not apply to a program or activity authorized under chapter 8A.

CHAPTER 8A

125.2088 Legislative findings; intent; scope of activities.

Sec. 88. (1) The legislature finds and declares that the activities authorized under this chapter to encourage diversification of the economy and the creation of jobs in this state are a public purpose and of paramount concern in the interest of the health, safety, and general welfare of the citizens of this state. It is the intent of the legislature that the economic benefits and the creation of jobs resulting from this chapter shall accrue substantially within this state.

(2) Activities authorized under this chapter shall not be considered a project, economic development project, or a product assisted by the fund for purposes of chapter 1 or 2.

125.2088a Definitions.

Sec. 88a. As used in this chapter:

(a) “Advanced automotive, manufacturing, and materials technology” means any technology that involves 1 or more of the following:

(i) Materials with engineered properties created through the development of specialized process and synthesis technology.

(ii) Nanotechnology, including materials, devices, or systems at the atomic, molecular, or macromolecular level, with a scale measured in nanometers.

(iii) Microelectromechanical systems, including devices or systems integrating microelectronics with mechanical parts and a scale measured in micrometers.

(iv) Improvements to vehicle safety, vehicle performance, vehicle production, or environmental impact, including, but not limited to, vehicle equipment and component parts.

(v) A new technology, device, or system that enhances or improves the manufacturing process of wood, timber, or agricultural-based products.

(vi) Any technology that involves an alternative energy vehicle or its components, as alternative energy vehicle is defined under section 2 of the Michigan next energy authority act, 2002 PA 593, MCL 207.822.

(vii) Advanced computing or electronic device technology related to technology described under this subdivision.

(viii) Design, engineering, testing, or diagnostics related to technology described under this subdivision.

(ix) Product research and development related to technology described under this subdivision.

(b) “Advanced computing” means any technology used in the design and development of 1 or more of the following:

(i) Computer hardware and software.

(ii) Data communications.

(iii) Information technologies.

(c) “Alternative energy technology” means applied research or commercialization of new or next generation technology in 1 or more of the following:

(i) Alternative energy technology as that term is defined in section 2 of the Michigan next energy authority act, 2002 PA 593, MCL 207.822.

(ii) Devices or systems designed and used solely for the purpose of generating energy from agricultural crops, residue and waste generated from the production and processing of agricultural products, animal wastes, or food processing wastes, not including a conventional gasoline or diesel fuel engine or retrofitted conventional gasoline or diesel fuel engine.

(iii) A new technology, product, or system that permits the utilization of biomass for the production of specialty, commodity, or foundational chemicals or of novel or economical commodity materials through the application of biotechnology that minimizes, complements, or replaces reliance on petroleum for the production. Alternative energy technology also includes a new technology, product, or system that utilizes wind energy.

(iv) Advanced computing or electronic device technology related to technology described under this subdivision.

(v) Design, engineering, testing, or diagnostics related to technology described under this subdivision.

(vi) Product research and development related to a technology described under this subdivision.

(d) “Applied research” means translational research conducted with the objective of attaining a specific benefit or to solve a practical problem, or other research activity that seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specified problem, question, or issue, with high potential for commercial application to create jobs in this state.

(e) “Basic research” means any original investigation for the advancement of scientific or technological knowledge that will enhance the research capacity of this state in a way that increases the ability to attract to or develop companies, jobs, researchers, or students in this state.

(f) “Commercialization” means the transition from research to the actions necessary to achieve market entry and general market competitiveness of new innovative technologies, processes, and products and the services that support, assist, equip, finance, or promote a person or an entity with that transition.

(g) “Competitive edge technology” means 1 or more of the following:

(i) Life sciences technology.

(ii) Advanced automotive, manufacturing, and materials technology.

(iii) Homeland security and defense technology.

(iv) Alternative energy technology.

(h) “Electronic device technology” means any technology that involves microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; or data and digital communications and imaging devices.

(i) “Fund board” means the board of the Michigan strategic fund described in section 5.

(j) “Homeland security and defense technology” means technology that assists in the assessment of threats or damage to the general population and critical infrastructure, protection of, defense against, or mitigation of the effects of foreign or domestic threats, disasters, or attacks, or support for crisis or response management, including, but not limited to, 1 or more of the following:

(i) Sensors, systems, processes, or equipment for communications, identification and authentication, screening, surveillance, tracking, and data analysis.

