

HOUSE BILL No. 4696

March 25, 2009, Introduced by Rep. Coulouris and referred to the Committee on Commerce.

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending section 23 (MCL 125.2023), as amended by 2002 PA 556.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 23. (1) The fund may borrow money and issue bonds or
2 notes for the following purposes:

3 (a) To provide sufficient funds for achieving the fund's
4 purposes and objectives including, but not limited to, amounts
5 necessary to pay the costs of acquiring a project or part of a
6 project; to make loans for the costs of a project or part of a
7 project; to make loans pursuant to section 7(r) for an export
8 related transaction; for making grants; for providing money to
9 guarantee or insure loans, leases, bonds, notes, or other
10 indebtedness; for making working capital loans; for all other

1 expenditures of the fund incident to and necessary or convenient to
2 carry out the fund's purposes, objectives, and powers; and for any
3 combination of the foregoing. The cost of a project may include
4 administrative costs including, but not limited to, engineering,
5 architectural, legal, and accounting fees that are necessary for
6 the project.

7 (b) To refund bonds or notes of the fund issued under this
8 act, of the job development authority issued under former 1975 PA
9 301, of the Michigan economic development authority issued under
10 former 1982 PA 70, of an economic development corporation issued
11 under the economic development corporations act, 1974 PA 338, MCL
12 125.1601 to 125.1636, or of a municipality issued under the
13 industrial development revenue bond act of 1963, 1963 PA 62, MCL
14 125.1251 to 125.1267, by the issuance of new bonds, whether or not
15 the bonds or notes to be refunded have matured or are subject to
16 prior redemption or are to be paid, redeemed, or surrendered at the
17 time of the issuance of the refunding bonds or notes; and to issue
18 bonds or notes partly to refund the bonds or notes and partly for
19 any other purpose provided for by this section.

20 (c) To pay the costs of issuance of bonds or notes under this
21 act; to pay interest on bonds or notes becoming payable prior to
22 the receipt of the first revenues available for payment of that
23 interest as determined by the board; and to establish, in full or
24 in part, a reserve for the payment of the principal and interest on
25 the bonds or notes in the amount determined by the board.

26 (2) The bonds and notes, including, but not limited to,
27 commercial paper, shall be authorized by resolution adopted by the

board, shall bear the date or dates, and shall mature at the time or times not exceeding 50 years from the date of issuance, as the resolution may provide. The bonds and notes shall bear interest at the rate or rates as may be set, reset, or calculated from time to time, or may bear no interest, as provided in the resolution. The bonds and notes shall be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be transferable, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of prior redemption at the option of the fund or the holders of the bonds and notes as the resolution or resolutions may provide. The bonds and notes of the fund may be sold at public or private sale at the price or prices determined by the fund. For purposes of 1966 PA 326, MCL 438.31 to 438.33, this act and other acts applicable to the fund shall regulate the rate of interest payable or charged by the fund, and 1966 PA 326, MCL 438.31 to 438.33, does not apply. Bonds and notes may be sold at a discount.

(3) Bonds or notes may be 1 or more of the following:

(a) Made the subject of a put or agreement to repurchase by the fund or others.

(b) Secured by a letter of credit or by any other collateral that the resolution may authorize.

(c) Reissued by the fund once reacquired by the fund pursuant to any put or repurchase agreement.

(4) The fund may authorize by resolution any member of the board to do 1 or more of the following:

(a) Sell and deliver, and receive payment for notes or bonds.

1 (b) Refund notes or bonds by the delivery of new notes or
2 bonds whether or not the notes or bonds to be refunded have
3 matured, are subject to prior redemption, or are to be paid,
4 redeemed, or surrendered at the time of the issuance of refunding
5 bonds or notes.

6 (c) Deliver notes or bonds, partly to refund notes or bonds
7 and partly for any other authorized purposes.

8 (d) Buy notes or bonds so issued at not more than the face
9 value of the notes or bonds.

10 (e) Approve interest rates or methods for fixing interest
11 rates, prices, discounts, maturities, principal amounts,
12 denominations, dates of issuance, interest payment dates,
13 redemption rights at the option of the fund or the holder, the
14 place of delivery and payment, and other matters and procedures
15 necessary to complete the transactions authorized.

16 (5) Except as may otherwise be expressly provided by the fund,
17 every issue of its notes or bonds shall be general obligations of
18 the fund payable out of revenues, properties, or money of the fund,
19 subject only to agreements with the holders of particular notes or
20 bonds pledging particular receipts, revenues, properties, or money
21 as security for the notes or bonds.

22 (6) The notes or bonds of the fund are negotiable instruments
23 within the meaning of and for all the purposes of the uniform
24 commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, subject
25 only to the provisions of the notes or bonds for registration.

26 (7) Bonds or notes issued by the fund are not subject to the
27 terms of the revised municipal finance act, 2001 PA 34, MCL

1 141.2101 to 141.2821. The bonds or notes issued by the fund are not
2 required to be registered. A filing of a bond or note of the fund
3 is not required under the uniform securities act, 1964 PA 265, MCL
4 451.501 to 451.818, **OR THE UNIFORM SECURITIES ACT (2002), 2008 PA**
5 **551, MCL 451.2101 TO 451.2703.**

6 (8) A resolution authorizing notes or bonds may contain any or
7 all of the following covenants, which shall be a part of the
8 contract with the holders of the notes or bonds:

9 (a) A pledge of all or a part of the fees, charges, and
10 revenues made or received by the fund, or all or a part of the
11 money received in payment of lease rentals, or loans and interest
12 on the loans, and other money received or to be received to secure
13 the payment of the notes or bonds or of an issue of the notes or
14 bonds, subject to agreements with bondholders or noteholders as may
15 then exist.

