

HOUSE SUBSTITUTE FOR SENATE SUBSTITUTE FOR HOUSE SUBSTITUTE FOR
SENATE BILL NO. 533

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
(MCL 125.2001 to 125.2093) by adding sections 88k, 88l, 88m, 88n,
and 88o.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 88K. (1) THE STRATEGIC ECONOMIC INVESTMENT AND
2 COMMERCIALIZATION BOARD IS CREATED WITHIN THE FUND. THE
3 COMMERCIALIZATION BOARD SHALL EXERCISE ITS POWERS, DUTIES, AND
4 DECISION-MAKING AUTHORITY UNDER THIS CHAPTER INDEPENDENTLY OF THE
5 FUND, THE FUND BOARD, AND THE DEPARTMENT OF TREASURY.
6 (2) THE COMMERCIALIZATION BOARD SHALL AWARD GRANTS AND LOANS
7 FROM THE 21ST CENTURY JOBS TRUST FUND CREATED IN THE MICHIGAN TRUST
8 FUND ACT, 2000 PA 489, MCL 12.251 TO 12.256, AND THE INVESTMENT

1 FUND ONLY FOR BASIC RESEARCH, APPLIED RESEARCH, UNIVERSITY
2 TECHNOLOGY TRANSFER, AND COMMERCIALIZATION OF PRODUCTS, PROCESSES,
3 AND SERVICES TO ENCOURAGE THE DEVELOPMENT OF COMPETITIVE EDGE
4 TECHNOLOGIES TO CREATE JOBS IN THIS STATE.

5 (3) SUBJECT TO SUBSECTION (2), THE FUND AS DETERMINED BY THE
6 COMMERCIALIZATION BOARD SHALL DO ALL OF THE FOLLOWING:

7 (A) ESTABLISH A COMPETITIVE PROCESS TO AWARD GRANTS AND MAKE
8 LOANS FOR COMPETITIVE EDGE TECHNOLOGIES. THE COMPETITIVE PROCESS
9 SHALL INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING:

10 (i) A PROVISION THAT THE APPLICATIONS MUST BE PEER-REVIEWED BY
11 INDEPENDENT PEER REVIEW EXPERTS BASED ON THE SCIENTIFIC AND
12 TECHNICAL MERIT, PERSONNEL EXPERTISE, COMMERCIAL MERIT, AND THE
13 ABILITY TO LEVERAGE ADDITIONAL FUNDING OF THE APPLICATION.
14 SCIENTIFIC AND TECHNICAL MERIT, PERSONNEL EXPERTISE, COMMERCIAL
15 MERIT, AND THE ABILITY TO LEVERAGE ADDITIONAL FUNDING SHALL BE
16 GIVEN EQUAL WEIGHT IN THE REVIEW AND SCORING PROCESS.

17 (ii) A PREFERENCE FOR PROPOSALS THAT CAN CONTRIBUTE TO THE
18 DEVELOPMENT OF ECONOMIC DIVERSIFICATION OR THE CREATION OF
19 EMPLOYMENT OPPORTUNITIES IN THIS STATE.

20 (iii) A PROVISION THAT OUT-OF-STATE BUSINESS MUST HAVE A
21 SIGNIFICANT EXISTING OR PROPOSED BUSINESS PRESENCE IN THIS STATE.

22 (iv) A PROVISION THAT THE PROGRAM WILL UTILIZE CONTRACTS WITH
23 MEASURABLE MILESTONES, CLEAR OBJECTIVES, PROVISIONS TO REVOKE
24 AWARDS FOR BREACH OF CONTRACT, AND REPAYMENT PROVISIONS FOR LOANS
25 GIVEN TO QUALIFIED BUSINESSES THAT LEAVE MICHIGAN WITHIN 3 YEARS OF
26 THE EXECUTION OF THE CONTRACT OR OTHERWISE BREACH THE TERMS OF THE
27 CONTRACT.

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(v) A PROVISION THAT THE APPLICANT LEVERAGE OTHER RESOURCES AS A CONDITION OF THE GRANT OR LOAN. IF AN APPLICANT IS SEEKING A GRANT OR A LOAN UNDER THIS CHAPTER TO MATCH FEDERAL FUNDS FOR SMALL BUSINESS INNOVATION RESEARCH OR SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAMS, THE GRANT OR LOAN UNDER THIS CHAPTER SHALL NOT EXCEED 25% OF THE FEDERAL FUNDS AND MUST LEVERAGE THIRD PARTY COMMERCIALIZATION FUNDING AT BOTH THE PHASE I AND PHASE II LEVELS.

(vi) LIMIT OVERHEAD RATES FOR RECIPIENTS OF GRANTS AND LOANS TO REFLECT ACTUAL OVERHEAD BUT NOT GREATER THAN 15% OF THE GRANT OR LOAN.

(vii) EXCEPT AS PROVIDED IN SUBPARAGRAPH (v), A PROVISION THAT GRANTS CAN ONLY BE AWARDED TO MICHIGAN INSTITUTIONS OF HIGHER EDUCATION, MICHIGAN NONPROFIT RESEARCH INSTITUTIONS, AND MICHIGAN NONPROFIT CORPORATIONS.

(viii) A PREFERENCE FOR COLLABORATIONS BETWEEN INSTITUTIONS OF HIGHER EDUCATION, MICHIGAN NONPROFIT RESEARCH INSTITUTIONS, MICHIGAN NONPROFIT CORPORATIONS, AND QUALIFIED BUSINESSES.

