

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 270

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending sections 88a, 88b, and 89c (MCL 125.2088a, 125.2088b,
and 125.2089c), section 88a as amended by 2011 PA 22, section 88b
as amended by 2012 PA 145, and section 89c as added by 2008 PA 98.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 88a. As used in this chapter:

2 (a) "Advanced automotive, manufacturing, materials,
3 information, and agricultural processing technology" means any
4 technology that involves 1 or more of the following:

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

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

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

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

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

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

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

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

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

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

22 (i) Computer hardware and software.

23 (ii) Data communications.

24 (iii) Information technologies.

25 (c) "Alternative energy technology" means applied research or
26 commercialization of new or next generation technology in 1 or more
27 of the following:

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

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

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

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

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

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

23 (d) "Applied research" means translational research conducted
24 with the objective of attaining a specific benefit or to solve a
25 practical problem, or other research activity that seeks to
26 utilize, synthesize, or apply existing knowledge, information, or
27 resources to the resolution of a specified problem, question, or

1 issue, with high potential for commercial application to create
2 jobs in this state.

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

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

13 (g) "Competitive edge technology" means 1 or more of the
14 following:

15 (i) Life sciences technology.

16 (ii) Advanced automotive, manufacturing, materials,
17 information, and agricultural processing technology.

18 (iii) Homeland security and defense technology.

19 (iv) Alternative energy technology.

20 (v) Any other innovative technology as determined by the fund
21 board.

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

27 (i) "Fund board" means the board of the Michigan strategic

1 fund described in section 5.

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

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

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

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

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

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

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

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

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

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

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

14 (l) "Institution of higher education" means an institution of
15 higher education or a community or junior college described in
16 section 4, 5, 6, or 7 of article VIII of the state constitution of
17 1963 or an independent nonprofit degree-granting institution of
18 postsecondary education in this state that is approved by the state
19 board of education.

20 (m) "Jobs for Michigan investment fund" or "investment fund"
21 means the jobs for Michigan investment fund created in section 88h.

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

25 (i) Bioengineering.

26 (ii) Biomedical engineering.

27 (iii) Genomics.

1 (iv) Proteomics.

2 (v) Molecular and chemical ecology.

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

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

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

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

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

16 (E) Stem cell research with human embryonic tissue.

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

27 (i) Advanced computing or electronic device technology related

1 to technology described under this subdivision.

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

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

7 (p) "Qualified business" means a business entity located in
8 this state.

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

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

21 (s) "Qualified venture capital fund" means a firm principally
22 or primarily engaged in investing in or acquiring early stage
23 businesses with growth potential that have not yet demonstrated
24 consistent profitability or a proven business model, that is
25 managed by 2 or more individuals with not less than 5 years of
26 direct experience in venture capital, and that holds capital from
27 investors other than the fund.

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

6 (u) "21st century investments" means investments in 1 or more
7 of the following:

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

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

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

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

16 (v) "Strategic economic investment and commercialization
17 board" or "commercialization board" means, **EXCEPT AS OTHERWISE**
18 **PROVIDED IN THIS SUBDIVISION**, the strategic economic investment and
19 commercialization board created in section 88k. **BEGINNING OCTOBER**
20 **18, 2010, THE STRATEGIC ECONOMIC INVESTMENT AND COMMERCIALIZATION**
21 **BOARD OR THE COMMERCIALIZATION BOARD MEANS THE FUND BOARD.**

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

27 Sec. 88b. (1) The fund shall create and operate programs

1 authorized under this ~~chapter~~-**ACT**. The fund board shall determine
2 the annual allocation of money for programs authorized under this
3 ~~chapter~~-**ACT** and make authorized expenditures or investments from
4 the investment fund of the 21st century jobs trust fund created in
5 the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, as
6 authorized under this ~~chapter~~-**ACT** for programs and activities
7 authorized under this ~~chapter~~-**ACT**.

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

12 (a) 21st century investments **AS LONG AS THOSE INVESTMENTS**
13 **PROVIDE FOR REPAYMENT FOR BREACH OF THE WRITTEN AGREEMENT OR THE**
14 **FAILURE TO MEET MEASURABLE OUTCOMES.**

15 (b) Grants and loans approved by the commercialization board
16 under section 88k **AS LONG AS THOSE GRANTS AND LOANS PROVIDE FOR**
17 **REPAYMENT FOR BREACH OF THE WRITTEN AGREEMENT OR THE FAILURE TO**
18 **MEET MEASURABLE OUTCOMES.**

19 (c) Other programs or activities authorized under this
20 chapter, **ANY OTHER CHAPTER OF THIS ACT, OR AS PROVIDED IN AN**
21 **APPROPRIATION ACT AS LONG AS THOSE PROGRAMS OR ACTIVITIES PROVIDE**
22 **FOR REPAYMENT FOR BREACH OF THE WRITTEN AGREEMENT OR THE FAILURE TO**
23 **MEET MEASURABLE OUTCOMES.**

24 (d) For promotion of tourism in this state. For fiscal year
25 2010-2011 only, \$20,000,000.00 for the promotion of tourism in this
26 state from funds appropriated in the jobs for Michigan investment
27 program - 21st century jobs fund line in section 109 of 2010 PA 191

1 with not less than \$1,500,000.00 to be used for the 2010-2011
2 winter advertisement buy. For all funds used for promotion of
3 tourism in this state under this subdivision, the fund shall report
4 to the legislature at the same time and in the same manner as
5 provided in section 89d.

