

# HOUSE BILL No. 5362

September 15, 2009, Introduced by Reps. Booher, Wayne Schmidt, Elsenheimer, Rick Jones, Genetski, Ball, Horn, Crawford, Meltzer, Hansen, Daley, Haveman, Stamas, Pavlov, DeShazor, Moore, Lori, Opsommer, Tyler, Denby, Kowall, Knollenberg, Walsh, Marleau, Meekhof, Hildenbrand, Bolger, Calley and Lund and referred to the Committee on Banking and Financial Services.

A bill to amend 1984 PA 270, entitled  
"Michigan strategic fund act,"  
by amending section 88d (MCL 125.2088d), as amended by 2008 PA 571.

## 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.

10       (b) Ensures that participating financial institutions do not

1 refinance prior debt.

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

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

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

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

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

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

10 (b) To finance passive real estate ownership.

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

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

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

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

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

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

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

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

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

26 (iv) The guarantee is from a substantial and solvent entity as  
27 determined by the investment advisory committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (6) As a separate and distinct part of the loan enhancement  
24 program, the fund shall operate the choose Michigan fund program to  
25 invest in loans from the investment fund to a qualified business.  
26 The choose Michigan fund program shall operate on an incentive  
27 basis and shall provide loans to qualified businesses to promote

1 and enhance significant job creation or retention within this  
2 state. The choose Michigan fund shall not make a loan under this  
3 subsection after September 30, 2009. Notwithstanding any  
4 requirement imposed by the fund before April 1, 2008, to receive a  
5 loan under this subsection, the fund board may or may not require a  
6 qualified business to obtain an additional loan from an accredited  
7 financial institution or other approved lending market to obtain a  
8 loan under this subsection. At the discretion of the fund board,  
9 not more than 3 loans provided through the choose Michigan fund may  
10 be forgivable. A loan issued under this subsection is subject to  
11 all of the following requirements:

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

14 (b) The minimum amount of a loan under this subsection is  
15 \$500,000.00.

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

20 (d) Except as provided in subdivision (g), the qualified  
21 business is responsible for repayment of the loan regardless of any  
22 primary incentives received.

23 (e) The qualified business is responsible for loan preparation  
24 and closing costs.

25 (f) The loan shall be issued consistent with guidelines for  
26 the initiation of a loan and the terms of the loan under this  
27 subsection approved by the fund board.



1 (g) A loan under this subsection may be converted to an equity  
2 investment by the fund board.

3 (h) The loan shall be subject to repayment provisions. If the  
4 loan is with a qualified business that closes down or relocates  
5 outside of Michigan anytime within 3 years after the term of the  
6 loan, then the provisions of the loan shall also include, at a  
7 minimum, immediate repayment of any outstanding principal, payment  
8 of a default interest rate, and repayment of any amounts forgiven.

9 (i) In determining whether to forgive all or a portion of a  
10 loan to a qualified business, the fund shall consider the net  
11 economic impact of the project on the state's economy. The loan  
12 agreement between the fund and the qualified business shall clearly  
13 enumerate the terms, conditions and requirements under which all or  
14 a portion of the loan may be forgiven, including, but not limited  
15 to, job creation and investment in this state.

16 (7) AS A SEPARATE AND DISTINCT PART OF THE LOAN ENHANCEMENT  
17 PROGRAM, THE FUND SHALL ESTABLISH AND OPERATE THE SMALL BUSINESS  
18 LOAN GUARANTEE PROGRAM THAT DOES ALL OF THE FOLLOWING:

19 (A) PROVIDES A LOAN GUARANTEE MECHANISM OF 80% OF THE LOSS TO  
20 FINANCIAL INSTITUTIONS LOCATED IN THIS STATE THAT PROVIDE  
21 COMMERCIAL LOANS TO SMALL BUSINESSES LOCATED IN THIS STATE.

22 (B) ENSURES THAT PARTICIPATING FINANCIAL INSTITUTIONS DO NOT  
23 FINANCE PRIOR DEBT THAT IS NOT PART OF THE SMALL BUSINESS LOAN  
24 GUARANTEE PROGRAM.

25 (C) PROVIDES THAT THE SMALL BUSINESSES ELIGIBLE FOR THE SMALL  
26 BUSINESS LOAN GUARANTEE PROGRAM DO NOT HAVE MORE THAN 250 EMPLOYEES  
27 OR MORE THAN \$6,000,000.00 IN GROSS ANNUAL SALES.

1 (D) PROVIDES LOANS IN THE AMOUNT OF \$750,000.00 OR LESS AND  
2 THAT THE LOANS CANNOT BE MADE FOR THE BENEFIT OF RESIDENTIAL  
3 PROPERTY OR FOR PASSIVE REAL ESTATE INVESTMENTS.

4 (E) PROVIDES THAT LOANS CANNOT BE MADE TO NONPROFIT  
5 INSTITUTIONS.

6 (F) PROVIDES THAT FINANCIAL INSTITUTIONS PARTICIPATING IN THE  
7 SMALL BUSINESS LOAN GUARANTEE PROGRAM WILL CHARGE THE APPLICANT  
8 SMALL BUSINESS A SEPARATE FEE OF 2% OF THE LOAN AMOUNT AND SHALL  
9 FORWARD THAT SEPARATE FEE TO THE FUND TO BE USED ONLY BY THE FUND  
10 BOARD FOR THE OPERATION OF THE SMALL BUSINESS LOAN GUARANTEE  
11 PROGRAM DESCRIBED IN THIS SUBSECTION.

12 (G) PROVIDES THAT THE FINANCIAL INSTITUTION PARTICIPATING IN  
13 THE SMALL BUSINESS LOAN GUARANTEE PROGRAM MAY CHARGE AN  
14 ADMINISTRATIVE FEE AND INTEREST RATE AS DETERMINED BY THE FINANCIAL  
15 INSTITUTION.

16 (8) ~~(7)~~—As used in this section:

17 (a) "Below the line crew" means that term as defined under  
18 section 459 of the Michigan business tax act, 2007 PA 36, MCL  
19 208.1459.

20 (b) "Eligible production company" means that term as defined  
21 under section 455 of the Michigan business tax act, 2007 PA 36, MCL  
22 208.1455.

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

27 (i) Has as its primary business activity the investment of

1 funds in return for equity in qualified productions.

2 (ii) Holds out the prospect for capital appreciation from the  
3 investments.

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

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

10 (e) "Michigan film office" means the office created under  
11 chapter 2A.

12 (f) "Primary incentive" means a tax credit an eligible  
13 production company is eligible to receive under the Michigan  
14 economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810,  
15 or under sections 455 to 459 of the Michigan business tax act, 2007  
16 PA 36, MCL 208.1455 to 208.1459.

17 (g) "Qualified production" means that term as defined under  
18 section 455 of the Michigan business tax act, 2007 PA 36, MCL  
19 208.1455.