

SENATE BILL No. 929

February 7, 2012, Introduced by Senator KOWALL and referred to the Committee on Economic Development.

A bill to amend 1984 PA 270, entitled "Michigan strategic fund act," by amending sections 9, 88b, 88c, 88h, and 88k (MCL 125.2009, 125.2088b, 125.2088c, 125.2088h, and 125.2088k), section 9 as amended by 2011 PA 291, section 88b as amended by 2011 PA 250, sections 88c and 88h as amended by 2011 PA 251, and section 88k as added by 2005 PA 215.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) The fund shall transmit to the legislature ~~each~~
 2 ~~quarter~~ **ANNUALLY** a status report of its activities. The report
 3 shall include, but not be limited to, information on name and
 4 location of all applicants, amount and type of financial assistance
 5 being requested, type of project or product being financed, number
 6 of net jobs created or retained, duration of financial assistance,

1 amount of financial support other than state resources, and the
2 status of any loans of the fund, excluding industrial development
3 revenue loans, which are in default. The report shall not include
4 information exempt from disclosure under section 5.

5 (2) The auditor general or a certified public accountant
6 appointed by the auditor general annually shall conduct and remit
7 to the legislature an audit of the fund and, in the conduct of the
8 audit, shall have access to all records of the fund at any time,
9 whether or not confidential. Each audit required by this section
10 shall include a determination of whether the fund is likely to be
11 able to continue to meet its obligations, including a report on the
12 status of outstanding loans and agreements made by the fund.

13 (3) The fund shall also transmit the status report described
14 in subsection (1) and audit described in subsection (2) to the
15 chairperson and minority vice-chairperson of the senate
16 appropriations subcommittee on general government and the house of
17 representatives appropriations subcommittee on general government.
18 The fund shall make the status report and audit available to the
19 public on the fund's website.

20 Sec. 88b. (1) The fund shall create and operate programs
21 authorized under this chapter. The fund board shall determine the
22 annual allocation of money for programs authorized under this
23 chapter and make authorized expenditures or investments from the
24 investment fund of the 21st century jobs trust fund created in the
25 Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, as
26 authorized under this chapter for programs and activities
27 authorized under this chapter.

1 (2) Money transferred or appropriated by law to the fund for
2 the purposes of carrying out this chapter or chapter 8C shall be
3 expended or invested by the fund as authorized by law for the
4 following purposes:

5 (a) 21st century investments.

6 (b) Grants and loans approved by the commercialization board
7 under section 88k.

8 (c) Other programs or activities authorized under this
9 chapter.

10 (d) For promotion of tourism in this state. For fiscal year
11 2010-2011 only, \$20,000,000.00 for the promotion of tourism in this
12 state from funds appropriated in the jobs for Michigan investment
13 program - 21st century jobs fund line in section 109 of 2010 PA 191
14 with not less than \$1,500,000.00 to be used for the 2010-2011
15 winter advertisement buy. For all funds used for promotion of
16 tourism in this state under this subdivision, the fund shall report
17 to the legislature at the same time and in the same manner as
18 provided in section 89d.

19 (e) Grants, loans, or other economic assistance under section
20 88r and community revitalization incentives under chapter 8C.

21 (3) Not more than 4% of the annual appropriation as provided
22 by law from the 21st century jobs trust fund created in the
23 Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be
24 used for the purposes of administering the programs and activities
25 authorized under this chapter. However, the fund and the fund board
26 shall not use more than 3% of the annual appropriation for
27 administering the programs and activities authorized under this

1 chapter unless the fund board by a 2/3 vote authorizes the
2 additional 1% for administration. The MEDC may charge actual and
3 reasonable fees for costs associated with loans under this chapter.
4 These fees are in addition to an amount of the appropriation used
5 for administering the programs and activities authorized under this
6 chapter.

