

Act No. 109
Public Acts of 2017
Approved by the Governor
July 26, 2017
Filed with the Secretary of State
July 26, 2017
EFFECTIVE DATE: August 25, 2017

STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2017

Introduced by Senators Stamas, Schmidt, Horn, Hansen, Kowall, Knezek, Hildenbrand, Meekhof and Hertel

ENROLLED SENATE BILL No. 242

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, 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," by amending section 9 (MCL 125.2009), as amended by 2014 PA 503, and by adding chapter 8D.

The People of the State of Michigan enact:

Sec. 9. (1) The fund shall transmit to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies annually a report of its activities. The report shall be transmitted not later than April 10 of each year for activities in the immediately preceding state fiscal year. The report shall not include information exempt from disclosure under section 5. The report shall include, but is not limited to, all of the following for each program operated under this act:

- (a) A list of entities that received financial assistance.
- (b) The type of project or product being financed.
- (c) The amount and type of financial assistance.

- (d) For each separate form of financial assistance, all of the following:
- (i) The number of new jobs committed or projected when the financial assistance was applied for.
 - (ii) The number of retained jobs committed or projected when the financial assistance was applied for.
 - (iii) The actual number of new jobs created that are not temporary employees.
 - (iv) The actual number of retained jobs that are not temporary employees.
 - (v) The average annual salary of the new jobs created that are not temporary employees.
 - (vi) The average annual salary of the retained jobs that are not temporary employees.
- (e) The duration of the financial assistance.
- (f) The amount of financial support other than state resources.
- (g) Money or other revenue or property returned to the fund, including any repayments through a clawback provision in the agreement.
- (h) The status of all loans of the fund.
- (i) A list of all entities that are in bankruptcy, that the fund has received actual notice of, filed by a direct recipient of an active single incentive of at least \$500,000.00. In addition, the fund shall, within 120 days after the fund receives notice, provide a report of the notice of bankruptcy on its website and shall forward the report to each of the following:
- (i) The senate majority leader and the senate minority leader.
 - (ii) The speaker of the house and the house minority leader.
 - (iii) The members of the house commerce committee.
 - (iv) The members of the house appropriations subcommittee on general government.
 - (v) The members of the senate economic development committee.
 - (vi) The members of the senate appropriations subcommittee on general government.
- (j) A summary of the approximate administrative costs used to administer the programs and activities authorized under this act.
- (k) Any other information as required in this section.
- (2) The auditor general or a certified public accountant appointed by the auditor general annually shall conduct and remit to the legislature an audit of the fund and, in the conduct of the audit, shall have access to all records of the fund at any time, whether or not confidential. Each audit required by this section shall include a determination of whether the fund is likely to be able to continue to meet its obligations, including a report on the status of outstanding loans and agreements made by the fund.
- (3) The fund shall also transmit the audit described in subsection (2) to the chairperson and minority vice-chairperson of the senate appropriations subcommittee on general government and the house of representatives appropriations subcommittee on general government. The fund shall make the report and audit available to the public on the fund's website.
- (4) The report described in subsection (1) shall also contain all of the following that are related to a 21st century investment made by the fund board under chapter 8A:
- (a) 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.
 - (b) 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.
 - (c) A statement of the amount of money in each loan reserve fund established under the small business capital access program required under chapter 8A.
- (5) The report described in subsection (1) shall also include, but is not limited to, all of the following for all actions under section 88r:
- (a) The total actual amount of qualified investment attracted under section 88r as reported to the fund.
 - (b) The total actual number of new jobs created under section 88r as reported to the fund.
 - (c) The actual amount of the grant, loan, or other economic assistance made under section 88r separately for each qualified business verified by the fund.
 - (d) For each qualified business, whether it is a new business, whether it is an expansion of an existing business, or whether it relocated from outside of this state.
 - (e) An evaluation of the aggregate return on investment that this state realizes on the actual qualified new jobs and actual qualified investment made by qualified businesses.

(6) The report described in subsection (1) shall also include, but is not limited to, all of the following for all actions under chapter 8B:

(a) For tourism promotion efforts, all of the following:

(i) An itemized list, by market, of how much was spent, types of media purchased, and target of the tourism promotion campaign.

(ii) The return on investment analysis that utilizes existing baseline data and compares results with prior outcome evaluations funded by Travel Michigan.

