

MEMORANDUM



DATE: December 9, 2013
TO: Interested Parties
FROM: Ben Gielczyk, Senior Fiscal Analyst
RE: Proposed Michigan Strategic Fund Act Changes (UPDATED)

This memorandum provides a summary of the proposed changes to the Michigan Strategic Fund (MSF) Act in a package of both Senate- and House-introduced bills. The bills include Senate Bills 269, 270, 271, and 272, and House Bills 4480, 4481, and 4482, as recently reported by the House Commerce Committee; Senate Bill 278, as reported by the Senate Committee on Economic Development; and House Bill 4071, which is currently referred to the House Committee on Appropriations. Generally, the bills would expand the authority of, provide greater latitude to, and increase funding for, the MSF. Additionally, the bills would consolidate and modify reporting requirements. The bills are not tie-barred.

Background

The MSF was created under Public Act (P.A.) 270 of 1984 as an autonomous entity with the stated intent of producing economic development in the state. Executive Order 1999-1 expanded the authority of the MSF by transferring all state funded economic development programs to the MSF. The MSF was also transferred to the Department of Management and Budget as an autonomous state agency, governed by a board of directors. As a state agency, the MSF was able to enter into interlocal agreements with local entities as provided under the Urban Cooperation Act of 1967.

The interlocal agreements between the MSF and local entities created the MEDC, which is also an autonomous entity of the state of Michigan. The MEDC acts as the administrative arm and provides all program services for programs created under the MSF. Therefore, a majority of the state appropriations and employees are transferred to the MEDC. The MEDC is also able to employ non-state (corporate) employees to assist in the administration of MSF programs. The corporate employees are funded with non-appropriated corporate funds which are received through the Tribal-State Gaming Compacts.

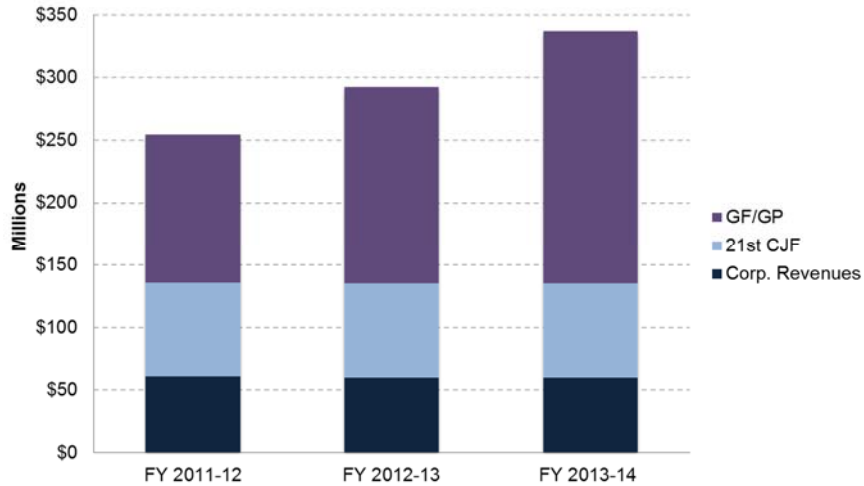
The MSF is administered by an 11-member board and is charged with approving private activity bonds; authorizing Community Development Block Grant applications; recommending renaissance zones to State Administrative Board; approving MSF designated renaissance zones; and acting as fiduciary agent with respect to the 21st Century Jobs Fund investments.

Control and management of the MEDC is conducted by the MEDC Executive Committee consisting of 20 members, appointed by the governor. The responsibilities of the MEDC Executive Committee include developing policy direction and guidance to MEDC regarding economic development programs and initiatives; approving MEDC's corporate budget; and appointing a chief executive officer who administers all programs, funds, personnel and other administrative transactions of the MEDC, among other responsibilities.

Generally speaking, economic development funding received by the MSF/MEDC comes from three sources: 21st Century Jobs Trust Fund, General Fund, and Corporate Revenue. Recent growth in economic development appropriations has come solely from General Fund appropriations. The following chart shows economic development funding over the past three years (post business tax

restructuring, under which business tax revenues were reduced by a movement from the Michigan Business Tax to a Corporate Income Tax).

