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BILL



ANALYSIS

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Senate Bill 929 (as enacted)
Sponsor: Senator Mike Kowall
Senate Committee: Economic Development
House Committee: Commerce

PUBLIC ACT 145 of 2012

Date Completed: 8-28-12

CONTENT

The bill amended the Michigan Strategic Fund (MSF) Act to do the following:

- Delete a requirement that the MSF board select all vendors for all marketing expenditures under Chapter 8A (21st Century Investment Programs and Activities) by issuing a request for proposal (RFP).
- Allow the MSF board to select all vendors for all expenditures and for program awards under Chapter 8A by issuing an RFP or an alternative competitive process.
- Allow the MSF to use application fees received for programs and activities under Chapters 8A and 8C (Community Revitalization), to administer those programs and activities.
- Allow the Michigan Economic Development Corporation (MEDC) to charge fees for costs associated with grants or other economic assistance (in addition to loans) under Chapter 8A.
- Require the competitive process under Chapter 8A for grants and loans for competitive edge technologies to include review by a joint-evaluation committee, rather than be peer reviewed by independent experts.
- Require the competitive process to limit overhead rates, administrative fees, and management fees for award recipients to 25% of the award, rather than limiting overhead rates to 15% of a grant or loan.
- Revise notice and hearing provisions for resolutions establishing or changing 21st Century investment programs.
- Allow the MSF board to act on a resolution on the day of a public hearing.
- Require the MSF to transmit to the Legislature an annual, rather than quarterly, status report of its activities.
- Include a municipality in the Act's definition of "person".

The bill took effect on May 30, 2012.

Selection of Vendors

Previously, the Act required the MSF board to select all vendors for all marketing expenditures under Chapter 8A by issuing a request for proposal. Under the bill, instead, the MSF board may select all vendors for all expenditures and for program awards under Chapter 8A by issuing an RFP or an alternative competitive process as determined by the board.

As previously required, at a minimum, an RFP must require the responding entities to disclose any conflict of interest, any criminal convictions, any investigations by the IRS or any other Federal or State taxing body or court, and any litigation involving the entity, and maintain records and evidence pertaining to work performed. The MSF board must establish a standard process to evaluate proposals submitted and appoint a committee to review them. The MSF or its board may not appoint or designate any

person to a review committee if that person has a conflict of interest with any potential vendors.

Charging & Use of Fees

Under the bill, the MEDC may charge actual and reasonable fees for costs associated with loans, grants, or other economic assistance under Chapter 8A. Previously, the MEDC could charge actual and reasonable fees for costs associated only with loans.

The bill specifies that application fees received for programs and activities authorized under Chapter 8A or Chapter 8C may be used by the MSF for administering the programs and activities authorized under Chapter 8A or Chapter 8C. A restriction on the amount of the annual appropriation from the 21st Century Jobs Trust Fund that may be used for administering the programs and activities authorized under Chapter 8A does not apply to the expenditure of application fee revenue.

The bill allows the MEDC to charge actual and reasonable fees for costs associated with a community revitalization "incentive" under Chapter 8C. The Act previously allowed fees associated with a community revitalization "loan".

21st Century Investment Program Resolutions

Under Chapter 8A, before adopting a resolution establishing or substantially changing a 21st Century investment program, the MSF board must notify the Governor, the Secretary of the Senate, the Clerk of the House of Representatives, and others. The notice and proposed resolution must be published on the MSF website. Previously, the MSF board had to hold a public hearing between 14 and 30 days from the date notice of a proposed resolution was given. The bill deleted that time frame but still requires a public hearing. The bill also requires the notice and proposed resolution to be published on the website at least 10 days before the date the resolution is considered by the board.

Previously, the MSF board could act on the proposed resolution at least 14 days after the public hearing. Under the bill, the board may act on the day of the public hearing.