(b) For business development efforts, all of the following:

(i) An itemized list, by market, of how much was spent, types of media purchased, and target of the business promotion campaign.

(ii) A performance analysis that compares the program or campaign objectives and outcome of the campaign or program.

(7) The report described in subsection (1) shall also include, but is not limited to, all of the following for all actions under section 90d:

(a) The total actual amount of private investment attracted under section 90d as reported to the fund.

(b) The actual amount of the community revitalization incentives made under chapter 8C separately for each project.

(c) The total actual amount of square footage revitalized or added for each project approved under section 90d as reported to the fund. When reporting square footage, the person must report the square footage by category, including, but not limited to, commercial, residential, or retail.

(d) The aggregate increase in taxable value of all property subject to a written agreement under chapter 8C when established and recorded by the local units of government and as reported to the fund.

(e) The total actual number of residential units revitalized or added for each project approved under section 90d as reported to the fund.

(f) Each project that received a community revitalization incentive outside the fund program standards and guidelines and why the variance was given.

(8) Beginning on and after January 1, 2012, on a monthly basis the fund shall provide exact copies of all information regarding all actions under chapter 8C that is provided to board members of the fund for the purpose of monthly board meetings, subject to confidentiality under section 5, to each of the following and post that information on the fund's website:

(a) The chairperson and minority vice-chairperson of the house commerce committee.

(b) The chairperson and minority vice-chairperson of the house appropriations subcommittee on general government.

(c) The chairperson and minority vice-chairperson of the senate economic development committee.

(d) The chairperson and minority vice-chairperson of the senate appropriations subcommittee on general government.

(9) The report described in subsection (1) shall also include a summary of the approximate administrative costs used to administer the programs and activities authorized in the following sections:

(a) Section 88b.

(b) Section 88h.

(c) Section 90b.

(10) The report described in subsection (1) shall also include, but is not limited to, all of the following for all actions for business incubators approved by the fund after January 14, 2015:

(a) The number of new jobs created and projected new job growth by current clients of the business incubator.

(b) Amounts of other funds leveraged by current clients of the business incubator.

(c) Increases in revenue for current clients of the business incubator.

(11) The report described in subsection (1) shall also include the actual repayments received by the fund for failure to comply with clawback provisions of the written agreement under all of the following:

(a) Section 78.

(b) Section 88d.

(c) Section 88k.

(d) Section 88q.

(e) Section 88r.

(f) Section 90b.

(12) Beginning on July 1, 2015, the fund shall post on the fund's website a list of each contract, agreement, or other written loan or grant documentation for financial assistance under sections 88r and 90b that the fund entered into or modified in the immediately preceding fiscal year.

(13) Beginning on July 1, 2015, the fund shall post and update periodically all of the following on its website for all loans made under sections 88r and 90b:

- (a) A description of the project for which the loan was made.
- (b) The total amount of the loan.
- (c) Whether payments on the loan balance are current or delinquent.
- (d) The interest rate of the loan.

(14) Beginning July 1, 2015, the report described in subsection (1) shall also contain all of the following for each program that provides financial assistance under this act that requires a site visit:

- (a) A copy of the site visit guidelines for that program.
- (b) The number of site visits conducted under that program.
- (c) The chief compliance officer shall review and evaluate compliance with the site visit guidelines.

(15) The fund shall post on its website and update periodically all of the information described in subsection (14).

(16) The report described in subsection (1) must also include, but is not limited to, all of the following for all written agreements related to the good jobs for Michigan program created under chapter 8D:

- (a) The name of the authorized business.
- (b) The number of certified new jobs required to be maintained.
- (c) The amount and duration of the withholding tax capture revenues.

(17) As used in this section, "financial assistance" means grants, loans, other economic assistance, and any other incentives or assistance under this act.

CHAPTER 8D

Sec. 90g. As used in this chapter:

(a) "Authorized business" means an eligible business that has met the requirements of this chapter and with which the fund has entered into a written agreement for withholding tax capture revenues pursuant to this chapter and section 51f of the income tax act of 1967, 1967 PA 281, MCL 206.51f.

(b) "Casino" means a casino regulated by this state under the Michigan gaming control and revenue act, 1996 IL 1, 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, or motel.