7 (4) Not more than 5% of the annual appropriation as provided
8 by law from the 21st century jobs trust fund created in the
9 Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be
10 used for business development and business marketing costs. Not
11 less than 80% of the funds committed for business development and
12 business marketing costs shall be targeted to persons or entities
13 outside of this state. No funds may be used for any business
14 development and business marketing effort that includes a reference
15 to or the image or voice of an elected state officer or a candidate
16 for elective state office and that is targeted to a media market in
17 Michigan. ~~The fund board shall select all vendors for all marketing~~
18 ~~expenditures under this chapter by issuing a request for proposal.~~
19 ~~At a minimum, the request for proposal shall require the responding~~
20 ~~entities to disclose any conflict of interest, disclose any~~
21 ~~criminal convictions, disclose any investigations by the internal~~
22 ~~revenue service or any other federal or state taxing body or court,~~
23 ~~disclose any pertinent litigation regarding the conduct of the~~
24 ~~entity, and maintain records and evidence pertaining to work~~
25 ~~performed. The fund board shall establish a standard process to~~
26 ~~evaluate proposals submitted as a result of a request for proposal~~
27 ~~and appoint a committee to review the proposals. The fund or the~~

1 ~~fund board shall not appoint or designate any person paid or unpaid~~
2 ~~to a committee to review proposals if that person has a conflict of~~
3 ~~interest with any potential vendors as determined by the office of~~
4 ~~the chief compliance officer established in section 88i.~~

5 (5) The fund shall not use any money appropriated or
6 transferred for purposes authorized under this chapter to acquire
7 interests in or improve real property. The restriction under this
8 subsection does not prohibit the fund from taking a security
9 interest in real property. The restriction under this subsection
10 applies only to the fund and not to recipients of expenditures or
11 investments under this chapter.

12 (6) THE FUND BOARD MAY SELECT ALL VENDORS FOR ALL EXPENDITURES
13 AND FOR PROGRAM AWARDS UNDER THIS CHAPTER BY ISSUING A REQUEST FOR
14 PROPOSAL OR AN ALTERNATIVE COMPETITIVE PROCESS AS DETERMINED BY THE
15 FUND BOARD. AT A MINIMUM, THE REQUEST FOR PROPOSAL SHALL REQUIRE
16 THE RESPONDING ENTITIES TO DISCLOSE ANY CONFLICT OF INTEREST,
17 DISCLOSE ANY CRIMINAL CONVICTIONS, DISCLOSE ANY INVESTIGATIONS BY
18 THE INTERNAL REVENUE SERVICE OR ANY OTHER FEDERAL OR STATE TAXING
19 BODY OR COURT, DISCLOSE ANY LITIGATION INVOLVING THE ENTITY, AND
20 MAINTAIN RECORDS AND EVIDENCE PERTAINING TO WORK PERFORMED. THE
21 FUND BOARD SHALL ESTABLISH A STANDARD PROCESS TO EVALUATE PROPOSALS
22 SUBMITTED AS A RESULT OF A REQUEST FOR PROPOSAL AND APPOINT A
23 COMMITTEE TO REVIEW THE PROPOSALS. THE FUND OR THE FUND BOARD SHALL
24 NOT APPOINT OR DESIGNATE ANY PERSON PAID OR UNPAID TO A COMMITTEE
25 TO REVIEW PROPOSALS IF THAT PERSON HAS A CONFLICT OF INTEREST WITH
26 ANY POTENTIAL VENDORS AS DETERMINED BY THE OFFICE OF THE CHIEF
27 COMPLIANCE OFFICER ESTABLISHED IN SECTION 88I.

1 (7) APPLICATION FEES RECEIVED FOR PROGRAMS AND ACTIVITIES
2 AUTHORIZED UNDER THIS CHAPTER OR CHAPTER 8C MAY BE USED BY THE FUND
3 FOR ADMINISTERING THE PROGRAMS AND ACTIVITIES AUTHORIZED UNDER THIS
4 CHAPTER OR CHAPTER 8C. THE RESTRICTIONS ON EXPENDITURES UNDER
5 SUBSECTION (3) DO NOT APPLY TO EXPENDITURE OF APPLICATION FEE
6 REVENUE UNDER THIS SUBSECTION.