Restrictions on Use of 21st Century Funds

The Act requires the MSF board to ensure that a recipient of money under certain provisions of Chapter 8A and Chapter 8C agrees not to use the money for the development of a stadium or arena for use by a professional sports team or for the development of a casino regulated under the Michigan Gaming Control and Revenue Act or the Federal Indian Gaming Regulatory Act. In addition, the MSF board must establish requirements to ensure that money spent under those provisions is not used for certain other purposes (such as providing money to a person who has been convicted of a particular crime, or to a business to induce other businesses to leave Michigan).

Under the bill, those restrictions also apply to a recipient of money for the Center of Innovation Program. (Section 88q of the Act originally authorized the MSF to create and operate a Centers of Energy Excellence Program to promote the development, acceleration, and sustainability of energy excellence sectors. Public Act 221 of 2012 amended Section 88q to allow the MSF instead to create and operate a Center of Innovation Program to promote competitive edge technology sectors.)

Competitive Edge Technologies

Chapter 8A created the Strategic Economic Investment and Commercialization Board within the MSF. The Commercialization Board must establish a competitive process to award grants and make loans for competitive edge technologies, subject to certain requirements for that competitive process. (Executive Reorganization Order 2010-4 abolished the Commercialization Board and transferred all of its powers and responsibilities to the MSF board.)

Previously, the competitive process had to include a requirement that the applications be peer reviewed by independent peer review experts based on the scientific and technical merit, personnel expertise, commercial merit, and the ability to leverage additional funding of the application. Those factors had to be given equal weight in the review and scoring process.

The bill instead requires the competitive process to require the applications to be reviewed by a joint-evaluation committee.

Scientific and technical merit, personnel expertise, commercial merit, and the ability to leverage additional funding may be given equal weight in the review and scoring process as determined by the MSF board.

Previously, the competitive process had to limit overhead rates for recipients of grants and loans to reflect actual overhead, but not greater than 15% of the grant or loan. The bill instead requires the competitive process to limit overhead rates, administrative fees, and management fees, for award recipients to 25% of the award.

Before adopting a resolution establishing or substantially changing a program operated by the MSF board under these provisions, the board must notify the Governor, the Secretary of the Senate, the Clerk of the House, and others, and hold a public hearing. The notice and proposed resolution must be published on the MSF website. The bill requires the notice and proposed resolution to be published on the website at least 10 days before the date the resolution is considered by the board.

Previously, the MSF board could act on the proposed resolution at least 14 days after the public hearing. Under the bill, the board may act on the day of the public hearing.

MCL 125.2009 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill made a series of changes to give the Michigan Strategic Fund board greater flexibility in the administration of 21st Century Investment and other programs, including tourism promotion and business marketing, competitive edge technology grants and loans, loan enhancement programs, business incubators, and the Michigan Business Development Program. These changes will tend to reduce the MSF's administrative costs and will have an unknown impact on the overall costs and uses of funds available to the program, which include annual appropriations and the Jobs for Michigan Investment Fund, the permanent fund that receives earnings and repayments from 21st Century programs and predecessor programs.

The bill also permits fees to be charged for grants and other economic assistance from 21st Century programs and for costs associated with any type of assistance under the Community Revitalization Program. These changes will provide additional revenue to cover administrative costs, replacing in part revenue from application fees for the Michigan Economic Growth Authority and brownfield tax credits. The amount of revenue depends on the level of fees and the amount of activity in these programs.

Including a municipality in the Act's definition of "person" will make a wide variety of local governments eligible for the Community Revitalization Program. The Community Revitalization Program was created by Public Act 253 of 2011 to replace brownfield tax credits. Public Act 63 of 2011 appropriated \$100.0 million in FY 2011-12 that can be allocated by the MSF board between the Business Development Program and the Community Revitalization Program. Section 1024 of that Act requires the allocation of at least \$20.0 million for brownfield redevelopment and historic preservation incentives.

Public Act 200 of 2012 continued the same level of funding in FY 2012-13, with \$100.0 million appropriated for the program, subject to the same requirement for allocation of at least \$20.0 million for brownfield redevelopment and historic preservation incentives.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.