

# HOUSE BILL No. 6209

June 5, 2008, Introduced by Rep. Gonzales 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 88k (MCL 125.2088k), as added by 2005 PA 215.

**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~~**MAY** award grants ~~and~~  
7 ~~loans~~ from the 21st century jobs trust fund created in the Michigan  
8 trust fund act, 2000 PA 489, MCL 12.251 to ~~12.256~~**12.260**, and **MAY**  
9 **RECOMMEND LOANS, CONVERTIBLE LOANS, EQUITY INVESTMENTS, AND**  
10 **WARRANTS FROM** the investment fund ~~only~~ for basic research, applied

1 research, university technology transfer, and commercialization of  
2 products, processes, and services to encourage the development of  
3 competitive edge technologies **INTENDED** to create jobs in this  
4 state. **LOANS, CONVERTIBLE LOANS, EQUITY INVESTMENTS, AND WARRANTS**  
5 **RECOMMENDED BY THE COMMERCIALIZATION BOARD ARE SUBJECT TO APPROVAL**  
6 **BY THE FUND BOARD. THE FUND BOARD SHALL ESTABLISH A STANDARD**  
7 **PROCESS TO REVIEW INVESTMENTS RECOMMENDED BY THE COMMERCIALIZATION**  
8 **BOARD UNDER THIS SUBSECTION BEFORE APPROVING ANY INVESTMENT**  
9 **CONSIDERED APPROPRIATE BY THE FUND BOARD.**

10 (3) Subject to subsection (2), the fund as determined by the  
11 commercialization board **AND THE FUND BOARD** shall do all of the  
12 following:

13 (a) Establish a competitive process to award grants **FOR** and  
14 ~~make loans for~~ **RECOMMEND INVESTMENTS IN** competitive edge  
15 technologies. The competitive process shall include, but is not  
16 limited to, the following:

17 (i) A provision that the applications must be peer-reviewed by  
18 independent peer review experts based on the scientific and  
19 technical merit, personnel expertise, commercial merit, and the  
20 ability to leverage additional funding of the application.  
21 Scientific and technical merit, personnel expertise, commercial  
22 merit, and the ability to leverage additional funding shall be  
23 given equal weight in the review and scoring process. **IF AN**  
24 **APPLICANT IS SEEKING A GRANT OR INVESTMENT UNDER THIS CHAPTER TO**  
25 **MATCH FEDERAL FUNDS FOR SMALL BUSINESS INNOVATION RESEARCH OR SMALL**  
26 **BUSINESS TECHNOLOGY TRANSFER PROGRAMS, THE PEER REVIEW REQUIREMENT**  
27 **UNDER THIS SUBSECTION IS SATISFIED BY THE REVIEW CONDUCTED BY THE**

1 **FEDERAL AGENCY AWARDING THE FEDERAL FUNDS.**

2 (ii) A preference for proposals that can contribute to the  
3 development of economic diversification or the creation of  
4 employment opportunities in this state.

5 (iii) A provision that out-of-state business must have a  
6 significant existing or proposed business presence in this state.

7 (iv) A provision that the program will utilize contracts with  
8 measurable milestones, clear objectives, provisions to revoke  
9 awards for breach of contract, and repayment provisions for loans  
10 given to qualified businesses that leave Michigan within 3 years of  
11 the execution of the contract or otherwise breach the terms of the  
12 contract.

13 (v) A provision that the applicant leverage other resources as  
14 a condition of the grant or ~~loan~~**INVESTMENT**. If an applicant is  
15 seeking a grant or a ~~loan~~**AN INVESTMENT** under this chapter to match  
16 federal funds for small business innovation research or small  
17 business technology transfer programs **OR OTHER RESEARCH PROGRAMS**  
18 **SUPPORTED BY FEDERAL FUNDS**, the grant or ~~loan~~**INVESTMENT** under this  
19 chapter shall not exceed 25% of the federal funds. ~~and must~~  
20 ~~leverage third party commercialization funding at both the phase I~~  
21 ~~and phase II levels.~~

22 (vi) Limit overhead rates for recipients of grants and ~~loans~~  
23 **INVESTMENTS** to reflect actual overhead but not greater than 15% of  
24 the grant or loan.

25 (vii) Except as provided in subparagraph (v), a provision that  
26 grants can only be awarded to Michigan institutions of higher  
27 education, Michigan nonprofit research institutions, and Michigan

1 nonprofit corporations.

