



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 358 (as introduced 3-24-05)
Sponsor: Senator Bill Hardiman
Committee: Commerce and Labor

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CONTENT

The bill would create the "Life Science Investment Authority Act" to do all of the following:

- Create the Life Science Investment Authority within the Department of Treasury.
- Provide for the Authority to be governed by a board consisting of seven members, including the State Treasurer and the chief executive officer of the Michigan Economic Development Corporation (MEDC) or their designees.
- Require the board to contract with an investment management company to make qualified investments in qualified businesses (businesses that develop, market, or commercialize life science products, i.e., drugs or medical devices).
- Require the agreement between the investment management company and a qualified business to include a match requirement, conditions regarding a return on the investment and the use of members of the Life Science Pipeline, and a condition that the investment would not be used for human cloning or stem cell research with embryonic tissue.
- Provide for the confidentiality of financial or proprietary information submitted by an applicant for a qualified investment.
- Require the board to prepare an annual budget.
- Allow the board to appoint a director and hire employees of the Authority.

- Specify the powers of the Authority, including the power to promulgate rules.
- Authorize the Authority to issue bonds and notes payable solely from revenue or funds available to the Authority.
- Create the "Life Science Investment Fund", which could be administered for the general operations of the Authority and to secure its notes and bonds.
- Exempt the Authority from certain taxes.
- Appropriate \$100,000 from the General Fund for the Act's initial implementation costs.

Life Science Investment Authority

The bill would create a public body corporate and politic known as the Life Science Investment Authority within the Department of Treasury. The Authority would have to exercise its prescribed powers, duties, and functions independently of the State Treasurer, but the Authority's budgeting, procurement, and related administrative functions would have to be performed under the Treasurer's direction and supervision. The Authority could contract with the Department for the purpose of maintaining the Authority's rights and interests.

The Authority's accounts could be subject to annual financial audits by the State Auditor General. Authority records would have to be maintained according to generally accepted accounting principles.

Life Science Investment Authority Board

The Authority would be governed by the Life Science Investment Authority Board, which would consist of seven members who were Michigan residents. Board members would serve staggered terms, with two initial appointed members serving two years and three serving three years. After that, appointed members would serve four-year terms.

The board would consist of the State Treasurer and the chief executive officer of the MEDC, or their designees, and five members appointed by the Governor by and with the advice and consent of the Senate. Appointed members could not be State employees and would have to have knowledge, skill, and experience as follows:

- At least one member in science.
- At least one member in venture capital investments.
- At least one member in business in the life science field.
- At least one member in the business of bringing life science products to market.

Members of the board (as well as the Authority's officers and employees) would be considered public servants and would have to discharge their duties in a nonpartisan manner, in good faith, in the best interests of the Authority, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

Board members would serve without compensation but would have to be reimbursed for actual and necessary expenses.

Upon the appointment of at least five members, the board could hold its first meeting, which would have to be held within 60 days after the date the Authority was created. The board would have to comply with the Open Meetings Act.

The board could act only by resolution. A majority of the board members then in office, or of any committee of the board, would constitute a quorum for the transaction of business. A vote of the majority of the board members present at a meeting at which a quorum was present would constitute the action of the board, but

a vote of the majority of the members serving at the time of the vote would be necessary to approve the issuance of bonds or to approve or amend the Authority's annual budget.

Confidential Information

A record or portion of a record, material, or other data received, prepared, used, or retained by the Authority in connection with an application for a qualified investment that related to financial or proprietary information submitted by the applicant, and that was considered by the applicant and acknowledged by the Authority as confidential, would not be subject to disclosure under the Freedom of Information Act (FOIA). A designee of the Authority would have to determine whether the Authority would acknowledge as confidential any proprietary information submitted by an applicant. Unless considered proprietary information, the Authority could not acknowledge routine financial information as confidential. If the Authority's designee determined that financial or proprietary information was confidential, the Authority would have to release a written statement, subject to disclosure under FOIA, stating all of the following:

- The name of the person requesting that information be confidential as financial or proprietary.
- That the information was determined by the Authority's designee to be confidential as financial or proprietary information.
- A broad, nonspecific overview of the information.