Michigan Strategic Fund Economic Development Funds Post-Tax Restructuring

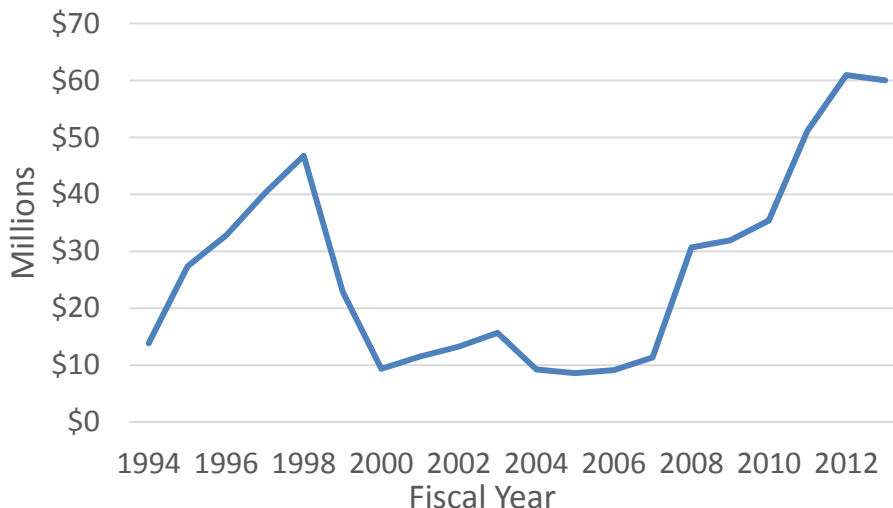


*NOTE: Corporate revenues are not subject to legislative appropriation.
FY 2013 and 2014 corporate revenue amounts are estimated.*

As was noted above, in addition to General Fund and 21st Century Jobs Trust Fund legislative appropriations, the MEDC receives direct payments under various Indian Gaming Compacts, also known as corporate revenues. The revenues flow directly from the tribal casino operations to the MEDC and are not subject to legislative appropriation.

All but one of the tribes operating under the 1993 Tribal-State Gaming Compacts have stopped making payments to the MEDC. Payments were stopped upon the approval of the three Detroit casinos by the voters, which terminated the exclusivity agreement in the 1993 Tribal-State Gaming Compacts. Payments under the 1993 compacts had reached a high of \$46.8 million in 1998.

Tribal Gaming Payments History



Source: Michigan Gaming Control Board

In recent years, tribal gaming payments have grown substantially due to new compacts and new tribal gaming facilities. Payments reached approximately \$60.9 million in FY 2011-12 and are expected to remain relatively flat, all else being equal. The chart identifies the trends in tribal gaming payments to MEDC since 1994.

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The state is currently engaged in negotiations with the tribes covered under the 1993 compacts. While a fiscal impact is uncertain at this time, successful renegotiation of the compacts has the potential to increase annual tribal gaming revenues to the MEDC by a significant amount. If the 1993 Tribal-State Gaming Compacts are not successfully renegotiated, current compact language will continue and no payments will be made to the MEDC.

Senate Bill 269 (H-2) - Tobacco Settlement Revenues

Senate Bill 269 would amend the Michigan Trust Fund Act to remove the FY 2014-15 sunset on the requirement that not less than \$75.0 million of the tobacco settlement revenue be deposited in the 21st Century Jobs Trust Fund. The sunset would be extended until FY 2018-19 and the \$75.0 million deposit would be replaced with earmark language providing that “not more than” \$100.0 million could be deposited in the 21st Century Jobs Trust Fund. Correspondingly, the bill would remove the \$72.0 million appropriation in FY 2015-16 that was included to make up previous diversions of tobacco settlement revenue from the 21st Century Jobs Trust Fund to the General Fund.

When compared to current law, the revisions in the bill have the potential to appropriate an additional \$328.0 million to the 21st Century Jobs Trust Fund between FY 2015-16 and 2018-19. Presumably, the funds would be subject to appropriation in the MSF annual appropriations act.

Under current law, the \$75.0 million in tobacco settlement revenues currently dedicated to the MSF would be available for expenditure similar to General Fund revenues after FY 2015-16. Other current uses of tobacco settlement revenue include Medicaid and Family Independence Program (FIP) funding.

The 21st Century Jobs Trust Fund and corresponding 21st Century Jobs Trust Fund programs were established in 2005. Over the ten-year period of funding agreed upon at the time of passage, the 21st Century Jobs Trust Fund was allocated approximately \$1.0 billion. In FYs 2005-06 and 2006-07 \$394.0 million was deposited in the fund with an additional \$600.0 million deposited over the next 8 years (\$75.0 million annually) ending in FY 2014-15. An additional transfer of \$72.0 million was added in FY 2015-16 due to various transfers from the 21st Century Jobs Trust Fund to the General Fund in an effort to balance the state budget.

