

# HOUSE BILL No. 6103

May 24, 2006, Introduced by Rep. Drolet and referred to the Committee on Government Operations.

A bill to amend 1984 PA 270, entitled  
"Michigan strategic fund act,"  
by amending sections 4, 5, 7, and 13 (MCL 125.2004, 125.2005,  
125.2007, and 125.2013), as amended by 2005 PA 225; and to repeal  
acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 4. As used in this act:

2       (a) "Board" means the board of directors of the Michigan  
3       strategic fund, except where the context clearly requires a  
4       different definition.

5       (b) "Economic development project" means an endeavor related  
6       to industrial, commercial, or agricultural enterprise. Economic  
7       development project includes, but is not limited to, a theme or

1 recreation park; agricultural or forestry production, harvesting,  
2 storage, or processing facilities or equipment; and the use of  
3 equipment or facilities designed to produce energy from renewable  
4 resources. Economic development project does not include that  
5 portion of an endeavor devoted to the sale of goods at retail,  
6 except that, as used in relation to the fund insuring a transaction  
7 entered into by a depository institution, and as used in relation  
8 to a loan by the fund to a minority owned business, an economic  
9 development project may include that portion of an endeavor devoted  
10 to the sale of goods at retail. ~~Economic development project does~~  
11 ~~not include that portion of an endeavor devoted to housing or a~~  
12 ~~program or activity authorized under chapter 8A.~~

13 (c) "Financial institution" means a state or nationally  
14 chartered bank or a state or federally chartered savings and loan  
15 association, savings bank, or credit union whose deposits are  
16 insured by an agency of the United States government and that  
17 maintains a principal office or branch office in this state under  
18 the laws of this state or the United States.

19 (d) "Fund" means the Michigan strategic fund created under  
20 section 5, except where the context clearly requires a different  
21 definition.

22 (e) "Michigan economic development corporation" or "MEDC"  
23 means the Michigan economic development corporation, the public  
24 body corporate created under section 28 of article VII of the state  
25 constitution of 1963 and the urban cooperation act of 1967, 1967  
26 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal  
27 agreement effective April 5, 1999, and subsequently amended,

1 between local participating economic development corporations  
2 formed under the economic development corporations act, 1974 PA  
3 338, MCL 125.1601 to 125.1636, and the fund.

4 (f) "Municipality" means a county, city, village, township,  
5 port district, development organization, institution of higher  
6 education, community or junior college, or subdivision or  
7 instrumentality of any of the legal entities listed in this  
8 subdivision.

9 (g) "Person" means an individual, sole proprietorship,  
10 partnership, limited partnership, limited liability partnership,  
11 limited liability company, joint venture, profit or nonprofit  
12 corporation including a public or private college or university,  
13 public utility, local industrial development corporation, economic  
14 development corporation, or other association of persons organized  
15 for agricultural, commercial, or industrial purposes.

16 (h) "Project" means an economic development project and, in  
17 addition, means the acquisition, construction, reconstruction,  
18 conversion, or leasing of an industrial, commercial, retail,  
19 agricultural, or forestry enterprise, or any part of these, to  
20 carry out the purposes and objectives of this act and of the fund,  
21 including, but not limited to, acquisition of land or interest in  
22 land, buildings, structures, or other planned or existing planned  
23 improvements to land including leasehold improvements, machinery,  
24 equipment, or furnishings which include, but are not limited to,  
25 the following: research parks; office facilities; engineering  
26 facilities; research and development laboratories; warehousing  
27 facilities; parts distribution facilities; depots or storage

1 facilities; port facilities; railroad facilities, including  
2 trackage, right of way, and appurtenances; airports; water and air  
3 pollution control equipment or waste disposal facilities; theme or  
4 recreational parks; equipment or facilities designed to produce  
5 energy from renewable resources; farms, ranches, forests, and other  
6 agricultural or forestry commodity producers; agricultural  
7 harvesting, storage, transportation, or processing facilities or  
8 equipment; grain elevators; shipping heads and livestock pens;  
9 livestock; warehouses; wharves and dock facilities; water,  
10 electricity, hydro electric, coal, petroleum, or natural gas  
11 provision facilities; dams and irrigation facilities; sewage,  
12 liquid, and solid waste collection, disposal treatment, and  
13 drainage services and facilities. ~~Project does not include a~~  
14 ~~program or activity authorized under chapter 8A.~~

15 (i) "Private sector" means other than the fund, a state or  
16 federal source, or an agency of a state or the federal government.

17 Sec. 5. (1) There is created by this act a public body  
18 corporate and politic to be known as the Michigan strategic fund.  
19 The fund shall be within the department of treasury and shall  
20 exercise its prescribed statutory powers, duties, and functions  
21 independently of the state treasurer. The statutory authority,  
22 powers, duties, functions, records, personnel, property, unexpended  
23 balances of appropriations, allocations, and other funds of the  
24 fund, including the functions of budgeting, procurement, personnel,  
25 and management-related functions, shall be retained by the fund,  
26 and the fund shall be an autonomous entity within the department of  
27 treasury in the same manner as the Michigan employment security

1 commission was designated an autonomous entity within the Michigan  
2 department of labor under section 379 of the executive organization  
3 act of 1965, 1965 PA 380, MCL 16.479.

