

HOUSE BILL No. 5638

January 17, 2008, Introduced by Reps. Coulouris, Byrum, Griffin and Simpson and referred to the Committee on Commerce.

A bill to amend 1984 PA 270, entitled "Michigan strategic fund act," by amending section 5 (MCL 125.2005), as amended by 2005 PA 225.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) There is created by this act a public body
2 corporate and politic to be known as the Michigan strategic fund.
3 The fund shall be within the department of treasury and shall
4 exercise its prescribed statutory powers, duties, and functions
5 independently of the state treasurer. The statutory authority,
6 powers, duties, functions, records, personnel, property, unexpended
7 balances of appropriations, allocations, and other funds of the
8 fund, including the functions of budgeting, procurement, personnel,
9 and management-related functions, shall be retained by the fund,

1 and the fund shall be an autonomous entity within the department of
2 treasury in the same manner as the Michigan employment security
3 commission was designated an autonomous entity within the Michigan
4 department of labor under section 379 of the executive organization
5 act of 1965, 1965 PA 380, MCL 16.479.

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

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

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

18 (4) In addition to the 9 members of the board under subsection
19 (3), not later than December 15, 2005, the governor shall appoint,
20 with the advice and consent of the senate, 2 additional members to
21 the board for terms expiring December 31, 2007. **AFTER THE INITIAL**
22 **APPOINTMENTS UNDER THIS SUBSECTION, MEMBERS APPOINTED UNDER THIS**
23 **SUBSECTION SHALL BE APPOINTED FOR A TERM OF 4 YEARS.** The members
24 appointed under this subsection shall be from the private sector
25 and shall have experience in private equity or venture capital
26 investments, commercial lending, or commercialization of
27 technology. From the date of the appointment of the members under

1 this subsection until December 31, ~~2007~~—2015, the board shall have
2 11 members. After December 31, ~~2007~~—2015, the board shall have 9
3 members **AND NO MEMBERS SHALL BE APPOINTED UNDER THIS SUBSECTION.**

4 (5) The governor shall designate 1 member of the board to
5 serve as its chairperson. The governor shall designate 1 member of
6 the board to serve as president of the fund and may designate 1
7 member to serve as vice-president of the fund. The chairperson,
8 president, and vice-president, if a vice-president is designated,
9 shall serve as those officers at the pleasure of the governor.

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

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

19 (8) A majority of the members of the board appointed and
20 serving constitutes a quorum for the transaction of business at a
21 meeting, or the exercise of a power or function of the fund,
22 notwithstanding the existence of 1 or more vacancies. The board may
23 act only by resolution approved by a majority of board members
24 appointed and serving. Voting upon action taken by the board shall
25 be conducted by majority vote of the members appointed and serving.
26 Members of the board may be present in person at a meeting of the
27 board or, if authorized by the bylaws of the board, by use of

1 telecommunications or other electronic equipment. The fund shall
2 meet at the call of the chair and as may be provided in the bylaws
3 of the fund. Meetings of the fund may be held anywhere within the
4 state of Michigan.

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

1 applicant as confidential. Unless considered proprietary
2 information, the board shall not acknowledge routine financial
3 information as confidential. If the board determines that
4 information submitted to the fund is financial or proprietary
5 information and is confidential, the board shall release a written
6 statement, subject to disclosure under the freedom of information
7 act, 1976 PA 442, MCL 15.231 to 15.246, that states all of the
8 following:

9 (a) The name and business location of the person requesting
10 that the information submitted be confidential as financial or
11 proprietary information.

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

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

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

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

24 (12) For purposes of subsections (9), (10), and (11),
25 "financial or proprietary information" means information that has
26 not been publicly disseminated or which is unavailable from other
27 sources, the release of which might cause the applicant significant

1 competitive harm.