

**HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 771**

A bill to amend 1984 PA 270, entitled  
"Michigan strategic fund act,"  
by amending section 9 (MCL 125.2009), as amended by 2017 PA 109,  
and by adding section 88s.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

1 the following for each program operated under this act:

2 (a) A list of entities that received financial assistance.

3 (b) The type of project or product being financed.

4 (c) The amount and type of financial assistance.

5 (d) For each separate form of financial assistance, all of the  
6 following:

7 (i) The number of new jobs committed or projected when the  
8 financial assistance was applied for.

9 (ii) The number of retained jobs committed or projected when  
10 the financial assistance was applied for.

11 (iii) The actual number of new jobs created that are not  
12 temporary employees.

13 (iv) The actual number of retained jobs that are not temporary  
14 employees.

15 (v) The average annual salary of the new jobs created that are  
16 not temporary employees.

17 (vi) The average annual salary of the retained jobs that are  
18 not temporary employees.

19 (e) The duration of the financial assistance.

20 (f) The amount of financial support other than state  
21 resources.

22 (g) Money or other revenue or property returned to the fund,  
23 including any repayments through a clawback provision in the  
24 agreement.

25 (h) The status of all loans of the fund.

26 (i) A list of all entities that are in bankruptcy, that the  
27 fund has received actual notice of, filed by a direct recipient of  
28 an active single incentive of at least \$500,000.00. In addition,  
29 the fund shall, within 120 days after the fund receives notice,

1 provide a report of the notice of bankruptcy on its website and  
2 shall forward the report to each of the following:

3 (i) The senate majority leader and the senate minority leader.

4 (ii) The speaker of the house and the house minority leader.

5 (iii) The members of the house commerce **and tourism** committee.

6 (iv) The members of the house appropriations subcommittee on  
7 general government.

8 (v) The members of the senate economic **and small business**  
9 development committee.

10 (vi) The members of the senate appropriations subcommittee on  
11 general government.

12 (j) A summary of the approximate administrative costs used to  
13 administer the programs and activities authorized under this act.

14 (k) Any other information as required in this section.

15 (2) The auditor general or a certified public accountant  
16 appointed by the auditor general annually shall conduct and remit  
17 to the legislature an audit of the fund and, in the conduct of the  
18 audit, shall have access to all records of the fund at any time,  
19 whether or not confidential. Each audit required by this section  
20 shall include a determination of whether the fund is likely to be  
21 able to continue to meet its obligations, including a report on the  
22 status of outstanding loans and agreements made by the fund.

23 (3) The fund shall also transmit the audit described in  
24 subsection (2) to the chairperson and minority vice-chairperson of  
25 the senate appropriations subcommittee on general government and  
26 the house of representatives appropriations subcommittee on general  
27 government. The fund shall make the report and audit available to  
28 the public on the fund's website.

29 (4) The report described in subsection (1) ~~shall~~**must** also

1 contain all of the following that are related to a 21st century  
2 investment made by the fund board under chapter 8A:

3 (a) The amount of qualified venture capital fund investments,  
4 qualified mezzanine fund investments, and qualified private equity  
5 fund investments under management in this state, including year-to-  
6 year growth.

7 (b) The value of loan enhancement program investments,  
8 qualified private equity fund investments, qualified mezzanine fund  
9 investments, and qualified venture capital investments in qualified  
10 businesses, including year-to-year growth.

11 (c) A statement of the amount of money in each loan reserve  
12 fund established under the small business capital access program  
13 required under chapter 8A.

14 (5) The report described in subsection (1) ~~shall~~**must** also  
15 include, but is not limited to, all of the following for all  
16 actions under section 88r:

17 (a) The total actual amount of qualified investment attracted  
18 under section 88r as reported to the fund.

19 (b) The total actual number of new jobs created under section  
20 88r as reported to the fund.

21 (c) The actual amount of the grant, loan, or other economic  
22 assistance made under section 88r separately for each qualified  
23 business verified by the fund.

24 (d) For each qualified business, whether it is a new business,  
25 whether it is an expansion of an existing business, or whether it  
26 relocated from outside of this state.

27 (e) An evaluation of the aggregate return on investment that  
28 this state realizes on the actual qualified new jobs and actual  
29 qualified investment made by qualified businesses.