The Authority could not disclose financial or proprietary information not subject to disclosure without consent of the applicant submitting the information.

("Financial or proprietary information" would mean information that has not been publicly disseminated or is unavailable from other sources, the release of which might cause the applicant competitive harm.)

Authority Annual Budget

Before the beginning of each fiscal year, the board would have to prepare a budget containing an itemized statement of the Authority's estimated current operational

expenses, the amount necessary to pay the principal and interest of any outstanding bonds or other Authority obligations maturing during the ensuing fiscal year or that previously matured and were unpaid, an estimate of the Authority's revenue from all sources for the ensuing fiscal year, and other amounts necessary to further the purposes of the proposed Act. The Authority's budget would have to be funded by proceeds derived from gifts, grants, loans, appropriations, and other aids from any person or the Federal government, the State, or a local government or any Federal, State, or local governmental agency.

Director & Employees

The board could appoint a person, other than a board member, to serve as director of the Authority. The Authority could delegate any of its administrative powers to the director.

Subject to the board's approval, the director would have to supervise, and be responsible for, all of the following:

- The performance of the Authority's functions under the proposed Act.
- A regular report describing the Authority's activities and financial condition.
- The issuance of bonds, notes, or other obligations of the board.
- All other activities or functions that the board considered necessary.

The board could employ legal and technical experts, private consultants and engineers, accountants, scientists and other agents or employees for rendering professional and technical assistance and advice as necessary. The Authority would have to determine the qualifications, duties, and compensation of those it employed.

Investment Management Company

The board would have to contract with an investment management company to make "qualified investments" in "qualified businesses", under the terms of "qualified agreements" as determined by the board. The board would have to require the investment management company to do all of the following:

- Make early seed investments in qualified businesses for "life science products".
- Use peer review of the science involved in the life science product before entering into a qualified investment.
- Report at least quarterly to the board, as determined by the board.
- Meet any other requirements determined by the board.

"Life science products" would mean a product that requires Food and Drug Administration approval or registration before its introduction in the marketplace and is a drug or medical device as defined by the Federal Food, Drug, and Cosmetic Act.

"Qualified business" would mean a business entity that develops, markets, or commercializes life science products. "Qualified investments" would mean a loan or investment in a qualified business under the terms of a qualified agreement. "Qualified agreement" would mean an agreement between a qualified business and the investment management company. A qualified agreement would have to include all of the following:

- A condition that the qualified business match the qualified investment, which could not exceed 10% of the total needed to complete work on the requested round. A qualified investment could be made in follow-on rounds.
- A condition that the investment management company would ensure a return on the State's investment similar to other investors in the qualified business, as determined by the investment management company.
- A condition that qualified businesses would use members of the "Michigan Life Science Pipeline" to develop their life science product, if the services needed were readily available as determined by the investment management company.
- A condition that a qualified investment would not be used to engage in or support human cloning or stem cell research with embryonic tissue.

(Senate Bill 359 would codify the Biosciences Research and Commercialization Center in the Michigan Strategic Fund Act and require the center to establish and operate the Life Science Pipeline, which would be an affiliation of companies involved

in life science research and commercialization.)

Powers of the Authority

Except as otherwise provided in the proposed Act, the Authority could do all things necessary to implement the purposes of the Act, including all of the following:

