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BILL ANALYSIS

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House Bill 5848 (Substitute H-1 as passed by the House)  
Sponsor: Representative Robert Jones  
House Committee: Commerce  
Senate Committee: Commerce and Tourism

(as enacted)

Date Completed: 3-18-08

### CONTENT

The bill would amend the Michigan Strategic Fund (MSF) Act to do all of the following:

- Allow a loan under the Small Business Capital Access Program to be issued to an eligible production company or film and digital media private equity fund, even if it were not a small business.
- Require the MSF to establish a Michigan Film and Digital Media Investment Loan Program to invest in loans from the Jobs for Michigan Investment Fund to eligible production companies or film and digital media private equity funds.
- Establish conditions for loans under the proposed Investment Loan Program, including a limitation of \$15 million on the amount that could be loaned to any one eligible production company or private equity fund for one qualified production.
- Require the MSF to establish the "Choose Michigan Film and Digital Media Loan Fund" to invest in loans from the Jobs for Michigan Investment Fund to eligible production companies or film and digital media private equity funds eligible for a tax credit under the Michigan Economic Growth Authority (MEGA) Act or proposed sections of the Michigan Business Tax (MBT) Act.
- Establish conditions for loans issued under the proposed Loan Fund, including a minimum interest rate of 1%, a minimum loan amount of \$500,000, and a maximum term of

**10 years including up to three years of deferred principal payments.**

- **Require that, under both the Michigan Film and Digital Media Investment Loan Program and the Choose Michigan Film and Digital Media Loan Fund, 100% of principal repaid be deposited in the Jobs for Michigan Investment Fund and half of any earnings on a loan or investment be deposited in that Fund and the remainder in a proposed Michigan Film Promotion Fund.**

(The Jobs for Michigan Investment Fund was created by Public Act 225 of 2005 as part of a package of legislation that created the 21<sup>st</sup> Century Jobs program, under which a portion of the State's receipts from the tobacco settlement agreement was sold ("securitized") with the proceeds used for economic development efforts. Public Act 225 established loan and investment programs; appropriated \$400 million from the Fund for use in economic development; and specified the allocation of approximately half of that money.)

#### Definitions

Under the bill, "eligible production company" would mean that term as defined under Section 455 of the MBT Act. (That section is proposed by House Bill 5841 (H-1), which would define "eligible production company" as an entity in the business of producing qualified productions, but not an entity that is more than 30% owned, affiliated, or controlled by an entity or individual who is in

default on a loan made or guaranteed by this State or by any other state.)

"Film and digital media private equity fund" would mean any limited partnership, limited liability company, or corporation organized and operating in the United States that has as its primary business activity the investment of funds in return for equity in qualified productions; holds out the prospect for capital appreciation from the investments; and accepts investments only from accredited investors.

"Qualified production" would mean that term as defined under proposed Section 455 of the MBT Act. (House Bill 5841 (H-1) would define "state certified qualified production" or "qualified production" as single media or multimedia entertainment content created in whole or in part in this State for distribution or exhibition to the general public in two or more states by any means and media in any digital media format, film, or video tape, including a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, commercials, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website.

The term also would include any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in a film or digital media production.

The term would not include the production of any of the following:

- A production for which records must be maintained with respect to any performer in the production under 18 USC 2257 (which concerns sexually explicit visual depictions).
- A production that includes obscene matter or an obscene performance, as described in Public Act 343 of 1984 (which prohibits the dissemination of obscene material).
- A production that primarily consists of televised news or current events, a live sporting event, or political advertising.
- A radio program.

- A weather show, talk show, or game show.
- A financial market report.
- A production that primarily markets a product or service, other than a State certified qualified production.
- An awards show or other gala event production.
- A production with the primary purpose of fund-raising.
- A production that primarily is for employee training or in-house corporate advertising or other similar production.)

#### Small Business Capital Access Program

The MSF Act requires the Michigan Strategic Fund to create and operate a Loan Enhancement Program. As a separate and distinct part of the Loan Enhancement Program, the MSF is required to establish the Small Business Capital Access Program, which must operate on a market-driven basis and provide for premium payments by borrowers into a special reserve fund.

The bill specifies that a loan under the Small Business Capital Access Program could be issued to an eligible production company or film and digital media private equity fund even if that production company or private equity fund were not a small business.

#### Film & Digital Media Investment Loan Program

The bill would require the MSF to establish a Michigan Film and Digital Media Investment Loan Program, as a separate and distinct part of the Loan Enhancement Program, to invest in loans from the Jobs for Michigan Investment Fund to eligible production companies or film and digital media private equity funds. The MSF board could make these investments only upon approval of the chief compliance officer and the Michigan Film Office after a review by the investment advisory committee. (Public Act 225 of 2005 created the Office of the Chief Compliance Officer within the MSF and charges the State Administrative Board with appointing the chief compliance officer. Public Act 474 of 2006 requires the State Administrative Board to employ the chief compliance officer, and review all reports he or she submits to the Board. The Office of the Chief Compliance Officer must assist the MSF board with creating, implementing, monitoring, and enforcing policies and

procedures to prevent illegal, unethical, or improper conduct on the part of various State officials.)

If an investment were made under the Investment Loan Program, not more than \$15 million could be loaned to any one eligible production company or film and digital media private equity fund for any one qualified production. The MSF board could make an investment in a qualified production if all of the following were satisfied:

- The production was filmed wholly or substantially in Michigan.
- The eligible production company or private equity fund had shown to the Film Office's satisfaction that a distribution contract or plan was in place with a reputable distribution company.
- The eligible production company or private equity fund agreed that, while filming in Michigan, a majority of the "below the line crew" would be Michigan residents.

"Below the line crew" would mean that term as defined under Section 459 of the MBT Act. (That section is proposed by House Bill 5849 (H-1), which would define "below the line crew" as people employed by an eligible production company for State-certified qualified production expenditures made after production begins and before production is completed, including a best boy, boom operator, camera loader, camera operator, compositor, dialogue editor, film editor, focus puller, foley operator or editor, gaffer, grip, key grip, lighting crew, lighting board operator, lighting technician, music editor, sound or sound effects editor, sound mixer, steadicam operator, assistant camera operator or film editor, and similar personnel. The term would not include a producer, director, writer, actor, or similar personnel.)

The eligible production company or private equity fund also would have to post a completion bond approved by the Film Office and obtain at least one-third of the estimated total production costs from other sources as approved by the chief compliance officer and the Film Office, or have obtained a full, unconditional, and irrevocable guarantee of the repayment of the amount invested by the MSF in favor of the Jobs for

Michigan Investment Fund that satisfied one or more of the following:

- The guarantee was from an entity that had a credit rating of at least "BAA" or "BBB" from a national rating agency.
- The guarantee was from a substantial subsidiary of an entity that had a credit rating of at least "BAA" or "BBB".
- The eligible production company or private equity fund provided a full, unconditional letter of credit from a bank with a credit rating of at least "A" from a national rating agency.

The MSF board could make a loan under the program at a market rate of interest for a qualified production of up to 80% of expected and estimated tax credits available to the production company or film and digital media private equity fund under Sections 455 to 459 of the MBT Act (proposed by House Bills 5841, 5846, and 5849), if the production company or equity fund agreed to name the MSF as its agent for the purpose of filing for the tax credits should the production company not apply for them. The Film Office and the State Treasurer would have to determine the estimated amount of tax credits. The MSF board would have to approve guidelines for the initiation of a loan and the terms of the loan.

(House Bill 5841 (H-1) would add Section 455 to the MBT Act to allow a credit for a minimum investment of \$50,000 in Michigan for a percentage of the development, preproduction, production, and postproduction costs of a State-certified qualified production. House Bill 5846 (H-1) would add Section 457 to the MBT Act to allow a credit for investment in a qualified film and digital infrastructure project. House Bill 5849 (H-1) would add Section 459 to the MBT Act to allow a credit for job training expenditures of an eligible production company.)

A loan under the program could be converted to an equity investment by the MSF board with the approval of the chief compliance officer and the Film Office. An eligible production company or film and digital media production company that received a loan under the program would not also be eligible for a loan for the same qualified production under the Choose Michigan Film and Digital Media Loan Fund.

Half of any earnings on a loan or investment under the program would have to be deposited in the Jobs for Michigan Investment Fund and the remainder of the earnings would have to be deposited in the Michigan Film Promotion Fund created under Chapter 2a of the MSF Act (which is proposed by House Bill 5850). All of the principal repaid under the program would have to be deposited in the Jobs for Michigan Investment Fund upon repayment.

#### Film & Digital Media Loan Fund

The MSF would have to establish the Choose Michigan Film and Digital Media Loan Fund, as a separate and distinct part of the Loan Enhancement Program, to invest in loans from the Jobs for Michigan Investment Fund to eligible production companies or film and digital media private equity funds eligible for a tax credit under the MEGA Act or proposed Sections 455 to 459 of the MBT Act. The MSF board could make investments under this provision only upon approval of the chief compliance officer and the Film Office.

A loan issued under this provision would have to be provided at an interest rate of at least 1%, and the minimum loan amount would be \$500,000. The maximum term of the loan would be 10 years, including up to three years of deferred principal payments to align principal payments with receipt of primary incentives, as determined by the MSF board. The value of the loan could not exceed the value of the primary incentive that the eligible production company or film and digital media private equity fund was eligible to receive over seven years, as discounted by the MSF board. A loan authorized by the MSF board could provide for a loan amount equal to a portion or all of the discounted value of the primary incentives, as discounted by the MSF board. ("Primary incentive" would mean a tax credit an eligible production company was eligible to receive under the MEGA Act or under proposed Sections 455 to 459 of the MBT Act.)

The eligible production company or film and digital media private equity fund would be responsible for repayment of the loan regardless of actual primary incentive amounts received, and would be responsible for loan preparation and closing costs.

An eligible production company or film and digital media private equity fund that received a loan under this provision would not also be eligible for loan for the same qualified production under the Michigan Film and Digital Media Investment Loan Program, but would have to obtain an additional loan from an accredited financial institution or other approved lending market.

A loan under this provision would have to be issued consistent with guidelines for the initiation of a loan and the terms of the loan approved by the MSF board. Half of any earnings on the loan would have to be deposited in the Jobs for Michigan Investment Fund and the remainder in the proposed Michigan Film Promotion Fund. All of the principal repaid on a loan would have to be deposited in the Jobs for Michigan Investment Fund upon repayment.

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Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The three loan programs that are proposed by this bill would be funded from appropriations to the 21<sup>st</sup> Century Jobs Trust Fund. Two of the three, the Michigan Film and Digital Media Investment Loan Program and the Choose Michigan Film and Digital Media Loan Fund, would be created as separate and distinct loan programs under the Loan Enhancement Program. Under the law, not more than 25% of the annual \$75 million allocation to this program, or \$18.75 million, may be used for a loan enhancement program. For FY 2007-08, the MSF board has allocated the entire allotment or \$18.75 million to a proposed loan enhancement program called the Choose Michigan Fund, which would provide low-cost loans for job creation projects to companies that qualified for MEGA job creation credits, making the cash value of the anticipated future credits available to a company at the start of a project. Any loans that would be made under the two proposed loan enhancement programs could reduce or eliminate any funding under this program for all other industries interested in locating or expanding in Michigan.

In addition, the bill would make film production companies eligible for the Small Business Capital Access Program. Funding

for the Capital Access Program also is provided through 21<sup>st</sup> Century Jobs Trust Fund. The act that initially created this program, Public Act 225 of 2005, included a one-time earmark of \$3.5 million to start this program and permits the MSF board to make additional allocations to this program in future years from its appropriation. This program provides financing to small businesses by using public resources to leverage private financing for loans. The bill would make film production companies eligible for these loans regardless of size. This exception could reduce allocations to other programs under the 21<sup>st</sup> Century Jobs program if the MSF board designated additional resources to this program to accommodate these new loans.

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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.