7 Sec. 88c. (1) The fund board shall exercise the duties of a
8 fiduciary with respect to 21st century investments consistent with
9 the purposes of this chapter. The prudent investor rule shall be
10 applied by the fund board and any agent of the fund board in the
11 management of 21st century investments. The prudent investor rule
12 as applied to 21st century investments means that in making 21st
13 century investments, the fund board shall exercise the judgment and
14 care under the circumstances then prevailing that an institutional
15 investor of ordinary prudence, discretion, and intelligence would
16 exercise in similar circumstances in a like position. The fund
17 board shall maintain a reasonable diversification among 21st
18 century investments consistent with the requirements of this
19 chapter.

20 (2) The fund board shall select qualified private equity
21 funds, qualified venture capital funds, and qualified mezzanine
22 funds by issuing a request for proposal. At a minimum, the request
23 for proposal shall require a responding entity to disclose any
24 conflict of interest, disclose any criminal convictions, disclose
25 any investigations by the internal revenue service, the securities
26 and exchange commission, or any other federal or state taxing or
27 securities regulatory body, or court, or pertinent litigation

1 regarding the conduct of the person or entity. The fund board shall
2 establish a standard process to evaluate proposals submitted as a
3 result of a request for proposal and appoint a committee to review
4 the proposals.

5 (3) The fund board shall ensure that a recipient of money
6 under sections 88d, 88e, 88f, 88g, **88Q**, and 88r and chapter 8C
7 agrees as a condition of receiving the money not to use the money
8 for any of the following:

9 (a) The development of a stadium or arena for use by a
10 professional sports team.

11 (b) The development of a casino regulated by this state under
12 the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201
13 to 432.226, a casino at which gaming is conducted under the Indian
14 gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or
15 property associated or affiliated with the operation of either type
16 of casino described in this subdivision, including, but not limited
17 to, a parking lot, hotel, motel, or retail store.

18 (4) The fund board shall establish requirements to ensure that
19 money expended under sections 88d, 88e, 88f, 88g, **88Q**, and 88r and
20 chapter 8C shall not be used for any of the following:

21 (a) Provision of money to a person who has been convicted of a
22 criminal offense incident to the application for or performance of
23 a state contract or subcontract. As used in this subdivision, if a
24 person is a business entity, person includes affiliates,
25 subsidiaries, officers, directors, managerial employees as
26 determined by the board, and any person who, directly or
27 indirectly, holds a pecuniary interest in that business entity of

1 20% or more.

2 (b) Provision of money to a person who has been convicted of a
3 criminal offense, or held liable in a civil proceeding, that
4 negatively reflects on the person's business integrity, based on a
5 finding of embezzlement, theft, forgery, bribery, falsification or
6 destruction of records, receiving stolen property, or violation of
7 state or federal antitrust statutes. As used in this subdivision,
8 if a person is a business entity, person includes affiliates,
9 subsidiaries, officers, directors, managerial employees, and any
10 person who, directly or indirectly, holds a pecuniary interest in
11 that business entity of 20% or more.

12 (c) Provision of money to a business enterprise to induce
13 qualified businesses or small businesses to leave this state.

14 (d) Provision of money that would contribute to the violation
15 of internationally recognized workers rights, as defined in section
16 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a
17 country other than the United States, including any designated zone
18 or area in that country.

19 (e) Provision of money to a corporation or an affiliate of the
20 corporation who is incorporated in a tax haven country after
21 September 11, 2001, while maintaining the United States as the
22 principal market for the public trading of the corporation's stock.
23 As used in this section, "tax haven country" includes a country
24 with tax laws that facilitate avoidance by a corporation or an
25 affiliate of the corporation of United States tax obligations,
26 including Barbados, Bermuda, British Virgin Islands, Cayman
27 Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of