2 (viii) A preference for collaborations between institutions of  
3 higher education, Michigan nonprofit research institutions,  
4 Michigan nonprofit corporations, and qualified businesses.

5 (ix) A provision authorizing the award of grants to  
6 institutions of higher education to serve as match to promote or  
7 secure the award and receipt of competitively awarded federal  
8 research grants related to competitive edge technologies. A  
9 matching grant shall not exceed 10% of the amount of the  
10 competitively awarded federal research grants received.

11 (x) A provision encouraging the redevelopment of existing  
12 scientific wet lab space for the commercialization of life science  
13 technology.

14 (xi) A preference for proposals that meet 1 or more of the  
15 following:

16 (A) Forecast revenues within 2 years.

17 (B) Have outside investments from investors with experience  
18 and management teams with experience in the industry targeted by  
19 the proposal.

20 (C) Have outside directors with expertise in the industry  
21 targeted by the proposal.

22 (b) The fund shall contract with independent peer review  
23 experts selected by the commercialization board to assist the  
24 commercialization board with its responsibilities under this  
25 chapter.

26 (4) The commercialization board shall establish standards to  
27 ensure that money expended under this chapter will result in

1 economic benefit to this state and ensure that a major share of the  
2 business activity resulting from the expenditures occurs in this  
3 state.

4 (5) The commercialization board shall ensure that a recipient  
5 of money expended under this chapter agrees as a condition of  
6 receiving the money not to use the money for any of the following:

7 (a) The development of a stadium or arena for use by a  
8 professional sports team.

9 (b) The development of a casino regulated by this state under  
10 the Michigan gaming control and revenue act, ~~the Initiated Law of~~  
11 1996 **IL 1**, MCL 432.201 to 432.226, a casino at which gaming is  
12 conducted under the Indian gaming regulatory act, Public Law 100-  
13 497, ~~102 Stat. 2467~~, or property associated or affiliated with the  
14 operation of either type of casino described in this subdivision,  
15 including, but not limited to, a parking lot, hotel, motel, or  
16 retail store.

17 (6) The commercialization board shall establish requirements  
18 to ensure that money expended under this section shall not be used  
19 for any of the following:

20 (a) Grants, ~~or~~ loans, **CONVERTIBLE LOANS, EQUITY INVESTMENTS,**  
21 **OR WARRANTS** to a person who has been convicted of a criminal  
22 offense incident to the application for or performance of a state  
23 contract or subcontract. As used in this subdivision, if a person  
24 is a business entity, then person includes affiliates,  
25 subsidiaries, officers, directors, managerial employees, and any  
26 person who, directly or indirectly, holds a pecuniary interest in  
27 that business entity of 20% or more. **A DIRECTOR OR OFFICER OF A**

1 NONPROFIT ENTITY MAY SATISFY THE REQUIREMENTS OF THIS SUBDIVISION  
2 IF HE OR SHE FILES AN AFFIDAVIT WITH THE FUND AFFIRMING THAT HE OR  
3 SHE HAS NOT BEEN CONVICTED OF A CRIMINAL OFFENSE INCIDENT TO THE  
4 APPLICATION FOR OR PERFORMANCE OF A STATE CONTRACT OR SUBCONTRACT.

5 (b) Grants, ~~or~~loans, CONVERTIBLE LOANS, EQUITY INVESTMENTS,  
6 OR WARRANTS to a person who has been convicted of a criminal  
7 offense, or held liable in a civil proceeding, that negatively  
8 reflects on the person's business integrity, based on a finding of  
9 embezzlement, theft, forgery, bribery, falsification or destruction  
10 of records, receiving stolen property, or violation of state or  
11 federal antitrust statutes. As used in this subdivision, if a  
12 person is a business entity, then person includes affiliates,  
13 subsidiaries, officers, directors, managerial employees, and any  
14 person who, directly or indirectly, holds a pecuniary interest in  
15 that business entity of 20% or more. A DIRECTOR OR OFFICER OF A  
16 NONPROFIT ENTITY MAY SATISFY THE REQUIREMENTS OF THIS SUBDIVISION  
17 IF HE OR SHE FILES AN AFFIDAVIT WITH THE FUND AFFIRMING THAT HE OR  
18 SHE HAS NOT BEEN CONVICTED OF A CRIMINAL OFFENSE, OR HELD LIABLE IN  
19 A CIVIL PROCEEDING, THAT NEGATIVELY REFLECTS ON THE PERSON'S  
20 BUSINESS INTEGRITY, BASED ON A FINDING OF EMBEZZLEMENT, THEFT,  
21 FORGERY, BRIBERY, FALSIFICATION OR DESTRUCTION OF RECORDS,  
22 RECEIVING STOLEN PROPERTY, OR VIOLATION OF STATE OR FEDERAL  
23 ANTITRUST STATUTES.