16 (b) A pledge of all or a part of the assets of the fund,
17 including leases, or notes or mortgages and obligations securing
18 the same to secure the payment of the notes or bonds or of an issue
19 of notes or bonds, subject to agreements with noteholders or
20 bondholders as may then exist.

21 (c) A pledge of a loan, grant, or contribution from the
22 federal, state, or local government, or source in aid of a project
23 as provided for in this act.

24 (d) A pledge of money directly derived from payments from the
25 heritage trust fund created by the heritage trust fund act of 1982,
26 former 1982 PA 327.

27 (e) The use and disposition of the revenues and income from

1 leases, or from loans, notes, and mortgages owned by the fund.

2 (f) The establishment and setting aside of reserves or sinking
3 funds and the regulation and disposition of reserves or sinking
4 funds subject to this act.

5 (g) Limitations on the purpose to which the proceeds of sale
6 of the notes or bonds may be applied and limitations on pledging
7 those proceeds to secure the payment of other bonds or notes.

8 (h) Authority for and limitations on the issuance of
9 additional notes or bonds for the purposes provided for in the
10 resolution and the terms upon which additional notes or bonds may
11 be issued and secured. Additional bonds pledging money derived from
12 the heritage trust fund as provided in subdivision (d) may only be
13 issued if the issuance meets the requirements of section 204 of the
14 resolution adopted by the Michigan economic development authority
15 authorizing issuance of its bonds dated December 1, 1982, and any
16 requirement of former 1982 PA 70, provided that these requirements
17 do not apply if those bonds have been defeased.

18 (i) The procedure, if any, by which the terms of a contract
19 with noteholders or bondholders may be amended or abrogated, the
20 number of noteholders or bondholders who are required to consent to
21 an amendment or abrogation, and the manner in which the consent may
22 be given.

23 (j) Vest in a trustee or a secured party the property, income,
24 revenues, receipts, rights, remedies, powers, and duties in trust
25 or otherwise as the fund may determine necessary or appropriate to
26 adequately secure and protect noteholders and bondholders or to
27 limit or abrogate the rights of the noteholders and bondholders. A

1 trust agreement may be executed by the fund with any trustee who
2 may be located inside or outside this state to accomplish any of
3 the foregoing.

4 (k) Pay maintenance and repair costs of a project.

5 (l) The insurance to be carried on a project and the use and
6 disposition of insurance money and condemnation awards.

7 (m) The terms, conditions, and agreements upon which the
8 holder of the bonds, or a portion of the bonds, is entitled to the
9 appointment of a receiver by the circuit court. A receiver who is
10 appointed may enter and take possession of the project and maintain
11 it or lease or sell the project for cash or on an installment sales
12 contract and prescribe rentals and payments therefor and collect,
13 receive, and apply all income and revenues thereafter arising in
14 the same manner and to the same extent as the fund.

15 (n) Any other matters, of like or different character, which
16 in any way affect the security or protection of the notes or bonds.

17 (9) A pledge made by the fund is valid and binding from the
18 time the pledge is made. The money or property so pledged and
19 thereafter received by the fund is immediately subject to the lien
20 of the pledge without a physical delivery or further act. The lien
21 of a pledge is valid and binding as against parties having claims
22 of any kind in tort, contract, or otherwise against the fund and is
23 valid and binding as against the transfer of the money or property
24 pledged, irrespective of whether the parties have notice. Neither
25 the resolution, the trust agreement, nor any other instrument by
26 which a pledge is created need be recorded.

27 (10) A member of the board or a person executing the notes or

1 bonds is not liable personally on the notes or bonds and is not
2 subject to personal liability of accountability by reason of the
3 issuance of the notes or bonds.

4 (11) This state is not liable on notes or bonds of the fund,
5 and the notes or bonds shall not be considered a debt of this
6 state. The notes and bonds shall contain on their face a statement
7 indicating this fact.

8 (12) The notes and bonds of the fund are securities in which
9 the public officers and bodies of this state; municipalities and
10 municipal subdivisions; insurance companies, associations, and
11 other persons carrying on an insurance business; banks, trust
12 companies, savings banks, savings associations, and savings and
13 loan associations; investment companies; administrators, guardians,
14 executors, trustees, and other fiduciaries; and all other persons
15 who are authorized to invest in bonds or other obligations of this
16 state may properly and legally invest funds.

17 (13) The property of the fund and its income and operation is
18 exempt from all taxation by this state or any of its political
19 subdivisions, and all bonds and notes of the fund, the interest on
20 the bonds and notes, and their transfer are exempt from all
21 taxation by this state or any of its political subdivisions, except
22 for estate, gift, and inheritance taxes. The state covenants with
23 the purchasers and all subsequent holders and transferees of notes
24 and bonds issued by the fund under this act, in consideration of
25 the acceptance of and payment for the notes and bonds, that the
26 notes and bonds of the fund, issued pursuant to this act, the
27 interest on the notes and bonds, the transfer of the notes and

1 bonds, and all its fees, charges, gifts, grants, revenues,
2 receipts, and other money received or to be received and pledged to
3 pay or secure the payment of the notes or bonds shall at all times
4 be free and exempt from all state or local taxation provided by the
5 laws of this state, except for estate, gift, and inheritance taxes.

6 (14) The issuance of bonds and notes under this act is subject
7 to the agency financing reporting act, **2002 PA 470, MCL 129.171 TO**
8 **129.177.**

9 (15) For the purpose of more effectively managing its debt
10 service, the fund may enter into an interest rate exchange or swap,
11 hedge, or similar agreement with respect to its bonds or notes on
12 the terms and payable from the sources and with the security, if
13 any, as determined by a resolution of the board.