

# HOUSE BILL No. 5490

November 28, 2007, Introduced by Rep. Donigan and referred to the Committee on Tax Policy.

A bill to amend 1984 PA 270, entitled "Michigan strategic fund act," by amending sections 7, 63, 68, and 69a (MCL 125.2007, 125.2063, 125.2068, and 125.2069a), section 7 as amended by 2005 PA 225 and section 63 as amended by 1987 PA 278.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 7. The fund shall have the powers and duties provided in  
2 this act, the powers delegated by other laws or executive orders,  
3 including, but not limited to, the power to:

4           (a) Sue and be sued; to have a seal and alter the same at  
5 pleasure; to have perpetual succession; to make, execute, and  
6 deliver contracts, conveyances, and other instruments necessary or  
7 convenient to the exercise of its powers; and to make and amend

1 bylaws.

2 (b) Solicit and accept gifts, grants, loans, and other aids  
3 from any person or the federal, state, or a local government or any  
4 agency of the federal, state, or a local government, or to  
5 participate in any other way in any federal, state, or local  
6 government program.

7 (c) Make grants, loans, and investments; to guarantee and  
8 insure loans, leases, bonds, notes, or other indebtedness, whether  
9 public or private; and to issue letters of credit.

10 (d) Construct; acquire by gift, purchase, installment  
11 purchase, or lease; and reconstruct, improve, repair, or equip a  
12 project or any part of a project.

13 (e) Borrow money and issue bonds and notes to finance part or  
14 all of the project costs of a project, or of a loan under  
15 subdivision (r) for an export transaction, and to secure those  
16 bonds and notes by mortgage, assignment, or pledge of any of its  
17 money, revenues, income, and properties. The authority provided by  
18 this subdivision includes, but is not limited to, issuing bonds and  
19 notes to acquire and install machinery, equipment, furnishings, and  
20 other personal property, notwithstanding that the fund does not own  
21 or propose to own or finance the building or land in or near to  
22 which the machinery, equipment, furnishings, and other personal  
23 property is or is to be located.

24 (f) Acquire or contract to acquire from any person,  
25 municipality, the federal or state government, or any agency of the  
26 foregoing, or otherwise, leaseholds, real or personal property or  
27 any interest in real or personal property; to own, hold, clear,

1 improve, and rehabilitate and to sell, assign, exchange, transfer,  
2 convey, lease, mortgage, or otherwise dispose of or encumber  
3 leaseholds, real or personal property or any interest in real or  
4 personal property, as is convenient for the accomplishment of the  
5 purposes of this act and of the fund.

6 (g) Procure insurance against any loss in connection with the  
7 fund's property, assets, or activities.

8 (h) Invest any money of the fund at the fund's discretion, in  
9 any obligations determined proper by the fund, and name and use  
10 depositories for its money.

11 (i) Engage personnel as is necessary and engage the services  
12 of private consultants, managers, counsel, auditors, engineers, and  
13 scientists for rendering professional management and technical  
14 assistance and advice, payable out of any money of the fund legally  
15 available for this purpose.

16 (j) Charge, impose, and collect fees and charges in connection  
17 with any transaction and provide for reasonable penalties for  
18 delinquent payment of fees or charges.

19 (k) Indemnify and procure insurance indemnifying any members  
20 of the board from personal loss or accountability from liability  
21 asserted by a person on the bonds or notes of the fund or from any  
22 personal liability or accountability by reason of the issuance of  
23 the bonds, notes, insurance, or guarantees; by reason of  
24 acquisition, construction, ownership, or operation of a project; or  
25 by reason of any other action taken or the failure to act by the  
26 fund.

27 (l) Enter into a lease for the use or sale of a project. The

1 lease may provide for options to purchase or renew.

2 (m) Mortgage or create security interests in a project or any  
3 part of a project, or in a lease or loan, or in the rents,  
4 revenues, or sums to be paid thereunder, in favor of the holders of  
5 the bonds or notes issued by the fund.

6 (n) Convey or release a project or any part of a project to a  
7 lessee, purchaser, or borrower under any agreement after provision  
8 has been made for the retirement in full of the bonds or notes  
9 issued for that project under terms and conditions provided in the  
10 agreement or as may be agreed with the holders of the bonds or  
11 notes, at any time where the obligation of the lessee, purchaser,  
12 or borrower to make the payments prescribed shall remain fixed as  
13 provided in the agreement notwithstanding the conveyance or  
14 release, or as may otherwise be agreed with the holders of the  
15 bonds or notes.

16 (o) Make loans, participate in the making of loans, undertake  
17 commitments to make loans and mortgages, buy and sell loans and  
18 mortgages at public or private sale, rewrite loans and mortgages,  
19 discharge loans and mortgages, foreclose on a mortgage, commence an  
20 action to protect or enforce a right conferred upon the fund by a  
21 law, mortgage, loan, contract, or other agreement, bid for and  
22 purchase property which was the subject of the mortgage at a  
23 foreclosure or other sale, acquire or take possession of the  
24 property and in that event complete, administer, pay the principal  
25 and interest on obligations incurred in connection with that  
26 property, and dispose of and otherwise deal with the property, in a  
27 manner as may be necessary or desirable to protect the interests of

1 the fund.

2 (p) Certify, for the purpose of determining eligible  
3 investments for the basis of a single business tax credit **UNDER THE**  
4 **SINGLE BUSINESS TAX ACT, 1975 PA 228, MCL 208.1 TO 208.145,**  
5 minority venture capital companies, as defined by law.

6 (q) Except as otherwise provided in this subdivision, to  
7 create and operate centers, accounts, and funds as required or  
8 permitted by law for the use and disbursement of assets of the  
9 fund. The powers granted under this subdivision do not apply to  
10 chapter 8A.

11 (r) To make loans to a financial institution to facilitate  
12 financing of all or part of an export related transaction  
13 including, but not limited to, pre-export working capital financing  
14 and postexport receivable financing.

15 (s) Do all other things necessary or convenient to achieve the  
16 objectives and purposes of the fund, this act, or other laws that  
17 relate to the purposes and responsibilities of the fund.

18 Sec. 63. (1) The fund is empowered to certify a minority  
19 venture capital company and a MESBIC for the purpose of verifying  
20 that the business satisfies the qualifications provided by law for  
21 being an eligible recipient of investments that qualify for a  
22 credit under the single business tax act, ~~Act No. 228 of the Public~~  
23 ~~Acts of 1975, being sections 208.1 to 208.145 of the Michigan~~  
24 ~~Compiled Laws~~ **1975 PA 228, MCL 208.1 TO 208.145,** for an investment  
25 in a minority venture capital company or MESBIC certified under  
26 this chapter. The certification shall not be construed to impose  
27 liability on this state or to authorize the giving or lending of

1 the credit of this state to any business enterprise. All documents  
2 promulgated by the department of commerce, the fund, or business  
3 enterprises in conjunction with this program shall include a  
4 statement reflecting the limited purpose of the certification and  
5 disclaiming the involvement of this state.

6 (2) Certification applications by a minority venture capital  
7 company or a MESBIC shall be forwarded to the fund. To qualify for  
8 its initial certification and to retain its certification, a  
9 minority venture capital company or a MESBIC shall comply with all  
10 of the following applicable requirements:

11 (a) Qualify as a minority venture capital company or as a  
12 MESBIC.

13 (b) If a minority venture capital company, has raised or has  
14 commitments for at least \$1,000,000.00 to capitalize the minority  
15 venture capital company. Amounts which the minority venture capital  
16 company is or may be obligated to repay shall not be included as  
17 money which has been raised or committed to capitalize the minority  
18 venture capital company.

19 (c) Demonstrate that the professional staff which will manage  
20 the minority venture capital company or MESBIC possesses relevant  
21 experience in the administration and operation of a venture capital  
22 company.

23 (d) Either have invested at time of application or, if the  
24 minority venture capital company or MESBIC has not yet made  
25 investments, agree to invest and to retain an investment of 100% of  
26 its portfolio in businesses operating within this state.

27 (e) Either have invested at time of application or, if the

1 minority venture capital company or MESBIC has not yet made  
2 investments or has not yet reached the applicable year of  
3 operation, agree to invest and to retain an investment of 50% of  
4 its paid-in capital by the end of the third year of operation and  
5 70% of its paid-in capital by the end of the fifth year of  
6 operation.

7 (f) Agree to comply with the terms of this act and with its  
8 investment plan and management plan submitted pursuant to  
9 subdivision (g).

10 (g) Provide the information the fund determines to be  
11 necessary or appropriate for the fund to review in considering the  
12 application including, but not necessarily limited to, the  
13 following:

14 (i) A detailed investment plan describing the current and  
15 proposed activities of the minority venture capital company or  
16 MESBIC.

17 (ii) A management plan, including a description of the business  
18 experience and reputation of the professional staff that has been  
19 or is to be assembled, and a description of the current and  
20 proposed management structure.

21 (iii) A listing of the present or committed investors in the  
22 minority venture capital company or MESBIC and background  
23 information on the investors.

24 (h) If a minority venture capital company, agree to disclose  
25 to the fund and to allow the fund to approve or disapprove a  
26 contract entered into between the minority venture capital company  
27 and a minority owned business in which an officer or director of

1 the minority venture capital company owns 10% or more.

2 (i) Agree to comply with the condition that, of the  
3 investments for which a request for certification is or will be  
4 filed under section 69a, not less than 50% shall be invested by  
5 persons who, if they receive a credit under section 36b of the  
6 single business tax act, ~~Act No. 228 of the Public Acts of 1975,~~  
7 ~~being section 208.36b of the Michigan Compiled Laws 1975 PA 228,~~  
8 **MCL 208.36B**, would have that credit revoked if the minority venture  
9 capital company or MESBIC has its certification revoked within 6  
10 years after the tax year for which the person received the credit.

11 Sec. 68. (1) Unless revoked, a certification provided under  
12 this chapter shall be effective and subject the minority venture  
13 capital company or MESBIC to the requirements of this chapter from  
14 the date of its certification until 6 years following the date of  
15 its tax credit disqualification pursuant to subsection (3).

16 (2) Unless the certification is revoked, from the date of its  
17 certification until the date the fund approves a tax credit  
18 disqualification for the minority venture capital company or MESBIC  
19 pursuant to subsection (3) a certified minority venture capital  
20 company and a certified MESBIC shall be an eligible recipient of  
21 investments that qualify for a credit under the single business tax  
22 act, ~~Act No. 228 of the Public Acts of 1975, being sections 208.1~~  
23 ~~to 208.145 of the Michigan Compiled Laws 1975 PA 228, MCL 208.1 TO~~  
24 **208.145**, for an investment in a minority venture capital company or  
25 MESBIC certified under this chapter.

26 (3) Upon request of a certified minority venture capital  
27 company or a certified MESBIC the fund shall approve a tax credit

1 disqualification for the minority venture capital company or MESBIC  
2 and thereafter the minority venture capital company or MESBIC shall  
3 not be an eligible recipient of investments that qualify under, and  
4 the fund shall not provide a tax credit certification pursuant to  
5 section 69a for credits under, ~~Act No. 228 of the Public Acts of~~  
6 ~~1975~~ **THE SINGLE BUSINESS TAX ACT, 1975 PA 228, MCL 208.1 TO**  
7 **208.145.**

8       Sec. 69a. (1) Upon written request to the fund not later than  
9 90 days following an investment, the fund shall certify the  
10 following for a person subject to the tax imposed under the single  
11 business tax act, ~~Act No. 228 of the Public Acts of 1975, being~~  
12 ~~sections 208.1 to 208.145 of the Michigan Compiled Laws 1975 PA~~  
13 **228, MCL 208.1 TO 208.145**, who seeks to claim the credit provided  
14 under ~~Act No. 228 of the Public Acts of 1975~~ **THE SINGLE BUSINESS**  
15 **TAX ACT, 1975 PA 228, MCL 208.1 TO 208.145**, for an investment in a  
16 minority venture capital company or MESBIC certified under this  
17 chapter:

18       (a) The date which the person made the investment.

19       (b) That the investment is in a certified minority venture  
20 capital company or MESBIC which has not been disqualified pursuant  
21 to section 68(3) as of the date of the investment.

22       (c) The amount of the investment in the certified minority  
23 venture capital company or MESBIC that was made after the effective  
24 date of the amendatory act providing for a tax credit under ~~Act No.~~  
25 ~~228 of the Public Acts of 1975~~ **THE SINGLE BUSINESS TAX ACT, 1975 PA**  
26 **228, MCL 208.1 TO 208.145**, for an investment in a minority venture  
27 capital company or MESBIC certified under this chapter.

1 (d) The amount of the credit to which the person is entitled  
2 under ~~Act No. 228 of the Public Acts of 1975~~ **THE SINGLE BUSINESS**  
3 **TAX ACT, 1975 PA 228, MCL 208.1 TO 208.145**, for an investment in a  
4 minority venture capital company or MESBIC certified under this  
5 chapter.

6 (2) A minority venture capital company or MESBIC certified  
7 under this chapter and a person requesting a tax credit  
8 certification of an investment pursuant to subsection (1) shall  
9 provide the fund with all information it requires to make the  
10 certification under subsection (1).

11 (3) A tax credit certification report for an investment  
12 certified under subsection (1) shall be sent by the fund to the  
13 requester and the department of treasury.