

Act No. 507  
Public Acts of 2014  
Approved by the Governor  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

Introduced by Senator Kowall

**ENROLLED SENATE BILL No. 272**

AN ACT to amend 1984 PA 270, entitled “An act relating to the economic development of this state; to create the Michigan strategic fund and to prescribe its powers and duties; to transfer and provide for the acquisition and succession to the rights, properties, obligations, and duties of the job development authority and the Michigan economic development authority to the Michigan strategic fund; to provide for the expenditure of proceeds in certain funds to which the Michigan strategic fund succeeds in ownership; to provide for the issuance of, and terms and conditions for, certain notes and bonds of the Michigan strategic fund; to create certain boards and funds; to create certain permanent funds; to exempt the property, income, and operation of the fund and its bonds and notes, and the interest thereon, from certain taxes; to provide for the creation of certain centers within and for the purposes of the Michigan strategic fund; to provide for the creation and funding of certain accounts for certain purposes; to impose certain powers and duties upon certain officials, departments, and authorities of this state; to make certain loans, grants, and investments; to provide penalties; to make an appropriation; and to repeal acts and parts of acts,” by amending sections 4, 5, and 23 (MCL 125.2004, 125.2005, and 125.2023), section 4 as amended by 2012 PA 145, section 5 as amended by 2011 PA 251, and section 23 as amended by 2009 PA 85, and by adding section 7b.

*The People of the State of Michigan enact:*

Sec. 4. As used in this act:

(a) “Board” means the board of directors of the Michigan strategic fund, except where the context clearly requires a different definition.

(b) “Economic development project” means an endeavor related to industrial, commercial, or agricultural enterprise. Economic development project includes, but is not limited to, a theme or recreation park; agricultural or forestry production, harvesting, storage, or processing facilities or equipment; port facilities; and the use of equipment or facilities designed to produce energy from renewable resources. Economic development project does not include that portion of an endeavor devoted to the sale of goods at retail, except that, as used in relation to the fund insuring a transaction entered into by a depository institution, and as used in relation to a loan by the fund to a minority owned business, an economic development project may include that portion of an endeavor devoted to the sale of goods at retail. Economic development project does not include that portion of an endeavor devoted to housing or a program or activity authorized under chapter 8A.

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

(d) “Fund” means the Michigan strategic fund created under section 5, except where the context clearly requires a different definition.

(e) “Green chemistry” means chemistry and chemical engineering to design chemical products or processes that reduce or eliminate the use or generation of hazardous substances, while producing high-quality products through safe and efficient manufacturing processes. Green chemistry is guided by the following 12 principles:

(i) Prevent waste: Design chemical syntheses to prevent waste, leaving no waste to treat or clean up.

(ii) Design safer chemicals and products: Design chemical products to be fully effective, yet have little or no toxicity.

(iii) Design less hazardous chemical syntheses: Design syntheses to use and generate substances with little or no toxicity to humans and the environment.

(iv) Use renewable feedstocks: Use raw materials and feedstocks that are renewable rather than depleting. Renewable feedstocks are often made from agricultural products or are the wastes of other processes; depleting feedstocks are made from fossil fuels, including petroleum, natural gas, or coal, or are mined.

(v) Use catalysts, not stoichiometric reagents: Minimize waste by using catalytic reactions. Catalysts are used in small amounts and can carry out a single reaction many times. They are preferable to stoichiometric reagents, which are used in excess and work only once.

(vi) Avoid chemical derivatives: Avoid using blocking or protecting groups or any temporary modifications if possible. Derivatives use additional reagents and generate waste.

(vii) Maximize atom economy: Design syntheses so that the final product contains the maximum proportion of the starting materials. There should be few, if any, wasted atoms.

(viii) Use safer solvents and reaction conditions: Avoid using solvents, separation agents, or other auxiliary chemicals. If these chemicals are necessary, use innocuous chemicals.

(ix) Increase energy efficiency: Run chemical reactions at ambient temperature and pressure whenever possible.

(x) Design chemicals and products to degrade after use: Design chemical products to break down to innocuous substances after use so that they do not accumulate in the environment.

