

HOUSE BILL No. 5247

August 19, 2009, Introduced by Reps. Amash and Lund and referred to the Committee on Families and Children's Services.

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending sections 29a, 29d, and 88d (MCL 125.2029a, 125.2029d,
and 125.2088d), sections 29a and 29d as added by 2008 PA 75 and
section 88d as amended by 2008 PA 571.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29a. (1) The Michigan film office is created in the fund.
2 The office shall be the successor to any authority, powers, duties,
3 functions, or responsibilities of the Michigan film office under
4 section 21 of the history, arts, and libraries act, 2001 PA 63, MCL
5 399.721.

6 (2) The office may do all of the following:

7 (a) Promote and market locations, talent, crews, facilities,

1 and technical production and other services related to film,
2 digital media, and television production in this state.

3 (b) Provide to interested persons descriptive and pertinent
4 information on locations, talent, crews, facilities, and technical
5 production and other services related to film, digital media, and
6 television production in this state.

7 (c) Provide technical assistance to the film, television, and
8 digital media industry in locating and securing the use of
9 locations, talent, crews, facilities, and services in this state.

10 (d) Encourage community and Michigan film, digital media, and
11 television production industry participation in, and coordination
12 with, state and local efforts to attract film, digital media, and
13 television production in this state.

14 (e) Serve as this state's chief liaison with the film, digital
15 media, and television production industry and with other
16 governmental units and agencies for the purpose of promoting,
17 encouraging, and facilitating film, digital media, and television
18 production in this state.

19 (f) Explain the benefits and advantages of producing films,
20 digital media, and television productions in this state.

21 (g) Assist film, digital media, and television producers with
22 securing location authorization and other appropriate services
23 connected with film, digital media, and television production in
24 this state.

25 (h) Scout potential film locations for national and
26 international film, digital media, and television prospects.

27 (i) Escort film, digital media, and television producers on

1 location scouting trips.

2 (j) Serve as a liaison between film, digital media, and
3 television producers, state agencies, local agencies, federal
4 agencies, community organizations and leaders, and the film,
5 digital media, and television industry in this state.

6 (k) Assist film, digital media, and television producers in
7 securing permits to film at specific locations in this state and in
8 obtaining needed services related to the production of a film,
9 digital media, or a television program.

10 (l) Represent this state at film, digital media, and television
11 industry trade shows and film festivals.

12 (m) Sponsor workshops or conferences on topics relating to
13 filmmaking, including, but not limited to, screenwriting, film
14 financing, and the preparation of communities to attract and assist
15 film, digital media, and television productions in this state.

16 (n) Encourage cooperation between local, state, and federal
17 government agencies and local film offices in the location and
18 production of films, digital media, and television programming in
19 this state.

20 (o) Coordinate activities with local film offices.

21 (p) Facilitate cooperation from state departments and
22 agencies, local governments, local film offices, federal agencies,
23 and private sector entities in the location and production of
24 films, digital media, and television programming in this state.

25 (q) Prepare, maintain, and distribute a directory of persons,
26 firms, and governmental agencies available to assist in the
27 production of films, digital media, and television programming in

1 this state.

2 (r) Prepare, maintain, and distribute a digital library
3 depicting the variety and extent of the locations within this state
4 for film, digital media, and television productions.

5 (s) Prepare and distribute appropriate promotional and
6 informational materials that do all of the following:

7 (i) Describe desirable locations in this state for film,
8 digital media, and television production.

9 (ii) Explain the benefits and advantages of producing films,
10 digital media, and television productions in this state.

11 (iii) Detail services and assistance available from state
12 government, from local film offices, and from the film, digital
13 media, and television industry in this state.

14 (t) Solicit and accept gifts, grants, labor, loans, and other
15 aid from any person, government, or entity.

16 (u) Employ technical experts, other officers, agents, or
17 employees, permanent or temporary, paid from the funds of the
18 office. The office shall determine the qualifications, duties, and
19 compensation of those the office employs.

20 (v) Contract for goods and services and engage personnel as
21 necessary to perform the duties of the office under this chapter.