(c) "Certified new job" means a full-time job created by an authorized business at a facility in this state that is in excess of the number of full-time jobs that authorized business maintained in this state prior to the expansion or location and the number of full-time jobs that the authorized business acquired through a merger or acquisition that were located in this state prior to the expansion or location, as determined by the fund. Pursuant to a written agreement between the authorized business, the fund, and the primary supplier, certified new jobs for an authorized business described in subdivision (d)(i) may, as determined by the fund, include the number of those new jobs created by the primary supplier of that authorized business as a result of the new or increased business activity with that authorized business as determined by the fund.

(d) "Eligible business" means a business other than a retail establishment, professional sports stadium, casino, or that portion of an eligible business used exclusively for retail sales that proposes to create 1 or more of the following:

(i) A minimum of 3,000 certified new jobs in this state with an average annual wage that is equal to or greater than the prosperity region average wage.

(ii) A minimum of 500 certified new jobs in this state with an average annual wage that is equal to or greater than the prosperity region average wage.

(iii) A minimum of 250 certified new jobs in this state with an average annual wage that is equal to 125% or more of the prosperity region average wage.

(e) "Facility" means a site or sites within this state in which an authorized business creates certified new jobs.

(f) "Full-time job" means a full-time job as determined by the fund performed by an individual whose income and social security taxes are withheld by 1 or more of the following:

- (i) An authorized business.
- (ii) An employee leasing company.

(iii) A professional employer organization on behalf of the authorized business.

(g) “Good jobs for Michigan fund” means the good jobs for Michigan fund created in section 90j.

(h) “Municipality” means that term as defined in section 4.

(i) “Primary supplier” means an entity that creates not fewer than 25 new jobs in this state and that provides both of the following to an authorized business pursuant to a written agreement under this chapter:

(i) A minimum of \$5,000,000.00 in tangible personal property annually as determined by the fund.

(ii) A minimum of 10% of the tangible personal property used by the authorized business annually as determined by the fund.

(j) “Prosperity region” means each of the 10 prosperity regions identified by the department of technology, management, and budget on the effective date of the amendatory act that added this section.

(k) “Prosperity region average wage” means the average annual wage for the prosperity region where the facility is located based on the most recent data made available by the Michigan bureau of labor market information and strategic initiatives.

(l) “Withholding tax capture revenues” means the amount of income tax withheld under part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, each calendar year that is attributable to individuals employed within certified new jobs. The state treasurer shall develop methods and processes that are necessary for each authorized business to report the amount of withholding under part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, from individuals employed within certified new jobs.

(m) “Written agreement” means a written agreement made between the eligible business and the fund pursuant to this chapter.

Sec. 90h. (1) The fund shall create and operate the good jobs for Michigan program to authorize the transfer of the dedicated portion of withholding tax capture revenues to authorized businesses that provide certified new jobs in this state. The fund shall develop and use a detailed application, approval, and compliance process published and available on the fund’s website.

(2) An eligible business may apply to the fund to enter into a written agreement which authorizes the payment of withholding tax capture revenues under this chapter.

(3) The fund may request information, in addition to that contained in an application, as may be needed to permit the fund to discharge its responsibilities under this chapter.

(4) After receipt of an application, the fund may enter into an agreement with an eligible business for withholding tax capture revenues under this chapter if the fund determines that all of the following are met:

(a) The eligible business proposes to create and maintain the minimum number of certified new jobs at a facility in this state and to pay an average annual wage that is described in section 90g(d).

(b) In addition to the jobs specified in subdivision (a), the eligible business, if already located within this state, agrees to maintain a number of full-time jobs equal to or greater than the number of full-time jobs it maintained in this state prior to the expansion, as determined by the fund.

(c) The plans for the expansion or location are economically sound.

(d) The expansion or location of the eligible business will benefit the people of this state by increasing opportunities for employment and by strengthening the economy of this state.

(e) The withholding tax capture revenues offered under this chapter and paid from the good jobs for Michigan fund is an incentive to expand or locate the eligible business in this state and address the competitive disadvantages with sites outside this state.

(f) An industry-recognized regional economic model cost-benefit analysis reveals that the payment of withholding tax capture revenues under this chapter to an eligible business will result in an overall positive fiscal impact to the state.

(g) The eligible business will create the requisite number of certified new jobs within not more than 5 years after entering into the written agreement as determined by the fund.