6 (e) Grants, loans, or other economic assistance under section
7 88r and community revitalization incentives under chapter 8C **AS**
8 **LONG AS THOSE GRANTS, LOANS, OTHER ECONOMIC ASSISTANCE, AND**
9 **COMMUNITY REVITALIZATION INCENTIVES PROVIDE FOR REPAYMENT FOR**
10 **BREACH OF THE WRITTEN AGREEMENT OR THE FAILURE TO MEET MEASURABLE**
11 **OUTCOMES.**

12 (3) Not more than 4% of the annual appropriation as provided
13 by law from the 21st century jobs trust fund created in the
14 Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be
15 used for the purposes of administering the programs and activities
16 authorized under this chapter. However, the fund and the fund board
17 shall not use more than 3% of the annual appropriation for
18 administering the programs and activities authorized under this
19 chapter unless the fund board by a 2/3 vote authorizes the
20 additional 1% for administration. The MEDC may charge actual and
21 reasonable fees for costs associated with loans, grants, or other
22 economic assistance under this chapter. These fees are in addition
23 to an amount of the appropriation used for administering the
24 programs and activities authorized under this chapter.

25 (4) Not more than 5% of the annual appropriation as provided
26 by law from the 21st century jobs trust fund created in the
27 Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be

1 used for business development and business marketing costs. ~~Not~~
2 ~~less than 80% of the funds committed for business development and~~
3 ~~business marketing costs shall be targeted to persons or entities~~
4 ~~outside of this state.~~ No funds may be used for any business
5 development and business marketing effort that includes a reference
6 to or the image or voice of an elected state officer or a candidate
7 for elective state office and that is targeted to a media market in
8 Michigan.

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

16 (6) The fund board may select all vendors for all expenditures
17 and for program awards under this chapter by issuing a request for
18 proposal or an alternative competitive process as determined by the
19 fund board. At a minimum, the request for proposal shall require
20 the responding entities to disclose any conflict of interest,
21 disclose any criminal convictions, disclose any investigations by
22 the internal revenue service or any other federal or state taxing
23 body or court, disclose any litigation involving the entity, and
24 maintain records and evidence pertaining to work performed. The
25 fund board shall establish a standard process to evaluate proposals
26 submitted as a result of a request for proposal and appoint a
27 committee to review the proposals. The fund or the fund board shall

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

5 (7) Application fees received for programs and activities
6 authorized under this chapter or chapter 8C may be used by the fund
7 for administering the programs and activities authorized under this
8 chapter or chapter 8C. The restrictions on expenditures under
9 subsection (3) do not apply to expenditure of application fee
10 revenue under this subsection.

11 (8) FUNDS APPROPRIATED BY LAW TO THE FUND BOARD OR THE FUND
12 MAY BE EXPENDED BY THE FUND BOARD OR FUND WITHOUT FURTHER
13 APPROPRIATION REGARDLESS OF THE SOURCE OF THOSE FUNDS.

14 Sec. 89c. (1) The fund board shall select vendors for Michigan
15 promotion program expenditures under this chapter exceeding
16 \$250,000.00 by issuing a request for proposal. At a minimum, the
17 request for proposal shall require the responding entities to
18 disclose any conflict of interest, disclose any criminal
19 convictions, disclose any investigations by the internal revenue
20 service or any other federal or state taxing body or court,
21 disclose any pertinent litigation regarding the conduct of the
22 entity, and maintain records and evidence pertaining to work
23 performed for at least 5 years. The fund board shall establish a
24 standard process to evaluate proposals submitted as a result of a
25 request for proposal and appoint a committee to review the
26 proposals. Members of any committee or individuals working on
27 behalf of the Michigan strategic fund, paid or unpaid, shall have

1 no conflict of interest as determined by the office of the chief
2 compliance officer established in section 88i. This subsection does
3 not apply to a contract that was in existence on March 25, 2008 or
4 to the extension of a contract in which the right to extend was in
5 existence on or before March 25, 2008.

6 (2) ~~Not less than 75% of the funds appropriated under this~~
7 ~~chapter shall be targeted to persons or entities outside of this~~
8 ~~state.~~ No funds may be used for any Michigan promotion program
9 effort that includes a reference to or the image or voice of an
10 elected official, appointed state employee, state employee governed
11 by a senior executive service limited term employment agreement, or
12 a candidate for elective office, and that is targeted to a media
13 market in this state.