22 (w) Study, develop, and prepare reports or plans the office
23 considers necessary to assist the office in the exercise of its
24 powers under this chapter and to monitor and evaluate progress
25 under this chapter.

26 (x) ~~Exercise~~ **THROUGH SEPTEMBER 30, 2009, EXERCISE** the duties
27 and responsibilities vested in the office under this chapter and

1 all of the following:

2 (i) Section 88d.

3 (ii) Section 88j(3)(e).

4 (iii) Section 4cc of the general sales tax act, 1933 PA 167, MCL
5 205.54cc.

6 (iv) Sections 455 to 459 of the Michigan business tax act, 2007
7 PA 36, MCL 208.1455 to 208.1459.

8 (y) All other things necessary or convenient to achieve the
9 objectives and purposes of the office, this chapter, or other laws
10 that relate to the purposes and responsibilities of the office.

11 (3) The enumeration of a power in this chapter shall not be
12 construed as a limitation upon the general powers of the office.
13 The powers granted under this chapter are in addition to those
14 powers granted by any other law.

15 (4) The commissioner and the president of the fund shall
16 cooperate in administering the budget, procurement, and related
17 management functions of the office. The fund may provide the office
18 with staff support and other services to assist the office in
19 performing the functions and duties of the office.

20 (5) State departments, agencies, boards, commissions, and
21 officers and local film offices shall cooperate with the office in
22 the performance of the office's duties under this chapter.

23 Sec. 29d. (1) The Michigan film promotion fund is created
24 within the state treasury.

25 (2) The state treasurer may receive money or other assets from
26 any source for deposit into the promotion fund, including federal
27 funds, other state revenues, gifts, bequests, and other donations,

1 including, but not limited to, all of the following:

2 (a) ~~Fees~~**THROUGH SEPTEMBER 30, 2009, FEES** deposited in the
3 promotion fund under sections 455 to 459 of the Michigan business
4 tax act, 2007 PA 36, MCL 208.1455 to 208.1459.

5 (b) ~~Fees~~**THROUGH SEPTEMBER 30, 2009, FEES** deposited in the
6 promotion fund under section 367 of the income tax act of 1967,
7 1967 PA 281, MCL 206.367.

8 (c) ~~Proceeds~~**THROUGH SEPTEMBER 30, 2009, PROCEEDS** deposited in
9 the promotion fund under section 88d.

10 (3) The state treasurer shall direct the investment of the
11 promotion fund and shall credit to the promotion fund interest and
12 earnings from promotion fund investments.

13 (4) Money in the promotion fund at the close of a fiscal year
14 shall remain in the promotion fund and shall not lapse to the
15 general fund.

16 (5) Money in the promotion fund may be expended, upon
17 appropriation, to support the functions of the office under this
18 chapter and other applicable law and for purposes authorized under
19 this chapter.

20 Sec. 88d. (1) The fund shall create and operate a loan
21 enhancement program.

22 (2) As a separate and distinct part of the loan enhancement
23 program, the fund may create a loan guarantee program that does all
24 of the following:

25 (a) Provide a loan guarantee mechanism to financial
26 institutions located in this state that provide commercial loans to
27 qualified businesses, public authorities, and local units of

1 government.

2 (b) Ensures that participating financial institutions do not
3 refinance prior debt.

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

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

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

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

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

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

12 (b) To finance passive real estate ownership.

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

16 (4) As a separate and distinct part of the loan enhancement
17 program, the fund shall establish a Michigan film and digital media
18 investment loan program to invest in loans from the investment fund
19 to eligible production companies or film and digital media private
20 equity funds. The fund board shall make investments under this
21 subsection only upon approval of the chief compliance officer and
22 the Michigan film office after a review by the investment advisory
23 committee. If an investment is made under this section, not more
24 than \$15,000,000.00 may be loaned to any 1 eligible production
25 company or film and digital media private equity fund for any 1
26 qualified production. **THE FUND BOARD SHALL NOT MAKE A LOAN OR AN**
27 **INVESTMENT UNDER THIS SUBSECTION AFTER SEPTEMBER 30, 2009.** The fund

1 board may make an investment in a qualified production if all of
2 the following are satisfied:

3 (a) The production is filmed wholly or substantially in this
4 state.