1 Man, the principality of Liechtenstein, the principality of Monaco,
2 and the Republic of the Seychelles.

3 (5) Before adopting a resolution that establishes or
4 substantially changes a 21st century investment program, including
5 any fees, charges, or penalties attached to that program, the fund
6 board shall give notice of the proposed resolution to the governor,
7 to the clerk of the house of representatives, to the secretary of
8 the senate, to members of the senate and house of representatives
9 appropriation committees, and to each person who requested from the
10 fund in writing or electronically to be notified regarding proposed
11 resolutions. The notice and proposed resolution and all attachments
12 shall be published on the fund's internet website **NOT SOONER THAN**
13 **10 DAYS PRIOR TO THE DATE THAT THE PROPOSED RESOLUTION IS**
14 **CONSIDERED BY THE FUND BOARD.** The fund board shall hold a public
15 hearing ~~not sooner than 14 days and not longer than 30 days from~~
16 ~~the date notice of a proposed resolution is given~~ and offer a
17 person an opportunity to present data, views, questions, and
18 arguments. Members of the fund board or 1 or more persons
19 designated by the fund board who have knowledge of the subject
20 matter of the proposed resolution shall be present at the public
21 hearing and shall participate in the discussion of the proposed
22 resolution. The fund board may act on the proposed resolution ~~no~~
23 ~~sooner than 14 days after~~ **ON THE DAY OF** the public hearing. The
24 fund board shall produce a final decision document that describes
25 the basis for its decision. The final resolution and all
26 attachments and the decision document shall be provided to the
27 governor, to the clerk of the house of representatives, to the

1 secretary of the senate, and to members of the senate and house of
2 representatives appropriation committees and shall be published on
3 the fund's internet website.

4 (6) The notice described in subsection (5) shall include all
5 of the following:

6 (a) A copy of the proposed resolution and all attachments.

7 (b) A statement that the addressee may express any data,
8 views, or arguments regarding the proposed resolution.

9 (c) The address to which written comments may be sent and the
10 date by which comments must be mailed or electronically
11 transmitted, which date shall not be before the date of the public
12 hearing.

13 (d) The date, time, and place of the public hearing.

14 (7) The fund board shall employ or contract with a fund
15 manager or other persons it considers necessary to implement this
16 section. The person employed or contracted under this subsection
17 shall have not less than 10 years' experience in commercial
18 lending, private equity, mezzanine funding, or venture capital. The
19 person employed or contracted under this section shall exercise the
20 duties of a fiduciary toward investments from the investment fund
21 under this section. Management fees payable by the fund and other
22 investors in a qualified private equity fund, a qualified mezzanine
23 fund, or a qualified venture capital fund shall be considered an
24 investment expense and not an administrative cost incurred by the
25 fund.

26 (8) Subject to subsection (9), a record received, prepared,
27 used, or retained by an investment fiduciary in connection with an

1 investment or potential investment of the investment fund that
2 relates to investment information pertaining to a portfolio company
3 in which the investment fiduciary has invested or has considered an
4 investment that is considered by the portfolio company and
5 acknowledged by the investment fiduciary as confidential, or that
6 relates to investment information whether prepared by or for the
7 investment fiduciary regarding loans and assets directly owned by
8 the investment fiduciary and acknowledged by the investment
9 fiduciary as confidential, is exempt from the disclosure
10 requirements of the freedom of information act, 1976 PA 442, MCL
11 15.231 to 15.246, if at least annually the fund provides to the
12 fund board, and makes available to the public, a report of fund
13 investments during the prior state fiscal year that includes all of
14 the following:

15 (a) The name of each portfolio company in which the investment
16 fund invested during the reporting period.

17 (b) The aggregate amount of money invested by the investment
18 fund in portfolio companies during the reporting period.

19 (c) The rate of return realized during the reporting period on
20 the investments of the investment fund in portfolio companies.

21 (d) The source of any public funds invested by the investment
22 fund in portfolio companies during the reporting period.

23 (9) If a record described in subsection (8) is an agreement or
24 instrument to which an investment fiduciary is a party, only those
25 parts of the record that contain investment information are exempt
26 from the disclosure requirements of the freedom of information act,
27 1976 PA 442, MCL 15.231 to 15.246.

1 (10) As used in subsections (8) and (9):

2 (a) "Investment fiduciary" means a person who exercises any
3 discretionary authority or control over an investment of the
4 investment fund or renders investment advice for the fund for a fee
5 or other direct or indirect compensation.