24 (c) Grants, ~~or~~loans, CONVERTIBLE LOANS, EQUITY INVESTMENTS,  
25 OR WARRANTS to induce a qualified business or a small business to  
26 leave this state.

27 (d) Grants, ~~or~~loans, CONVERTIBLE LOANS, EQUITY INVESTMENTS,

1 **OR WARRANTS** that would contribute to the violation of  
2 internationally recognized workers rights, as defined in section  
3 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a  
4 country other than the United States, including any designated zone  
5 or area in that country.

6 (e) Grants, ~~or~~ loans, **CONVERTIBLE LOANS, EQUITY INVESTMENTS,**  
7 **OR WARRANTS** to a corporation or an affiliate of the corporation  
8 incorporated in a tax haven country after September 11, 2001, but  
9 with the United States as the principal market for the public  
10 trading of the corporation's stock. As used in this section, "tax  
11 haven country" includes a country with tax laws that facilitate  
12 avoidance by a corporation or an affiliate of the corporation of  
13 United States tax obligations, including Barbados, Bermuda, British  
14 Virgin Islands, Cayman Islands, Commonwealth of the Bahamas,  
15 Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein,  
16 the Principality of Monaco, and the Republic of the Seychelles.

17 (7) When ~~the commercialization board approves a grant, or a~~  
18 loan, **CONVERTIBLE LOAN, EQUITY INVESTMENT, OR WARRANT IS APPROVED**  
19 under this chapter, the ~~commercialization board~~ **APPROVING THE LOAN,**  
20 **CONVERTIBLE LOAN, EQUITY INVESTMENT, OR WARRANT** shall state the  
21 specific objective reasons the applicant was selected over other  
22 applicants. ~~for a grant or loan under this chapter.~~

23 (8) ~~After March 31, 2006, before~~ **BEFORE** adopting a resolution  
24 that establishes or substantially changes a program operated by the  
25 commercialization board, including any fees, charges, or penalties  
26 attached to that program, the commercialization board shall give  
27 notice of the proposed resolution to the governor, to the secretary

1 of the senate, to the clerk of the house of representatives, to  
2 members of the senate and house of representatives standing  
3 committees on appropriations, and to each person who requested from  
4 the fund in writing or electronically to be notified regarding  
5 proposed resolutions. The notice and proposed resolution and all  
6 attachments shall be published on the fund's internet website. The  
7 commercialization board shall hold a public hearing not sooner than  
8 14 days and not longer than 30 days from the date notice of a  
9 proposed resolution is given and offer a person an opportunity to  
10 present data, views, questions, and arguments. Commercialization  
11 board members or 1 or more persons designated by the  
12 commercialization board who have knowledge of the subject matter of  
13 the proposed resolution shall be present at the public hearing and  
14 shall participate in the discussion of the proposed resolution. The  
15 commercialization board may act on the proposed resolution no  
16 sooner than 14 days after the public hearing. The commercialization  
17 board shall produce a final decision document that describes the  
18 basis for its decision. The final resolution and all attachments  
19 and the decision document shall be provided to the governor, to the  
20 secretary of the senate, to the clerk of the house of  
21 representatives, and to members of the senate and house of  
22 representatives standing committees on appropriations and shall be  
23 published on the fund's internet website.

24 (9) The notice described in subsection (8) shall include all  
25 of the following:

26 (a) A copy of the proposed resolution and all attachments.

27 (b) A statement that the addressee may express any data,

1 views, or arguments regarding the proposed resolution.

2 (c) The address to which written comments may be sent and the  
3 date by which comments must be mailed or electronically  
4 transmitted, which date shall not be before the date of the public  
5 hearing.

6 (d) The date, time, and place of the public hearing.