Table 1
21st Century Jobs Trust Fund Deposits (Current Law)

<u>Fiscal Year</u>	<u>Orig. Appropriation</u>	<u>Adjustment</u>	<u>TOTAL</u>
2005-06	\$394,000,000	(\$55,950,000)	\$338,050,000
2006-07*	0	0	0
2007-08	75,000,000	50,000,000	125,000,000
2008-09	75,000,000	(22,050,000)	52,950,000
2009-10	28,500,000	0	28,500,000
2010-11	75,000,000	0	75,000,000
2011-12	75,000,000	0	75,000,000
2012-13	75,000,000	0	75,000,000
2013-14	75,000,000	0	75,000,000
2014-15 (est.)	75,000,000	N/A	75,000,000
2015-16 (est.)	72,000,000	N/A	72,000,000
TOTAL	\$1,019,500,000	(\$28,000,000)	\$991,500,000

*FY 2005-06 appropriation covers two-year period.

For additional information on tobacco settlement funds and the potential impact of Senate Bill 269 on expenditures of that revenue see this HFA memorandum:

http://www.house.mi.gov/hfa/pdf/Tobacco_Settlement_Funds.pdf

Senate Bill 270 (H-2) - 21st Century Job Trust Fund Expenditures

Senate Bill 270 bill would expand MSF's authority to commit 21st Century Jobs Trust Fund appropriations to any program MSF operates and not just those programs that are specified under Chapter 8A, 8B, and 8C.

The bills also include language that requires funds used for investments, grants, loans, or other programs to provide for repayment for breach of the written agreement or for failure to meet measurable outcomes.

The provisions of the bill would also strike the requirement that at least 80% of the funds committed for business development and business marketing be targeted to persons or entities outside of the state.

In addition to striking the requirement that at least 80% of business marketing and business development be targeted to persons out-of-state, the bill would strike the requirement that at least 75% of the funds appropriated under Chapter 8A (21st Century Jobs Trust Fund appropriations) be targeted to persons or entities outside of the state of Michigan. By striking the expenditure minimums for targeting out-of-state persons or entities, the MSF Board would not be statutorily required to expend any funds targeting out of state persons or entities.

Senate Bill 271 (H-4) - Community Revitalization Program

Senate Bill 271 would make various changes to the Michigan Community Revitalization Program under Chapter 8C of the MSF Act. The provisions of the bill would expand the definition of "eligible property" to include "[a]ny other property as determined by the MSF Board if the property will promote community revitalization." This would expand the scope of the Community Revitalization Program beyond its

current exclusive statutory definition of eligible property. The change would effectively open up the Community Revitalization Program to any property deemed eligible by the MSF Board.

The provisions of the bill would also change the definition of historic resource under "eligible property." The bill would broaden the meaning of historic resource to add "site, object, feature, or open space either manmade or natural, individually listed or located within and contributing to a historic district." Current law defines "historic resource" as any historic building or structure located in a historic district.

The bill would also diminish the requirement that certain criteria be considered when reviewing an application for a Community Revitalization incentive. The fund board would have to consider the criteria to the extent reasonably applicable "as reasonably determined by the fund board." Use of the criteria would be permissive under the bill.

Additionally, the provisions of the bill would revise the grant and loan amounts under the Community Revitalization Program. Specifically, the maximum grant award would be increased from \$1.0 million to \$1.5 million. Moreover, the MSF board would be allowed to approve up to 3 single projects that shall not exceed 50% of a projects eligible investment up to \$10.0 million for community revitalization loans and grants for the specific purpose of historic preservation.

Generally, the bill would require the State Historic Preservation Office or Officer to be consulted during the grant and loan process.

Since FY 2011-12, boilerplate Section 1024 of the MSF appropriations act has required a minimum of \$20.0 million annually to go to programs operating under the Community Revitalization Program.

Reporting requirements removed under the bill are moved to a consolidated report under the provisions of House Bill 4480 (see below).

Senate Bill 272 - Revised Definition of Economic Development Projects

Senate Bill 272 would amend the Michigan Strategic Fund Act to do the following:

- Include port facilities in the definition of "economic development project" and provide a definition of port facilities not to include an international bridge or tunnel. An advisory committee would be established to make recommendations to the MSF Board regarding projects relating to port facilities.
- Expand the definition of "person" to include a lender or any other entity approved by the MSF Board. The change would give the MSF Board complete discretion as to who qualifies as a "person" under the provisions of the bill.
- Include dredging of recreational or commercial harbors in the definition of "project."