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

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

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

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

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

26 (iii) The eligible production company or the film and digital
27 media private equity fund provides a full, unconditional letter of

1 credit from a bank with a credit rating of not less than A from a
2 national rating agency.

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

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

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

22 (g) An eligible production company or film and digital media
23 production company that receives a loan under this subsection is
24 not also eligible for a loan for the same qualified production
25 under subsection (5).

26 (h) Fifty percent of any earnings on a loan or investment
27 under this subsection shall be deposited in the investment fund and

1 the remainder of the earnings shall be deposited in the Michigan
2 film promotion fund created under chapter 2A. One hundred percent
3 of principal repaid under this subsection shall be deposited in the
4 investment fund upon repayment.

5 (5) As a separate and distinct part of the loan enhancement
6 program, the fund shall establish and operate the choose Michigan
7 film and digital media loan fund to invest in loans from the
8 investment fund to eligible production companies or film and
9 digital media private equity funds eligible for a tax credit under
10 the Michigan economic growth authority act, 1995 PA 24, MCL 207.801
11 to 207.810, or sections 455 to 459 of the Michigan business tax
12 act, 2007 PA 36, MCL 208.1455 to 208.1459. The fund board shall
13 make investments under this subsection only upon approval of the
14 chief compliance officer and the Michigan film office. **THE FUND**
15 **BOARD SHALL NOT MAKE A LOAN OR AN INVESTMENT UNDER THIS SUBSECTION**
16 **AFTER SEPTEMBER 30, 2009.** A loan issued under this subsection is
17 subject to all of the following requirements:

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

20 (b) The minimum amount of a loan under this subsection is
21 \$500,000.00.

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

26 (d) The value of the loan may not exceed the value of the
27 primary incentive that the eligible production company or film and

1 digital media private equity fund is eligible to receive over 7
2 years, as discounted by the fund board. A loan authorized by the
3 fund board may provide for a loan amount equal to a portion or all
4 of the discounted value of the primary incentives, as discounted by
5 the fund board.

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

9 (f) The eligible production company or film and digital media
10 private equity fund is responsible for loan preparation and closing
11 costs.

12 (g) An eligible production company or film and digital media
13 private equity fund that receives a loan under this subsection is
14 not also eligible for a loan for the same qualified production
15 under subsection (4).

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

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

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

1 (6) As a separate and distinct part of the loan enhancement
2 program, the fund shall operate the choose Michigan fund program to
3 invest in loans from the investment fund to a qualified business.
4 The choose Michigan fund program shall operate on an incentive
5 basis and shall provide loans to qualified businesses to promote
6 and enhance significant job creation or retention within this
7 state. The choose Michigan fund shall not make a loan under this
8 subsection after September 30, 2009. Notwithstanding any
9 requirement imposed by the fund before April 1, 2008, to receive a
10 loan under this subsection, the fund board may or may not require a
11 qualified business to obtain an additional loan from an accredited
12 financial institution or other approved lending market to obtain a
13 loan under this subsection. At the discretion of the fund board,
14 not more than 3 loans provided through the choose Michigan fund may
15 be forgivable. A loan issued under this subsection is subject to
16 all of the following requirements:

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

19 (b) The minimum amount of a loan under this subsection is
20 \$500,000.00.

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

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

1 (e) The qualified business is responsible for loan preparation
2 and closing costs.

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

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

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

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

21 (7) As used in this section:

22 (a) "Below the line crew" means that term as defined under
23 section 459 of the Michigan business tax act, 2007 PA 36, MCL
24 208.1459.

25 (b) "Eligible production company" means that term as defined
26 under section 455 of the Michigan business tax act, 2007 PA 36, MCL
27 208.1455.

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

5 (i) Has as its primary business activity the investment of
6 funds in return for equity in qualified productions.

7 (ii) Holds out the prospect for capital appreciation from the
8 investments.

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

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

15 (e) "Michigan film office" means the office created under
16 chapter 2A.

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

22 (g) "Qualified production" means that term as defined under
23 section 455 of the Michigan business tax act, 2007 PA 36, MCL
24 208.1455.