

Draft 6/15/2009

**MICHIGAN ECONOMIC DEVELOPMENT CODE (MEDC)**

**[Editor's note: the draft of ARTICLE V is included in this document. To assist in orienting the reader, remaining articles of the draft Michigan economic development code, including source statutes, are outlined in a separate document.]**

**ARTICLE I – GENERAL PROVISIONS****DIVISION I – TITLE**

**Sec. 11101. Title.** AN ACT relating to the economic development of this state; to codify, revise, consolidate, and classify laws relating to the economic development activities of the state and political subdivisions of the state; and to repeal acts and parts of acts.

**DIVISION II - LEGISLATIVE FINDINGS**

**Sec. 11201. Legislative finding and declaration.** [Source, MSF Act 125.2001.]

The legislature hereby finds and declares the following problems and objectives:

- (a) Action is needed to encourage increased employment and business expansion in the State of Michigan.
- (b) The economy of the state of Michigan is undergoing a long-term transition requiring new and innovative policies from state government and greater coordination of existing policies and programs related to jobs and economic development.
- (c) It is necessary to provide a mechanism to foster greater coordination of state policies and to make available public and private development finance opportunities to agriculture, forestry, business, and industry, and to communities within the state, in order to expand the number of jobs in the state and to help agriculture, forestry, business, and industry prosper in the state.
- (d) There exists a need to leverage private sector investment in new and innovative products, in entrepreneurial activity, and in economic development finance; therefore, state assistance for development finance should reflect a leveraging investment strategy.
- (e) There is a statewide need for programs to alleviate and prevent conditions of unemployment; to preserve existing jobs and create new jobs to meet the employment demands of population growth and population shifts; to promote the development of existing business enterprises and to meet the growing competition among states and nations for business enterprises; to revitalize and diversify the Michigan economy in general to achieve the goals of long-term economic growth and full employment, and to

provide a solid tax base for the state and its local units of government to provide funds for needed public services.

(f) The goals of long-term economic growth and full employment can best be provided by the promotion, attraction, stimulation, retention, rehabilitation, and revitalization of business enterprises and worker-owned enterprises and by actions to lower the costs of business and production.

(g) The retention, promotion, diversification, and development of business enterprises and the lowering of costs of business and production require means of financing, including economic development finance mechanisms that support private capital resources, to help existing business enterprises expand more rapidly, and to promote the location of additional business enterprises in Michigan.

(h) It is necessary to provide means and methods for the encouragement and assistance of industrial and commercial development projects, including but not limited to providing aid to development enterprises utilizing new or experimental technologies in locating, purchasing, constructing, reconstructing, modernizing, improving, maintaining, repairing, furnishing, equipping, and expanding in this state and its local units of government.

(i) The retention and expansion of existing business enterprise and the acquiring of new business enterprises to Michigan requires the availability of energy supplies and that, to this end, known sources of energy in Michigan should be developed to the fullest extent possible consistent with environmental protection and ecological preservation.

(j) To conserve the public benefits of nonrenewable oil, gas, and mineral resources which are now subject to increasing development and depletion it is necessary to apply the proceeds of such resources to the encouragement of capital growth and the financing of self-sustaining sources of economic activity.

(k) It is necessary to promote economic activity in the forestry and agricultural sectors by providing incentives to reduce energy consumption, to retain agricultural and forestry enterprises, to reduce the rate at which urban sprawl has been devouring productive farm and forestry lands, and to provide our farmers and foresters with a more favorable export market. It is also necessary to encourage the development of facilities designed to produce energy from renewable resources.

(l) For the preservation and betterment of the health, safety, and general welfare of the people of Michigan, it is necessary to promote and develop new and adequate water and air pollution control and solid waste disposal facilities for business enterprises and public utilities located in this state, which equipment or facilities need not be incidental to an industrial building, but may serve the general public.

(m) It is necessary for a sound economy of the state for the local units of government of the state to provide quality services and this requires an adequate and modern infrastructure in the local units of government which makes it necessary for such units to

finance local improvements in an economical manner which in many cases can be best done through assistance by the state.

(n) The lending and investment of funds to develop and improve the economy of the state requires specialized and unique knowledge, skills, and experience.

### **DIVISION III**

#### **Sec. 11301. Short Title.**

This act shall be known and may be cited as the “Michigan economic development code”.

