Legislative Analysis

CREATE THE RURAL DEVELOPMENT FUND PROGRAM

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House Bill 6064 as introduced
Sponsor: Rep. Jason Wentworth
Committee: Michigan Competitiveness
Complete to 5-29-18

BRIEF SUMMARY:

House Bill 6064 would add a chapter to the Michigan Strategic Fund Act to create the Rural Development Fund Program ("program") and provide for its operations. Generally speaking, the program would involve the application and approval of rural development funds (RDFs), which would be financed through a 50-50 split of private contributions and repayable grants from the newly created Rural Development Jobs Creation Fund within the state treasury. The RDFs would be required to make growth investments in qualified businesses in qualified rural counties.

Proposed MCL 125.2090*l* et seq.

DETAILED SUMMARY:

Application Process
Beginning October 1, 2018, the Michigan Strategic Fund (MSF) would accept applications for approval as a ***rural development fund*** (RDF).

Rural development fund would be defined as an entity approved by MSF that meets all the following criteria:

- The entity or its "affiliate" (defined in the bill) is a "rural business investment company" or a "small business investment company" under federal law.
- As of the date of the application, the entity or its affiliates had invested at least $75.0 million in nonpublic companies located in counties throughout the U.S. with a population of less than 50,000.
- As of the date of the application, the entity or its affiliates had received equity investments from investors who are not affiliates of the applicant equal to at least $100.0 million.

The application would have to include:

- The total investment authority sought by the applicant.
- A copy of the applicant's license showing that it is a rural business investment company or small business investment company.
- Evidence that the entity has met the $75.0 million investment and $100.0 million equity requirements (described above).

MSF would have until November 30, 2018 to make application determinations, in the order in which the applications were received. MSF could only approve $100.0 million in ***investment authority*** and $50.0 million in ***repayable grants***. If requests for investment authority were received on the same day and would result in the limitation being exceeded, MSF would proportionally allot the investment authority and repayable grants among the approved applications.

> ***Investment authority*** would be the amount stated on the certificate certifying the RDF. An RDF's investment authority would be composed equally of repayable grants by MSF and private contributions.
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> ***Repayable grants*** would be a grant of cash by MSF into an RDF to be matched dollar-for-dollar with private contributions up to the investment authority of the RDF.

Upon approval of an application, MSF would provide a grant certificate to the applicant designating the applicant as an RDF and specifying the amount of the RDF's investment authority and the amount of the payable grant to be received.

MSF could deny an application only for the following reasons:
- The applicant did not satisfy the RDF criteria.
- MSF had already approved the maximum amount of investment authority allowed.

If MSF denied an application, the applicant could provide additional information to MSF within 5 days of the denial. MSF would review and reconsider the application and additional information within 10 days but not beyond December 15, 2018. The original date of receipt would continue for a reconsidered application for purposes of priority.

Rural Development Fund Requirements

Within 60 days after receiving approval, the RDF would have to collect ***private contributions*** equal to 50% of the RDF's investment authority. Within 65 days after receiving approval, the RDF would have to send MSF documentation sufficient to prove that this amount had been collected.

> ***Private contributions*** would be an investment of cash in an RDF to match dollar-for-dollar the repayable grant amount up to the investment authority of the RDF. An RDF's private contributions would be composed of not less than 10% of equity investments.

If the RDF failed to meet either of these requirements, its approval would be forfeited, and MSF would award the corresponding investment authority first to existing applicants who received investment authority lower than the amount requested and then to new applicants.

MSF would transfer the repayable grant to the RDF upon receipt of the documentation proving the amount collected within 1 business day.

Rural Development Job Creation Fund
The bill would create the Rural Development Job Creation Fund ("fund") within the state treasury.

The state treasurer could receive money or other assets from any source for deposit into the fund. The state treasurer would direct the investment of the fund and credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund. The Department of Talent and Economic Development (TED) would be the administrator of the fund for auditing purposes.

MSF would expend money from the fund, upon appropriation, only to make refundable grants to RDFs in Michigan.

Demand of Repayment
MSF would demand immediate repayment of a repayable grant issued if any of the following occurred with respect to the RDF before it was certified to exit the program:

- The RDF did not invest all its investment authority in ***growth investments*** in Michigan within 3 years of the ***closing date*** with 100% of its investment authority invested in growth investments in ***qualified businesses*** with ***principal business operations*** located in ***qualified rural counties***.
- The RDF, after doing the above, failed to maintain growth investments at the levels required above until the sixth anniversary of the closing date. (For this purpose, an investment would be maintained even if the investment were sold or repaid so long as the RDF reinvested an amount equal to the capital returning or recovered by the RDF from the original investment, exclusive of any profits realized, in other growth investments in Michigan within 12 months of the receipt of that capital. Also, amounts received by an RDF pursuant to periodic repayments would be treated as continually invested in certain circumstances. Finally, an RDF would not be required to reinvest capital returned from growth investments after the fifth anniversary of the closing date, and those investments would be considered held continuously through the sixth anniversary of the closing date.)
- The RDF, before exiting the program, made a distribution or payment that resulted in its having less than 100% of its investment authority invested in growth investments in Michigan or available for investment in growth investments and held in cash and other marketable securities.
- The RDF made a growth investment in a qualified business that directly or indirectly through an affiliate owns, had the right to acquire an ownership interest in, made a loan to, or made an investment in the RDF, an affiliate of the RDF, or an investor in the RDF.