(ii) Advanced computing or electronic device technology related to technology described under this subdivision.

(iii) Aviation technology, including, but not limited to, avionics, airframe design, sensors, early warning systems, and services related to technology described under this subdivision.

(iv) Design, engineering, testing, or diagnostics related to technology described under this subdivision.

(v) Product research and development related to technology described under this subdivision.

(k) “Independent peer review expert” means a person or persons selected by the commercialization board with appropriate expertise to conduct an independent, unbiased, objective, and competitive evaluation of activities funded under section 88k. The person or persons shall demonstrate the capability and experience, as appropriate or necessary for the particular activity funded, to do all of the following:

(i) Conduct a highly competitive and intensive, independent, multiphased, peer-review-based evaluation process.

(ii) Employ personnel with appropriate business, scientific, technical, commercial, or other specialized expertise to carry out each aspect of the evaluation process.

(iii) Provide recommendations to or assist the commercialization board in identifying high-quality activities for funding that are likely to result in the development and commercialization of competitive edge technology and job creation in this state. The recommendations shall include all materials used by the independent peer review expert in making the recommendation.

(iv) Assure that any peer review process developed maintains a high level of integrity.

(l) “Institution of higher education” means an institution of higher education or a community or junior college described in section 4, 5, 6, or 7 of article VIII of the state constitution of 1963 or an independent nonprofit degree-granting institution of postsecondary education in this state that is approved by the state board of education.

(m) “Jobs for Michigan investment fund” or “investment fund” means the jobs for Michigan investment fund created in section 88f.

(n) “Life sciences” means science for the examination or understanding of life or life processes, including, but not limited to, all of the following:

- (i) Bioengineering.
- (ii) Biomedical engineering.
- (iii) Genomics.
- (iv) Proteomics.
- (v) Molecular and chemical ecology.

(vi) Biotechnology, including any technology that uses living organisms, cells, macromolecules, microorganisms, or substances from living organisms to make or modify a product for useful purposes. Biotechnology or life sciences does not include any of the following:

(A) Activities prohibited under section 2685 of the public health code, 1978 PA 368, MCL 333.2685.

(B) Activities prohibited under section 2688 of the public health code, 1978 PA 368, MCL 333.2688.

(C) Activities prohibited under section 2690 of the public health code, 1978 PA 368, MCL 333.2690.

(D) Activities prohibited under section 16274 of the public health code, 1978 PA 368, MCL 333.16274.

(E) Stem cell research with human embryonic tissue.

(o) “Life sciences technology” means any technology derived from life sciences intended to improve human health or the overall quality of human life, including, but not limited to, systems, processes, or equipment for drug or gene therapies, biosensors, testing, medical devices or instrumentation with a therapeutic or diagnostic value, a pharmaceutical or other product that requires United States food and drug administration approval or registration prior to its introduction in the marketplace and is a drug or medical device as defined by the federal food, drug, and cosmetic act, 21 USC 301 to 399, or 1 or more of the following:

(i) Advanced computing or electronic device technology related to technology described under this subdivision.

(ii) Design, engineering, testing, or diagnostics related to technology or the commercial manufacturing of technology described under this subdivision.

(iii) Product research and development related to technology described under this subdivision.

(p) “Qualified business” means a business entity located in this state.

(q) “Qualified mezzanine fund” means a person or entity primarily engaged in making loans or investments ranging in size from \$250,000.00 to \$6,000,000.00 that is managed by 2 or more individuals with no less than 5 years’ direct experience in mezzanine lending or capital investments and that holds investment capital or has commitments from investors other than the fund and at least 2 financial institutions.

(r) “Qualified private equity fund” means a firm principally or primarily engaged in investing in or acquiring businesses that is managed by 2 or more individuals with no less than 5 years of direct experience in private equity investments, and that holds investment capital from investors other than the fund.

(s) “Qualified venture capital fund” means a firm principally or primarily engaged in investing in or acquiring early stage businesses with growth potential that have not yet demonstrated consistent profitability or a proven business model, that is managed by 2 or

more individuals with not less than 5 years of direct experience in venture capital, and that holds capital from investors other than the fund.

(t) “Small business” means a business entity formed or doing business in this state, including the affiliates of the business concern, which business entity is independently owned and operated and employs fewer than 250 full-time employees or has gross annual sales of less than \$6,000,000.00.