4 (2) Except as otherwise provided in this act, the purposes,  
5 powers, and duties of the Michigan strategic fund are vested in and  
6 shall be exercised by a board of directors.

7 (3) Except as provided in subsection (4), the board shall  
8 consist of the director of the department of labor and economic  
9 growth or his or her designee from within the department of labor  
10 and economic growth, the state treasurer or his or her designee  
11 from within the department of treasury, the chief executive officer  
12 of the MEDC, and 6 other members with knowledge, skill, and  
13 experience in the academic, business, or financial field, who shall  
14 be appointed by the governor with the advice and consent of the  
15 senate. None of the 6 members appointed under this section shall be  
16 employees of this state. Not less than 5 members of the board  
17 appointed under this subsection shall be members of the private  
18 sector. Five of the 6 members appointed under this subsection shall  
19 serve for fixed terms. Upon completion of each fixed term expiring  
20 after December 30, 2005, a member shall be appointed for a term of  
21 4 years. Of the private sector members appointed by the governor  
22 for a fixed term, 1 shall be appointed from a list of 3 or more  
23 nominees of the speaker of the house of representatives  
24 representing persons within the private sector with experience in  
25 private equity or venture capital investments, commercial lending,  
26 or commercialization of technology and 1 shall be appointed from a  
27 list of 3 or more nominees of the senate majority leader

1 representing persons within the private sector with experience in  
2 private equity or venture capital investments, commercial lending,  
3 or commercialization of technology. A member appointed under this  
4 subsection or subsection (4) shall serve until a successor is  
5 appointed, and a vacancy shall be filled for the balance of the  
6 unexpired term in the same manner as the original appointment. The  
7 member appointed under this subsection and serving without a fixed  
8 term shall serve at the pleasure of the governor. Of the members  
9 appointed under this subsection and subsection (4), there shall be  
10 minority, female, and small business representation. After December  
11 31, 2005, at least 2 of the members of the board shall have  
12 experience in private equity or venture capital investments, at  
13 least 1 of the members shall have experience in commercial lending,  
14 and at least 1 of the members of the board shall have experience in  
15 commercialization of technology.

16 (4) In addition to the 9 members of the board under subsection  
17 (3), not later than December 15, 2005, the governor shall appoint,  
18 with the advice and consent of the senate, 2 additional members to  
19 the board for terms expiring December 31, 2007. The members  
20 appointed under this subsection shall be from the private sector  
21 and shall have experience in private equity or venture capital  
22 investments, commercial lending, or commercialization of  
23 technology. From the date of the appointment of the members under  
24 this subsection until December 31, 2007, the board shall have 11  
25 members. After December 31, 2007, the board shall have 9 members.

26 (5) The governor shall designate 1 member of the board to  
27 serve as its chairperson. The governor shall designate 1 member of

1 the board to serve as president of the fund and may designate 1  
2 member to serve as vice-president of the fund. The chairperson,  
3 president, and vice-president, if a vice-president is designated,  
4 shall serve as those officers at the pleasure of the governor.

5 (6) Members of the board shall serve without compensation for  
6 their membership on the board, except that members of the board may  
7 receive reasonable reimbursement for necessary travel and expenses.

8 (7) The board may delegate to its president, vice-president,  
9 staff, or others those functions and authority that the board deems  
10 necessary or appropriate, which may include the oversight and  
11 supervision of employees of the fund. ~~However, responsibilities~~  
12 ~~specifically vested in the board under chapter 8A shall be~~  
13 ~~performed by the board and shall not be transferred to the MEDC.~~

14 (8) A majority of the members of the board appointed and  
15 serving ~~constitutes~~ **CONSTITUTE** a quorum for the transaction of  
16 business at a meeting, or the exercise of a power or function of  
17 the fund, notwithstanding the existence of 1 or more vacancies. The  
18 board may act only by resolution approved by a majority of board  
19 members appointed and serving. Voting upon action taken by the  
20 board shall be conducted by majority vote of the members appointed  
21 and serving. Members of the board may be present in person at a  
22 meeting of the board or, if authorized by the bylaws of the board,  
23 by use of telecommunications or other electronic equipment. The  
24 fund shall meet at the call of the chair and as may be provided in  
25 the bylaws of the fund. Meetings of the fund may be held anywhere  
26 within the state of Michigan.

