THE MINUTES OF THE HOUSE STANDING COMMITTEE
ON
COMMERCE

Tuesday, May 1, 2012 **10:30 a.m.** **Room 519 House Office Building**

The House Standing Committee on Commerce was called to order by **Representative Wayne Schmidt**, Chair.

MEMBERS PRESENT: Representatives Wayne Schmidt, Tyler, Gilbert, Knollenberg, Denby, Lund, Shirkey, Farrington, Glardon, Shaughnessy, Somerville, Zorn, Switalski, Bledsoe, Haugh, Barnett, Clemente and Townsend.

MEMBERS ABSENT: Representative Olumba.

Representative Tyler moved to adopt the minutes from the **April 17, 2012**, meeting. There being no objection, the motion prevailed by unanimous consent.

Chair Wayne Schmidt laid **HB 5477** before the committee:

HB 5477	Wayne Schmidt	State financing and management; funds; 21st century job trust fund; modify.

Representative Switalski withdrew the amendment offered previously on April 17, 2012.

Representative Switalski offered the following amendment to **HB 5477:**

1. Amend page 1, following "**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**" by inserting:

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

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

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

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

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

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

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

(3) As a separate and distinct part of the loan enhancement program, the fund shall reestablish the small business capital access program that was previously operated by the fund for small businesses in a manner similar to how that program was operated before January 1, 2002. The small business capital access program shall operate on a market-driven basis and provide for premium payments by borrowers into a special reserve fund. The small business capital access program established by the board shall prohibit an officer, director, principal shareholder of a participating financial institution, or his or her immediate family members from receiving a small business capital access program loan from the financial institution. A loan under the small business capital access program may be issued to an eligible production company or film and digital media private equity fund even if the eligible production company or film and digital media private equity fund is not a small business. A loan under the small business capital access program shall provide that the proceeds of a loan may only be used for a business purpose within this state and may not be used for any of the following:

(a) The construction or purchase of residential housing.

(b) To finance passive real estate ownership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) AS A SEPARATE AND DISTINCT PART OF THE LOAN ENHANCEMENT PROGRAM, THE FUND SHALL OPERATE THE MICHIGAN MICRO-ENTERPRISE LOAN PROGRAM TO INVEST IN OR MAKE LOANS TO QUALIFIED MICRO-ENTERPRISE LENDERS. THE FUND SHALL ESTABLISH GUIDELINES FOR THE MICHIGAN MICRO-ENTERPRISE LOAN PROGRAM THAT INCLUDE, BUT ARE NOT LIMITED TO, ALL OF THE FOLLOWING:

(A) A PROVISION THAT THE PERSON WHO BORROWS FUNDS FROM THE QUALIFIED MICRO-ENTERPRISE LENDER ACTS AS A PERSONAL GUARANTOR, OR PROVIDES A SURETY AGREEMENT FOR THE LOAN.

(B) A PROVISION THAT THE AMOUNT OF A LOAN MAY NOT EXCEED SMALL BUSINESS ADMINISTRATION GUIDELINES.

(C) A PROVISION THAT REQUIRES A POSITION OF SECURITY ON ASSETS THAT ARE PURCHASED THROUGH THE MICHIGAN MICRO-ENTERPRISE LOAN PROGRAM.

(D) A PROVISION THAT REQUIRES CONSIDERATION OF THE DEFAULT RATE OF THE QUALIFIED MICRO-ENTERPRISE LENDER BEFORE APPROVING LOANS UNDER THE MICHIGAN MICRO-ENTERPRISE LOAN PROGRAM.

(E) A PROVISION THAT PROHIBITS THE QUALIFIED MICRO-ENTERPRISE LENDER FROM USING FUNDS FROM THE MICHIGAN MICRO-ENTERPRISE LOAN PROGRAM AS A MATCH FOR SMALL BUSINESS ADMINISTRATION LOANS.