(ix) A PROVISION AUTHORIZING THE AWARD OF GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO SERVE AS MATCH TO PROMOTE OR SECURE THE AWARD AND RECEIPT OF COMPETITIVELY AWARDED FEDERAL RESEARCH GRANTS RELATED TO COMPETITIVE EDGE TECHNOLOGIES. A MATCHING GRANT SHALL NOT EXCEED 10% OF THE AMOUNT OF THE COMPETITIVELY AWARDED FEDERAL RESEARCH GRANTS RECEIVED.

(x) A PROVISION ENCOURAGING THE REDEVELOPMENT OF EXISTING SCIENTIFIC WET LAB SPACE FOR THE COMMERCIALIZATION OF LIFE SCIENCE TECHNOLOGY.

[(xi) A PREFERENCE FOR PROPOSALS THAT MEET 1 OR MORE OF THE FOLLOWING:

(A) FORECAST REVENUES WITHIN 2 YEARS.

(B) HAVE OUTSIDE INVESTMENTS FROM INVESTORS WITH EXPERIENCE AND MANAGEMENT TEAMS WITH EXPERIENCE IN THE INDUSTRY TARGETED BY THE PROPOSAL.

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(C) HAVE OUTSIDE DIRECTORS WITH EXPERTISE IN THE INDUSTRY TARGETED
BY THE PROPOSAL.]

27

(B) THE FUND SHALL CONTRACT WITH INDEPENDENT PEER REVIEW

1 EXPERTS SELECTED BY THE COMMERCIALIZATION BOARD TO ASSIST THE
2 COMMERCIALIZATION BOARD WITH ITS RESPONSIBILITIES UNDER THIS
3 CHAPTER.

4 (4) THE COMMERCIALIZATION BOARD SHALL ESTABLISH STANDARDS TO
5 ENSURE THAT MONEY EXPENDED UNDER THIS CHAPTER WILL RESULT IN
6 ECONOMIC BENEFIT TO THIS STATE AND ENSURE THAT A MAJOR SHARE OF THE
7 BUSINESS ACTIVITY RESULTING FROM THE EXPENDITURES OCCURS IN THIS
8 STATE.

9 (5) THE COMMERCIALIZATION BOARD SHALL ENSURE THAT A RECIPIENT
10 OF MONEY EXPENDED UNDER THIS CHAPTER AGREES AS A CONDITION OF
11 RECEIVING THE MONEY NOT TO USE THE MONEY FOR ANY OF THE FOLLOWING:

12 (A) THE DEVELOPMENT OF A STADIUM OR ARENA FOR USE BY A
13 PROFESSIONAL SPORTS TEAM.

14 (B) THE DEVELOPMENT OF A CASINO REGULATED BY THIS STATE UNDER
15 THE MICHIGAN GAMING CONTROL AND REVENUE ACT, THE INITIATED LAW OF
16 1996, MCL 432.201 TO 432.226, A CASINO AT WHICH GAMING IS CONDUCTED
17 UNDER THE INDIAN GAMING REGULATORY ACT, PUBLIC LAW 100-497, 102
18 STAT. 2467, OR PROPERTY ASSOCIATED OR AFFILIATED WITH THE OPERATION
19 OF EITHER TYPE OF CASINO DESCRIBED IN THIS SUBDIVISION, INCLUDING,
20 BUT NOT LIMITED TO, A PARKING LOT, HOTEL, MOTEL, OR RETAIL STORE.

21 (6) THE COMMERCIALIZATION BOARD SHALL ESTABLISH REQUIREMENTS
22 TO ENSURE THAT MONEY EXPENDED UNDER THIS SECTION SHALL NOT BE USED
23 FOR ANY OF THE FOLLOWING:

24 (A) GRANTS OR LOANS TO A PERSON WHO HAS BEEN CONVICTED OF A
25 CRIMINAL OFFENSE INCIDENT TO THE APPLICATION FOR OR PERFORMANCE OF
26 A STATE CONTRACT OR SUBCONTRACT. AS USED IN THIS SUBDIVISION, IF A
27 PERSON IS A BUSINESS ENTITY, THEN PERSON INCLUDES AFFILIATES,

1 SUBSIDIARIES, OFFICERS, DIRECTORS, MANAGERIAL EMPLOYEES, AND ANY
2 PERSON WHO, DIRECTLY OR INDIRECTLY, HOLDS A PECUNIARY INTEREST IN
3 THAT BUSINESS ENTITY OF 20% OR MORE.

4 (B) GRANTS OR LOANS TO A PERSON WHO HAS BEEN CONVICTED OF A
5 CRIMINAL OFFENSE, OR HELD LIABLE IN A CIVIL PROCEEDING, THAT
6 NEGATIVELY REFLECTS ON THE PERSON'S BUSINESS INTEGRITY, BASED ON A
7 FINDING OF EMBEZZLEMENT, THEFT, FORGERY, BRIBERY, FALSIFICATION OR
8 DESTRUCTION OF RECORDS, RECEIVING STOLEN PROPERTY, OR VIOLATION OF
9 STATE OR FEDERAL ANTITRUST STATUTES. AS USED IN THIS SUBDIVISION,
10 IF A PERSON IS A BUSINESS ENTITY, THEN PERSON INCLUDES AFFILIATES,
11 SUBSIDIARIES, OFFICERS, DIRECTORS, MANAGERIAL EMPLOYEES, AND ANY
12 PERSON WHO, DIRECTLY OR INDIRECTLY, HOLDS A PECUNIARY INTEREST IN
13 THAT BUSINESS ENTITY OF 20% OR MORE.

