

HOUSE BILL No. 4481

March 20, 2013, Introduced by Reps. Santana and Schmidt and referred to the Committee on Commerce.

A bill to amend 1984 PA 270, entitled "Michigan strategic fund act," by amending sections 88k and 88n (MCL 125.2088k and 125.2088n), section 88k as amended by 2012 PA 145 and section 88n as added by 2005 PA 215.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 88k. (1) The strategic economic investment and
2 commercialization board is created within the fund. ~~The~~**THROUGH**
3 **OCTOBER 17, 2010, THE** commercialization board shall exercise its
4 powers, duties, and decision-making authority under this chapter
5 independently of the fund, the fund board, and the department of
6 treasury. **BEGINNING OCTOBER 18, 2010, THE FUND BOARD SHALL EXERCISE**
7 **ALL POWERS, DUTIES, AND DECISION-MAKING AUTHORITY OF THE STRATEGIC**

1 **ECONOMIC INVESTMENT AND COMMERCIALIZATION BOARD.**

2 (2) The ~~commercialization~~-**FUND** board shall award grants and
3 loans from the 21st century jobs trust fund created in the Michigan
4 trust fund act, 2000 PA 489, MCL 12.251 to ~~12.256~~, **12.260**, and the
5 investment fund only for basic research, applied research,
6 university technology transfer, and commercialization of products,
7 processes, and services to encourage the development of competitive
8 edge technologies to create jobs in this state.

9 (3) Subject to subsection (2), the fund ~~as determined by the~~
10 ~~commercialization board~~ shall establish a competitive process to
11 award grants and make loans for competitive edge technologies. The
12 competitive process shall include, but is not limited to, the
13 following:

14 (a) A provision that the applications must be reviewed by a
15 joint-evaluation committee. Scientific and technical merit,
16 personnel expertise, commercial merit, and the ability to leverage
17 additional funding may be given equal weight in the review and
18 scoring process as determined by the fund board.

19 (b) A preference for proposals that can contribute to the
20 development of economic diversification or the creation of
21 employment opportunities in this state.

22 (c) A provision that out-of-state business must have a
23 significant existing or proposed business presence in this state.

24 (d) A provision that the program will utilize contracts with
25 measurable milestones, clear objectives, provisions to revoke
26 awards for breach of contract, and repayment provisions for loans
27 given to qualified businesses that leave Michigan within 3 years of

1 the execution of the contract or otherwise breach the terms of the
2 contract.

3 (e) A provision that the applicant leverage other resources as
4 a condition of the grant or loan. If an applicant is seeking a
5 grant or a loan under this chapter to match federal funds for small
6 business innovation research or small business technology transfer
7 programs, the grant or loan under this chapter shall not exceed 25%
8 of the federal funds and must leverage third-party
9 commercialization funding at both the phase I and phase II levels.

10 (f) Limit overhead rates, administrative fees, and management
11 fees for recipients of awards to not more than 25% of the award.

12 (g) Except as provided in subdivision (e), a provision that
13 grants can only be awarded to Michigan institutions of higher
14 education, Michigan nonprofit research institutions, and Michigan
15 nonprofit corporations.

16 (h) A preference for collaborations between institutions of
17 higher education, Michigan nonprofit research institutions,
18 Michigan nonprofit corporations, and qualified businesses.

19 (i) A provision authorizing the award of grants to
20 institutions of higher education to serve as match to promote or
21 secure the award and receipt of competitively awarded federal
22 research grants related to competitive edge technologies. A
23 matching grant shall not exceed 10% of the amount of the
24 competitively awarded federal research grants received.

25 (j) A provision encouraging the redevelopment of existing
26 scientific wet lab space for the commercialization of life science
27 technology.

1 (k) A preference for proposals that meet 1 or more of the
2 following:

3 (i) Forecast revenues within 2 years.

4 (ii) Have outside investments from investors with experience
5 and management teams with experience in the industry targeted by
6 the proposal.

7 (iii) Have outside directors with expertise in the industry
8 targeted by the proposal.

9 (4) The ~~commercialization~~-**FUND** board shall establish standards
10 to ensure that money expended under this chapter will result in
11 economic benefit to this state and ensure that a major share of the
12 business activity resulting from the expenditures occurs in this
13 state.