#### **Sec. 11302. Members Of Predecessor Agencies; Powers.**

When a board, commission, committee, council, or other agency created by or pursuant to this act was preceded by an agency with the same or similar name and functions, members of the predecessor agency shall continue in office for the duration of the terms of office for which they were appointed and with the new members appointed shall constitute the new agency. Members shall be appointed under this act only as terms of the former members expire or vacancies occur. Members of the predecessor agency may be appointed to the new agency to succeed themselves subject to the limits for the total period of service set forth in this act.

#### **Sec. 11303. Existing Rules; Effect.**

When the department or other agency is directed to promulgate rules by this act and rules exist on the date the requirement to promulgate rules takes effect, which rules the department or agency believes adequately cover the matter, the department or agency may determine that new rules are not required or may delay the promulgation of new rules until the department or agency considers it advisable.

#### **Sec. 11304. Orders; Effect.**

Except as otherwise provided by law, this act does not repeal or alter the content or effect of orders that were issued pursuant to an act that is repealed by this act and codified as a part of this act.

#### **Sec. 11305. Editorial Changes; Effect; Intent.**

It is the intention of the legislature that editorial changes in the language of statutes codified as parts within this act not be construed as changes to the meanings of those statutes.

#### **Sec. 11306. Severability. [Source: Sec. 93 of the Michigan Strategic Fund Act, 125.2095].**

If any article, division, part, section, subsection, paragraph, clause, or provision of this code shall be adjudged unconstitutional or ineffective, no other article, division, part, section, subsection,

paragraph, clause, or provision of this article shall on account thereof be deemed invalid or ineffective and the inapplicability or invalidity of any article, division, part, section, subsection, paragraph, clause, or provision of this code in any 1 or more instances or under any 1 or more circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance or under any other circumstance.

#### DIVISION IV – DEFINITIONS

##### **Sec. 11401. Definitions.**

(1) As used in this article:

- (a) “Code” means the Michigan economic development code created by this act.
- (b) “Strategic fund” means the Michigan Strategic Fund **described** by article II of this code, except where the context clearly requires a different definition.
- (c) “Strategic fund board” means the board of directors of the strategic fund, except where the context clearly requires another definition.
- (d) “Michigan economic development corporation” or “MEDC” means the Michigan economic development corporation, the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967(Ex sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, and subsequently amended, between local participating economic development corporations formed under **article X, formerly** 1974 PA 338, MCL 125.1601 to 125.1536, and the strategic fund.

**[Drafter’s note: Need a consistent definition for “person” for this article. See three alternatives below. I believe the first would be the more modern and preferred version, and should not be substantive. However, there may be agency or court interpretation of component acts that hold otherwise.**

**(e) "Person" means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.**

**(e) "Person" means a natural person, partnership, fiduciary, association, corporation, or other entity.**

**(e) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.]**

#### DIVISION V – SUNSHINE PROVISIONS

##### **Sec. 11501. Open Meetings.**

Except as otherwise specifically provided in this code, any authority, board, commission or committee created or authorized pursuant to this code shall:

- a. organize and adopt its own policies, procedures, schedule of regular meetings, and a regular meeting date, place, and time;
- b. conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275; and
- c. give public notice of the time, date, and place of each meeting in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

**Sec. 11502. Access to Information.**

Except as specifically exempted in this code, any writing prepared, owned, used, in the possession of, or retained by any authority, board, commission or committee created or authorized pursuant to this code, in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**Sec. 11503. Oaths of Office.**

Before beginning his or her duties, a member of any authority, board, committee or commission created or authorized pursuant to this code shall take and subscribe the constitutional oath of office. A record of each oath or affirmation shall be filed in the office of the secretary of state.