14 (C) GRANTS OR LOANS TO INDUCE A QUALIFIED BUSINESS OR A SMALL
15 BUSINESS TO LEAVE THIS STATE.

16 (D) GRANTS OR LOANS THAT WOULD CONTRIBUTE TO THE VIOLATION OF
17 INTERNATIONALLY RECOGNIZED WORKERS RIGHTS, AS DEFINED IN SECTION
18 507(4) OF THE TRADE ACT OF 1974, 19 USC 2467(4), OF WORKERS IN A
19 COUNTRY OTHER THAN THE UNITED STATES, INCLUDING ANY DESIGNATED ZONE
20 OR AREA IN THAT COUNTRY.

21 (E) GRANTS OR LOANS TO A CORPORATION OR AN AFFILIATE OF THE
22 CORPORATION INCORPORATED IN A TAX HAVEN COUNTRY AFTER SEPTEMBER 11,
23 2001, BUT WITH THE UNITED STATES AS THE PRINCIPAL MARKET FOR THE
24 PUBLIC TRADING OF THE CORPORATION'S STOCK. AS USED IN THIS SECTION,
25 "TAX HAVEN COUNTRY" INCLUDES A COUNTRY WITH TAX LAWS THAT
26 FACILITATE AVOIDANCE BY A CORPORATION OR AN AFFILIATE OF THE
27 CORPORATION OF UNITED STATES TAX OBLIGATIONS, INCLUDING BARBADOS,

1 BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, COMMONWEALTH OF
2 THE BAHAMAS, CYPRUS, GIBRALTAR, ISLE OF MAN, THE PRINCIPALITY OF
3 LIECHTENSTEIN, THE PRINCIPALITY OF MONACO, AND THE REPUBLIC OF THE
4 SEYCHELLES.

5 (7) WHEN THE COMMERCIALIZATION BOARD APPROVES A GRANT OR A
6 LOAN UNDER THIS CHAPTER, THE COMMERCIALIZATION BOARD SHALL STATE
7 THE SPECIFIC OBJECTIVE REASONS THE APPLICANT WAS SELECTED OVER
8 OTHER APPLICANTS FOR A GRANT OR LOAN UNDER THIS CHAPTER.

9 (8) AFTER MARCH 31, 2006, BEFORE ADOPTING A RESOLUTION THAT
10 ESTABLISHES OR SUBSTANTIALLY CHANGES A PROGRAM OPERATED BY THE
11 COMMERCIALIZATION BOARD, INCLUDING ANY FEES, CHARGES, OR PENALTIES
12 ATTACHED TO THAT PROGRAM, THE COMMERCIALIZATION BOARD SHALL GIVE
13 NOTICE OF THE PROPOSED RESOLUTION TO THE GOVERNOR, TO THE SECRETARY
14 OF THE SENATE, TO THE CLERK OF THE HOUSE OF REPRESENTATIVES, TO
15 MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES STANDING
16 COMMITTEES ON APPROPRIATIONS, AND TO EACH PERSON WHO REQUESTED FROM
17 THE FUND IN WRITING OR ELECTRONICALLY TO BE NOTIFIED REGARDING
18 PROPOSED RESOLUTIONS. THE NOTICE AND PROPOSED RESOLUTION AND ALL
19 ATTACHMENTS SHALL BE PUBLISHED ON THE FUND'S INTERNET WEBSITE. THE
20 COMMERCIALIZATION BOARD SHALL HOLD A PUBLIC HEARING NOT SOONER THAN
21 14 DAYS AND NOT LONGER THAN 30 DAYS FROM THE DATE NOTICE OF A
22 PROPOSED RESOLUTION IS GIVEN AND OFFER A PERSON AN OPPORTUNITY TO
23 PRESENT DATA, VIEWS, QUESTIONS, AND ARGUMENTS. COMMERCIALIZATION
24 BOARD MEMBERS OR 1 OR MORE PERSONS DESIGNATED BY THE
25 COMMERCIALIZATION BOARD WHO HAVE KNOWLEDGE OF THE SUBJECT MATTER OF
26 THE PROPOSED RESOLUTION SHALL BE PRESENT AT THE PUBLIC HEARING AND
27 SHALL PARTICIPATE IN THE DISCUSSION OF THE PROPOSED RESOLUTION. THE

1 COMMERCIALIZATION BOARD MAY ACT ON THE PROPOSED RESOLUTION NO
2 SOONER THAN 14 DAYS AFTER THE PUBLIC HEARING. THE COMMERCIALIZATION
3 BOARD SHALL PRODUCE A FINAL DECISION DOCUMENT THAT DESCRIBES THE
4 BASIS FOR ITS DECISION. THE FINAL RESOLUTION AND ALL ATTACHMENTS
5 AND THE DECISION DOCUMENT SHALL BE PROVIDED TO THE GOVERNOR, TO THE
6 SECRETARY OF THE SENATE, TO THE CLERK OF THE HOUSE OF
7 REPRESENTATIVES, AND TO MEMBERS OF THE SENATE AND HOUSE OF
8 REPRESENTATIVES STANDING COMMITTEES ON APPROPRIATIONS AND SHALL BE
9 PUBLISHED ON THE FUND'S INTERNET WEBSITE.