Under the provisions of the bill, no additional appropriations are directed to the expanded projects. Rather, allocations to the expanded uses would depend on current and future appropriation levels. The MSF Board determines how expenditure of appropriated funds are allocated.

There would be minimal costs associated with the establishment of an advisory committee on port facilities. Any increased costs would be absorbed under current appropriations levels.

Senate Bill 278 - Jobs for Michigan Investment Fund

The provisions of the bill would expand the use of the Jobs for Michigan Investment Fund, a permanent fund, to any authorized use under the MSF Act. The MSF Board allocates the expenditure of the funds

from the investment fund. Under current law, the Jobs for Michigan Investment Fund is restricted to use for grants, loans, investments, tourism promotion, business development, and community revitalization under Chapters 8A and 8C of the MSF Act. Additionally, the bill would allow the MSF Board to collect up to 4.0% for administrative expenses.

The Jobs for Michigan Investment Fund consists of the following funds:

- Funds appropriated or transferred to the investment fund from the 21st Century Jobs Trust Fund;
- Earnings and repayments received pursuant to programs under Chapters 8A or 8C;
- Earnings and repayments received pursuant to the previous Michigan technology tri-corridor and life sciences initiative program;
- Interest and earnings on any funds; and
- Any other money or assets received by the investment fund.

The investment fund also receives direct payments from the Nottawaseppi Huron Band of Potawatomi Tribal-State Gaming Compact. For the most recent year (ending December 2012), the permanent fund received approximately \$15.3 million from this payment. Since August 2009, approximately \$41.5 million has been received.

In FY 2014, planned expenditures from the permanent fund total \$34.2 million according to MEDC documents. Expenditures totaled \$15.0 million in FY 2013.

Under a previous legal opinion obtained by the MSF, in consultation with the Department of Attorney General and the Office of the Chief Compliance Officer, the only amount available for legislative appropriation from the fund is the earnings on funds in the investment fund (common cash earnings).

House Bill 4480 (H-3) - Michigan Strategic Fund Act Consolidated Reporting Requirements

The provisions of House Bill 4480 consolidate and modify reporting requirements throughout the MSF Act. The new report would be due annually on April 10. Outside of the Tourism and Business Promotion Program report, the April 10 reporting date would be later in the year than most current reporting requirements for the MSF. The proposed changes consolidate the following reporting requirements into one report:

- General Report on Activities by the MSF, Section 9 of the MSF Act;
- Report on 21st Century Jobs Fund grants and loans, Section 88n(5) of the MSF Act;
- Report on 21st Century Jobs Fund investments, Section 88n(6) of the MSF Act;
- Report on Michigan Business Development Program Activity, Section 88r(6) of the MSF Act;
- Report on Tourism and Business Development Promotion, Section 89d(1) of the MSF Act; and
- Report on Community Revitalization Program activity, Section 90d(4) of the MSF Act;

The provisions of the bill would also cover the following reporting requirements currently located in the MSF appropriations act boilerplate provisions:

- Report on all grants awarded by the MSF or by the MEDC, Section 1006;
- Report on MEDC grants and investment programs financed from the MSF using investment or Indian gaming revenues, Section 1007; and
- Report on geographic market locations and recreational activities used in tourism promotion; Section; Section 1023.
- Report on Business Incubators, Section 1034.

Nothing in the bills would prevent or preclude the inclusion of specific boilerplate reporting requirements in the MSF appropriations act.

In general, reporting language that was no longer applicable to the program was removed from the consolidated reporting language. A few reporting requirements that were determined to be duplicative were also removed. Other changes are explained in further detail below.

General reporting requirements that were added for all programs include:

- Information related to money or other property returned to the fund through clawback provisions;
- A status of all loans of the fund that are in default;
- A list of all entities in bankruptcy that have received a single incentive exceeding \$500,000;
- A summary of the approximate administrative costs used to administer the programs authorized under the MSF Act;
- Site visits for those programs requiring site visits prior to granting financial assistance; and
- A listing of actual repayments received by the MSF for failure to comply with the provisions of the written agreement.

Reporting requirements were changed to generally improve expenditure oversight.

The MSF board would be required to post a copy of each contract, agreement, or other written loan or grant documentation for financial assistance under the Michigan Business Development Program and Michigan Community Revitalization Program. The reporting requirements would also include posting and updating periodically the status of the grants and loans provided under the programs.

As it applies to the Business Development Program (Michigan Economic Growth Authority (MEGA) tax credit replacement) the provisions of the bill eliminate the requirement that the MSF include a report on the individuals hired by a qualified business, which includes the number of individuals hired, their educational attainment, and the number of individuals hired who relocated to this state.