(h) The eligible business will maintain the number of certified new jobs throughout the duration of the period of time that the authorized business receives withholding tax capture revenues paid from the good jobs for Michigan fund. However, if the authorized business fails to maintain the requisite number of certified new jobs as provided in the written agreement, the authorized business will forfeit the withholding tax capture revenues for that calendar year.

(i) That the local governing body of the municipality in which the facility is located approves the expansion or new location by resolution.

(5) If the fund determines that the eligible business satisfies all of the requirements of subsection (4), subject to subsection (6), the fund shall determine the amount and duration of the withholding tax capture revenues to be

authorized under this chapter and shall enter into a written agreement as provided in this section. The duration of the withholding tax capture revenues must not exceed 5 or 10 years, whichever is applicable based on the average annual wage of the certified new jobs, from the date the authorized business creates the certified new jobs as provided in the written agreement. Subject to subsection (6), in determining the maximum amount and maximum duration of the withholding tax capture revenues authorized, the fund shall consider the following factors, if applicable:

(a) The number of certified new jobs to be created.

(b) The degree to which the average annual wage of the certified new jobs exceeds the prosperity region average wage.

(c) Whether there is a disadvantage to the eligible business if it were to expand or locate in this state versus a site outside this state.

(d) The potential impact of the expansion or location on the economy of this state.

(e) The estimated cost of the reimbursement of withholding tax capture revenues under this chapter; the staff, financial, or economic assistance provided by the municipality, or local economic development corporation or similar entity, and the value of assistance otherwise provided by this state.

(f) Whether the expansion or location will occur in this state without the payment of withholding tax capture revenues offered under this chapter.

(g) Whether the eligible business has made a written commitment to fund some portion of costs for applicable training of the individuals who will perform the full-time jobs that leads to a professional or technical certification for these individuals.

(h) That the eligible business will make a good-faith effort to employ, if qualified, Michigan residents at the facility.

(6) The fund shall determine the duration and amount of the withholding tax capture revenues. In determining the duration of the withholding tax capture revenues, the fund shall provide a duration of up to 5 years for eligible businesses described in section 90g(d)(ii) and up to a duration of 10 years for eligible businesses described in section 90g(d)(i) or (iii). In determining the amount of the withholding tax capture revenue payments, the fund may approve a payment of not more than 50% of the withholding tax capture revenues for an eligible business described in section 90g(d)(ii) and a payment of up to 100% of the withholding tax capture revenues for an eligible business described in section 90g(d)(i) or (iii). The amount of withholding tax capture revenues certified to be paid to an authorized business shall be reduced by 5%, which shall be retained by the fund for additional administrative expenses under this chapter as provided under section 90i.

(7) A written agreement between an eligible business and the fund must include, but need not be limited to, all of the following:

(a) A description of the business expansion or location that is the subject of the written agreement.

(b) Conditions upon which the authorized business designation is made.

(c) A statement from the eligible business that the eligible business would not have added certified new jobs without the withholding tax capture revenue payments authorized under this chapter.

(d) An estimate of the amount of withholding tax capture revenues expected to be generated for each calendar year of the duration of the written agreement.

(e) A statement by the eligible business that a violation of the written agreement may result in the revocation of the designation as an authorized business, the loss or reduction of future withholding tax capture revenue payments under this chapter, or a repayment of withholding tax capture revenues received pursuant to this chapter.

(f) A statement by the eligible business that a misrepresentation in the application may result in the revocation of the designation as an authorized business and the repayment of withholding tax capture revenues received under this chapter plus a penalty equal to 10% of the withholding tax capture revenue payments received pursuant to this chapter.

(g) A method for measuring and verifying full-time jobs before and after an expansion or location of an authorized business in this state.

(h) A provision that the authorized business that is certified under section 90i(2) for a payment from the good jobs for Michigan fund shall file the required returns and reports under this chapter and part 3 of the income tax act of 1967, 1967 PA 281, MCL 206.701 to 206.713, with the department of treasury, and shall provide any other information reasonably requested by the fund or the department of treasury.

(i) A maximum amount of withholding tax capture revenues that the authorized business may claim before reduction of the 5% payment described in section 90i for administrative expenses.