10 (9) THE NOTICE DESCRIBED IN SUBSECTION (8) SHALL INCLUDE ALL
11 OF THE FOLLOWING:

12 (A) A COPY OF THE PROPOSED RESOLUTION AND ALL ATTACHMENTS.

13 (B) A STATEMENT THAT THE ADDRESSEE MAY EXPRESS ANY DATA,
14 VIEWS, OR ARGUMENTS REGARDING THE PROPOSED RESOLUTION.

15 (C) THE ADDRESS TO WHICH WRITTEN COMMENTS MAY BE SENT AND THE
16 DATE BY WHICH COMMENTS MUST BE MAILED OR ELECTRONICALLY
17 TRANSMITTED, WHICH DATE SHALL NOT BE BEFORE THE DATE OF THE PUBLIC
18 HEARING.

19 (D) THE DATE, TIME, AND PLACE OF THE PUBLIC HEARING.

20 SEC. 88/. (1) THE COMMERCIALIZATION BOARD SHALL CONSIST OF 19
21 MEMBERS, AS PROVIDED UNDER SUBSECTIONS (2) AND (3).

22 (2) THE COMMERCIALIZATION BOARD SHALL INCLUDE EACH OF THE 2
23 FOLLOWING VOTING EX OFFICIO MEMBERS:

24 (A) THE DIRECTOR OF THE DEPARTMENT OF LABOR AND ECONOMIC
25 GROWTH OR HIS OR HER DESIGNEE FROM WITHIN THE DEPARTMENT OF LABOR
26 AND ECONOMIC GROWTH.

27 (B) THE STATE TREASURER OR HIS OR HER DESIGNEE FROM WITHIN THE

1 DEPARTMENT OF TREASURY.

2 (3) THE COMMERCIALIZATION BOARD SHALL INCLUDE THE FOLLOWING 17
3 MEMBERS APPOINTED BY THE GOVERNOR WITH, EXCEPT FOR THE INDIVIDUALS
4 DESCRIBED IN SUBDIVISIONS (C) AND (D), THE ADVICE AND CONSENT OF
5 THE SENATE:

6 (A) SEVEN MEMBERS REPRESENTING BUSINESS WITH EXPERTISE,
7 KNOWLEDGE, SKILL, OR EXPERIENCE IN VENTURE CAPITAL INVESTMENTS,
8 BUSINESS FINANCE, BRINGING COMPETITIVE EDGE TECHNOLOGY PRODUCTS TO
9 MARKET, OR REPRESENTING A QUALIFIED BUSINESS.

10 (B) A MEMBER REPRESENTING THE VAN ANDEL INSTITUTE, A MICHIGAN
11 CHARITABLE TRUST, MICS 13607, OR A SUCCESSOR ORGANIZATION.

12 (C) ONE MEMBER APPOINTED FROM A LIST OF 2 OR MORE INDIVIDUALS
13 SELECTED BY THE MAJORITY LEADER OF THE SENATE REPRESENTING
14 QUALIFIED BUSINESSES OR PERSONS WITH BUSINESS, TECHNOLOGICAL, OR
15 FINANCIAL EXPERIENCE RELATED TO COMPETITIVE EDGE TECHNOLOGY.

16 (D) ONE MEMBER APPOINTED FROM A LIST OF 2 OR MORE INDIVIDUALS
17 SELECTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
18 REPRESENTING QUALIFIED BUSINESSES OR PERSONS WITH BUSINESS,
19 TECHNOLOGICAL, OR FINANCIAL EXPERIENCE RELATED TO COMPETITIVE EDGE
20 TECHNOLOGY.

21 (E) A MEMBER REPRESENTING MICHIGAN STATE UNIVERSITY.

22 (F) A MEMBER REPRESENTING THE UNIVERSITY OF MICHIGAN.

23 (G) A MEMBER REPRESENTING WAYNE STATE UNIVERSITY.

24 (H) A MEMBER REPRESENTING WESTERN MICHIGAN UNIVERSITY.

25 (I) A MEMBER REPRESENTING MICHIGAN TECHNOLOGICAL UNIVERSITY.

26 (J) A MEMBER REPRESENTING A PUBLIC UNIVERSITY IN MICHIGAN
27 OTHER THAN MICHIGAN STATE UNIVERSITY, THE UNIVERSITY OF MICHIGAN,

1 WAYNE STATE UNIVERSITY, WESTERN MICHIGAN UNIVERSITY, OR MICHIGAN
2 TECHNOLOGICAL UNIVERSITY.

3 (K) A MEMBER REPRESENTING AUTOMATION ALLEY, A MICHIGAN
4 NONPROFIT CORPORATION INCORPORATED ON MAY 21, 1998, OR A SUCCESSOR
5 ORGANIZATION.

6 (4) OF THE MEMBERS OF THE COMMERCIALIZATION BOARD INITIALLY
7 APPOINTED UNDER SUBSECTION (3), 5 MEMBERS SHALL BE APPOINTED FOR
8 TERMS EXPIRING ON DECEMBER 31, 2006, 5 MEMBERS SHALL BE APPOINTED
9 FOR TERMS EXPIRING ON DECEMBER 31, 2007, 5 MEMBERS SHALL BE
10 APPOINTED FOR TERMS EXPIRING ON DECEMBER 31, 2008, AND 2 MEMBERS
11 SHALL BE APPOINTED FOR TERMS EXPIRING ON DECEMBER 31, 2009. AFTER
12 THE EXPIRATION OF THE INITIAL APPOINTMENT TERMS PROVIDED FOR BY
13 THIS SUBSECTION, MEMBERS OF THE COMMERCIALIZATION BOARD SHALL BE
14 APPOINTED FOR TERMS OF 4 YEARS.

15 (5) FOR MEMBERS OF THE COMMERCIALIZATION BOARD APPOINTED UNDER
16 SUBSECTION (3), A VACANCY ON THE COMMERCIALIZATION BOARD OCCURRING
17 OTHER THAN BY EXPIRATION OF A TERM SHALL BE FILLED IN THE SAME
18 MANNER AS THE ORIGINAL APPOINTMENT FOR THE BALANCE OF THE UNEXPIRED
19 TERM. A MEMBER OF THE COMMERCIALIZATION BOARD SHALL HOLD OFFICE
20 UNTIL A SUCCESSOR HAS BEEN APPOINTED AND QUALIFIED. A MEMBER OF THE
21 COMMERCIALIZATION BOARD IS ELIGIBLE FOR REAPPOINTMENT. STATE
22 EMPLOYEES ARE NOT ELIGIBLE TO SERVE AS MEMBERS APPOINTED UNDER
23 SUBSECTION (3). AS USED IN THIS SUBSECTION, "STATE EMPLOYEES" DOES
24 NOT INCLUDE AN OFFICER OR EMPLOYEE OF A STATE INSTITUTION OF HIGHER
25 EDUCATION.

26 (6) THE GOVERNOR SHALL DESIGNATE 1 OF THE MEMBERS OF THE
27 COMMERCIALIZATION BOARD TO SERVE AS ITS CHAIRPERSON AT THE PLEASURE

1 OF THE GOVERNOR. THE COMMERCIALIZATION BOARD SHALL SELECT FROM
2 AMONG ITS MEMBERS A MEMBER TO SERVE AS VICE-CHAIRPERSON AND A
3 MEMBER TO SERVE AS SECRETARY.

4 (7) UPON APPOINTMENT TO THE COMMERCIALIZATION BOARD UNDER THIS
5 SECTION AND UPON THE TAKING AND FILING OF THE CONSTITUTIONAL OATH
6 OF OFFICE PRESCRIBED IN SECTION 1 OF ARTICLE XI OF THE STATE
7 CONSTITUTION OF 1963, A MEMBER SHALL ENTER THE OFFICE AND EXERCISE
8 THE DUTIES OF THE OFFICE.

9 (8) MEMBERS OF THE COMMERCIALIZATION BOARD SHALL SERVE WITHOUT
10 COMPENSATION, BUT MAY BE REIMBURSED FOR ACTUAL AND NECESSARY
11 EXPENSES.

12 (9) UPON THE INITIAL APPOINTMENT OF MEMBERS UNDER THIS
13 SECTION, THE COMMERCIALIZATION BOARD SHALL ORGANIZE AND ADOPT ITS
14 OWN POLICIES, PROCEDURES, SCHEDULE OF REGULAR MEETINGS, AND A
15 REGULAR MEETING DATE, PLACE, AND TIME.

16 (10) THE COMMERCIALIZATION BOARD MAY ACT ONLY BY RESOLUTION
17 APPROVED BY A MAJORITY OF COMMERCIALIZATION BOARD MEMBERS APPOINTED
18 AND SERVING. A MAJORITY OF THE MEMBERS OF THE COMMERCIALIZATION
19 BOARD APPOINTED AND SERVING SHALL CONSTITUTE A QUORUM FOR THE
20 TRANSACTION OF BUSINESS. THE COMMERCIALIZATION BOARD SHALL MEET IN
21 PERSON OR BY MEANS OF ELECTRONIC COMMUNICATION DEVICES THAT ENABLE
22 ALL PARTICIPANTS IN THE MEETING TO COMMUNICATE WITH EACH OTHER.

23 (11) THE COMMERCIALIZATION BOARD SHALL CONDUCT ALL BUSINESS AT
24 PUBLIC MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976
25 PA 267, MCL 15.261 TO 15.275. PUBLIC NOTICE OF THE TIME, DATE, AND
26 PLACE OF EACH MEETING SHALL BE GIVEN IN THE MANNER REQUIRED BY THE
27 OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275, AND SHALL BE