6 (b) "Investment information" means information that has not
7 been publicly disseminated or that is unavailable from other
8 sources, the release of which might cause a portfolio company or an
9 investment fiduciary significant competitive harm. Investment
10 information includes, but is not limited to, financial performance
11 data and projections, financial statements, list of coinvestors and
12 their level of investment, product and market data, rent rolls, and
13 leases.

14 (c) "Portfolio company" means an entity in which an investment
15 fiduciary has made or considered an investment on behalf of the
16 investment fund.

17 (d) "Record" means all or part of a writing, as that term is
18 defined in section 2 of the freedom of information act, 1976 PA
19 442, MCL 15.232.

20 Sec. 88h. (1) The jobs for Michigan investment fund is created
21 within the fund as a permanent fund authorized by section 19 of
22 article IX of the state constitution of 1963. Money in the
23 investment fund at the close of the fiscal year shall remain in the
24 investment fund and shall not lapse to the general fund. Money in
25 the investment fund shall not be transferred to another
26 governmental entity or a separate legal entity and public body
27 corporate established under the urban cooperation act of 1967, 1967

1 (Ex Sess) PA 7, MCL 124.501 to 124.512, except as authorized in
2 this chapter.

3 (2) Money or other assets deposited in the investment fund
4 shall be held as permanent funds as provided under section 19 of
5 article IX of the state constitution of 1963 and invested only as
6 authorized under this chapter, including, but not limited to,
7 investments in the stock of a company, association, or corporation.

8 (3) The investment fund shall be invested as authorized under
9 this chapter for the benefit of the people of the state of Michigan
10 and for the purpose of creating incentives for the following in
11 this state:

12 (a) Retaining or creating jobs.

13 (b) Increasing capital investment activity.

14 (c) Increasing commercial lending activity.

15 (d) Encouraging the development and commercialization of
16 competitive edge technologies.

17 (e) Revitalizing Michigan communities.

18 (4) Funds or other assets of the investment fund also may be
19 invested in debt instruments or debt obligations for loans or
20 guarantees authorized under this chapter.

21 (5) The investment fund shall consist of all of the following:

22 (a) Any funds appropriated to, transferred to, or deposited in
23 the investment fund from the 21st century jobs trust fund under the
24 Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260.

25 (b) Earnings, royalties, return on investments, return of
26 principal, payments made, or other money received by or payable to
27 the fund under agreements related to grants, loans, investments, or

1 expenditures by the fund under this chapter or chapter 8C.

2 (c) Assets, property, money, earnings, royalties, return on
3 investments, return of principal, payments made, or other money
4 owed, received by, or payable to the fund or the Michigan economic
5 development corporation under agreements related to grants, loans,
6 investments, or other payments funded by appropriations from the
7 state general fund or tobacco settlement revenue under 1 or more of
8 the following:

9 (i) Section 418 of 1999 PA 120, commonly known as the health
10 and aging research and development initiative or the Michigan life
11 sciences corridor initiative, or any successor program.

12 (ii) Section 410 of 2000 PA 292, commonly known as the health
13 and aging research and development initiative or the Michigan life
14 sciences corridor initiative, or any successor program.

15 (iii) Section 410 of 2001 PA 80, commonly known as the health
16 and aging research and development initiative or the Michigan life
17 sciences corridor initiative, or any successor program.

18 (iv) Section 410 of 2002 PA 517, commonly known as the Michigan
19 life sciences corridor initiative, or any successor program.

20 (v) Section 410 of 2003 PA 169, commonly known as the Michigan
21 life sciences and technology tri-corridor initiative, or any
22 successor program.

23 (vi) Section 510 of 2004 PA 354, commonly known as the Michigan
24 technology tri-corridor and life sciences initiative, or any
25 successor program.

26 (vii) Section 801 of 2005 PA 11, commonly known as the
27 technology tri-corridor and life sciences initiative, or any

1 successor program.

2 (viii) Section 381(1)(c) of 2003 PA 173, providing for payments
3 to the life sciences commercial development fund.

4 (d) Money or assets received by the state treasurer or the
5 fund from any source for deposit in the investment fund.

6 (e) Interest and earnings on any funds or other assets
7 deposited in the investment fund or other net income of the
8 investment fund.