(8) Upon execution of a written agreement as provided in this chapter, an eligible business is an authorized business. The fund shall provide a copy of each written agreement to the department of treasury. Upon execution of the written agreement, the transfer and payment of withholding tax capture revenues as specified in this chapter and in the written agreement is binding on this state. The state treasurer shall calculate, based on the written agreements received pursuant to this subsection, the amount of withholding tax capture revenues collected as a result of the certified new

jobs created pursuant to those written agreements for each calendar year and the percentage of that amount that needs to be transferred from the general fund and deposited, in accordance with section 51f of the income tax act of 1967, 1967 PA 281, MCL 206.51f, into the good jobs for Michigan fund, where the fund shall issue payments to the authorized business in the manner provided in section 90i.

(9) The fund shall not commit, and the department of treasury shall not disburse, an amount of total withholding tax capture revenues that exceeds \$200,000,000.00, which includes the 5% payment for administrative expenses as provided in section 90i. The fund shall not execute more than 15 new written agreements each calendar year for authorized businesses. If the fund approves fewer than 15 written agreements in a calendar year, then any unused written agreements shall carry forward into future calendar years, and shall be in addition to the annual limit that is otherwise applicable. For purposes of this subsection, "total withholding tax capture revenues" means the aggregate amount of withholding tax capture revenues that may be distributed to authorized businesses under all written agreements.

(10) The fund shall not designate an authorized business or enter into a new written agreement on or after December 31, 2019.

Sec. 90i. (1) Subject to the limitations under section 90h(9), an authorized business is eligible to receive withholding tax capture revenue payments as provided in this chapter.

(2) Except as otherwise provided under subsection (3), the fund shall issue a withholdings certificate each calendar year to an authorized business that states the following:

(a) That the eligible business is an authorized business.

(b) The amount of withholding tax capture revenues to be paid from the good jobs for Michigan fund for the designated calendar year.

(c) The authorized business's federal employer identification number or the Michigan treasury number assigned to the authorized business.

(3) The fund shall provide the department of treasury with a copy of each withholdings certificate issued under this section. Upon receipt of a withholdings certificate, an authorized business may request a payment from the good jobs for Michigan fund by filing a copy of the withholdings certificate with the fund. The fund shall issue the withholding tax capture revenue payment from the good jobs for Michigan fund within 90 days of receipt of the request for payment from the authorized business.

(4) If the authorized business subsequently fails to satisfy and maintain the minimum number of certified new jobs as required under this chapter or any other conditions included in the written agreement, the authorized business forfeits its withholding tax capture revenue payment for the calendar year that the authorized business fails to comply with this chapter or the written agreement. The forfeiture of a withholding tax capture revenue payment under this subsection does not extend the duration of the original written agreement. Accordingly, if the duration of the written agreement has not expired, an authorized business that satisfies all of the terms of the written agreement after a forfeiture under this subsection is entitled to certification for withholding tax capture revenue payments for those subsequent calendar years.

(5) In the event of a proposed reorganization, merger, or other change of ownership of the authorized business for which reimbursement will continue pursuant to a written agreement, the approval of the fund is required prior to the assignment or transfer of the written agreement.

(6) The fund shall retain an amount equal to 5% of the withholding tax capture revenue payments authorized for that year for the fund. The board shall use the amount described in this subsection to pay for the additional administration expenses under this chapter.

(7) As a condition of being an authorized business, an authorized business authorizes the fund to identify the authorized business and disclose the amount and duration of the withholding tax capture revenue payments. The fund shall publish the information described in this subsection on the fund's website and include this information in the report required under section 9.

Sec. 90j. (1) The good jobs for Michigan fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit all amounts deposited pursuant to section 51f of the income tax act of 1967, 1967 PA 281, MCL 206.51f, to the fund and shall credit to the fund any interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(2) The good jobs for Michigan fund may be used only for 1 or more of the following purposes:

(a) To make withholding tax capture revenue payments in accordance with a written agreement to an authorized business within 90 days after receipt of a request for payment and a copy of the withholding certificate issued under section 90i.

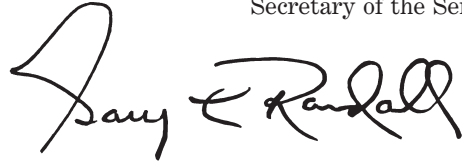
(b) To distribute an amount equal to 5% of the withholding tax capture revenue payments certified under section 90i to the Michigan strategic fund to pay for administration expenses.

Enacting section 1. This amendatory act takes effect 30 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor