

HOUSE BILL No. 4720

March 26, 2009, Introduced by Rep. Melton and referred to the Committee on Tax Policy.

A bill to amend 1984 PA 270, entitled "Michigan strategic fund act," by amending sections 7 and 23 (MCL 125.2007 and 125.2023), section 7 as amended by 2005 PA 225 and section 23 as amended by 2002 PA 556.

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, **OR OF A GRANT IN**
16 **ANTICIPATION OF A CREDIT TO BE RECEIVED UNDER THE MICHIGAN BUSINESS**
17 **TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601,** and to secure those
18 bonds and notes by mortgage, assignment, or pledge of any of its
19 money, revenues, income, and properties. The authority provided by
20 this subdivision includes, but is not limited to, issuing bonds and
21 notes to acquire and install machinery, equipment, furnishings, and
22 other personal property, notwithstanding that the fund does not own
23 or propose to own or finance the building or land in or near to
24 which the machinery, equipment, furnishings, and other personal
25 property is or is to be located.

26 (f) Acquire or contract to acquire from any person,
27 municipality, the federal or state government, or any agency of the

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

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

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

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

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

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

1 fund.

2 (l) Enter into a lease for the use or sale of a project. The
3 lease may provide for options to purchase or renew.

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

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

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

1 property, and dispose of and otherwise deal with the property, in a
2 manner as may be necessary or desirable to protect the interests of
3 the fund.

4 (p) Certify, for the purpose of determining eligible
5 investments for the basis of a single business tax credit, minority
6 venture capital companies, as defined by law.

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

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

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

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

21 (a) To provide sufficient funds for achieving the fund's
22 purposes and objectives including, but not limited to, amounts
23 necessary to pay the costs of acquiring a project or part of a
24 project; to make loans for the costs of a project or part of a
25 project; to make loans pursuant to section 7(r) for an export
26 related transaction; for making grants; for providing money to
27 guarantee or insure loans, leases, bonds, notes, or other

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

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

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

27 (2) The bonds and notes, including, but not limited to,

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (7) Bonds or notes issued by the fund are not subject to the

1 terms of the revised municipal finance act, 2001 PA 34, MCL
2 141.2101 to 141.2821. The bonds or notes issued by the fund are not
3 required to be registered. A filing of a bond or note of the fund
4 is not required under the uniform securities act, 1964 PA 265, MCL
5 451.501 to 451.818.

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, **INCLUDING FUNDS APPROPRIATED UNDER SECTION 515 OF THE**
15 **MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1515**, subject to
16 agreements with bondholders or noteholders as may then exist.

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

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

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

1 (e) The use and disposition of the revenues and income from
2 leases, or from loans, notes, and mortgages owned by the fund.

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

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

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

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

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

1 limit or abrogate the rights of the noteholders and bondholders. A
2 trust agreement may be executed by the fund with any trustee who
3 may be located inside or outside this state to accomplish any of
4 the foregoing.

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

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

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

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

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

1 (10) A member of the board or a person executing the notes or
2 bonds is not liable personally on the notes or bonds and is not
3 subject to personal liability of accountability by reason of the
4 issuance of the notes or bonds.

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

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

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

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

7 (14) The issuance of bonds and notes under this act is subject
8 to the agency financing reporting act.

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.

14 Enacting section 1. This amendatory act does not take effect
15 unless all of the following bills of the 95th Legislature are
16 enacted into law:

17 (a) Senate Bill No. ____ or House Bill No. 4716 (request no.
18 02788'09).

19 (b) Senate Bill No. ____ or House Bill No. 4718 (request no.
20 02870'09).

21 (c) Senate Bill No. ____ or House Bill No. 4719 (request no.
22 02892'09).

23 (d) Senate Bill No. ____ or House Bill No. 4717 (request no.
24 02893'09).