27 (9) The business of the board shall be conducted at a public

1 meeting of the board held in compliance with the open meetings act,  
2 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,  
3 and place of the meeting shall be given in the manner required by  
4 the open meetings act, 1976 PA 267, MCL 15.261 to ~~15.267~~ **15.275**,  
5 and shall also be provided on an internet website operated by the  
6 fund. A record or portion of a record, material, or other data  
7 received, prepared, used, or retained by the fund or any of its  
8 centers in connection with an application to or with a project or  
9 product assisted by the fund or any of its centers ~~or with an~~  
10 ~~award, grant, loan, or investment under chapter 8A~~ that relates to  
11 financial or proprietary information submitted by the applicant  
12 that is considered by the applicant and acknowledged by the board  
13 as confidential shall not be subject to the disclosure requirements  
14 of the freedom of information act, 1976 PA 442, MCL 15.231 to  
15 15.246. ~~The disclosure of a record concerning investment~~  
16 ~~information described in section 88c under the freedom of~~  
17 ~~information act, 1976 PA 442, MCL 15.231 to 15.246, is subject to~~  
18 ~~the limitations provided in section 88c.~~ The board may also meet  
19 in closed session pursuant to the open meetings act, 1976 PA 267,  
20 MCL 15.261 to ~~15.267~~ **15.275**, to make a determination of whether  
21 it acknowledges as confidential any financial or proprietary  
22 information submitted by the applicant and considered by the  
23 applicant as confidential. Unless considered proprietary  
24 information, the board shall not acknowledge routine financial  
25 information as confidential. If the board determines that  
26 information submitted to the fund is financial or proprietary  
27 information and is confidential, the board shall release a written



1 statement, subject to disclosure under the freedom of information  
2 act, 1976 PA 442, MCL 15.231 to 15.246, that states all of the  
3 following:

4 (a) The name and business location of the person requesting  
5 that the information submitted be confidential as financial or  
6 proprietary information.

7 (b) That the information submitted was determined by the board  
8 to be confidential as financial or proprietary information.

9 (c) A broad nonspecific overview of the financial or  
10 proprietary information determined to be confidential.

11 (10) The fund shall not disclose financial or proprietary  
12 information not subject to disclosure pursuant to subsection (9)  
13 without consent of the applicant submitting the information.

14 (11) Any document to which the fund is a party evidencing a  
15 loan, insurance, mortgage, lease, venture, or other type of  
16 agreement the fund is authorized to enter into shall not be  
17 considered financial or proprietary information that may be exempt  
18 from disclosure under subsection (9).

19 (12) For purposes of subsections (9), (10), and (11),  
20 "financial or proprietary information" means information that has  
21 not been publicly disseminated or which is unavailable from other  
22 sources, the release of which might cause the applicant significant  
23 competitive harm.

24 Sec. 7. The fund shall have the powers and duties provided in  
25 this act, the powers delegated by other laws or executive orders,  
26 including, but not limited to, the power to:

27 (a) Sue and be sued; to have a seal and alter the same at

1 pleasure; to have perpetual succession; to make, execute, and  
2 deliver contracts, conveyances, and other instruments necessary or  
3 convenient to the exercise of its powers; and to make and amend  
4 bylaws.

5 (b) Solicit and accept gifts, grants, loans, and other aids  
6 from any person or the federal, state, or a local government or any  
7 agency of the federal, state, or a local government, or to  
8 participate in any other way in any federal, state, or local  
9 government program.

10 (c) Make grants, loans, and investments; to guarantee and  
11 insure loans, leases, bonds, notes, or other indebtedness, whether  
12 public or private; and to issue letters of credit.

13 (d) Construct; acquire by gift, purchase, installment  
14 purchase, or lease; and reconstruct, improve, repair, or equip a  
15 project or any part of a project.

16 (e) Borrow money and issue bonds and notes to finance part or  
17 all of the project costs of a project, or of a loan under  
18 subdivision (r) for an export transaction, and to secure those  
19 bonds and notes by mortgage, assignment, or pledge of any of its  
20 money, revenues, income, and properties. The authority provided by  
21 this subdivision includes, but is not limited to, issuing bonds and  
22 notes to acquire and install machinery, equipment, furnishings, and  
23 other personal property, notwithstanding that the fund does not own  
24 or propose to own or finance the building or land in or near to  
25 which the machinery, equipment, furnishings, and other personal  
26 property is or is to be located.

27 (f) Acquire or contract to acquire from any person,

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

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

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

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

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

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

1 by reason of any other action taken or the failure to act by the  
2 fund.

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

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

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

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

1 and interest on obligations incurred in connection with that  
2 property, and dispose of and otherwise deal with the property, in a  
3 manner as may be necessary or desirable to protect the interests of  
4 the fund.

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

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

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

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

20 Sec. 13. The total debt owed to the fund, excluding rights and  
21 royalties under a venture capital agreement or obligations to the  
22 fund resulting from an industrial development revenue bond or note,  
23 in relation to any 1 project shall at no time exceed 5% of the  
24 total assets of the fund, except that upon approval by a 2/3 vote  
25 of the board this amount may be increased to not to exceed 10% of  
26 the assets of the fund. ~~This section does not apply to a program~~  
27 ~~or activity authorized under chapter 8A.~~

1           Enacting section 1. Chapter 8a of the Michigan strategic fund  
2   act, 1984 PA 270, MCL 125.2088 to 125.2088p, is repealed.