1 PUBLISHED ON THE FUND'S INTERNET WEBSITE.

2 SEC. 88M. (1) NOTWITHSTANDING SECTION 3(1) OF 1968 PA 317, MCL
3 15.323, MEMBERS OF THE COMMERCIALIZATION BOARD ARE CONSIDERED
4 PUBLIC SERVANTS SUBJECT TO 1968 PA 317, MCL 15.321 TO 15.330, AND
5 PUBLIC OFFICERS SUBJECT TO 1973 PA 196, MCL 15.341 TO 15.348. AN
6 OFFICER OR AN EMPLOYEE OF A STATE INSTITUTION OF HIGHER EDUCATION
7 MAY AT THE SAME TIME ALSO HOLD THE PUBLIC OFFICE OF MEMBER OF THE
8 COMMERCIALIZATION BOARD AS AUTHORIZED UNDER SECTION 88/(3) (D) AND
9 THE OFFICER OR EMPLOYEE SHALL NOT BE DEEMED TO HOLD 2 OR MORE
10 INCOMPATIBLE OFFICES AT THE SAME TIME. A MEMBER OF THE
11 COMMERCIALIZATION BOARD SHALL DISCHARGE THE DUTIES OF THE POSITION
12 IN A NONPARTISAN MANNER, IN GOOD FAITH, IN THE BEST INTERESTS OF
13 THIS STATE, AND WITH THE DEGREE OF DILIGENCE, CARE, AND SKILL THAT
14 A FIDUCIARY WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES IN A LIKE
15 POSITION. IN DISCHARGING DUTIES OF THE OFFICE, A MEMBER OF THE
16 COMMERCIALIZATION BOARD WHEN ACTING IN GOOD FAITH MAY RELY UPON THE
17 REPORT OF AN INDEPENDENT EXPERT OR INDEPENDENT PEER REVIEW EXPERT
18 OR UPON FINANCIAL STATEMENTS OF THE COMMERCIALIZATION BOARD
19 REPRESENTED TO THE MEMBER OF THE COMMERCIALIZATION BOARD BY THE
20 OFFICER OF THE COMMERCIALIZATION BOARD HAVING CHARGE OF ITS BOOKS
21 OR ACCOUNTS OR STATED IN A WRITTEN REPORT BY THE AUDITOR GENERAL.

22 (2) A MEMBER OF THE COMMERCIALIZATION BOARD SHALL NOT MAKE OR
23 PARTICIPATE IN MAKING, OR IN ANY WAY ATTEMPT TO USE HIS OR HER
24 POSITION AS A MEMBER OF THE COMMERCIALIZATION BOARD TO INFLUENCE, A
25 MATTER BEFORE THE FUND BOARD OR THE COMMERCIALIZATION BOARD
26 REGARDING A LOAN, GRANT, OR OTHER EXPENDITURE UNDER THIS CHAPTER TO
27 HIS OR HER EMPLOYER.

1 (3) AN INDEPENDENT PEER REVIEW EXPERT SHALL NOT HAVE ANY
2 FINANCIAL INTEREST IN A RECIPIENT OF INVESTMENT FUND PROCEEDS UNDER
3 THIS CHAPTER.

4 (4) A MEMBER, EMPLOYEE, OR AGENT OF THE COMMERCIALIZATION
5 BOARD SHALL NOT ENGAGE IN ANY CONDUCT THAT CONSTITUTES A CONFLICT
6 OF INTEREST AND SHALL IMMEDIATELY ADVISE THE COMMERCIALIZATION
7 BOARD IN WRITING OF THE DETAILS OF ANY INCIDENT OR CIRCUMSTANCES
8 THAT MAY PRESENT THE EXISTENCE OF A CONFLICT OF INTEREST WITH
9 RESPECT TO THE PERFORMANCE OF THE COMMERCIALIZATION BOARD-RELATED
10 WORK OR DUTY OF THE MEMBER, EMPLOYEE, OR AGENT OF THE
11 COMMERCIALIZATION BOARD.

12 (5) A MEMBER OF THE COMMERCIALIZATION BOARD WHO HAS A CONFLICT
13 OF INTEREST RELATED TO ANY MATTER BEFORE THE COMMERCIALIZATION
14 BOARD SHALL DISCLOSE THE CONFLICT OF INTEREST BEFORE THE
15 COMMERCIALIZATION BOARD TAKES ANY ACTION WITH RESPECT TO THE
16 MATTER, WHICH DISCLOSURE SHALL BECOME A PART OF THE RECORD OF THE
17 COMMERCIALIZATION BOARD'S OFFICIAL PROCEEDINGS. THE MEMBER WITH THE
18 CONFLICT OF INTEREST SHALL REFRAIN FROM DOING ALL OF THE FOLLOWING
19 WITH RESPECT TO THE MATTER THAT IS THE BASIS OF THE CONFLICT OF
20 INTEREST:

21 (A) VOTING IN THE COMMERCIALIZATION BOARD'S PROCEEDINGS
22 RELATED TO THE MATTER.

23 (B) PARTICIPATING IN THE COMMERCIALIZATION BOARD'S DISCUSSION
24 OF AND DELIBERATION ON THE MATTER.

25 (C) BEING PRESENT AT THE MEETING WHEN THE DISCUSSION,
26 DELIBERATION, AND VOTING ON THE MATTER TAKE PLACE.

27 (D) DISCUSSING THE MATTER WITH ANY OTHER COMMERCIALIZATION

1 BOARD MEMBER.

2 (6) FAILURE OF A MEMBER TO COMPLY WITH SUBSECTION (5)
3 CONSTITUTES MISCONDUCT IN OFFICE SUBJECT TO REMOVAL UNDER SECTION
4 94.

5 (7) WHEN AUTHORIZING EXPENDITURES AND INVESTMENTS UNDER THIS
6 ACT, THE COMMERCIALIZATION BOARD SHALL NOT CONSIDER WHETHER A
7 RECIPIENT HAS MADE A CONTRIBUTION OR EXPENDITURE UNDER THE MICHIGAN
8 CAMPAIGN FINANCE ACT, 1976 PA 388, MCL 169.201 TO 169.282.