(u) “21st century investments” means investments in 1 or more of the following:

(i) Commercial loan guarantees under a loan enhancement program operated by the fund.

(ii) Private equity investments under a private equity investment program operated by the fund.

(iii) Venture capital investments under a venture capital investment program operated by the fund.

(iv) Mezzanine investments under a mezzanine investment program operated by the fund.

(v) “Strategic economic investment and commercialization board” or “commercialization board” means the strategic economic investment and commercialization board created in section 88k.

(w) “University technology transfer” means innovative methods to accelerate the creation of start-up companies affiliated with institutions of higher education or the transfer of competitive edge technology research from an institution of higher education to a qualified business in Michigan.

125.2088b Programs authorized by fund board; creation; expenditures; use of appropriated or transferred money.

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 12.256, 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 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.

(3) Except for the appropriations described in section 88j(3), the fund board shall not expend more than the following amounts each year from the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.256, for the following purposes:

(a) 25% for the loan enhancement program.

(b) 40% for the private equity investment program, the venture capital investment program, and the mezzanine investment program combined.

(c) 70% for competitive edge technology grants and loans under section 88k. The commercialization board shall not authorize the expenditure of more than \$100,000,000.00 of the amount described in this subdivision for basic research over the life of the program.

(4) The commercialization board shall authorize the expenditure of not less than the following amounts described in subsection (3)(c) as follows:

- (a) \$40,000,000.00 in the 2005-2006 fiscal year.
- (b) \$50,000,000.00 in the 2006-2007 fiscal year.
- (c) \$30,000,000.00 in the 2007-2008 through the 2011-2012 fiscal years.

(5) 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 12.256, 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.

(6) 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 12.256, 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. The fund board shall select all vendors for all marketing expenditures under this chapter by issuing a request for proposal. 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 pertinent litigation regarding the conduct of 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.

(7) 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 applies only to the fund and not to recipients of expenditures or investments under this chapter.

125.2088c Duties of fund board.

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, and 88g 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, the Initiated Law of 1996, 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, and 88g 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, 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. The fund 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. 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 no sooner than 14 days after 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.

125.2088d Loan enhancement program; loan guarantee program; small business capital access program.

Sec. 88d. (1) The fund shall create and operate a loan enhancement program.

(2) As a separate and distinct part of the loan enhancement program, the fund may create a loan guarantee program that does all of the following:

(a) Provide a loan guarantee mechanism to financial institutions located in this state that provide commercial loans to qualified businesses, public authorities, and local units of government.

(b) Ensures that participating financial institutions do not refinance prior debt.

(c) Provide that a qualified business is only eligible for a loan guarantee under this section if it has a documented growth opportunity. As used in this subdivision, “documented growth opportunity” means a plant expansion, capital equipment investment, acquisition of intellectual property or technology, or the hiring of new employees to meet or satisfy a new business opportunity.

(d) Provide that a qualified business that engages primarily in retail sales is not eligible for a loan guarantee under this chapter unless the fund board makes a specific finding that the loan guarantee supports a new concept that has significant growth potential.

(e) Provide repayment provisions for a loan or a guarantee given to a qualified business that leaves Michigan within 3 years of the provision of the loan or guarantee or otherwise breaches the terms of an agreement with the fund.

(3) As a separate and distinct part of the loan enhancement program, the fund shall reestablish the small business capital access program that was previously operated by the fund for small businesses in a manner similar to how that program was operated before January 1, 2002. The small business capital access program shall operate on a market-driven basis and provide for premium payments by borrowers into a special reserve fund. The small business capital access program established by the board shall prohibit an officer,

director, principal shareholder of a participating financial institution, or his or her immediate family members from receiving a small business capital access program loan from the financial institution. A loan under the small business capital access program shall provide that the proceeds of a loan may only be used for a business purpose within this state and may not be used for any of the following:

- (a) The construction or purchase of residential housing.
- (b) To finance passive real estate ownership.
- (c) To refinance prior debt from the participating financial institution that is not part of the small business capital access program.

125.2088e Private equity investment program.

Sec. 88e. When creating programs for 21st century investments under this chapter, the fund shall create and operate a private equity investment program. The fund board shall authorize investments only in or alongside a qualified private equity fund. The private equity investment program shall do all of the following:

(a) Provide that the return on investment that is sought is greater than the return on investment under the commercial loan portion of the loan enhancement program to reflect the greater risk.