9 (6) The net income of the investment fund may be expended by
10 the fund only for purposes authorized under this chapter or chapter
11 8C pursuant to an appropriation authorized by law. As used in this
12 section, the net income of the investment fund shall be computed
13 annually as of the last day of the state fiscal year in accordance
14 with generally accepted accounting principles, excluding any
15 unrealized gains or losses.

16 (7) The fund board shall be the trustees of the investment
17 fund and shall direct the investment and reinvestment of the funds
18 and assets of the investment fund as ~~provided under, and~~ consistent
19 with the objectives of ~~,~~ this chapter or chapter 8C.

20 (8) The fund board may establish restricted subaccounts within
21 the investment fund as necessary to administer the investment fund.
22 The fund board may contract with the state treasurer to assist the
23 fund board in administering the investment fund. The fund board may
24 authorize money in the investment fund not invested as authorized
25 under sections 88d, 88e, 88f, 88g, **88Q**, and 88r and chapter 8C to
26 be managed by the state treasurer as part of the common cash fund
27 of this state under 1967 PA 55, MCL 12.51 to 12.53. Money managed

1 by the state treasurer under this subsection shall be separately
2 accounted for by the state treasurer. When authorized under this
3 subsection, the state treasurer may invest the funds or assets of
4 the investment fund in any investment authorized under 1855 PA 105,
5 MCL 21.141 to 21.147, for surplus funds of this state, in
6 obligations issued by any state or political subdivision or
7 instrumentality of the United States, or in any obligation issued,
8 assumed, or guaranteed by a solvent entity created or existing
9 under the laws of the United States or of any state, district, or
10 territory of the United States, which are not in default as to
11 principal or interest.

12 (9) A member of the fund board or officer of the fund shall
13 not gain from any investment of funds or assets of the investment
14 fund. A member of the fund board or officer of the fund shall not
15 have any direct or indirect interest in an investment of funds or
16 assets of the investment fund. A member of the fund board or person
17 connected with the investment fund directly or indirectly, for
18 himself or herself, or as an agent or partner of others, shall not
19 borrow any of the funds or assets of the investment fund or in any
20 manner use funds or assets of the investment fund except as
21 authorized under this chapter. A member of the fund board or
22 officer of the fund shall not become an endorser or surety or
23 become in any manner an obligor for money loaned by or borrowed
24 from the investment fund. Failure to comply with this subsection
25 constitutes misconduct in office subject to removal under section
26 94. In addition to any other sanction, a person who violates this
27 subsection is guilty of a misdemeanor punishable by imprisonment

1 for not more than 90 days or a fine of not more than \$500.00, or
2 both.

3 Sec. 88k. (1) The strategic economic investment and
4 commercialization board is created within the fund. The
5 commercialization board shall exercise its powers, duties, and
6 decision-making authority under this chapter independently of the
7 fund, the fund board, and the department of treasury.

8 (2) The commercialization board shall award grants and loans
9 from the 21st century jobs trust fund created in the Michigan trust
10 fund act, 2000 PA 489, MCL 12.251 to 12.256, and the investment
11 fund only for basic research, applied research, university
12 technology transfer, and commercialization of products, processes,
13 and services to encourage the development of competitive edge
14 technologies to create jobs in this state.

15 (3) Subject to subsection (2), the fund as determined by the
16 commercialization board shall ~~do all of the following:~~

17 ~~—— (a) Establish~~ **ESTABLISH** a competitive process to award grants
18 and make loans for competitive edge technologies. The competitive
19 process shall include, but is not limited to, the following:

20 **(A)** ~~(i) A provision that the applications must be peer reviewed~~
21 ~~by independent peer review experts based on the scientific and~~
22 ~~technical merit, personnel expertise, commercial merit, and the~~
23 ~~ability to leverage additional funding of the application~~ **REVIEWED**
24 **BY A JOINT-EVALUATION COMMITTEE**. Scientific and technical merit,
25 personnel expertise, commercial merit, and the ability to leverage
26 additional funding shall ~~shall~~ **MAY** be given equal weight in the review
27 and scoring process **AS DETERMINED BY THE FUND BOARD**.