- Promulgate rules under the Administrative Procedures Act necessary to carry out the purposes of the proposed Act.
- Adopt, amend, and repeal bylaws for the regulation of the Authority's affairs and the conduct of its business.
- Solicit and accept gifts, grants, loans, and other assistance from any person of the Federal, State, or a local government or any agency of the Federal, State, or a local government, or participate in any other way in any Federal, State, or local government program.
- Finance and otherwise aid in the development and commercialization of life science products.
- Make loans and investments; guarantee and insure loans, leases, bonds, notes, or other indebtedness, whether public or private; and issue letters of credit.
- Borrow money and issue bonds and notes to finance part or all of the costs of developing and commercializing life science products and secure those bonds and notes by mortgage, assignment, or pledge of any of its money, revenue, income, and property.
- Invest any money of the Authority, at the board's discretion, in any bond, note, or other obligation determined proper by the board.
- Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, engineers, accountants, scientists, and auditors for rendering professional financial assistance and advice payable out of any of the Authority's money.
- Charge, impose, and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.
- Indemnify and procure insurance indemnifying any members of the board or employees of the board from personal loss or accountability from liability

asserted by a person on the Authority's bonds or notes or from any personal liability or accountability by reason of the issuance of the bonds, notes, insurance, or guarantees; by reason of acquisition, construction, ownership, or operation of a project; or by reason of any other action taken or the failure to act by the Authority.

- Do all other things necessary to promote and finance development and commercialization of life science products in Michigan.

Bonds & Notes

The Authority could authorize and issue its bonds or notes payable solely from revenue or funds available to the Authority. Bonds and notes of the Authority would not be a debt or liability of the State and would not create or constitute any indebtedness, liability, or obligation of the State or constitute a pledge of the full faith or credit of the State. All Authority bonds and notes would be payable solely from revenue or funds pledged or available for their payment as authorized in the proposed Act. The Authority's bonds or notes would not be general obligation of the Authority.

All expenses incurred in carrying out the Authority's ability to authorize and issue bonds or notes would be payable solely from revenue or funds provided or to be provided under the proposed Act. The Act would not authorize the authority to incur any indebtedness or liability on behalf of or payable by the State. The Authority's bonds or notes would have to be authorized by resolution of the Authority.

Bonds and notes issued under the proposed Act would not be subject to the Revised Municipal Finance Act, but the issuance of bonds and notes would be subject to the Agency Financing Reporting Act.

The Authority could authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, or any other transaction to provide security to assure timely payment of a bond or note.

The Authority could not invest or otherwise approve an insurance contract, an agreement for a line of credit, a letter of

credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, or an issuance of bonds or notes or any other transaction that resulted in a combined liability of the Authority in excess of \$50.0 million.

Any of the following could legally invest funds belonging to them, or within their control, in bonds or notes issued under the proposed Act:

- The State and a public officer, local unit of government, agency of the State or a local unit, or an intergovernmental entity created under the laws of the State.
- A bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business.
- An insurance company, insurance association, or other person carrying on an insurance business.
- An executor, administrator, guardian, trustee, or other fiduciary.

Authority bonds or notes would be authorized security for public deposits.

Life Science Investment Fund

The bill would create the Life Science Investment Fund under the jurisdiction and control of the Authority. The Fund could be administered for the general operations of the Authority and to secure any notes and bonds of the Authority. The Authority could spend money from the Fund only for the authorized purposes provided in the proposed Act.

The Authority could receive money or other assets from any source for deposit into the Fund. The Authority would have to credit to the Fund interest and earnings from Fund investments.

Money in the Fund at the close of the fiscal year would have to remain in the Fund and could not lapse to the General Fund.

Tax Exemption

The Authority would be exempt from, and could not be required to pay, taxes on real and personal property belonging to the Authority that was used for a public or governmental purpose. Property of the Authority would be public property devoted

to an essential public or governmental function and purpose. The Authority's income and operation, including bonds or notes issued by the Authority or the interest and income derived from the bonds and notes, would be exempt from all taxes and special assessments of the State or a political subdivision of the State.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill contains an initial appropriation of \$100,000 for implementation costs under the bill. However, actual costs would depend on future appropriations and the amount of bonds issued by the Authority. The MEDC funds life sciences projects through the appropriations for the Technology TriCorridor - Life Sciences line item. The following amounts have been appropriated for the program over recent fiscal years:

FY 2001-02 - \$45 million
FY 2002-03 - \$32.5 million
FY 2003-04 - \$25 million
FY 2004-05 - \$30 million

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.