14 ~~—— (5) The commercialization board shall ensure that a recipient~~
15 ~~of money expended under this chapter agrees as a condition of~~
16 ~~receiving the money not to use the money for any of the following:~~

17 ~~—— (a) The development of a stadium or arena for use by a~~
18 ~~professional sports team.~~

19 ~~—— (b) The development of a casino regulated by this state under~~
20 ~~the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201~~
21 ~~to 432.226, a casino at which gaming is conducted under the Indian~~
22 ~~gaming regulatory act, Public Law 100 497, 102 Stat. 2467, or~~
23 ~~property associated or affiliated with the operation of either type~~
24 ~~of casino described in this subdivision, including, but not limited~~
25 ~~to, a parking lot, hotel, motel, or retail store.~~

26 ~~—— (6) The commercialization board shall establish requirements~~
27 ~~to ensure that money expended under this section shall not be used~~

1 ~~for any of the following:~~

2 ~~—— (a) Grants or loans to a person who has been convicted of a~~
3 ~~criminal offense incident to the application for or performance of~~
4 ~~a state contract or subcontract. As used in this subdivision, if a~~
5 ~~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 ~~—— (b) Grants or loans to a person who has been convicted of a~~
11 ~~criminal offense, or held liable in a civil proceeding, that~~
12 ~~negatively reflects on the person's business integrity, based on a~~
13 ~~finding of embezzlement, theft, forgery, bribery, falsification or~~
14 ~~destruction of records, receiving stolen property, or violation of~~
15 ~~state or federal antitrust statutes. As used in this subdivision,~~
16 ~~if a person is a business entity, then person includes affiliates,~~
17 ~~subsidiaries, officers, directors, managerial employees as~~
18 ~~determined by the fund board, and any person who, directly or~~
19 ~~indirectly, holds a pecuniary interest in that business entity of~~
20 ~~20% or more.~~

21 ~~—— (c) Grants or loans to induce a qualified business or a small~~
22 ~~business to leave this state.~~

23 ~~—— (d) Grants or loans that would contribute to the violation of~~
24 ~~internationally recognized workers rights, as defined in section~~
25 ~~507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a~~
26 ~~country other than the United States, including any designated zone~~
27 ~~or area in that country.~~

1 ~~—— (c) Grants or loans to a corporation or an affiliate of the~~
2 ~~corporation incorporated in a tax haven country after September 11,~~
3 ~~2001, but with the United States as the principal market for the~~
4 ~~public trading of the corporation's stock. As used in this section,~~
5 ~~"tax haven country" includes a country with tax laws that~~
6 ~~facilitate avoidance by a corporation or an affiliate of the~~
7 ~~corporation of United States tax obligations, including Barbados,~~
8 ~~Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of~~
9 ~~the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of~~
10 ~~Liechtenstein, the Principality of Monaco, and the Republic of the~~
11 ~~Seychelles.~~

12 (5) ~~(7)~~—When the ~~commercialization~~ **FUND** board approves a grant
13 or a loan under this chapter, the commercialization board shall
14 state the specific objective reasons the applicant was selected
15 over other applicants for a grant or loan under this chapter.

16 ~~—— (8) After March 31, 2006, before adopting a resolution that~~
17 ~~establishes or substantially changes a program operated by the~~
18 ~~commercialization board, including any fees, charges, or penalties~~
19 ~~attached to that program, the commercialization board shall give~~
20 ~~notice of the proposed resolution to the governor, to the secretary~~
21 ~~of the senate, to the clerk of the house of representatives, to~~
22 ~~members of the senate and house of representatives standing~~
23 ~~committees on appropriations, and to each person who requested from~~
24 ~~the fund in writing or electronically to be notified regarding~~
25 ~~proposed resolutions. The notice and proposed resolution and all~~
26 ~~attachments shall be published on the fund's internet website at~~
27 ~~least 10 days prior to the date that the proposed resolution is~~

~~1 considered by the commercialization board. The commercialization
2 board shall hold a public hearing not sooner than 14 days and not
3 longer than 30 days from the date notice of a proposed resolution
4 is given and offer a person an opportunity to present data, views,
5 questions, and arguments. Commercialization board members or 1 or
6 more persons designated by the commercialization board who have
7 knowledge of the subject matter of the proposed resolution shall be
8 present at the public hearing and shall participate in the
9 discussion of the proposed resolution. The commercialization board
10 may act on the proposed resolution on the day of the public
11 hearing. The commercialization board shall produce a final decision
12 document that describes the basis for its decision. The final
13 resolution and all attachments and the decision document shall be
14 provided to the governor, to the secretary of the senate, to the
15 clerk of the house of representatives, and to members of the senate
16 and house of representatives standing committees on appropriations
17 and shall be published on the fund's internet website.~~

~~18 — (9) The notice described in subsection (8) shall include all
19 of the following:~~

~~20 — (a) A copy of the proposed resolution and all attachments.~~

~~21 — (b) A statement that the addressee may express any data,
22 views, or arguments regarding the proposed resolution.~~

~~23 — (c) The address to which written comments may be sent and the
24 date by which comments must be mailed or electronically
25 transmitted, which date shall not be before the date of the public
26 hearing.~~