1 (B) ~~(ii)~~—A preference for proposals that can contribute to the
2 development of economic diversification or the creation of
3 employment opportunities in this state.

4 (C) ~~(iii)~~—A provision that out-of-state business must have a
5 significant existing or proposed business presence in this state.

6 (D) ~~(iv)~~—A provision that the program will utilize contracts
7 with measurable milestones, clear objectives, provisions to revoke
8 awards for breach of contract, and repayment provisions for loans
9 given to qualified businesses that leave Michigan within 3 years of
10 the execution of the contract or otherwise breach the terms of the
11 contract.

12 (E) ~~(v)~~—A provision that the applicant leverage other
13 resources as a condition of the grant or loan. If an applicant is
14 seeking a grant or a loan under this chapter to match federal funds
15 for small business innovation research or small business technology
16 transfer programs, the grant or loan under this chapter shall not
17 exceed 25% of the federal funds and must leverage third-party
18 commercialization funding at both the phase I and phase II levels.

19 (F) ~~(vi)~~—Limit overhead rates for recipients of ~~grants and~~
20 ~~loans~~ **AWARDS** to reflect actual overhead, ~~but not greater than 15%~~
21 ~~of the grant or loan.~~ **ADMINISTRATIVE FEES, AND MANAGEMENT FEES, TO**
22 **AN AMOUNT AS DETERMINED BY THE FUND BOARD.**

23 (G) ~~(vii)~~—Except as provided in ~~subparagraph (v),~~ **SUBDIVISION**
24 **(E)**, a provision that grants can only be awarded to Michigan
25 institutions of higher education, Michigan nonprofit research
26 institutions, and Michigan nonprofit corporations.

27 (H) ~~(viii)~~—A preference for collaborations between institutions

1 of higher education, Michigan nonprofit research institutions,
2 Michigan nonprofit corporations, and qualified businesses.

3 (I) ~~(ix)~~—A provision authorizing the award of grants to
4 institutions of higher education to serve as match to promote or
5 secure the award and receipt of competitively awarded federal
6 research grants related to competitive edge technologies. A
7 matching grant shall not exceed 10% of the amount of the
8 competitively awarded federal research grants received.

9 (J) ~~(x)~~—A provision encouraging the redevelopment of existing
10 scientific wet lab space for the commercialization of life science
11 technology.

12 (K) ~~(xi)~~—A preference for proposals that meet 1 or more of the
13 following:

14 (i) ~~(A)~~—Forecast revenues within 2 years.

15 (ii) ~~(B)~~—Have outside investments from investors with
16 experience and management teams with experience in the industry
17 targeted by the proposal.

18 (iii) ~~(C)~~—Have outside directors with expertise in the industry
19 targeted by the proposal.

20 ~~——(b) The fund shall contract with independent peer review~~
21 ~~experts selected by the commercialization board to assist the~~
22 ~~commercialization board with its responsibilities under this~~
23 ~~chapter.~~

24 (4) The commercialization board shall establish standards to
25 ensure that money expended under this chapter will result in
26 economic benefit to this state and ensure that a major share of the
27 business activity resulting from the expenditures occurs in this

1 state.

2 (5) The commercialization board shall ensure that a recipient
3 of money expended under this chapter agrees as a condition of
4 receiving the money not to use the money for any of the following:

5 (a) The development of a stadium or arena for use by a
6 professional sports team.

7 (b) The development of a casino regulated by this state under
8 the Michigan gaming control and revenue act, ~~the Initiated Law of~~
9 1996 **IL 1**, MCL 432.201 to 432.226, a casino at which gaming is
10 conducted under the Indian gaming regulatory act, Public Law 100-
11 497, 102 Stat. 2467, or property associated or affiliated with the
12 operation of either type of casino described in this subdivision,
13 including, but not limited to, a parking lot, hotel, motel, or
14 retail store.