(F) A PROVISION THAT PROVIDES THAT THE QUALIFIED MICRO-ENTERPRISE LENDER IS NOT ELIGIBLE TO RECEIVE FUNDS UNDER THE MICHIGAN MICRO-ENTERPRISE LOAN PROGRAM IF THE QUALIFIED MICRO-ENTERPRISE LENDER HAS A LOAN LOSS RESERVE OF 15% OR LESS FOR THE PORTFOLIO OF LOANS UNDER THE MICHIGAN MICRO-ENTERPRISE LOAN PROGRAM.

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

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

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

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

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

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

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

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

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

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

(G) "QUALIFIED MICRO-ENTERPRISE LENDER" MEANS AN ORGANIZATION THAT CURRENTLY ADMINISTERS A SUCCESSFUL MICRO-ENTERPRISE LOAN PROGRAM, MAKING MICRO-ENTERPRISE LOANS TO QUALIFIED MICRO-ENTERPRISE BUSINESSES, AS DETERMINED BY THE FUND.

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

Representative Farrington moved to adopt the amendment.

The motion prevailed by a vote of **18-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Wayne Schmidt, Tyler, Gilbert, Knollenberg, Denby, Lund, Shirkey, Farrington, Glardon, Shaughnessy, Somerville, Zorn, Switalski, Bledsoe, Haugh, Barnett, Clemente and Townsend,

Nays: None,

Pass: None.

Representative Clemente moved to report **HB 5477** with recommendation, as substitute **(H-1)**.

The motion prevailed by a vote of **17-1-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Wayne Schmidt, Tyler, Gilbert, Knollenberg, Denby, Lund, Shirkey, Farrington, Glardon, Shaughnessy, Zorn, Switalski, Bledsoe, Haugh, Barnett, Clemente and Townsend,

Nays: Representative Somerville,

Pass: None.

The following people submitted a card and did not speak:

James McBryde, Martin Dober and Brad Heffner, representing the Michigan Economic Development Corporation (MEDC) supports the bill.

Chair Wayne Schmidt laid **HB 4710** and **HB 4711** before the committee:

HB 4710	Kurtz	Trade; vehicles; motor vehicle sales finance act; expand to include nonmotorized recreational vehicles.
HB 4711	Kurtz	Trade; vehicles; application of retail installment sales act; exclude nonmotorized recreational vehicles.

TESTIMONY

Representative Kurtz, sponsor of HB 4710 and HB 4711, explained his bills to the committee.

Bill Sheffer and **Bill Perrone**, representing the Michigan Association of Recreation Vehicles (RVs) and Campsites (MARVAC), testified in support of the bills.

Dave Haylett, representing Haylett Auto & RV, testified in support of the bills. Handouts were submitted to the committee members.

Chair Wayne Schmidt opened the floor for a presentation from:

Kenneth Simonson, Chief Economist of the
Associated General Contractors (ACG) of America
and
Ken Lawless, Executive Vice-President of the
Clark Construction Company

Kenneth Simonson gave an overview of the role that construction plays in the U.S. economy, the employment outlook and the decrease in federal funding for construction. A handout was submitted to the committee. Questions and discussion followed.

Ken Lawless, Vice-President of Clark Construction and representing (ACG) of Michigan, gave an overview of the status of construction jobs in Michigan, the high unemployment rate in the construction industry, and how 70% of graduating construction students are now leaving Michigan to pursue available work. Questions and discussion followed.

Todd Doenitz, representing Fastdecks, Inc., gave comments on the construction climate in Michigan and the need for the legislature to invest in the infrastructure of Michigan to help create construction jobs, help keep construction worker families here in Michigan, and to help produce and retain college graduates. Questions and discussion followed.

There being no further business to come before the committee, the Chair adjourned the meeting at 11:34 a.m.

Representative Wayne Schmidt, Chair
House Standing Committee on Commerce
Malika Abdul-Basir

Committee Clerk

517-373-7256
1 Hour and 4 minutes