Under the Tourism and Business Development Promotion reporting requirement, the provisions of the bill would eliminate the specific outcome measures that the MSF may include in the performance analysis of the promotion program. Additionally, the bill would eliminate the requirement that the MSF report on the type of tourism promoted.

All program background check requirements are consolidated into Section 88c. Previous versions of the bill had moved the Chief Compliance Officer to Treasury to eliminate perceived conflicts of interest and eliminated specific statutory guidance on background check information. Background check policies and procedures would have been left to the discretion of the Chief Compliance Officer in Treasury in consultation with MSF and MEDC. House Bill 4480 (H-3) leaves the Chief Compliance Officer in MSF and retains background check requirements in statute.

House Bill 4481 (H-2) - Eliminate References to Strategic Economic Investment and Commercialization Board

The provisions of House Bill 4481 provide various technical adjustments and clean up changes to Sections 88k and 88n of the MSF Act. Specifically, the bill eliminates references to the Strategic Economic Investment and Commercialization Board which was dissolved in October 2010 and had its duties and responsibilities shifted to the MSF Board. The bill strikes additional language dealing with reporting and prohibitions of grant and loan funding. Similar language already applies to the MSF Board.

The bill modifies the oversight provisions by including language requiring repayment of grant or loan awards for failing to meet measurable outcomes in addition to the current breach of contract.

House Bill 4482 (H-5) - Michigan Strategic Fund Authority

House Bill 4482 (H-5) would expand the authority of the MSF to include the following:

- Procure goods and services, purchase and sell real and personal property, and lease property independent of any other department or agency;
- Appoint any individuals, including MSF and MEDC employees to a board to represent the interests of the MSF;
- Establish and operate a job training fund that will support worker training at Michigan businesses as determined by the MSF;
- Establish and operate a Brownfield Historic Investment Program that provides capital for projects as determined by the MSF; and
- Take necessary and reasonable steps to pursue repayment of funds disbursed for any grant or loan for failing to comply with provisions of a written agreement as required under the Michigan Business Development Program and Michigan Community Revitalization Program.

House Bill 4071 (H-1) Draft 2 - Michigan Promotion Program (Pure Michigan)

The bill would eliminate the limitation on the promotion of business from the funds appropriated to the Michigan Promotion Program in 2008 (see explanation in HB 4482 (H-2) above).

The provisions of the bill would also require that beginning in FY 2013-14 at least \$29.0 million be appropriated and transferred annually to the MSF for carrying out the purposes of the Michigan Promotion Program (Pure Michigan). However, the statutory language cannot bind future legislatures to make an appropriation for this program. Rather, any attempt to bind future legislatures to an appropriation amount has been determined to serve as an intention to appropriate.¹

The bill does not specify a source of funding for the appropriation; however, recent appropriation acts appropriated 21st Century Jobs Trust Fund dollars for this purpose (See Table 2).

¹ See Attorney General Opinion No. 6238 - <http://www.ag.state.mi.us/opinion/datafiles/1980s/op06238.htm>.

**Table 2
Tourism Promotion Funding FY 2005-06 to FY 2013-14**

Fiscal Year	GF/GP	21st Century Jobs Trust Fund*	Michigan Promotion Fund	TOTAL
2005-06**	\$5,817,500	\$7,500,000	\$0	\$13,317,500
2006-07	5,717,500	7,500,000	0	13,217,500
2007-08***	5,717,500	14,282,500	0	20,000,000
2008-09	5,717,500	27,500,000	0	33,217,500
2009-10	5,402,800	0	9,500,000	14,902,800
2010-11	5,402,800	20,000,000	0	25,402,800
2011-12	0	25,000,000	0	25,000,000
2012-13	0	25,000,000	0	25,000,000
2013-14	0	29,000,000	0	29,000,000
TOTAL	\$33,775,600	\$155,782,500	\$9,500,000	\$199,058,100

*Includes Jobs For Michigan Investment Fund - Returns to Fund appropriations in FY 2007-08 in the amount of \$4,282,500.

**\$100,000 GF/GP was included in a supplemental appropriation, Public Act 345 of 2006, for the promotion of the Detroit Zoological Institute.

***Additional \$12.5 million was appropriated in FY 2008 to the Michigan Promotion Program from a refinancing tobacco settlement bonds, which was dedicated to the promotion of business development in this State (authorized under MCL 125.2089b). Refinancing allowed the deposit of a total of \$50.0 million that was to be spread between FYs 2008 and 2009. \$10.0 million was appropriated in FY 2008 and \$27.5 million was appropriated in FY 2009.