

SENATE BILL No. 1175

March 4, 2008, Introduced by Senators HARDIMAN, ALLEN, VAN WOERKOM, KUIPERS, STAMAS, BROWN, GILBERT, JANSEN, BIRKHOLZ, McMANUS, PAPPAGEORGE, RICHARDVILLE, JELINEK, KAHN, GEORGE, GARCIA, CHERRY, JACOBS, WHITMER, PRUSI, GLEASON, BARCIA, THOMAS, ANDERSON, SCHAUER, CLARKE, HUNTER and OLSHOVE and referred to the Committee on Commerce and Tourism.

A bill to amend 1984 PA 270, entitled
 "Michigan strategic fund act,"
 by amending section 88d (MCL 125.2088d), as added by 2005 PA 225.

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 EVEN IF THE ELIGIBLE PRODUCTION COMPANY IS NOT A SMALL
4 BUSINESS. A loan under the small business capital access program
5 shall provide that the proceeds of a loan may only be used for a
6 business purpose within this state and may not be used for any of
7 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 THE MICHIGAN FILM AND DIGITAL
15 MEDIA INVESTMENT LOAN PROGRAM TO INVEST IN LOANS FROM THE
16 INVESTMENT FUND TO ELIGIBLE PRODUCTION COMPANIES OR FILM AND
17 DIGITAL MEDIA PRIVATE EQUITY FUNDS. THE FUND BOARD SHALL MAKE
18 INVESTMENTS UNDER THIS SUBSECTION ONLY UPON APPROVAL OF THE CHIEF
19 COMPLIANCE OFFICER AND THE MICHIGAN FILM OFFICE AFTER A REVIEW BY
20 THE INVESTMENT ADVISORY COMMITTEE. IF AN INVESTMENT IS MADE UNDER
21 THIS SECTION, NOT MORE THAN \$15,000,000.00 MAY BE LOANED TO ANY 1
22 ELIGIBLE PRODUCTION COMPANY OR FILM AND DIGITAL MEDIA PRIVATE
23 EQUITY FUND FOR ANY 1 QUALIFIED PRODUCTION. THE FUND BOARD MAY MAKE
24 AN INVESTMENT IN A QUALIFIED PRODUCTION IF ALL OF THE FOLLOWING ARE
25 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 IS IN PLACE WITH
4 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 PRODUCTION CREW 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.

25 (5) AS A SEPARATE AND DISTINCT PART OF THE LOAN ENHANCEMENT
26 PROGRAM, THE FUND SHALL ESTABLISH THE CHOOSE MICHIGAN FILM AND
27 DIGITAL MEDIA LOAN FUND TO INVEST IN LOANS FROM THE INVESTMENT FUND

1 TO ELIGIBLE PRODUCTION COMPANIES ELIGIBLE FOR A TAX CREDIT UNDER
2 THE MICHIGAN ECONOMIC GROWTH AUTHORITY ACT, 1995 PA 24, MCL 207.801
3 TO 207.810, OR SECTIONS 455 TO 457 OF THE MICHIGAN BUSINESS TAX
4 ACT, 2007 PA 36, MCL 208.1455 TO 208.1457. THE FUND BOARD SHALL
5 MAKE INVESTMENTS UNDER THIS SUBSECTION ONLY UPON APPROVAL OF THE
6 CHIEF COMPLIANCE OFFICER AND THE MICHIGAN FILM OFFICE. A LOAN
7 ISSUED UNDER THIS SUBSECTION IS SUBJECT TO ALL OF THE FOLLOWING
8 REQUIREMENTS:

9 (A) A LOAN SHALL BE PROVIDED AT AN INTEREST RATE OF NOT LESS
10 THAN 1%.

11 (B) THE MINIMUM AMOUNT OF A LOAN UNDER THIS SUBSECTION IS
12 \$500,000.00.

13 (C) THE MAXIMUM TERM OF A LOAN UNDER THIS SUBSECTION IS 10
14 YEARS, INCLUDING UP TO 3 YEARS OF DEFERRED PRINCIPAL PAYMENTS TO
15 ALIGN PRINCIPAL PAYMENTS WITH RECEIPT OF PRIMARY INCENTIVES, AS
16 DETERMINED BY THE FUND BOARD.

17 (D) THE VALUE OF THE LOAN MAY NOT EXCEED THE VALUE OF THE
18 PRIMARY INCENTIVE THAT THE ELIGIBLE PRODUCTION COMPANY IS ELIGIBLE
19 TO RECEIVE OVER 7 YEARS, AS DISCOUNTED BY THE FUND BOARD. A LOAN
20 AUTHORIZED BY THE FUND BOARD MAY PROVIDE FOR A LOAN AMOUNT EQUAL TO
21 A PORTION OR ALL OF THE DISCOUNTED VALUE OF THE PRIMARY INCENTIVES,
22 AS DISCOUNTED BY THE FUND BOARD.

23 (E) THE ELIGIBLE PRODUCTION COMPANY IS ELIGIBLE FOR REPAYMENT
24 OF THE LOAN REGARDLESS OF ACTUAL PRIMARY INCENTIVE AMOUNTS
25 RECEIVED.

26 (F) THE ELIGIBLE PRODUCTION COMPANY IS RESPONSIBLE FOR LOAN
27 PREPARATION AND CLOSING COSTS.

1 (G) AN ELIGIBLE PRODUCTION COMPANY THAT RECEIVES A LOAN UNDER
2 THIS SUBSECTION IS NOT ALSO ELIGIBLE FOR A LOAN FOR THE SAME
3 QUALIFIED PRODUCTION UNDER SUBSECTION (4).

4 (H) THE ELIGIBLE PRODUCTION COMPANY ALSO OBTAINS AN ADDITIONAL
5 LOAN FROM AN ACCREDITED FINANCIAL INSTITUTION OR OTHER APPROVED
6 LENDING MARKET.

7 (I) THE LOAN SHALL BE ISSUED CONSISTENT WITH GUIDELINES FOR
8 THE INITIATION OF A LOAN AND THE TERMS OF THE LOAN UNDER THIS
9 SUBSECTION APPROVED BY THE FUND BOARD.

10 (J) FIFTY PERCENT OF ANY EARNINGS ON A LOAN UNDER THIS
11 SUBSECTION SHALL BE DEPOSITED IN THE INVESTMENT FUND AND THE
12 REMAINDER OF THE EARNINGS SHALL BE DEPOSITED IN THE MICHIGAN FILM
13 PROMOTION FUND CREATED UNDER CHAPTER 2A.

14 (6) AS USED IN THIS SECTION:

15 (A) "ELIGIBLE PRODUCTION COMPANY" MEANS THAT TERM AS DEFINED
16 UNDER SECTION 455 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL
17 208.1455.

18 (B) "FILM AND DIGITAL MEDIA PRIVATE EQUITY FUND" MEANS ANY
19 LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY, OR CORPORATION
20 ORGANIZED AND OPERATING IN THE UNITED STATES THAT SATISFIES ALL OF
21 THE FOLLOWING:

22 (i) HAS AS ITS PRIMARY BUSINESS ACTIVITY THE INVESTMENT OF
23 FUNDS IN RETURN FOR EQUITY IN QUALIFIED PRODUCTIONS.

24 (ii) HOLDS OUT THE PROSPECT FOR CAPITAL APPRECIATION FROM THE
25 INVESTMENTS.

26 (iii) ACCEPTS INVESTMENTS ONLY FROM ACCREDITED INVESTORS AS THAT
27 TERM IS DEFINED IN SECTION 2 OF THE FEDERAL SECURITIES ACT OF 1963

1 AND RULES PROMULGATED UNDER THAT ACT.

2 (C) "INVESTMENT ADVISORY COMMITTEE" MEANS THE COMMITTEE
3 CREATED WITHIN THE DEPARTMENT UNDER SECTION 91 OF THE EXECUTIVE
4 ORGANIZATION ACT OF 1965, 1965 PA 380, MCL 16.191.

5 (D) "MICHIGAN FILM OFFICE" MEANS THE OFFICE CREATED UNDER
6 CHAPTER 2A.

7 (E) "PRIMARY INCENTIVE" MEANS A TAX CREDIT AN ELIGIBLE
8 PRODUCTION COMPANY IS ELIGIBLE TO RECEIVE UNDER THE MICHIGAN
9 ECONOMIC GROWTH AUTHORITY ACT, 1995 PA 24, MCL 207.801 TO 207.810,
10 OR UNDER SECTIONS 455 TO 459 OF THE MICHIGAN BUSINESS TAX ACT, 2007
11 PA 36, MCL 208.1455 TO 208.1459.

12 (F) "QUALIFIED PRODUCTION" MEANS THAT TERM AS DEFINED UNDER
13 SECTION 455 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL
14 208.1455.