(xi) Analyze in real-time to prevent pollution: Include in-process real-time monitoring and control during syntheses to minimize or eliminate the formation of by-products.

(xii) Minimize the potential for accidents: Design chemicals and their forms, including solid, liquid, or gas, to minimize the potential for chemical accidents, including explosions, fires, and releases to the environment.

(f) “Michigan economic development corporation” or “MEDC” means the Michigan economic development corporation, the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, and subsequently amended, between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the fund.

(g) “Municipality” means a county, city, village, township, port district, development organization, institution of higher education, community or junior college, or subdivision or instrumentality of any of the legal entities listed in this subdivision.

(h) “Person” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, profit or nonprofit corporation including a public or private college or university, public utility, municipality, local industrial development corporation, economic development corporation, other association of persons organized for agricultural, commercial, or industrial purposes, a lender, or any other entity approved by the board.

(i) “Port facilities” means seawall jetties; piers; wharves; docks; boat landings; marinas; warehouses; storehouses; elevators; grain bins; cold storage plants; bunkers; oil tanks; ferries; canals; locks; bridges; tunnels; seaways; conveyors; modern appliances for the economical handling, storage, and transportation of freight and handling of passenger traffic; transfer and terminal facilities required for the efficient operation and development of ports and harbors; other harbor improvements; or improvements, enlargements, remodeling, or extensions of any of these buildings or structures. Port facilities do not include an international bridge or international tunnel.

(j) “Project” means an economic development project and, in addition, means the acquisition, construction, reconstruction, conversion, or leasing of an industrial, commercial, retail, agricultural, or forestry enterprise, or any part of these, to carry out the purposes and objectives of this act and of the fund, including, but not limited to, acquisition of land or interest in land, buildings, structures, or other planned or existing planned improvements to land including leasehold improvements, machinery, equipment, or furnishings which include, but are not limited to, the following: research parks; office facilities; engineering facilities; research and development laboratories; warehousing facilities; parts distribution facilities; depots or storage facilities; port facilities; railroad facilities, including trackage, right of way, and appurtenances; airports; bridges and bridge facilities; water and air pollution control equipment or waste disposal facilities; theme or recreational parks; equipment or facilities designed to produce energy from renewable resources; farms, ranches, forests, and other agricultural or forestry commodity producers; agricultural harvesting, storage, transportation, or processing facilities or equipment; grain elevators; shipping heads and livestock pens; livestock; warehouses; wharves and dock facilities; dredging of recreational or commercial harbors; water, electricity, hydro

electric, coal, petroleum, or natural gas provision facilities; dams and irrigation facilities; sewage, liquid, and solid waste collection, disposal treatment, and drainage services and facilities. Project does not include a program or activity authorized under chapter 8A.

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

Sec. 5. (1) There is created by this act a public body corporate and politic to be known as the Michigan strategic fund. The fund shall be within the department of treasury and shall exercise its prescribed statutory powers, duties, and functions independently of the state treasurer. The statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other funds of the fund, including the functions of budgeting, procurement, personnel, and management-related functions, shall be retained by the fund, and the fund shall be an autonomous entity within the department of treasury in the same manner as the Michigan employment security commission was designated an autonomous entity within the Michigan department of labor under section 379 of the executive organization act of 1965, 1965 PA 380, MCL 16.479.

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

(3) Except as provided in subsection (4), the board shall consist of the director of the department of licensing and regulatory affairs or his or her designee from within the department of licensing and regulatory affairs, the state treasurer or his or her designee from within the department of treasury, the chief executive officer of the MEDC or his or her designee, and 6 other members with knowledge, skill, and experience in the academic, business, or financial field, who shall be appointed by the governor with the advice and consent of the senate. None of the 6 members appointed under this section shall be employees of this state. Not less than 5 members of the board appointed under this subsection shall be members of the private sector. Five of the 6 members appointed under this subsection shall serve for fixed terms. Upon completion of each fixed term expiring after December 30, 2005, a member shall be appointed for a term of 4 years. Of the private sector members appointed by the governor for a fixed term, 1 shall be appointed from a list of 3 or more nominees of the speaker of the house of representatives representing persons within the private sector with experience in private equity or venture capital investments, commercial lending, or commercialization of technology and 1 shall be appointed from a list of 3 or more nominees of the senate majority leader representing persons within the private sector with experience in private equity or venture capital investments, commercial lending, or commercialization of technology. A member appointed under this subsection or subsection (4) shall serve until a successor is appointed, and a vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The member appointed under this subsection and serving without a fixed term shall serve at the pleasure of the governor. Of the members appointed under this subsection and subsection (4), there shall be minority, female, and small business representation. After December 31, 2005, at least 2 of the members of the board shall have experience in private equity or venture capital investments, at least 1 of the members shall have experience in commercial lending, and at least 1 of the members of the board shall have experience in commercialization of technology.