15 (6) The commercialization board shall establish requirements
16 to ensure that money expended under this section shall not be used
17 for any of the following:

18 (a) Grants or loans to a person who has been convicted of a
19 criminal offense incident to the application for or performance of
20 a state contract or subcontract. As used in this subdivision, if a
21 person is a business entity, then person includes affiliates,
22 subsidiaries, officers, directors, managerial employees **AS**
23 **DETERMINED BY THE FUND BOARD**, and any person who, directly or
24 indirectly, holds a pecuniary interest in that business entity of
25 20% or more.

26 (b) Grants or loans to a person who has been convicted of a
27 criminal offense, or held liable in a civil proceeding, that

1 negatively reflects on the person's business integrity, based on a
2 finding of embezzlement, theft, forgery, bribery, falsification or
3 destruction of records, receiving stolen property, or violation of
4 state or federal antitrust statutes. As used in this subdivision,
5 if a person is a business entity, then person includes affiliates,
6 subsidiaries, officers, directors, managerial employees **AS**
7 **DETERMINED BY THE FUND BOARD**, and any person who, directly or
8 indirectly, holds a pecuniary interest in that business entity of
9 20% or more.

10 (c) Grants or loans to induce a qualified business or a small
11 business to leave this state.

12 (d) Grants or loans that would contribute to the violation of
13 internationally recognized workers rights, as defined in section
14 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a
15 country other than the United States, including any designated zone
16 or area in that country.

17 (e) Grants or loans to a corporation or an affiliate of the
18 corporation incorporated in a tax haven country after September 11,
19 2001, but with the United States as the principal market for the
20 public trading of the corporation's stock. As used in this section,
21 "tax haven country" includes a country with tax laws that
22 facilitate avoidance by a corporation or an affiliate of the
23 corporation of United States tax obligations, including Barbados,
24 Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of
25 the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of
26 Liechtenstein, the Principality of Monaco, and the Republic of the
27 Seychelles.

1 (7) When the commercialization board approves a grant or a
2 loan under this chapter, the commercialization board shall state
3 the specific objective reasons the applicant was selected over
4 other applicants for a grant or loan under this chapter.

5 (8) After March 31, 2006, before adopting a resolution that
6 establishes or substantially changes a program operated by the
7 commercialization board, including any fees, charges, or penalties
8 attached to that program, the commercialization board shall give
9 notice of the proposed resolution to the governor, to the secretary
10 of the senate, to the clerk of the house of representatives, to
11 members of the senate and house of representatives standing
12 committees on appropriations, and to each person who requested from
13 the fund in writing or electronically to be notified regarding
14 proposed resolutions. The notice and proposed resolution and all
15 attachments shall be published on the fund's internet website **NOT**
16 **SOONER THAN 10 DAYS PRIOR TO THE DATE THAT THE PROPOSED RESOLUTION**
17 **IS CONSIDERED BY THE COMMERCIALIZATION BOARD.** The commercialization
18 board shall hold a public hearing not sooner than 14 days and not
19 longer than 30 days from the date notice of a proposed resolution
20 is given and offer a person an opportunity to present data, views,
21 questions, and arguments. Commercialization board members or 1 or
22 more persons designated by the commercialization board who have
23 knowledge of the subject matter of the proposed resolution shall be
24 present at the public hearing and shall participate in the
25 discussion of the proposed resolution. The commercialization board
26 may act on the proposed resolution ~~no sooner than 14 days after~~ **ON**
27 **THE DAY OF** the public hearing. The commercialization board shall

1 produce a final decision document that describes the basis for its
2 decision. The final resolution and all attachments and the decision
3 document shall be provided to the governor, to the secretary of the
4 senate, to the clerk of the house of representatives, and to
5 members of the senate and house of representatives standing
6 committees on appropriations and shall be published on the fund's
7 internet website.

8 (9) The notice described in subsection (8) shall include all
9 of the following:

10 (a) A copy of the proposed resolution and all attachments.

11 (b) A statement that the addressee may express any data,
12 views, or arguments regarding the proposed resolution.

13 (c) The address to which written comments may be sent and the
14 date by which comments must be mailed or electronically
15 transmitted, which date shall not be before the date of the public
16 hearing.

17 (d) The date, time, and place of the public hearing.