9 SEC. 88N. (1) IN ADDITION TO ANY AUDIT REQUIREMENTS UNDER
10 SECTION 9, NOT LATER THAN MAY 1, 2007 AND EACH SUBSEQUENT MAY 1,
11 THE AUDITOR GENERAL SHALL CONDUCT AND REPORT A FINANCIAL POSTAUDIT
12 OF THE COMMERCIALIZATION BOARD, THE FUND, AND THE INVESTMENT FUND
13 FOR THE IMMEDIATELY PRECEDING FISCAL YEAR. NOT LESS THAN ONCE EVERY
14 3 YEARS BEGINNING NOT LATER THAN OCTOBER 1, 2007, THE AUDITOR
15 GENERAL SHALL CONDUCT AND REPORT A PERFORMANCE POST AUDIT OF THE
16 COMMERCIALIZATION BOARD, THE FUND, AND THE INVESTMENT FUND. THE
17 RESULTS OF THE PERFORMANCE POST AUDIT AND THE POST AUDIT OF
18 FINANCIAL TRANSACTIONS AND ACCOUNTS SHALL BE PUBLISHED ON THE
19 INTERNET AND DISSEMINATED BY OTHER MEANS IN A MANNER DETERMINED BY
20 THE FUND TO ADVISE THE CITIZENS OF THIS STATE OF THE RESULT OF THE
21 AUDITS. COPIES OF THE AUDITS SHALL BE PROVIDED TO THE GOVERNOR, THE
22 CLERK OF THE HOUSE OF REPRESENTATIVES, THE SECRETARY OF THE SENATE,
23 AND THE CHAIRPERSONS OF THE SENATE AND HOUSE OF REPRESENTATIVES
24 STANDING COMMITTEES ON APPROPRIATIONS.

25 (2) THE AUDITOR GENERAL MAY EMPLOY AN INDEPENDENT PUBLIC
26 ACCOUNTING FIRM TO CONDUCT THE AUDITS DESCRIBED IN THIS SECTION.
27 THE COSTS OF THE AUDITOR GENERAL OR OF THE INDEPENDENT PUBLIC

1 ACCOUNTING FIRM IN CONDUCTING THE AUDITS DESCRIBED IN THIS CHAPTER
2 SHALL BE FUNDED BY MONEY IN THE 21ST CENTURY JOBS TRUST FUND
3 CREATED IN THE MICHIGAN TRUST FUND ACT, 2000 PA 489, MCL 12.251 TO
4 12.256, AS PROVIDED IN AN APPROPRIATION. PRIOR TO EMPLOYING THE
5 SERVICES OF AN INDEPENDENT PUBLIC ACCOUNTING FIRM UNDER THIS
6 SECTION, THE AUDITOR GENERAL SHALL REQUIRE THE ENTITY TO DISCLOSE
7 ANY CONFLICT OF INTEREST, CRIMINAL CONVICTIONS, INVESTIGATIONS BY
8 THE INTERNAL REVENUE SERVICE OR OTHER FEDERAL OR STATE TAXING BODY
9 OR COURT, AND ANY PERTINENT LITIGATION REGARDING THE CONDUCT OF THE
10 ENTITY.

11 (3) ALL CONTRACTS APPROVED BY THE FUND FOR 21ST CENTURY
12 INVESTMENTS AND ALL CONTRACTS APPROVED BY THE COMMERCIALIZATION
13 BOARD FOR GRANTS OR LOANS UNDER THIS CHAPTER SHALL CONTAIN A
14 PROVISION THAT THE AUDITOR GENERAL HAS ACCESS TO THE BOOKS AND
15 RECORDS, INCLUDING FINANCIAL RECORDS AND ALL OTHER INFORMATION AND
16 DATA RELEVANT TO THE TERMS OF THE CONTRACT RELATED TO THE USE OF
17 THE GRANT, LOAN, OR 21ST CENTURY INVESTMENT.

18 (4) IF THE FUND BOARD OR THE COMMERCIALIZATION BOARD HAS A
19 REASONABLE BELIEF THAT A BREACH OF CONTRACT HAS OCCURRED, THE FUND
20 HAS THE RIGHT TO HAVE THE RECIPIENT'S ANNUAL FINANCIAL STATEMENTS
21 SEPARATELY AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AT
22 ITS SOLE COST AND EXPENSE. IF THE AUDIT REVEALS THAT A BREACH OF
23 CONTRACT HAS OCCURRED, THE RECIPIENT SHALL REIMBURSE THE FUND FOR
24 THE FEES AND EXPENSES INCURRED TO PERFORM THE AUDIT.

25 (5) IN ADDITION TO ANY REPORTING REQUIREMENTS UNDER SECTION 9,
26 NOT LATER THAN MARCH 31, 2007 AND EACH SUBSEQUENT MARCH 31, THE
27 COMMERCIALIZATION BOARD AND THE FUND SHALL REPORT TO THE GOVERNOR,

1 THE CLERK OF THE HOUSE OF REPRESENTATIVES, THE SECRETARY OF THE
2 SENATE, AND THE CHAIRPERSONS OF THE SENATE AND HOUSE OF
3 REPRESENTATIVES STANDING COMMITTEES ON APPROPRIATIONS. THE REPORT
4 SHALL CONTAIN ALL OF THE FOLLOWING FOR THE IMMEDIATELY PRECEDING
5 FISCAL YEAR THAT ARE RELATED TO A GRANT OR LOAN MADE BY THE FUND AS
6 DETERMINED BY THE COMMERCIALIZATION BOARD:

7 (A) A LIST OF ENTITIES THAT RECEIVED FUNDING, THE AMOUNT
8 RECEIVED, AND THE TYPE OF FUNDING.