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

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

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

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

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

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

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

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

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

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

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

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

1 the fund.

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

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

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

14 (a) The chairperson and minority vice-chairperson of the house  
15 commerce **and tourism** committee.

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

18 (c) The chairperson and minority vice-chairperson of the  
19 senate economic **and small business** development committee.

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

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

26 (a) Section 88b.

27 (b) Section 88h.

28 (c) Section 90b.

29 (10) The report described in subsection (1) ~~shall~~**must** also

1 include, but is not limited to, all of the following for all  
2 actions for business incubators approved by the fund after January  
3 14, 2015:

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

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

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

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

14 (a) Section 78.

15 (b) Section 88d.

16 (c) Section 88k.

17 (d) Section 88q.

18 (e) Section 88r.

19 (f) Section 90b.

20 (12) Beginning on July 1, 2015, the fund shall post on the  
21 fund's website a list of each contract, agreement, or other written  
22 loan or grant documentation for financial assistance under sections  
23 88r and 90b that the fund entered into or modified in the  
24 immediately preceding fiscal year.

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

28 (a) A description of the project for which the loan was made.

29 (b) The total amount of the loan.

1 (c) Whether payments on the loan balance are current or  
2 delinquent.

3 (d) The interest rate of the loan.

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

8 (a) A copy of the site visit guidelines for that program.

9 (b) The number of site visits conducted under that program.

10 (c) The chief compliance officer shall review and evaluate  
11 compliance with the site visit guidelines.

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

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

18 (a) The name of the authorized business.

19 (b) The number of certified new jobs required to be  
20 maintained.

21 (c) The amount and duration of the withholding tax capture  
22 revenues.

23 **(17) The report described in subsection (1) must also include**  
24 **the activities of the critical industry program described in**  
25 **section 88s.**

26 **(18) The report described in subsection (1) must also include**  
27 **the activities of the Michigan strategic site readiness program**  
28 **described in section 88t.**

29 **(19) ~~(17)~~As used in this section, "financial assistance"**



1 means grants, loans, other economic assistance, and any other  
2 incentives or assistance under this act.

3       Sec. 88s. (1) The fund shall create and operate the critical  
4 industry program. The fund shall use money transferred from the  
5 strategic outreach and attraction reserve fund created in section 4  
6 of the Michigan trust fund act, 2000 PA 489, MCL 12.254, or money  
7 appropriated to the program to make qualified investments to  
8 qualified businesses.

9       (2) The fund shall expend money allocated to the Michigan  
10 critical industry program only to provide qualified investments to  
11 qualified businesses for deal-closing, gap financing, or other  
12 economic assistance to create or retain qualified jobs as a result  
13 of a technological shift in product or production or make capital  
14 investments, or both, as determined by the fund board. The program  
15 must provide for a detailed application, approval, and compliance  
16 process that is also published and available on the fund's website.

17       (3) The fund shall consider and document at a minimum all of  
18 the following criteria to the extent reasonably applicable as  
19 reasonably determined by the fund board to the type of project  
20 proposed before entering into a written agreement for a qualified  
21 investment as provided under subsection (4):

22       (a) The importance of the project to the community in which it  
23 is located.

24       (b) If the project will act as a catalyst for additional  
25 revitalization of the community in which it is located and this  
26 state.

27       (c) The amount of local community and financial support for  
28 the project.

29       (d) The applicant's financial need for a qualified investment

1 from the critical industry program.

2 (e) The extent of reuse of vacant buildings, public or  
3 private, reuse of historic resources, and redevelopment of blighted  
4 property.

5 (f) Creation or retention of qualified jobs as a result of a  
6 technological shift in product or production at the project  
7 location and within this state.

8 (g) The level of other public funds including, but not limited  
9 to, the appropriation of federal or state funds and any federal or  
10 state tax credits.

11 (h) The level of any private funds, investments, or  
12 contributions into the project including, but not limited to, the  
13 qualified business's own investments in the project.

14 (i) Whether and how the project is financially and  
15 economically sound.

16 (j) Whether and how the project promotes sustainable  
17 development.

18 (k) Whether and how the project involves the rehabilitation of  
19 a historic resource.

20 (l) Whether and how the project addresses areawide  
21 redevelopment and the overall economic benefit to the existing  
22 supply chain.

23 (m) The level and extent of environmental contamination.

24 (n) Whether and how the project will compete with or affect  
25 existing Michigan businesses within the same industry.

26 (o) Whether and how the project's proximity to rail and  
27 utility will impact performance of the project and maximize energy  
28 and logistics needs in the community in which it is located and in  
29 this state.

1 (p) The risk of obsolescence of the project, products, and  
2 investments in the future.

3 (q) The overall return on investment to this state.

4 (r) Whether and how the project addresses food supply  
5 challenges.

6 (s) Any other additional criteria approved by the board that  
7 are specific to each individual project and are consistent with the  
8 purpose of this program.

9 (4) If the fund determines, after making the considerations  
10 under subsection (3), to award a qualified investment to a  
11 qualified business under this program, the fund shall enter into a  
12 written agreement with the qualified business that includes in a  
13 clear and concise manner all of the terms and conditions relating  
14 to the qualified investment as determined and documented by the  
15 fund board, including, but not limited to, the following:

16 (a) Specific time frames and benchmarks to be met before the  
17 qualified business receives a disbursement in installments under  
18 the critical industry program pursuant to the approved qualified  
19 investment.

20 (b) Specific terms relating to the required creation or  
21 retention of qualified jobs as a result of a technological shift in  
22 product or production at the project location and within this  
23 state, including measurable outcomes, proration of payments for  
24 partial performance, clawback and specific repayment provisions for  
25 breach of the agreement, or for failure to meet measurable  
26 outcomes.

27 (c) Specific penalties for noncompliance with the written  
28 agreement as determined by the fund.

29 (d) A provision that all money that is subject to a clawback

1 or required to be repaid under a specific repayment provision must  
2 be paid within 90 days of notification by the fund. Any amounts not  
3 paid within that 90-day period are subject to a penalty of 1% per  
4 month, prorated on a daily basis.

5 (e) A provision that this state shall have a security interest  
6 as defined in section 1201(2)(ii) of the uniform commercial code,  
7 1962 PA 174, MCL 440.1201, to the extent of the qualified  
8 investment. This provision does not apply if it conflicts with any  
9 contractual obligation of the qualified business or any federal or  
10 state bankruptcy or insolvency laws.

11 (f) A provision that the qualified business will provide the  
12 data described in the written agreement that are necessary for the  
13 fund to report to the legislature as required under this program.

14 (g) A provision that the qualified business may enter into  
15 direct agreements with workforce training providers, when  
16 appropriate, as determined by the fund to meet the workforce  
17 requirements of a qualified investment.

18 (5) If the fund receives a request to modify an existing  
19 written agreement for a qualified investment under this program,  
20 the fund must provide a copy of that requested modification to each  
21 member of the legislature, the governor, the clerk of the house of  
22 representatives, the secretary of the senate, and the senate and  
23 house fiscal agencies within 5 business days of the receipt of the  
24 modification request. In addition to the copy of the request for  
25 modification, the notice provided under this subsection must also  
26 include the specific provisions to be modified and the rationale  
27 for considering the modification. Before the fund modifies an  
28 existing written agreement for a qualified investment, the fund  
29 must give notice of the proposed amendments and publish them on the

1 fund's internet website at least 1 business day prior to a public  
2 hearing on the proposed amendments. If the fund approves and  
3 modifies an existing written agreement under this subsection, the  
4 fund must provide a copy of that amended written agreement to each  
5 member of the legislature, the governor, the clerk of the house of  
6 representatives, the secretary of the senate, and the senate and  
7 house fiscal agencies within 1 business day of the modification.

8 (6) If the fund board seeks to make a determination as to  
9 whether a qualified investment approved under this program  
10 represents a fair exchange of value for value, the fund may  
11 consider the total value to this state of the qualified investment  
12 and the best interests of this state, including, but not limited  
13 to, any positive economic impact to this state likely to be  
14 generated by the qualified business pursuant to the written  
15 agreement for a qualified investment, especially economic impact  
16 resulting in the location of a high-economic-impact business  
17 facility in this state, increased capital investment in this state,  
18 and the creation or retention of qualified jobs as a result of a  
19 technological shift in product or production in this state.

