

HOUSE BILL No. 6072

May 9, 2002, Introduced by Reps. Tabor, DeRossett, Howell, Richardville, Newell, Gilbert, Meyer, Cassis, Shulman, Bisbee, Kuipers, Birkholz, LaSata, Voorhees, Vear, Mead, Pumford, Ehardt, Jelinek, Ruth Johnson, Hummel, Cameron Brown, Faunce, George, Vander Veen, Kowall, DeVuyst, Gosselin, Bishop, Allen, Julian, Koetje and Raczkowski and referred to the Committee on Energy and Technology.

A bill to promote investment in certain businesses to promote economic development in this state; to establish the Michigan early stage venture capital investment authority and provide for the powers and responsibilities of that authority; to establish the Michigan early stage venture capital investment fund; to provide for tax credits and incentives; to authorize certain investments; to provide for an appropriation; and to provide penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan early stage venture capital investment act".

3 Sec. 3. As used in this act:

4 (a) "Authority" or "Michigan early stage venture capital
5 investment authority" means the authority created in section 5.

(b) "Board" means the Michigan early stage venture capital investment authority board of directors created in section 5.

(c) "Certified investor" means an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, receiver, estate, trust, or any other group or combination of groups acting as a unit that invests in the fund.

(d) "Director" means a person appointed to and serving on the board.

(e) "Equity capital" means capital invested in common or preferred stock, royalty rights, limited partnership interests, limited liability company interests, or any other security or rights that evidence ownership in private businesses.

(f) "Fund" or "Michigan early stage venture capital investment fund" means the fund created in section 9.

(g) "High-technology activity" means that term as defined in section 3 of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803.

(h) "Near-equity capital" means capital invested in unsecured, undersecured, or debt securities or subordinated or convertible loans.

(i) "Negotiated return on qualified investment" means the amount to be paid to a certified investor negotiated between and agreed upon by the authority and the certified investor based on investments made by certified investors in the fund.

(j) "Qualified business" means a business, the primary business activity of which is high-technology activity.

1 (k) "Qualified investment" means the amount of capital
2 invested by a certified investor in the fund.

3 (l) "Single business tax" means the tax imposed under the
4 single business tax act, 1975 PA 228, MCL 208.1 to 208.145.

5 (m) "Stated return on qualified investment" means the actual
6 return paid by the fund to a certified investor.

7 (n) "Tax credit" means the credit under section 39e(12) of
8 the single business tax act, 1975 PA 228, MCL 208.39e.

9 (o) "Venture capital company" means a corporation, partner-
10 ship, or other legal entity that has a place of business located
11 in this state and that has as its primary business activity the
12 investment in qualified businesses as determined by the
13 authority.

14 Sec. 5. (1) The Michigan early stage venture capital
15 investment authority is created in the department of treasury.

16 (2) The board of the authority shall consist of the follow-
17 ing members:

18 (a) One member appointed by the state treasurer.

19 (b) Two members appointed by the CEO of the Michigan eco-
20 nomic development corporation.

21 (c) One member appointed by the senate majority leader.

22 (d) One member appointed by the speaker of the house of
23 representatives.

24 (3) The term of office for members of the board appointed
25 under subsection (2) shall be 4 years, except that of the members
26 first appointed, the 2 members appointed under subsection (2)(b)
27 shall be appointed for terms of 4 years each, the members

1 appointed under subsection (2)(a) and (c) shall be appointed for
2 terms of 2 years each, and the member appointed under subsection
3 (2)(d) shall be appointed for a term of 1 year. A vacancy shall
4 be filled for the remainder of the unexpired term in the same
5 manner as the initial appointment.

6 (4) The authority shall establish an investment plan and
7 solicit investor groups and capital to fund the Michigan early
8 stage venture capital investment fund.

9 (5) The authority or the fund manager as its designee has
10 the power to do all of the following:

11 (a) Make contracts and execute any necessary documents.

12 (b) Charge reasonable fees for the implementation of this
13 act and the ongoing operation of the programs established under
14 this act.

15 (c) Perform any act or enter into financial or other trans-
16 actions necessary to carry out the provisions of this act.

17 (d) Employ persons the authority or fund manager considers
18 required for the implementation of this act.

19 (e) Any other act or transaction that the authority consid-
20 ers necessary to carry out its functions under this act.

21 (6) The authority shall hire a fund manager after the ini-
22 tial appointment of members of the board under section 5 has been
23 completed.

24 (7) The authority may enter into agreements with investors
25 which shall guarantee a negotiated return on qualified investment
26 over the term of the agreement and authorize credits for

1 investors that may be claimed under section 39e(12) of the single
2 business tax act, 1975 PA 228, MCL 208.39e.

3 (8) A conflict of interest exists in any contractual rela-
4 tionship in which a director, an officer, agent, or employee of
5 the authority; or any company, firm, or corporation in which a
6 director, officer, agent, or employee or any member of his or her
7 immediate family is an officer, partner, or principal stockholder
8 directly or indirectly buys or sells goods or services to or oth-
9 erwise contracts with the board or authority. If a conflict of
10 interest is shown to exist, the director, officer, agent, or
11 employee shall be subject to removal and any contract entered
12 into is considered unenforceable against the board or authority
13 unless the records of the board or authority reflect that the
14 director, officer, agent, or employee fully and publicly dis-
15 closed all interests and unless the contractual relationship was
16 secured by competitive bidding following a public invitation to
17 bid. If a director, officer, agent, or employee has a conflict
18 of interest, he or she shall refrain from any further official
19 involvement in regard to the related contract or agreement, from
20 voting on any matter pertaining to the contract or agreement, and
21 from communicating with other board members, officers, agents, or
22 employees concerning the contract or agreement.

23 Sec. 7. (1) The guarantees provided for under section 5(7)
24 shall not be considered obligations of this state and may be
25 restricted to specific funds or assets of the authority.

1 (2) The authority may purchase securities and security
2 interests and may manage, transfer, or dispose of those
3 securities and security interests.

4 (3) The authority and its officers, directors, and employees
5 are not broker-dealers, agents, investment advisors, or invest-
6 ment advisor representatives when carrying out their duties and
7 responsibilities under this act.

8 Sec. 9. (1) The Michigan early stage venture capital
9 investment fund is created as a fund of the Michigan early stage
10 venture capital investment authority.

11 (2) The fund manager shall select venture capital companies
12 in which to invest money from the fund using criteria, including,
13 but not limited to, the following:

14 (a) The investment performance history of the venture capi-
15 tal company and other professional portfolio management criteria
16 that the fund manager and board consider appropriate.

17 (b) The level of the venture capital company's experience in
18 investing in qualified businesses.

19 (c) The venture capital company's probability of success in
20 soliciting investments.

21 (d) The venture capital company's investment history and
22 expected ability to invest in qualified businesses in a manner
23 that mobilizes a wide variety of equity capital and near-equity
24 capital investment in ventures that promote the economic develop-
25 ment of this state.

(e) A commitment from the venture capital company that it will make a good faith effort to invest in qualified businesses based in this state.

Sec. 11. (1) The fund manager, with the approval of the board, shall determine which certified investors are eligible for tax credits and the amount of the tax credit allowed to each certified investor. The tax credit allowed under this section is the difference between the negotiated return on qualified investment and the stated return on qualified investment as determined in the agreement under section 5(7).

(2) The authority shall issue certificates that authorize tax credits for certified investors. Certificates issued under this section shall be issued annually not later than the March 1 following the end of the authority's fiscal year.

(3) The certificate issued under this section shall be attached to the taxpayer's annual return for the first tax year in which a tax credit allowed and calculated under this act and claimed under section 39e(12) of the single business tax act, 1975 PA 228, MCL 208.39e, is claimed which shall be the tax year in which the certificate is issued. The certificate shall state all of the following:

(a) That the taxpayer is a certified investor.

(b) The taxpayer's federal employer identification number or the number assigned to the taxpayer by the department of treasury for single business tax filing purposes.

(c) The amount of the tax credit that the taxpayer is allowed.

(d) The tax years for which the credit may be claimed.

(e) That the tax credit is transferable.

(4) The authority shall not authorize a total amount of tax credits under this section for all taxpayers for all years of more than \$30,000,000.00. Except as otherwise provided in this subsection, the authority shall not authorize tax credits under this section of more than \$5,000,000.00 for each state fiscal year. If the total amount of credits authorized in a state fiscal year equals less than \$5,000,000.00, the difference between the amount authorized and \$5,000,000.00 may be carried forward into a subsequent state fiscal year and may be authorized in that fiscal year, in addition to the \$5,000,000.00 allocated for that fiscal year.

Sec. 15. The authority may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 17. The authority shall publish an annual report not more than 3 months after the close of the authority's fiscal year that includes all of the following:

(a) A report of all investment and related activities for the fiscal year.

(b) Documentation and analysis of the implementation and status of the authority's investment plan and the economic impact of the plan on this state.

(c) Documentation of determinations made in the fiscal year of the business activity of venture capital companies under section 3(o).

1 (d) A list of all tax credits authorized under this act for
2 that fiscal year.