9 (B) THE NUMBER OF NEW PATENTS, COPYRIGHTS, OR TRADEMARKS
10 APPLIED FOR AND ISSUED.

11 (C) THE NUMBER OF NEW START-UP BUSINESSES.

12 (D) THE NUMBER OF NEW JOBS AND PROJECTED NEW JOB GROWTH.

13 (E) AMOUNTS OF OTHER FUNDS LEVERAGED.

14 (F) MONEY OR OTHER REVENUE OR PROPERTY RETURNED TO THE
15 INVESTMENT FUND.

16 (G) THE TOTAL NUMBER OF NEW LICENSING AGREEMENTS BY
17 INSTITUTION AND THE NUMBER OF NEW LICENSING AGREEMENTS ENTERED INTO
18 WITH MICHIGAN BASED FIRMS.

19 (H) PRODUCTS COMMERCIALIZED.

20 (6) NOT LATER THAN MARCH 31, 2007 AND EACH SUBSEQUENT MARCH
21 31, THE FUND SHALL REPORT TO THE GOVERNOR, THE CLERK OF THE HOUSE
22 OF REPRESENTATIVES, THE SECRETARY OF THE SENATE, AND THE
23 CHAIRPERSONS OF THE SENATE AND HOUSE OF REPRESENTATIVES STANDING
24 COMMITTEES ON APPROPRIATIONS. THE REPORT SHALL CONTAIN ALL OF THE
25 FOLLOWING FOR THE IMMEDIATELY PRECEDING FISCAL YEAR THAT ARE
26 RELATED TO A 21ST CENTURY INVESTMENT MADE BY THE FUND BOARD:

27 (A) A LIST OF ENTITIES THAT RECEIVED FUNDING, THE AMOUNT

1 RECEIVED, AND THE TYPE OF FUNDING.

2 (B) THE AMOUNT OF QUALIFIED VENTURE CAPITAL FUND INVESTMENTS,
3 QUALIFIED MEZZANINE FUND INVESTMENTS, AND QUALIFIED PRIVATE EQUITY
4 FUND INVESTMENTS UNDER MANAGEMENT IN THIS STATE, INCLUDING YEAR-TO-
5 YEAR GROWTH.

6 (C) THE VALUE OF LOAN ENHANCEMENT PROGRAM INVESTMENTS,
7 QUALIFIED PRIVATE EQUITY FUND INVESTMENTS, QUALIFIED MEZZANINE FUND
8 INVESTMENTS, AND QUALIFIED VENTURE CAPITAL INVESTMENTS IN QUALIFIED
9 BUSINESSES, INCLUDING YEAR-TO-YEAR GROWTH.

10 (D) A STATEMENT OF THE AMOUNT OF MONEY RECEIVED BY OR RETURNED
11 TO THE INVESTMENT FUND UNDER THIS CHAPTER.

12 (E) A STATEMENT OF THE LOAN ENHANCEMENT ACTIVITY OF THE FUND
13 BOARD UNDER THIS CHAPTER.

14 (F) A STATEMENT OF THE AMOUNT OF MONEY IN EACH LOAN RESERVE
15 FUND ESTABLISHED UNDER THE SMALL BUSINESS CAPITAL ACCESS PROGRAM
16 REQUIRED UNDER THIS CHAPTER.

17 (G) ANY RECOMMENDATIONS FOR NEEDED CHANGES AND ANY OTHER
18 INFORMATION THE BOARD BELIEVES WOULD BE OF INTEREST TO THE
19 GOVERNOR, THE LEGISLATURE, AND THE PUBLIC.

20 (7) AS A CONDITION OF RECEIVING FUNDING UNDER THIS CHAPTER,
21 THE FUND SHALL REQUIRE A RECIPIENT TO AGREE TO PROVIDE TO THE FUND
22 THE INFORMATION NECESSARY FOR THE FUND TO PRODUCE THE REPORTS
23 REQUIRED UNDER THIS SECTION.

24 SEC. 880. THE FUND SHALL CREATE AND OPERATE A PROGRAM TO
25 ASSIST INSTITUTIONS OF HIGHER EDUCATION WITH UNIVERSITY TECHNOLOGY
26 TRANSFER, INCLUDING, BUT NOT LIMITED TO, THE TRANSFER OF
27 COMPETITIVE EDGE TECHNOLOGY RESEARCH TO THE PRIVATE SECTOR FOR

1 **COMMERCIALIZATION.**

2 Enacting section 1. This amendatory act does not take effect
3 unless all of the following bills of the 93rd Legislature are
4 enacted into law:

- 5 (a) Senate Bill No. 298.
- 6 (b) Senate Bill No. 359.
- 7 (c) Senate Bill No. 521.
- 8 (d) Senate Bill No. 633.
- 9 (e) House Bill No. 4342.
- 10 (f) House Bill No. 4972.
- 11 (g) House Bill No. 4973.
- 12 (h) House Bill No. 5047.
- 13 (i) House Bill No. 5048.
- 14 (j) House Bill No. 5108.
- 15 (k) House Bill No. 5109.