(b) Provide that the qualified private equity fund will have an amount at risk greater than the fund's investment.

(c) Provide that a qualified private equity fund is not eligible to participate in a private equity investment program unless it operates a business development office in this state staffed with at least 1 full-time equivalent employee who is actively seeking opportunities for investments in businesses located in this state unless the investment opportunity requested by the qualified private equity fund is targeted to a specific transaction that will save jobs and will not occur without the fund's investment as determined by the fund board.

(d) Provide that a qualified private equity fund is not eligible to participate in a private equity investment program unless it agrees to make investments in this state at a percentage rate that is not less than the percentage rate that the fund's investment in the qualified private equity fund bears to the total amount in the qualified private equity fund.

(e) Provide that a qualified private equity fund is not eligible to participate in a private equity investment program if its investment strategy provides for the breakup and liquidation of businesses. The fund board shall make sure that the agreements with a private equity fund have the appropriate provisions to prohibit the actions described in this subdivision.

125.2088f Venture capital investment program.

Sec. 88f. When creating programs for 21st century investments under this chapter, the fund shall create and operate the venture capital investment program. The fund board shall authorize investments that shall invest only in or alongside a qualified venture capital fund that invests primarily in early stage businesses. The venture capital investment program shall do all of the following:

(a) Provide that the return on investment that is sought is greater than the return on investment under the commercial loan portion of the loan enhancement program to reflect the greater risk.

(b) Provide that the qualified venture capital fund will have an amount at risk greater than the fund's investment.

(c) Provide that a qualified venture capital fund is not eligible to participate in a venture capital investment program unless it operates a business development office in this state staffed with at least 1 full-time equivalent employee who is actively seeking opportunities for venture capital investments in businesses located in this state unless the investment opportunity requested by the qualified venture capital fund is targeted to a specific transaction involving a competitive edge technology that will not occur without the fund's investment as determined by the fund board.

(d) Provide that a qualified venture capital fund is not eligible to participate in a venture capital investment program unless it agrees to make venture capital investments in this state at a percentage rate that is not less than the percentage rate that the fund's investment in the qualified venture capital fund bears to the total amount in the qualified venture capital fund.

(e) Provide that a qualified venture capital fund is not eligible to participate in a venture capital investment program if its investment strategy provides for the breakup and liquidation of businesses. The fund board shall make sure that the agreements with a venture capital fund have the appropriate provisions to prohibit the actions described in this subdivision.

(f) Coordinate with the Michigan early stage venture investment fund as defined in section 3 of the Michigan early stage venture investment act of 2003, 2003 PA 296, MCL 125.2233, to ensure that a continuum of venture capital is available in this state.

(g) Provide that 80% of the funds allocated to a venture capital investment program shall focus on competitive edge technologies.

(h) Provide that a qualified venture capital fund may make follow-up investments that were eligible for investment at the time of initial investment but that subsequently may not be characterized as an investment in an early stage business.

125.2088g Mezzanine investment program.

Sec. 88g. When creating programs for 21st century investments under this chapter, the fund shall create and operate a mezzanine investment program. The fund board shall authorize investments in or alongside a qualified mezzanine fund under a mezzanine investment program providing for all of the following:

(a) That the return on investment that is sought is greater than the return on investment under the commercial loan portion of the loan enhancement program to reflect the greater risk.

(b) That the qualified mezzanine fund will have an amount at risk greater than the fund's investment.

(c) That a qualified mezzanine fund is not eligible to participate in a mezzanine investment program unless it operates a business development office in this state staffed with at least 1 full-time equivalent employee who is actively seeking opportunities for mezzanine investments in businesses located in this state.

(d) That a qualified mezzanine fund is not eligible to participate in a mezzanine investment program unless it agrees to make mezzanine investments in this state at a percentage rate that is not less than the percentage rate that the fund's investment in the qualified mezzanine fund bears to the total amount in the qualified mezzanine fund.

(e) That a qualified mezzanine fund is not eligible to participate in a mezzanine investment program if its investment strategy provides for the breakup and liquidation of businesses. The fund board shall make sure that the agreements with a qualified mezzanine fund have the appropriate provisions to prohibit the actions described in this subdivision.

125.2088h Investment fund; creation; duties.

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

(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 12.256.

(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.

(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 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 provided under, and consistent with the objectives of, this chapter.

(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, and 88g 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.