**Sec. 11504. Payment of Expenses.**

Except as specifically provided in this code, a member of any authority, board, committee or commission created or authorized pursuant to this code is not entitled to compensation for services as a member, but may be reimbursed for all actual and necessary expenses incurred in connection with the performance of duties as a member. **[Drafter's Note, the tourism commission is limited to 25 days of expenses and subject to DMB rules. Should this be made/is this already universal? If so, this provision should be modified to be consistent with Article VII, Division II, Part A provision.]**

**Sec. 11505. Conduct of Business.**

Except as otherwise specifically provided in this code, an authority, board, committee or commission created or authorized pursuant to this code may act only by resolution. A majority of the members of the authority, board, committee or commission then in office, or of any committee, shall constitute a quorum for the transaction of business. **[Drafter's Note: Quorum may not be a majority for all authorities, boards and commissions and commissions may be able to act without resolution. Perhaps someone from the AG's office could advise? Also, the tourism commission act states majority of those present and serving is required for action. Should this be made/is this already universal? If so, this provision should be modified to be consistent with Article VII, Division II, Part A provision.]**

**Sec. 11506. Avoidance of Personal Gain.**

Except as otherwise specifically provided in this code, a member of any authority, board, committee or commission created or authorized pursuant to this code shall not use for personal gain information obtained by the member while performing business of the authority, board, committee or commission, nor shall a member of any authority, board, committee or commission created or authorized pursuant to this code disclose confidential information obtained by the member while conducting authority, board, committee or commission business, except as necessary to perform official business.

**Sec. 11507. Duties of governor.**

Except as otherwise specifically provided in this code:

- (a) The governor shall inquire into the administration any state activities under this code.
- (b) The governor may remove or suspend any appointive public officer for violations of this code. The governor may request the MEDC to remove or suspend any MEDC corporate employee for violations of this code.
- (c) The governor may remove or suspend any elective public officer for violation of this code that constitutes gross neglect of duty, corrupt conduct in office, misfeasance, or malfeasance.
- (d) This section does not apply to any public officer of the legislative branch or the judicial branch of state government. [\[Source: MCL 125.2094\]](#)

**Sec. 11508. Conflicts of Interest.**

**[\[Note, this provision is currently limited to certain commissions, but might be made generally applicable to all commission, authority, boards and committees.\]](#)** (1) Except as otherwise specifically provided in this code, and notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, members of any authority, board, commission or committee created or authorized pursuant to this code are subject to 1968 PA 317, MCL 15.321 to 15.330. As used in this subsection, "substantial conflict of interest" means that the pecuniary interest is of such importance as to either materially influence the judgment of the member in the actual performance of his or her duty under the act or to foreseeably and materially influence the judgment of a reasonable person with similar knowledge and experience acting under similar circumstances and in a like position as the member.

(2) Except as otherwise specifically provided in this code, a member of any authority, board, commission or committee, or an officer, employee, or agent of the strategic fund, shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties, such member, officer, employee, or agent, when acting in good faith, may rely upon the opinion of counsel for the strategic fund, authority, board, commission or committee, upon the report of an independent appraiser selected with reasonable care by the authority, board, commission or committee, or upon financial statements of the strategic fund, authority, board, commission or committee represented to the

member, officer, employee, or agent to be correct by the president or the officer of the strategic fund, authority, board, commission or committee having charge of its books or account, or stated in a written report by a certified public accountant or firm of certified public accountants fairly to reflect the financial condition of the strategic fund, authority, board, commission or committee.

(3) Except as otherwise specifically provided in this code, a member of an authority, board, commission or committee created or authorized pursuant to this code shall not make, participate in making, or in any way attempt to use his or her position as a member of the authority, board, commission or committee to influence a decision regarding a loan, grant, investment, or other expenditure under this code to his or her employer.

(4) Except as otherwise specifically provided in this code, a member, employee, or agent of the strategic fund, or any authority, board, commission or committee created or authorized pursuant to this code, shall not engage in any conduct that constitutes a conflict of interest and shall immediately advise the authority, board, commission or committee in writing of the details of any incident or circumstances that may present the existence of a conflict of interest with respect to the performance of the related work or duty of the member, employee, or agent of the strategic fund, authority, board, commission or committee.

(5) Except as otherwise specifically provided in this code, a member who has a conflict of interest related to any matter before the authority, board, commission or committee shall disclose the conflict of interest before the authority, board, commission or committee takes any action with respect to the matter, which disclosure shall become a part of the record of the official proceedings. The member with the conflict of interest shall refrain from doing all of the following with respect to the matter that is the basis of the conflict of interest:

(a) Voting in the authority, board, commission or committee proceedings related to the matter.

(b) Participating in the authority, board, commission or committee discussion of and deliberation on the matter.