(4) In addition to the 9 members of the board under subsection (3), not later than December 15, 2005, the governor shall appoint, with the advice and consent of the senate, 2 additional members to the board for terms expiring December 31, 2007. After the initial appointments under this subsection, members appointed under this subsection shall be appointed for a term of 4 years. The members appointed under this subsection shall be from the private sector and shall have experience in private equity or venture capital investments, commercial lending, or commercialization of technology. From the date of the appointment of the members under this subsection until December 31, 2015, the board shall have 11 members. After December 31, 2015, the board shall have 9 members and no members shall be appointed under this subsection.

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

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

(7) The board may delegate to its president, vice-president, staff, or others, including the MEDC, those functions and authority that the board deems necessary or appropriate, which may include the oversight and supervision of employees of the fund. However, responsibilities specifically vested in the board under chapter 8A shall be performed by the board and shall not be transferred to the MEDC, except that Michigan business development program incentives under section 88r, and community revitalization incentives under chapter 8C, of \$1,000,000.00 or less can be authorized by the president of the fund.

(8) A majority of the members of the board appointed and serving constitutes a quorum for the transaction of business at a meeting, or the exercise of a power or function of the fund, notwithstanding the existence of 1 or more vacancies. The board may act only by resolution approved by a majority of board members appointed and serving.

Voting upon action taken by the board shall be conducted by majority vote of the members appointed and serving. Members of the board may be present in person at a meeting of the board or, if authorized by the bylaws of the board, by use of telecommunications or other electronic equipment. The fund shall meet at the call of the chair and as may be provided in the bylaws of the fund. Meetings of the fund may be held anywhere within the state of Michigan.

(9) The business of the board shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and shall also be provided on an internet website operated by the fund. A record or portion of a record, material, or other data received, prepared, used, or retained by the fund or any of its centers in connection with an application to or with a project or product assisted by the fund or any of its centers or with an award, grant, loan, or investment that relates to financial or proprietary information submitted by the applicant that is considered by the applicant and acknowledged by the board or a designee of the board as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The disclosure of a record concerning investment information described in section 88c under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is subject to the limitations provided in section 88c. The board may also meet in closed session pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, to make a determination of whether it acknowledges as confidential any financial or proprietary information submitted by the applicant and considered by the applicant as confidential. Unless considered proprietary information, the board shall not acknowledge routine financial information as confidential. If the board determines that information submitted to the fund is financial or proprietary information and is confidential, the board shall release a written statement, subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, that states all of the following:

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

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

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

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

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

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

Sec. 7b. (1) The governor shall establish and appoint an advisory committee to make recommendations to the board regarding projects relating to port facilities.

(2) The advisory board described in subsection (1) shall contain 9 members appointed by the governor as follows:

(a) Five members representing the interests of the following geographical areas of this state as determined by the governor:

(i) The Upper Peninsula of this state.

(ii) The southwest area of this state.

(iii) The northern Lower Peninsula of this state.

(iv) The southeast area of this state.

(v) The thumb area or midstate area of this state.

(b) One member representing the interests of the agricultural business supply and handling industry.

(c) One member representing the interests of the aggregate supply community.

(d) One member appointed from 2 or more nominees of the majority leader of the senate.

(e) One member appointed from 2 or more nominees of the speaker of the house of representatives.

(3) All of the individuals appointed to the advisory board described under subsection (2) shall be knowledgeable about port facilities or economic development as determined by the governor and shall serve at the pleasure of the governor.

Sec. 23. (1) The fund may borrow money and issue bonds or notes for the following purposes:

(a) To provide sufficient funds for achieving the fund's purposes and objectives including, but not limited to, amounts necessary to pay the costs of acquiring a project or part of a project; to make loans for the costs of a project or part of

a project; to make loans pursuant to section 7(r) for an export related transaction; for making grants; for providing money to guarantee or insure loans, leases, bonds, notes, or other indebtedness; for making working capital loans; for all other expenditures of the fund incident to and necessary or convenient to carry out the fund's purposes, objectives, and powers; and for any combination of the foregoing. The cost of a project may include administrative costs including, but not limited to, engineering, architectural, legal, and accounting fees that are necessary for the project.

(b) To refund bonds or notes of the fund issued under this act, of the job development authority issued under former 1975 PA 301, of the Michigan economic development authority issued under former 1982 PA 70, of an economic development corporation issued under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, or of a municipality issued under the industrial development revenue bond act of 1963, 1963 PA 62, MCL 125.1251 to 125.1267, by the issuance of new bonds, whether or not the bonds or notes to be refunded have matured or are subject to prior redemption or are to be paid, redeemed, or surrendered at the time of the issuance of the refunding bonds or notes; and to issue bonds or notes partly to refund the bonds or notes and partly for any other purpose provided for by this section.

(c) To pay the costs of issuance of bonds or notes under this act; to pay interest on bonds or notes becoming payable prior to the receipt of the first revenues available for payment of that interest as determined by the board; and to establish, in full or in part, a reserve for the payment of the principal and interest on the bonds or notes in the amount determined by the board.

(2) The bonds and notes, including, but not limited to, commercial paper, shall be authorized by resolution adopted by the board, shall bear the date or dates, and shall mature at the time or times not exceeding 50 years from the date of issuance, as the resolution may provide. The bonds and notes shall bear interest at the rate or rates as may be set, reset, or calculated from time to time, or may bear no interest, as provided in the resolution. The bonds and notes shall be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be transferable, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of prior redemption at the option of the fund or the holders of the bonds and notes as the resolution or resolutions may provide. The bonds and notes of the fund may be sold at public or private sale at the price or prices determined by the fund. For purposes of 1966 PA 326, MCL 438.31 to 438.33, this act and other acts applicable to the fund shall regulate the rate of interest payable or charged by the fund, and 1966 PA 326, MCL 438.31 to 438.33, does not apply. Bonds and notes may be sold at a discount.

(3) Bonds or notes may be 1 or more of the following:

(a) Made the subject of a put or agreement to repurchase by the fund or others.

(b) Secured by a letter of credit or by any other collateral that the resolution may authorize.

(c) Reissued by the fund once reacquired by the fund pursuant to any put or repurchase agreement.

(4) The fund may authorize by resolution any member of the board to do 1 or more of the following:

(a) Sell and deliver, and receive payment for notes or bonds.

(b) Refund notes or bonds by the delivery of new notes or bonds whether or not the notes or bonds to be refunded have matured, are subject to prior redemption, or are to be paid, redeemed, or surrendered at the time of the issuance of refunding bonds or notes.

(c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purposes.

(d) Buy notes or bonds so issued at not more than the face value of the notes or bonds.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the fund or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(5) Except as may otherwise be expressly provided by the fund, every issue of its notes or bonds shall be general obligations of the fund payable out of revenues, properties, or money of the fund, subject only to agreements with the holders of particular notes or bonds pledging particular receipts, revenues, properties, or money as security for the notes or bonds.

(6) The notes or bonds of the fund are negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.9994, subject only to the provisions of the notes or bonds for registration.

(7) Bonds or notes issued by the fund are not subject to the terms of the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bonds or notes issued by the fund are not required to be registered. A filing of a bond or note of the fund is not required under the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

(8) A resolution authorizing notes or bonds may contain any or all of the following covenants, which shall be a part of the contract with the holders of the notes or bonds:

(a) A pledge of all or a part of the fees, charges, and revenues made or received by the fund, or all or a part of the money received in payment of lease rentals, or loans and interest on the loans, and other money received or to be

received to secure the payment of the notes or bonds or of an issue of the notes or bonds, subject to agreements with bondholders or noteholders as may then exist.

(b) A pledge of all or a part of the assets of the fund, including leases, or notes or mortgages and obligations securing the same to secure the payment of the notes or bonds or of an issue of notes or bonds, subject to agreements with noteholders or bondholders as may then exist.

(c) A pledge of a loan, grant, or contribution from the federal, state, or local government, or source in aid of a project as provided for in this act.

(d) A pledge of money directly derived from payments from the heritage trust fund created by the heritage trust fund act of 1982, former 1982 PA 327.

(e) The use and disposition of the revenues and income from leases, or from loans, notes, and mortgages owned by the fund.

(f) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this act.

(g) Limitations on the purpose to which the proceeds of sale of the notes or bonds may be applied and limitations on pledging those proceeds to secure the payment of other bonds or notes.

(h) Authority for and limitations on the issuance of additional notes or bonds for the purposes provided for in the resolution and the terms upon which additional notes or bonds may be issued and secured. Additional bonds pledging money derived from the heritage trust fund as provided in subdivision (d) may only be issued if the issuance meets the requirements of section 204 of the resolution adopted by the Michigan economic development authority authorizing issuance of its bonds dated December 1, 1982, and any requirement of former 1982 PA 70, provided that these requirements do not apply if those bonds have been defeased.

(i) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to an amendment or abrogation, and the manner in which the consent may be given.

(j) Vest in a trustee or a secured party the property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise as the fund may determine necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the rights of the noteholders and bondholders. A trust agreement may be executed by the fund with any trustee who may be located inside or outside this state to accomplish any of the foregoing.

(k) Pay maintenance and repair costs of a project.

(l) The insurance to be carried on a project and the use and disposition of insurance money and condemnation awards.

(m) The terms, conditions, and agreements upon which the holder of the bonds, or a portion of the bonds, is entitled to the appointment of a receiver by the circuit court. A receiver who is appointed may enter and take possession of the project and maintain it or lease or sell the project for cash or on an installment sales contract and prescribe rentals and payments therefor and collect, receive, and apply all income and revenues thereafter arising in the same manner and to the same extent as the fund.

(n) Any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.

(9) A pledge made by the fund is valid and binding from the time the pledge is made. The money or property so pledged and thereafter received by the fund is immediately subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge is valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the fund and is valid and binding as against the transfer of the money or property pledged, irrespective of whether the parties have notice. Neither the resolution, the trust agreement, nor any other instrument by which a pledge is created need be recorded.

(10) A member of the board or a person executing the notes or bonds is not liable personally on the notes or bonds and is not subject to personal liability of accountability by reason of the issuance of the notes or bonds.

(11) This state is not liable on notes or bonds of the fund, and the notes or bonds shall not be considered a debt of this state. The notes and bonds shall contain on their face a statement indicating this fact.

(12) The notes and bonds of the fund are securities in which the public officers and bodies of this state; municipalities and municipal subdivisions; insurance companies, associations, and other persons carrying on an insurance business; banks, trust companies, savings banks, savings associations, and savings and loan associations; investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and all other persons who are authorized to invest in bonds or other obligations of this state may properly and legally invest funds.

(13) The property of the fund and its income and operation is exempt from all taxation by this state or any of its political subdivisions, and all bonds and notes of the fund, the interest on the bonds and notes, and their transfer are

exempt from all taxation by this state or any of its political subdivisions, except for estate, gift, and inheritance taxes. The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the fund under this act, in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds of the fund, issued pursuant to this act, the interest on the notes and bonds, the transfer of the notes and bonds, and all its fees, charges, gifts, grants, revenues, receipts, and other money received or to be received and pledged to pay or secure the payment of the notes or bonds shall at all times be free and exempt from all state or local taxation provided by the laws of this state, except for estate, gift, and inheritance taxes.

(14) The issuance of bonds and notes under this act is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(15) For the purpose of more effectively managing its debt service, the fund may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by the board by resolution.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor