

HOUSE BILL No. 6208

June 5, 2008, Introduced by Rep. Clemente and referred to the Committee on New Economy and Quality of Life.

A bill to amend 1984 PA 270, entitled "Michigan strategic fund act," by amending section 88d (MCL 125.2088d), as amended by 2008 PA 80.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 88d. (1) The fund shall create and operate a loan
2 enhancement program.

3 (2) As a separate and distinct part of the loan enhancement
4 program, the fund may create a loan guarantee program that does all
5 of the following:

6 (a) Provide a loan guarantee mechanism to financial
7 institutions located in this state that provide commercial loans to
8 qualified businesses, public authorities, and local units of
9 government.

1 (b) Ensures that participating financial institutions do not
2 refinance prior debt.

3 (c) Provide that a qualified business is only eligible for a
4 loan guarantee under this section if it has a documented growth
5 opportunity. As used in this subdivision, "documented growth
6 opportunity" means a plant expansion, capital equipment investment,
7 acquisition of intellectual property or technology, or the hiring
8 of new employees to meet or satisfy a new business opportunity.

9 (d) Provide that a qualified business that engages primarily
10 in retail sales is not eligible for a loan guarantee under this
11 chapter unless the fund board makes a specific finding that the
12 loan guarantee supports a new concept that has significant growth
13 potential.

14 (e) Provide repayment provisions for a loan or a guarantee
15 given to a qualified business that leaves Michigan within 3 years
16 of the provision of the loan or guarantee or otherwise breaches the
17 terms of an agreement with the fund.

18 (3) As a separate and distinct part of the loan enhancement
19 program, the fund shall reestablish the small business capital
20 access program that was previously operated by the fund for small
21 businesses in a manner similar to how that program was operated
22 before January 1, 2002. The small business capital access program
23 shall operate on a market-driven basis and provide for premium
24 payments by borrowers into a special reserve fund. The small
25 business capital access program established by the board shall
26 prohibit an officer, director, principal shareholder of a
27 participating financial institution, or his or her immediate family

1 members from receiving a small business capital access program loan
2 from the financial institution. A loan under the small business
3 capital access program may be issued to an eligible production
4 company or film and digital media private equity fund even if the
5 eligible production company or film and digital media private
6 equity fund is not a small business. A loan under the small
7 business capital access program shall provide that the proceeds of
8 a loan may only be used for a business purpose within this state
9 and may not be used for any of the following:

10 (a) The construction or purchase of residential housing.

11 (b) To finance passive real estate ownership.

12 (c) To refinance prior debt from the participating financial
13 institution that is not part of the small business capital access
14 program.

15 (4) As a separate and distinct part of the loan enhancement
16 program, the fund shall establish a Michigan film and digital media
17 investment loan program to invest in loans from the investment fund
18 to eligible production companies or film and digital media private
19 equity funds. The fund board shall make investments under this
20 subsection only upon approval of the chief compliance officer and
21 the Michigan film office after a review by the investment advisory
22 committee. If an investment is made under this section, not more
23 than \$15,000,000.00 may be loaned to any 1 eligible production
24 company or film and digital media private equity fund for any 1
25 qualified production. The fund board may make an investment in a
26 qualified production if all of the following are satisfied:

27 (a) The production is filmed wholly or substantially in this

1 state.

2 (b) The eligible production company or the film and digital
3 media private equity fund has shown to the satisfaction of the
4 Michigan film office that a distribution contract or plan is in
5 place with a reputable distribution company.

6 (c) The eligible production company or film and digital media
7 private equity fund agrees that, while filming in this state, a
8 majority of the below the line crew for the qualified production
9 will be residents of this state.

10 (d) The eligible production company or film and digital media
11 private equity fund posts a completion bond approved by the
12 Michigan film office and has obtained no less than 1/3 of the
13 estimated total production costs from other sources as approved by
14 the chief compliance officer and the Michigan film office or has
15 obtained a full, unconditional, and irrevocable guarantee of the
16 repayment of the amount invested by the fund in favor of the
17 investment fund that satisfies 1 or more of the following:

18 (i) The guarantee is from an entity that has a credit rating of
19 not less than BAA or BBB from a national rating agency.

20 (ii) The guarantee is from a substantial subsidiary of an
21 entity that has a credit rating of not less than BAA or BBB from a
22 national rating agency.

23 (iii) The eligible production company or the film and digital
24 media private equity fund provides a full, unconditional letter of
25 credit from a bank with a credit rating of not less than A from a
26 national rating agency.

27 (iv) The guarantee is from a substantial and solvent entity as

1 determined by the investment advisory committee.

2 (e) The fund board may make a loan under this subsection at a
3 market rate of interest for a qualified production of up to 80% of
4 expected and estimated tax credits available to the eligible
5 production company or film and digital media private equity fund
6 under sections 455 to 459 of the Michigan business tax act, 2007 PA
7 36, MCL 208.1455 to 208.1459, if the eligible production company or
8 the film and digital media private equity fund agrees to name the
9 fund as its agent for the purpose of filing for the tax credits
10 should the eligible production company not apply for the tax
11 credits. The Michigan film office and the state treasurer shall
12 determine the estimated amount of tax credits for purposes of this
13 subsection. The fund board shall approve guidelines for the
14 initiation of a loan and the terms of the loan under this
15 subsection.

16 (f) A loan under this subsection may be converted to an equity
17 investment by the fund board with the approval of the chief
18 compliance officer and the Michigan film office.

19 (g) An eligible production company or film and digital media
20 production company that receives a loan under this subsection is
21 not also eligible for a loan for the same qualified production
22 under subsection (5).

23 (h) Fifty percent of any earnings on a loan or investment
24 under this subsection shall be deposited in the investment fund and
25 the remainder of the earnings shall be deposited in the Michigan
26 film promotion fund created under chapter 2A. One hundred percent
27 of principal repaid under this subsection shall be deposited in the

1 investment fund upon repayment.

2 (5) As a separate and distinct part of the loan enhancement
3 program, the fund shall establish **AND OPERATE** the choose Michigan
4 film and digital media loan fund to invest in loans from the
5 investment fund to eligible production companies or film and
6 digital media private equity funds eligible for a tax credit under
7 the Michigan economic growth authority act, 1995 PA 24, MCL 207.801
8 to 207.810, or sections 455 to 459 of the Michigan business tax
9 act, 2007 PA 36, MCL 208.1455 to 208.1459. The fund board shall
10 make investments under this subsection only upon approval of the
11 chief compliance officer and the Michigan film office. A loan
12 issued under this subsection is subject to all of the following
13 requirements:

14 (a) A loan shall be provided at an interest rate of not less
15 than 1%.

16 (b) The minimum amount of a loan under this subsection is
17 \$500,000.00.

18 (c) The maximum term of a loan under this subsection is 10
19 years, including up to 3 years of deferred principal payments to
20 align principal payments with receipt of primary incentives, as
21 determined by the fund board.

22 (d) The value of the loan may not exceed the value of the
23 primary incentive that the eligible production company or film and
24 digital media private equity fund is eligible to receive over 7
25 years, as discounted by the fund board. A loan authorized by the
26 fund board may provide for a loan amount equal to a portion or all
27 of the discounted value of the primary incentives, as discounted by

1 the fund board.

2 (e) The eligible production company or film and digital media
3 private equity fund is responsible for repayment of the loan
4 regardless of actual primary incentive amounts received.

5 (f) The eligible production company or film and digital media
6 private equity fund is responsible for loan preparation and closing
7 costs.

8 (g) An eligible production company or film and digital media
9 private equity fund that receives a loan under this subsection is
10 not also eligible for a loan for the same qualified production
11 under subsection (4).

12 ~~—(h) The eligible production company or film and digital media
13 private equity fund also obtains an additional loan from an
14 accredited financial institution or other approved lending market.~~

15 (H) ~~(i)~~—The loan shall be issued consistent with guidelines
16 for the initiation of a loan and the terms of the loan under this
17 subsection approved by the fund board.

18 (I) ~~(j)~~—Fifty percent of any earnings on a loan under this
19 subsection shall be deposited in the investment fund and the
20 remainder of the earnings shall be deposited in the Michigan film
21 promotion fund created under chapter 2A. One hundred percent of
22 principal repaid under this subsection shall be deposited in the
23 investment fund upon repayment.

24 (6) AS A SEPARATE AND DISTINCT PART OF THE LOAN ENHANCEMENT
25 PROGRAM, THE FUND SHALL OPERATE THE CHOOSE MICHIGAN FUND PROGRAM TO
26 INVEST IN LOANS FROM THE INVESTMENT FUND TO A QUALIFIED BUSINESS.
27 THE CHOOSE MICHIGAN FUND PROGRAM SHALL OPERATE ON AN INCENTIVE

1 BASIS AND SHALL PROVIDE LOANS TO QUALIFIED BUSINESSES TO PROMOTE
2 AND ENHANCE SIGNIFICANT JOB CREATION OR RETENTION WITHIN THIS
3 STATE. NOTWITHSTANDING ANY REQUIREMENT IMPOSED BY THE FUND BEFORE
4 APRIL 1, 2008, TO RECEIVE A LOAN UNDER THIS SUBSECTION, THE FUND
5 BOARD MAY OR MAY NOT REQUIRE A QUALIFIED BUSINESS TO OBTAIN AN
6 ADDITIONAL LOAN FROM AN ACCREDITED FINANCIAL INSTITUTION OR OTHER
7 APPROVED LENDING MARKET TO OBTAIN A LOAN UNDER THIS SUBSECTION. AT
8 THE DISCRETION OF THE FUND BOARD, LOANS PROVIDED THROUGH THE CHOOSE
9 MICHIGAN FUND MAY BE FORGIVABLE. A LOAN ISSUED UNDER THIS
10 SUBSECTION IS SUBJECT TO ALL OF THE FOLLOWING REQUIREMENTS:

11 (A) A LOAN SHALL BE PROVIDED AT AN INTEREST RATE OF NOT LESS
12 THAN 1%.

13 (B) THE MINIMUM AMOUNT OF A LOAN UNDER THIS SUBSECTION IS
14 \$500,000.00.

15 (C) THE MAXIMUM TERM OF A LOAN UNDER THIS SUBSECTION IS 10
16 YEARS, INCLUDING UP TO 3 YEARS OF DEFERRED PRINCIPAL PAYMENTS TO
17 ALIGN PRINCIPAL PAYMENTS WITH RECEIPT OF ANY PRIMARY INCENTIVES, AS
18 DETERMINED BY THE FUND BOARD.

19 (D) EXCEPT AS PROVIDED IN SUBDIVISION (G), THE QUALIFIED
20 BUSINESS IS RESPONSIBLE FOR REPAYMENT OF THE LOAN REGARDLESS OF ANY
21 PRIMARY INCENTIVES RECEIVED.

22 (E) THE QUALIFIED BUSINESS IS RESPONSIBLE FOR LOAN PREPARATION
23 AND CLOSING COSTS.

24 (F) THE LOAN SHALL BE ISSUED CONSISTENT WITH GUIDELINES FOR
25 THE INITIATION OF A LOAN AND THE TERMS OF THE LOAN UNDER THIS
26 SUBSECTION APPROVED BY THE FUND BOARD.

27 (G) A LOAN UNDER THIS SUBSECTION MAY BE CONVERTED TO AN EQUITY

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1 INVESTMENT BY THE FUND BOARD.

[(H) THE LOAN SHALL BE SUBJECT TO REPAYMENT PROVISIONS. IF THE LOAN IS WITH A QUALIFIED BUSINESS THAT CLOSES DOWN OR RELOCATES OUTSIDE OF MICHIGAN ANYTIME WITHIN 3 YEARS AFTER THE TERM OF THE LOAN, THEN THE PROVISIONS OF THE LOAN SHALL ALSO INCLUDE, AT A MINIMUM, IMMEDIATE REPAYMENT OF ANY OUTSTANDING PRINCIPAL, PAYMENT OF A DEFAULT INTEREST RATE, AND REPAYMENT OF ANY AMOUNTS FORGIVEN.]

(I) IN DETERMINING WHETHER TO FORGIVE ALL OR A PORTION OF A LOAN TO A QUALIFIED BUSINESS, THE FUND SHALL CONSIDER THE NET ECONOMIC IMPACT OF THE PROJECT ON THE STATE'S ECONOMY. THE LOAN AGREEMENT BETWEEN THE FUND AND THE QUALIFIED BUSINESS SHALL CLEARLY ENUMERATE THE TERMS, CONDITIONS AND REQUIREMENTS UNDER WHICH ALL OR A PORTION OF THE LOAN MAY BE FORGIVEN, INCLUDING BUT NOT LIMITED TO JOB CREATION AND INVESTMENT IN THIS STATE.]

2 (7) ~~(6)~~—As used in this section:

3 (a) "Below the line crew" means that term as defined under
4 section 459 of the Michigan business tax act, 2007 PA 36, MCL
5 208.1459.

6 (b) "Eligible production company" means that term as defined
7 under section 455 of the Michigan business tax act, 2007 PA 36, MCL
8 208.1455.

9 (c) "Film and digital media private equity fund" means any
10 limited partnership, limited liability company, or corporation
11 organized and operating in the United States that satisfies all of
12 the following:

13 (i) Has as its primary business activity the investment of
14 funds in return for equity in qualified productions.

15 (ii) Holds out the prospect for capital appreciation from the
16 investments.

17 (iii) Accepts investments only from accredited investors as that
18 term is defined in section 2 of the federal securities act of 1963
19 and rules promulgated under that act.

20 (d) "Investment advisory committee" means the committee
21 created within the department under section 91 of the executive
22 organization act of 1965, 1965 PA 380, MCL 16.191.

23 (e) "Michigan film office" means the office created under

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24 chapter 2A.

25 (f) "Primary incentive" means a tax credit an eligible
26 production company is eligible to receive under the Michigan
27 economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810,

1 or under sections 455 to 459 of the Michigan business tax act, 2007
2 PA 36, MCL 208.1455 to 208.1459.

3 (g) "Qualified production" means that term as defined under
4 section 455 of the Michigan business tax act, 2007 PA 36, MCL
5 208.1455.