(c) Being present at the meeting when the discussion, deliberation, and voting on the matter take place.

(d) Discussing the matter with any other authority, board, commission or committee member.

(6) Failure of a member to comply with subsection (5) constitutes misconduct in office subject to removal.

(7) When authorizing expenditures and investments under this code, an authority, board, commission or committee created or authorized pursuant to this code shall not consider whether a recipient has made a contribution or expenditure under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

(8) Expenditures under this code shall not be used to finance or influence political activities.

### **Sec. 11588i. Office of Chief Compliance Officer**

**[Drafter's comment: The concept of Chief Compliance Office is currently contained in the Michigan Strategic Fund Act (Sec.2088i) and does not apply to other agencies or levels of government. A policy decision regarding the extent to which the COO concept will apply must be made. At that point, references to the strategic fund below can be changed or the division moved. Note, there are many internal references to this section in the code, so do not change it without checking for them.]**

(1) The office of the chief compliance officer is created within the strategic fund. The office shall exercise its powers and duties under this section independently of the strategic fund.

(2) The office shall assist the strategic fund board with the creation, implementation, monitoring, and enforcement of policies and procedures to prevent illegal, unethical, or improper conduct on the part of fund board members, commercialization board members and employees, or agents of the strategic fund board and commercialization board in carrying out their duties under this code.

(3) The principal executive officer of the office is the chief compliance officer. The state administrative board shall be the appointing authority of the chief compliance officer.

(4) A person may not interfere with, prevent, or prohibit the chief compliance officer from carrying out his or her duties as established in this section and set by the state administrative board. The chief compliance officer is an employee for purposes of the whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369.

(5) All departments, state agencies, committees, commissioners, or officers of this state, the MEDC, and any political subdivision of this state, so far as is compatible with their duties, shall give the chief compliance officer any necessary assistance required by the chief compliance officer in the performance of the duties of the chief compliance officer. All departments, state agencies, committees, commissioners, or officers of this state, the MEDC, and any political subdivision of this state shall provide the chief compliance officer free access to any book, record, or document in their custody, relating to the matters within the scope of the chief compliance officer in the performance of his or her duties.

(6) The chief compliance officer shall do all of the following:

(a) Recommend policies and procedures, including, but not limited to, a conflict of interest policy, an investment policy, and an ethics policy to the strategic fund board and the commercialization board that shall protect the state's assets consistent with the requirements of this code and applicable state and federal law. The chief compliance officer shall also assist in the design of the policies and procedures that will prevent violations from occurring, detect violations that have occurred, and correct such violations promptly.



- (b) Assist employees and agents of the board and the commercialization board to ensure that they are in compliance with internal policies and procedures and with applicable state and federal law.
  - (c) Provide guidance to the board, the commercialization board, and employees of the board and the commercialization board on matters related to compliance with internal policies and procedures and with applicable state and federal law.
  - (d) Make recommendations to the board, the commercialization board, and employees of the board and the commercialization board regarding the appropriate evaluation, investigation, and resolution of issues and concerns regarding compliance with internal policies and procedures and with applicable state and federal law.
  - (e) Review and evaluate compliance with internal policies and procedures and with applicable state and federal law.
  - (f) Cooperate with the office of the auditor general as the auditor general carries out his or her duties.
  - (g) Report quarterly to the strategic fund board and the state administrative board regarding compliance with internal policies and procedures and with applicable state and federal law.
  - (h) Contact persons receiving awards, investments, grants, and loans under this code to the extent necessary to carry out responsibilities under this chapter.
  - (i) Prepare a written annual report that evaluates compliance with internal policies and procedures and with applicable state and federal law, explains any compliance matters that arose during the previous year, and suggests revisions to agency policies and procedures. Copies of the report shall be provided to the governor, the clerk of the house of representatives, the secretary of the senate, the chairpersons of the senate and house of representatives committees on commerce, and the chairpersons of the senate and house of representatives committees on appropriations. The annual report shall also be published on the strategic fund's internet website.
  - (j) Do all other things necessary to carry out the chief compliance officer's responsibilities under this section.
- (7) As used in this section, "office" means the office of the chief compliance officer.

**[Source: PA 270 OF 1984 MICHIGAN STRATEGIC FUND ACT – Sec. 88i]**