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CREATE EARLY STAGE VENTURE CAPITAL INVESTMENT ACT

House Bill 6072
Sponsor: Rep. Sue Tabor
Committee: Energy and Technology

Complete to 5-14-02

A SUMMARY OF HOUSE BILL 6072 AS INTRODUCED 5-9-02

House Bill 6072 would create the Michigan Early Stage Venture Capital Investment Act to establish the Michigan Early Stage Venture Capital Investment Authority (MESVCIA) and the Michigan Early Stage Venture Capital Investment Fund. MESVCIA would establish an investment plan and solicit investor groups and capital to fund the fund, and the manager of the fund would select venture capital companies to invest in, according to criteria set forth in the bill (and described below). The fund manager, with the approval of MESVCIA's board, would also determine which investors were eligible for Single Business Tax (SBT) credits, which could be claimed under the Single Business Tax Act as it would be amended by House Bill 6073. The fund manager would also be responsible for determining the amount of the credit allowed to each investor. The bill would specify, however, that MESVCIA could not authorize a total amount of tax credits for all taxpayers for all years of more than $30 million. Further, MESVCIA could not authorize tax credits of more than $5 million for each state fiscal year, except that if the total amount of credits authorized in a given state fiscal year equals less than $5 million, the difference could be carried forward into a subsequent state fiscal year and could be authorized in that fiscal year in addition to the $5 million otherwise permitted for that fiscal year. The bill's other provisions are described below.

Board. The board of the MESVCIA would consist of one member appointed by the state treasurer for an initial two-year term, two members appointed by the chief executive officer (CEO) of the Michigan Economic Development Corporation (MEDC) for initial four-year terms, one member appointed by the Senate Majority Leader for an initial two-year term, and one member apppointed by the Speaker of the House of Representatives for an initial one-year term. Subsequent terms of office for all board members would be four-year terms.

Fund. After the initial appointment of board members was completed, the authority would hire a fund manager. MESVCIA or the fund manager would do all of the following: make contracts and execute any necessary documents; charge reasonable fees for the implementation of the act and the ongoing operation of programs established under the act; perform any act or enter into financial or other transactions necessary to carry out the provisions of the act; employ persons MESVCIA or the fund manager considered necessary for the implementation of the act; and any other act or transaction that MESVCIA considered necessary to carry out its functions. The fund manager would select venture capital companies in which to invest money from the fund using criteria, including the following: the investment performance history of the company and other appropriate professional portfolio management criteria; the level of the company's experience in investing in qualified businesses; the company's probability of success in soliciting investments; the company's investment history and expected ability to invest in qualified businesses in a manner that mobilized a wide variety of equity capital and near-equity capital investment in ventures that promoted state economic development; and a commitment from the company that it would make a good faith effort to invest in qualified businesses based in the state.

Agreements. MESVCIA could enter into agreements with investors, and any agreement would have to guarantee a negotiated return on qualified investment over the term of the agreement and authorize credits for investors that could be claimed under a section of the Single Business Tax Act that would be added by House Bill 6073. Such a guarantee would not be considered an obligation of the state and could be restricted to specific funds or assets of MESVCIA.

Securities. MESVCIA could purchase securities and security interests and could manage, transfer, or dispose of those securities and security interests. MESVCIA and its officers, directors, and employees would not be broker-dealers, agents, investment advisors, or investment advisor representatives when carrying out their duties and responsibilities under the act.

Conflicts of interest. A conflict of interest would exist in any contractual relationship in which a director, an officer, agent, or employee of MESVCIA, or any company, firm, or corporation in which a director, officer, agent, or employee or any member of his or her immediate family was an officer, partner, or principal stockholder directly or indirectly bought or sold goods or services to or otherwise contracted with MESVCIA or its board. The bill specifies procedures to follow in the case of a conflict of interest.

Single Business Tax credit. The fund manager, with the board's approval, would determine which certified investors were eligible for Single Business Tax (SBT) credits and the amount of the credit allowed to each investor. The credit would be the difference between the negotiated return on qualified investment and the stated return on qualified investment as determined in the agreement between MESVCIA and the investor. MESVCIA would issue certificates authorizing SBT credits for certified investors, and the certificates would be issued annually not later than the March 1 following the end of MESVCIA's fiscal year. The bill also specifies procedures to follow when claiming the credit.

Annual report. MESVCIA would publish an annual report not less than three months after the close of its fiscal year. The report would have to include all of the following: a report of all investment and related activities for the fiscal year; documentation and analysis of the implementation and status of MESVCIA's investment plan and the economic impact of the plan on the state; documentation of determinations made in the fiscal year of the business activity of venture capital companies; a list of all tax credits authorized under the act for that fiscal year.

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