125.2088i Office of chief compliance officer.

Sec. 88i. (1) The office of the chief compliance officer is created within the fund. The office shall exercise its powers and duties under this section independently of the fund.

(2) The office shall assist the fund board with the creation, implementation, monitoring, and enforcement of policies and procedures to prevent illegal, unethical, or improper conduct on the part of fund board members, commercialization board members and employees, or agents of the fund board and commercialization board in carrying out their duties under this chapter.

(3) The principal executive officer of the office is the chief compliance officer. The state administrative board shall be the appointing authority of the chief compliance officer.

(4) A person may not interfere with, prevent, or prohibit the chief compliance officer from carrying out his or her duties as established in this section and set by the state administrative board. The chief compliance officer is an employee for purposes of the whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369.

(5) All departments, state agencies, committees, commissioners, or officers of this state, the MEDC, and any political subdivision of this state, so far as is compatible with their duties, shall give the chief compliance officer any necessary assistance required by the chief compliance officer in the performance of the duties of the chief compliance officer. All departments, state agencies, committees, commissioners, or officers of this state, the MEDC, and any political subdivision of this state shall provide the chief compliance officer free access to any book, record, or document in their custody, relating to the matters within the scope of the chief compliance officer in the performance of his or her duties.

(6) The chief compliance officer shall do all of the following:

(a) Recommend policies and procedures, including, but not limited to, a conflict of interest policy, an investment policy, and an ethics policy to the fund board and the commercialization board that shall protect the state's assets consistent with the requirements of this chapter and applicable state and federal law. The chief compliance officer shall also assist in the design of the policies and procedures that will prevent violations from occurring, detect violations that have occurred, and correct such violations promptly.

(b) Assist employees and agents of the board and the commercialization board to ensure that they are in compliance with internal policies and procedures and with applicable state and federal law.

(c) Provide guidance to the board, the commercialization board, and employees of the board and the commercialization board on matters related to compliance with internal policies and procedures and with applicable state and federal law.

(d) Make recommendations to the board, the commercialization board, and employees of the board and the commercialization board regarding the appropriate evaluation, investigation, and resolution of issues and concerns regarding compliance with internal policies and procedures and with applicable state and federal law.

(e) Review and evaluate compliance with internal policies and procedures and with applicable state and federal law.

(f) Cooperate with the office of the auditor general as the auditor general carries out his or her duties.

(g) Report quarterly to the fund board and the state administrative board regarding compliance with internal policies and procedures and with applicable state and federal law.

(h) Contact persons receiving awards, investments, grants, and loans under this chapter to the extent necessary to carry out responsibilities under this chapter.

(i) Prepare a written annual report that evaluates compliance with internal policies and procedures and with applicable state and federal law, explains any compliance matters

that arose during the previous year, and suggests revisions to agency policies and procedures. Copies of the report shall be provided to the governor, the clerk of the house of representatives, the secretary of the senate, the chairpersons of the senate and house of representatives committees on commerce, and the chairpersons of the senate and house of representatives committees on appropriations. The annual report shall also be published on the fund's internet website.

(j) Do all other things necessary to carry out the chief compliance officer's responsibilities under this section.

(7) As used in this section, "office" means the office of the chief compliance officer.

125.2088j Disbursements.

Sec. 88j. (1) Upon request from the fund board, the state treasurer shall transfer appropriated funds from the 21st century jobs trust fund to the fund in the amounts designated by the fund board at the time and as necessary to fund disbursements or reserves required for programs or activities authorized under this chapter or to fund investments authorized by the fund board from the investment fund. Funds appropriated or transferred to the 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 under this chapter.

(2) For the fiscal year ending September 30, 2006, there is appropriated and transferred from the 21st century jobs trust fund to the fund \$400,000,000.00 for the purposes of carrying out the purposes of this chapter.

(3) From the funds appropriated and transferred in subsection (2), the fund shall make the following commitments, dispersible as provided in subsection (1):

(a) \$26,000,000.00 as a grant to the Michigan forest finance authority for purposes under part 505 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.50501 to 324.50522. The money shall be spent only as provided by the Michigan forest finance authority.

(b) \$10,000,000.00, up to 1/2 in loans, to support the development and creation of a defense contract coordination center program to assist Michigan companies in securing more federal defense and homeland security procurement contracts. This program shall include, but is not limited to, providing low-interest rate loans to support the expansion of manufacturing operations in order to fulfill federal procurement contracts. The loan repayments shall return to the investment fund.