~~27 — (d) The date, time, and place of the public hearing.~~

1 ~~Sec. 88n. (1) In addition to any audit requirements under~~
2 ~~section 9, not later than May 1, 2007 and each subsequent May 1,~~
3 ~~the auditor general shall conduct and report a financial postaudit~~
4 ~~of the commercialization board, the fund, and the investment fund~~
5 ~~for the immediately preceding fiscal year. Not less than once every~~
6 ~~3 years beginning not later than October 1, 2007, the auditor~~
7 ~~general shall conduct and report a performance postaudit of the~~
8 ~~commercialization board, the fund, and the investment fund. The~~
9 ~~results of the performance postaudit and the postaudit of financial~~
10 ~~transactions and accounts shall be published on the internet and~~
11 ~~disseminated by other means in a manner determined by the fund to~~
12 ~~advise the citizens of this state of the result of the audits.~~
13 ~~Copies of the audits shall be provided to the governor, the clerk~~
14 ~~of the house of representatives, the secretary of the senate, and~~
15 ~~the chairpersons of the senate and house of representatives~~
16 ~~standing committees on appropriations.~~

17 ~~—— (2) The auditor general may employ an independent public~~
18 ~~accounting firm to conduct the audits described in this section.~~
19 ~~The costs of the auditor general or of the independent public~~
20 ~~accounting firm in conducting the audits described in this chapter~~
21 ~~shall be funded by money in the 21st century jobs trust fund~~
22 ~~created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to~~
23 ~~12.256, as provided in an appropriation. Prior to employing the~~
24 ~~services of an independent public accounting firm under this~~
25 ~~section, the auditor general shall require the entity to disclose~~
26 ~~any conflict of interest, criminal convictions, investigations by~~
27 ~~the internal revenue service or other federal or state taxing body~~

1 ~~or court, and any pertinent litigation regarding the conduct of the~~
2 ~~entity.~~

3 (1) ~~(3)~~—All contracts approved by the fund for 21st century
4 investments and all contracts approved by the commercialization
5 board **OR FUND BOARD** for grants or loans under this chapter shall
6 contain a provision that the auditor general has access to the
7 books and records, including financial records and all other
8 information and data relevant to the terms of the contract related
9 to the use of the grant, loan, or 21st century investment.

10 (2) ~~(4)~~—If the fund board or the commercialization board has a
11 reasonable belief that a breach of contract has occurred, the fund
12 has the right to have the recipient's annual financial statements
13 separately audited by an independent certified public accountant at
14 its sole cost and expense. If the audit reveals that a breach of
15 contract has occurred, the recipient shall reimburse the fund for
16 the fees and expenses incurred to perform the audit.

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

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

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

3 ~~—— (c) The number of new start-up businesses.~~

4 ~~—— (d) The number of new jobs and projected new job growth.~~

5 ~~—— (e) Amounts of other funds leveraged.~~

6 ~~—— (f) Money or other revenue or property returned to the~~
7 ~~investment fund.~~

8 ~~—— (g) The total number of new licensing agreements by~~
9 ~~institution and the number of new licensing agreements entered into~~
10 ~~with Michigan based firms.~~

11 ~~—— (h) Products commercialized.~~

12 ~~—— (6) Not later than March 31, 2007 and each subsequent March~~
13 ~~31, the fund shall report to the governor, the clerk of the house~~
14 ~~of representatives, the secretary of the senate, and the~~
15 ~~chairpersons of the senate and house of representatives standing~~
16 ~~committees on appropriations. The report shall contain all of the~~
17 ~~following for the immediately preceding fiscal year that are~~
18 ~~related to a 21st century investment made by the fund board:~~

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

21 ~~—— (b) The amount of qualified venture capital fund investments,~~
22 ~~qualified mezzanine fund investments, and qualified private equity~~
23 ~~fund investments under management in this state, including year to-~~
24 ~~year growth.~~

25 ~~—— (c) The value of loan enhancement program investments,~~
26 ~~qualified private equity fund investments, qualified mezzanine fund~~
27 ~~investments, and qualified venture capital investments in qualified~~

1 ~~businesses, including year to year growth.~~

2 ~~—— (d) A statement of the amount of money received by or returned~~
3 ~~to the investment fund under this chapter.~~

4 ~~—— (e) A statement of the loan enhancement activity of the fund~~
5 ~~board under this chapter.~~

6 ~~—— (f) A statement of the amount of money in each loan reserve~~
7 ~~fund established under the small business capital access program~~
8 ~~required under this chapter.~~

9 ~~—— (g) Any recommendations for needed changes and any other~~
10 ~~information the board believes would be of interest to the~~
11 ~~governor, the legislature, and the public.~~

12 (3) ~~(7)~~—As a condition of receiving funding under this
13 chapter, the fund shall require a recipient to agree to provide to
14 the fund the information necessary for the fund to produce the
15 reports required under this section.