

HOUSE BILL No. 4020

January 13, 2011, Introduced by Reps. Ouimet, Kowall, Crawford, Walsh, MacMaster, Callton, Zorn and Potvin 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
11 refinance prior debt.

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

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

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

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

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

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

9 (b) To finance passive real estate ownership.

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

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

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

27 (b) The eligible production company or the film and digital

1 media private equity fund has shown to the satisfaction of the
2 Michigan film office that a distribution contract or plan is in
3 place with a reputable distribution company.

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

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

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

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

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

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

27 (e) The fund board may make a loan under this subsection at a

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

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

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

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

27 (5) As a separate and distinct part of the loan enhancement

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

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

27 (e) The eligible production company or film and digital media

1 private equity fund is responsible for repayment of the loan
2 regardless of actual primary incentive amounts received.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (g) A loan under this subsection may be converted to an equity

1 investment by the fund board.

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

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

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

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

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

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

27 (D) PROVIDES LOANS IN THE AMOUNT OF \$750,000.00 OR LESS AND

1 THAT THE LOANS CANNOT BE MADE FOR THE BENEFIT OF RESIDENTIAL
2 PROPERTY OR FOR PASSIVE REAL ESTATE INVESTMENTS.

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

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

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

15 (8) ~~(7)~~—As used in this section:

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

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

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

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

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

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

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

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

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

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