(c) \$4,000,000.00 as follows:

(i) \$3,000,000.00 for a private research institute that has received a specific federal appropriation prior to 2005 for the creation of a good manufacturing facility. The facility shall be used for the production of drugs approved for use in clinical trials, as approved by the United States food and drug administration, and shall work to market the core technology alliance for the purposes of commercialization and providing access to advanced technologies to researchers affiliated with universities, private research institutes, and biotech and pharmaceutical firms.

(ii) \$1,000,000.00 to the core technology alliance to implement and fund a grant program for early drug discoveries.

(d) \$6,000,000.00 for an automotive technology business accelerator to provide for the research, development, and commercialization of innovative technologies and products. The funds shall be used to support international business development, encourage development of competitive edge technologies through the creation of early stage seed funds, and support the outreach and growth of technology based businesses and professionals.

(e) \$2,000,000.00 for the Michigan film office to promote the filming of motion pictures in this state. No funds may be used to promote the filming of a motion picture that depicts obscene matter or an obscene performance. As used in this subdivision, “obscene matter or an obscene performance” means obscene material, the dissemination of which is a violation of 1984 PA 343, MCL 752.361 to 752.374. The Michigan film office created under section 21 of the history, arts, and libraries act, 2001 PA 63, MCL 399.721, shall use the funds in the following manner:

(i) To hire an independent firm to conduct a baseline study that will accurately demonstrate Michigan’s status within the film industry and include recommendations of necessary improvements for Michigan to attract motion pictures.

(ii) To market and promote Michigan as a premiere location for filming motion pictures, commercials, and documentaries. Marketing and promoting include, but are not limited to, website development, promotional and research expenses, event and festival sponsorship, and advertising.

(iii) Assist in workforce development within the film industry by supporting on-the-job training of qualified crew members. Job training of film and media technicians includes, but is not limited to, technical training, practical training, and internship opportunities.

(f) \$2,000,000.00 to implement the transfer of competitive edge technology research from institutions of higher education to the private sector as provided in this chapter.

(g) \$15,000,000.00 for a Michigan promotion program to enhance funding beyond that included in the annual appropriation for travel Michigan to attract additional tourism expenditures in this state. No funds may be used for any tourism marketing effort that includes the image of an elected state officer or a candidate for elective state office that is targeted to a media market in Michigan.

(h) \$10,000,000.00 to the agricultural development fund created in section 2 of the Julian-Stille value-added act, 2000 PA 322, MCL 285.302, for grants and loans. Not less than \$5,000,000.00 shall be awarded as specialty crop grants and loans. The money shall not be spent until after April 1, 2006. As used in this subdivision, “specialty crop” means any agricultural crop, except wheat, feed grains, oilseeds, cotton, rice, peanuts, and tobacco.

(i) \$3,500,000.00 to implement the capital access program.

(j) \$90,000,000.00 for life sciences technology as provided in this chapter.

(4) \$16,000,000.00 of the appropriation made in subsection (2) may be expended for administrative costs related to the administration of programs or activities authorized under this chapter. However, the fund and the fund board shall not expend more than \$12,000,000.00 for administration of programs or activities authorized under this chapter unless the fund board by a 2/3 vote authorizes the additional \$4,000,000.00 for administration.

(5) \$20,000,000.00 of the appropriation made in subsection (2) may be expended 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 shall 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 this state. The fund board shall select all vendors for all marketing expenditures under this chapter by issuing a request for proposal. 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 pertinent litigation regarding the conduct of 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.

(6) Following the disbursements described in subsections (3), (4), and (5), the remaining money shall be allocated pursuant to section 88b(1).

(7) The appropriation authorized in subsection (2) is a work project appropriation and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to provide substantial economic benefits and job creation within this state and to create incentives for the diversification of the economy of this state through 21st century investments, grants and loans approved by the commercialization board under section 88k, and other programs or activities authorized under this chapter.

(b) The work project will be accomplished through the use of interagency agreements, grants, loans, investments, state employees, and contracts.

(c) The total estimated completion cost of the work project is \$400,000,000.00.

125.2094 Duties of governor.

Sec. 94. (1) The governor shall inquire into the administration of this act.

(2) The governor may remove or suspend any appointive public officer for violations of this act. The governor may request the MEDC to remove or suspend any MEDC corporate employee for violations of this act.