20 (7) The fund board shall not disburse funds allocated to the  
21 program for a qualified investment to a qualified business if that  
22 qualified business has not fully repaid all money subject to  
23 clawback or required to be repaid under a specific repayment  
24 provision as provided in any written agreement under this act or if  
25 that qualified business is in default on any grant, loan,  
26 investment, or other economic assistance made or guaranteed by this  
27 state. All money paid to the fund pursuant to a clawback or  
28 specific repayment provision for a qualified investment under this  
29 program shall be deposited in the strategic outreach and attraction

1 reserve fund created in section 4 of the Michigan trust fund act,  
2 2000 PA 489, MCL 12.254. The fund shall not use money allocated to  
3 the program for administrative purposes. Any money that is  
4 allocated to the program that remains unexpended, unallocated, or  
5 unobligated at the end of a fiscal year shall revert back to the  
6 strategic outreach and attraction reserve fund created in section 4  
7 of the Michigan trust fund act, 2000 PA 489, MCL 12.254.

8 (8) Not later than March 15 of each year, the fund shall  
9 transmit to each member of the legislature, the governor, the clerk  
10 of the house of representatives, the secretary of the senate, and  
11 the senate and house fiscal agencies a report on the activities of  
12 the critical industry program. The report must include the  
13 following:

14 (a) A list of qualified businesses that received a qualified  
15 investment.

16 (b) The type of project or product approved for a qualified  
17 investment.

18 (c) The amount and type of qualified investment.

19 (d) For each separate form of qualified investment, all of the  
20 following:

21 (i) The number of qualified jobs committed or projected to be  
22 created or retained as a result of a technological shift in product  
23 or production when the qualified investment was applied for.

24 (ii) The actual number of qualified jobs created or retained as  
25 a result of a technological shift in product or production that are  
26 not temporary employees.

27 (iii) The average annual salary of the qualified jobs created or  
28 retained as a result of a technological shift in product or  
29 production that are not temporary employees.

1 (e) The duration of the qualified investment.

2 (f) The amount of other financial assistance other than state  
3 resources.

4 (g) Money or other revenue or property returned to the  
5 strategic outreach and attraction reserve fund, created in section  
6 4 of the Michigan trust fund act, 2000 PA 489, MCL 12.254,  
7 including any clawbacks and repayments due to a breach of the  
8 written agreement.

9 (9) If the fund fails to transmit the report as required in  
10 subsection (8) on or before March 15, the fund board shall not  
11 disburse funds for a qualified investment under this program until  
12 it transmits the report as required under subsection (8).

13 (10) The legislature finds and declares that funding provided  
14 under this program is for a public purpose and serves the health,  
15 safety, and general welfare of the residents of this state.

16 (11) As used in this section:

17 (a) "Critical industry program" or "program" means the  
18 critical industry program created in subsection (1).

19 (b) "Qualified business" means a business that is located in  
20 or operates in this state or will locate or will operate in this  
21 state as determined by the fund board. A qualified business may  
22 include more than 1 business as determined by the fund board.

23 (c) "Qualified investment" means a grant, loan, or other  
24 economic assistance for a project subject to a written agreement  
25 with a qualified business under this program. Qualified investment  
26 includes a grant, loan, or other economic assistance for creation  
27 or retention of qualified jobs as a result of a technological shift  
28 in product or production, infrastructure improvements, other  
29 capital investments, the purchase or acquisition of heavy

1 machinery, or other assistance, including, but not limited to, an  
2 agreement providing for assistance via the transportation economic  
3 development fund created under section 2 of 1987 PA 231, MCL  
4 247.902. Qualified investment also includes a grant, loan, or other  
5 economic assistance for job training opportunities or workforce  
6 development and education, or both.

7 (d) "Qualified job" means a job performed by an individual who  
8 is a resident of this state whose Michigan income taxes are  
9 withheld by an employer, or an employee leasing company or  
10 professional employer organization on behalf of the employer, or by  
11 an individual who is not a resident of this state and is employed  
12 by a business at a project location that is located in this state,  
13 as determined and verified by the fund.

14 Enacting section 1. This amendatory act does not take effect  
15 unless all of the following bills of the 101st Legislature are  
16 enacted into law:

- 17 (a) Senate Bill No. 769.
- 18 (b) House Bill No. 4082.
- 19 (c) House Bill No. 5351.
- 20 (d) House Bill No. 5603.