> ***Growth investment*** would be any capital or equity investment in a qualified business or any loan to a qualified business with a stated maturity at least 1 year after the date of issuance. A secured loan or the provision of a revolving line of credit would be a growth investment only if the RDF obtains an affidavit from the president or CEO of the qualified business attesting that

the business sought and was denied similar financing from a commercial bank.

Closing date would be the date on which an RDF received a repayable grant.

Qualified business would be an operating business that, at the time of the initial investment in the business by an RDF, had fewer than 150 employees and was engaged in industries assigned a certain sector code in the North American Industry Classification System[1] or, if the business was not engaged in any of those industries, the department determined that the investment would be beneficial to the rural area and economic growth of the state.

Principal business operations would mean, for a qualified business, the place or places where at least 80% of its employees work or where employees that are paid at least 80% of its payroll work. An out-of-state business that agreed to relocate employees using the proceeds of a growth investment would be considered to have its principal business operations in this new location provided that it satisfied the definition within 180 days after receiving the investment or a later date, if agreed to by MSF.

Qualified rural county would be a county with a population of 200,000 or less.

No more than $5.0 in growth investments in a qualified business, including investments in affiliates of the qualified business, would count toward investment amounts and durations required of the RDF.

Before demanding a repayment, MSF would notify the RDF of the reasons for the pending repayment. The RDF would have 90 days from the date of the notice to correct any violation outline to the satisfaction of MSF and avoid repayment of the refundable grant.

An RDF, before making a growth investment, could ask MSF for a written opinion as to whether the business in which it proposed to invest was a qualified business. MSF, within 15 business days, would respond with its determination. If MSF failed to notify the RDF by the fifteenth day, the qualified business in which the RDF proposes to invest would be a qualified business.

[1] The sectors listed in the bill are: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Construction; Manufacturing; Wholesale Trade; Transportation and Warehousing; Professional, Scientific, and Technical Services (with exceptions); Administrative and Support and Waste Management and Remediation Services; Health Care and Social Assistance; and Other Services (except public administration).

Annual Report to MSF

An RDF would submit an annual report to MSF on or before the last day of February of each year until the RDF has exited the program. It would provide documentation as to the RDF's growth investments and include all the following:

- A bank statement evidencing each growth investment.
- The name, location, and industry of each qualified businesses receiving an investment, including the MSF determination letter or evidence that the business was a qualified business at the time of the investment.
- The number of new full-time equivalent employees at the qualified business in Michigan, and the number of full-time equivalent employees on the date of receipt of the initial growth investment.
- Any other information required by MSF.

Within 60 days after receiving an annual report, MSF would provide written confirmation to the RDF of the new full-time equivalent employees the RDF had been credited with for that year.

By the fifth business day after the third anniversary of the closing date, an RDF would submit a report to MSF evidencing its compliance with the investment requirements of the bill.

Annual Report to Legislature

MSF would submit an annual report to each house of the legislature on or before April 1, 2020. The report would include all of the following:

- The name and number of all RDFs approved to participate in the program.
- The amount of investment authority awarded to each RDF.
- Any investments made by the RDFs, including the location.
- Whether the RDFs are in compliance with the bill.
- Any other information required.

Annual Program Fee

MSF would calculate an annual fee to be paid by each RDF approved by dividing $25,000 by the number of applications approved, and notify each RDF of the amount of the fee. The initial annual fee would be due and payable to MSF within 1 business day of receipt of a repayable grant. After the initial annual fee, the fee would be due and payable on or before the last day of February of each year.

Program Exit

On or after the sixth anniversary of the closing date, an RDF could exit the program and no longer be subject to the provisions of the bill. MSF would respond to the application within 30 days of receipt and include a calculation of any ***repayment amount*** due.

> ***Repayment amount*** would be defined as an amount equal to 50% of an RDF's investment authority *minus* the *sum* of the product of new full-time equivalent employees reported to MSF and the earned job factor [$25,000] and the product of initial full-time equivalent employees (provided that the rural growth fund receives

an affidavit from the president or CEO of the qualified business attesting that the employee positions would have been eliminated without receipt of the initial investment) and 50% of the earned job factor [$12,500].

Until the RDF paid MSF the repayment amount, no distributions other than those required by the bill could be made with respect to the equity interests of the RDF more than the sum of the amount of equity capital invested into the RDF with respect to the equity interests and an amount equal to any project increase in the federal or state tax liability of holder or those interests related to the ownership of the RDF.

FISCAL IMPACT:

The bill would have no direct fiscal impact on state or local government. While the provisions of the bill create the statutory structure for the Rural Development Fund Program and Rural Development Fund, there is no identified revenue source or appropriation of funds. Any program funding would be subject to legislative appropriation. If program funding were made available, the Michigan Strategic Fund (MSF) repayable grants share would be capped at $50.0 million.

Assuming funds were appropriated for program operation, the provisions of the bill would increase administrative and oversight costs for the MSF by an unknown amount. Presumably, the annual fee of $25,000 could be used to offset program costs. However, it is not known whether this amount would be sufficient to fully offset administrative and oversight costs that would be incurred by the MSF.

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