(3) The governor may remove or suspend any elective public officer for violation of this act that constitutes gross neglect of duty, corrupt conduct in office, misfeasance, or malfeasance.

(4) This section does not apply to any public officer of the legislative branch or the judicial branch of state government.

(5) The governor shall report the reasons for any removal or suspension under this section to the clerk of the house of representatives and the secretary of the senate.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) Senate Bill No. 298.
- (b) Senate Bill No. 359.
- (c) Senate Bill No. 521.
- (d) Senate Bill No. 533.
- (e) Senate Bill No. 633.
- (f) House Bill No. 4342.
- (g) House Bill No. 4972.
- (h) House Bill No. 4973.

- (i) House Bill No. 5048.
- (j) House Bill No. 5108.
- (k) House Bill No. 5109.

This act is ordered to take immediate effect.

Approved November 21, 2005.

Filed with Secretary of State November 21, 2005.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:

- Senate Bill No. 298 was filed with the Secretary of State November 21, 2005, and became 2005 PA 212, Eff. Jan. 1, 2006.
- Senate Bill No. 359 was filed with the Secretary of State November 21, 2005, and became 2005 PA 213, Imd. Eff. Nov. 21, 2005.
- Senate Bill No. 521 was filed with the Secretary of State November 21, 2005, and became 2005 PA 214, Imd. Eff. Nov. 21, 2005.
- Senate Bill No. 533 was filed with the Secretary of State November 21, 2005, and became 2005 PA 215, Imd. Eff. Nov. 21, 2005.
- Senate Bill No. 633 was filed with the Secretary of State November 21, 2005, and became 2005 PA 216, and was not enacted into law during the 2005 legislative session.
- House Bill No. 4342 was filed with the Secretary of State November 21, 2005, and became 2005 PA 221, and was not enacted into law during the 2005 legislative session.
- House Bill No. 4972 was filed with the Secretary of State November 21, 2005, and became 2005 PA 222, and was not enacted into law during the 2005 legislative session.
- House Bill No. 4973 was filed with the Secretary of State November 21, 2005, and became 2005 PA 223, and was not enacted into law during the 2005 legislative session.
- House Bill No. 5048 was filed with the Secretary of State November 21, 2005, and became 2005 PA 226, Imd. Eff. Nov. 21, 2005.
- House Bill No. 5108 was filed with the Secretary of State November 21, 2005, and became 2005 PA 231, and was not enacted into law during the 2005 legislative session.
- House Bill No. 5109 was filed with the Secretary of State November 21, 2005, and became 2005 PA 232, Imd. Eff. Nov. 21, 2005.

[No. 226]

(HB 5048)

AN ACT to create the Michigan tobacco settlement finance authority; to create funds and accounts; to provide for the sale by this state and the purchase by the authority of all or a portion of tobacco settlement assets; to authorize the issuing of bonds and notes; to prescribe the powers and duties of the authority, the state administrative board, the state treasurer, and certain other state officials and state employees; and to make appropriations and prescribe certain conditions for the appropriations.

The People of the State of Michigan enact:

129.261 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan tobacco settlement finance authority act”.

129.262 Legislative findings and declaration.

Sec. 2. The legislature finds and declares the following:

(a) This state has entered into a master settlement agreement with major tobacco companies that should result in the state receiving substantial sums of money in perpetuity assuming no adverse changes in cigarette consumption, market share, financial condition of those tobacco companies, and changes in law.

(b) The master settlement agreement is a binding and enforceable agreement of this state.

(c) Selling the state’s right to receive all or a portion of tobacco settlement payments is a prudent method of managing the risks associated with reliance on the receipt of tobacco settlement payments in perpetuity.

(d) Establishing the authority and execution by the authority of its powers granted under this act fulfill in all respects a public and governmental purpose for the benefit of the people of this state.

(e) The exchange of net proceeds received by the authority from the issuance of bonds plus residual interests for the right to receive all or a portion of tobacco settlement payments constitutes a true sale for a fair price.

129.263 Definitions.

Sec. 3. As used in this act:

(a) “Ancillary facility” means any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange or similar agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements, investment agreements, float agreements, forward agreements or other investment arrangements, insurance contract, surety bond, commitment to purchase or sell securities, purchase or sale agreements or commitments or other contracts or agreements and other security agreements approved by the authority, including without limitation any arrangements referred to in this act.

(b) “Authority” means the Michigan tobacco settlement finance authority created under section 4.

(c) “Benefited parties” means persons, firms, or corporations that enter into ancillary facilities with the authority according to the provisions of this act.

(d) “Board” means the board of directors of the authority.

(e) “Bond” means a bond, note, or other obligation issued by the authority under this act.

(f) “Code” means the United States internal revenue code of 1986, as amended, and any successor provision of law.

(g) “Encumbered tobacco revenues” means that portion of the TSRs that is pledged by the authority to the repayment of any bonds under the terms of the applicable authority resolution, trust agreement, or trust indenture.

(h) “Federal bankruptcy code” means the federal bankruptcy code, 11 USC 101 to 1330.

(i) “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.

(j) “Financing costs” means all capitalized interest, operating and debt service reserves, costs of issuance, fees for credit and liquidity enhancements, any item of expense directly or indirectly payable or reimbursable by the authority and related to the authorization, sale, or issuance of bonds, including without limitation underwriting fees, counsel fees, fees of the attorney general and fees and expenses of consultants and fiduciaries, and other costs as the authority determines to be desirable in issuing, securing, and marketing the bonds.

(k) “Interest rate exchange or similar agreement” means a written contract with a counterparty to provide for an exchange of payments based upon fixed or variable interest rates, or both fixed and variable interest rates.

(l) “Master settlement agreement” means the settlement agreement and related documents entered into on November 23, 1998, and incorporated into a consent decree and

final judgment entered into on December 7, 1998, in Kelley Ex Rel. Michigan v Philip Morris Incorporated, et al., Ingham county circuit court, docket no. 96-84281CZ.

(m) “Net proceeds” means the amount of proceeds remaining following each sale of bonds which are not required by the authority to establish and fund reserve or escrow funds or termination or settlement payments under ancillary facilities and to provide the financing costs and other expenses and fees directly related to the authorization and issuance of bonds.

(n) “Operating expenses” means the reasonable operating expenses of the authority, including without limitation the cost of preparation of accounting and other reports, costs of maintenance of the ratings on the bonds, insurance premiums, and costs of authority meetings or other required activities of the authority, counsel fees, including the fees of the attorney general, and fees and expenses incurred for consultants and fiduciaries and any other costs described in section 4(12).

(o) “Outstanding” means, when used with respect to bonds, all bonds other than bonds that shall have been paid in full at maturity or that may be considered not outstanding under the applicable authority resolution, trust indenture or trust agreement authorizing the issuance of the bonds and when used with respect to ancillary facilities, all ancillary facilities other than ancillary facilities that have been paid in full or that may be considered not outstanding under such ancillary facilities.

(p) “Person” means an individual, corporation, limited or general partnership, association, joint venture, limited liability company, or a governmental entity, including this state.

(q) “Qualifying statute” means that term as defined in the master settlement agreement, which is 1999 PA 244, MCL 445.2051 to 445.2052.

(r) “Residual interests” means 1 or more of the following as provided in any sale agreement:

(i) The unencumbered tobacco revenues.

(ii) The net proceeds not previously paid to this state.

(iii) The income of the authority that is in excess of the authority’s requirements to pay its operating expenses, debt service, sinking fund requirements, reserve fund or escrow fund requirements, and any other contractual obligations to the owners of the bonds or benefited parties, or that may be incurred in connection with the issuance or repayment of the bonds or the execution or repayment of ancillary facilities.

(iv) Contractual rights, if any, as shall be provided to this state in accordance with the terms of any sale agreements.

(s) “Sale agreement” means any agreement authorized under this act in which this state provides for the sale of all or a portion of the state’s tobacco receipts under section 8.

(t) “State treasurer” means the state treasurer of this state or his or her designee who shall be designated by a written instrument signed by the state treasurer and maintained in a permanent file and whose signature shall have the same force and effect as the signature of the state treasurer for all purposes under this act.

(u) “State’s tobacco receipts” means:

(i) All tobacco settlement revenue that is received by this state that is required to be made, under the terms of the master settlement agreement, by tobacco manufacturers to this state.

(ii) This state’s rights to receive the tobacco settlement revenue under the master settlement agreement.

(v) “TSRs” means the portion, which may include any or all, of this state’s tobacco receipts sold to the authority under this act and any sale agreement.