

# HOUSE BILL No. 5759

April 1, 2004, Introduced by Rep. Koetje and referred to the Committee on Commerce.

A bill to amend 1984 PA 270, entitled  
"Michigan strategic fund act,"  
by amending section 23 (MCL 125.2023), as amended by 2002 PA  
556.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

3       (a) To provide sufficient funds for achieving the fund's  
4 purposes and objectives including, but not limited to, amounts  
5 necessary to pay the costs of acquiring a project or part of a  
6 project; to make loans for the costs of a project or part of a  
7 project; to make loans pursuant to section 7(r) for an export  
8 related transaction; for making grants; for providing money to  
9 guarantee or insure loans, leases, bonds, notes, or other  
10 indebtedness; for making working capital loans; for all other

1 expenditures of the fund incident to and necessary or convenient  
2 to carry out the fund's purposes, objectives, and powers; and for  
3 any combination of the foregoing. The cost of a project may  
4 include administrative costs including, but not limited to,  
5 engineering, architectural, legal, and accounting fees that are  
6 necessary for the project.

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

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

27 (2) The bonds and notes, including, but not limited to,

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

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

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

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

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

27 (4) The fund may authorize by resolution any member of the

1 board to do 1 or more of the following:

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

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

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

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

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

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

25 (6) The notes or bonds of the fund are negotiable instruments  
26 within the meaning of and for all the purposes of the uniform  
27 commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, subject

1 only to the provisions of the notes or bonds for registration.

2 (7) Bonds or notes issued by the fund are not subject to the  
3 terms of the revised municipal finance act, 2001 PA 34,  
4 MCL 141.2101 to 141.2821. The bonds or notes issued by the fund  
5 are not required to be registered. A filing of a bond or note of  
6 the fund is not required under the uniform securities act, 1964  
7 PA 265, MCL 451.501 to 451.818, **or the uniform securities act**  
8 **(2002), MCL 451.2101 to 451.2703.**

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

12 (a) A pledge of all or a part of the fees, charges, and  
13 revenues made or received by the fund, or all or a part of the  
14 money received in payment of lease rentals, or loans and interest  
15 on the loans, and other money received or to be received to  
16 secure the payment of the notes or bonds or of an issue of the  
17 notes or bonds, subject to agreements with bondholders or  
18 noteholders as may then exist.

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

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

27 (d) A pledge of money directly derived from payments from the

1 heritage trust fund created by the heritage trust fund act of  
2 1982, former 1982 PA 327.

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

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

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

11 (h) Authority for and limitations on the issuance of  
12 additional notes or bonds for the purposes provided for in the  
13 resolution and the terms upon which additional notes or bonds may  
14 be issued and secured. Additional bonds pledging money derived  
15 from the heritage trust fund as provided in subdivision (d) may  
16 only be issued if the issuance meets the requirements of section  
17 204 of the resolution adopted by the Michigan economic  
18 development authority authorizing issuance of its bonds dated  
19 December 1, 1982, and any requirement of former 1982 PA 70,  
20 provided that these requirements do not apply if those bonds have  
21 been defeased.

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

27 (j) Vest in a trustee or a secured party the property,

1 income, revenues, receipts, rights, remedies, powers, and duties  
2 in trust or otherwise as the fund may determine necessary or  
3 appropriate to adequately secure and protect noteholders and  
4 bondholders or to limit or abrogate the rights of the noteholders  
5 and bondholders. A trust agreement may be executed by the fund  
6 with any trustee who may be located inside or outside this state  
7 to accomplish any of the foregoing.

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

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

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

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

23 (9) A pledge made by the fund is valid and binding from the  
24 time the pledge is made. The money or property so pledged and  
25 thereafter received by the fund is immediately subject to the  
26 lien of the pledge without a physical delivery or further act.  
27 The lien of a pledge is valid and binding as against parties

1 having claims of any kind in tort, contract, or otherwise against  
2 the fund and is valid and binding as against the transfer of the  
3 money or property pledged, irrespective of whether the parties  
4 have notice. Neither the resolution, the trust agreement, nor  
5 any other instrument by which a pledge is created need be  
6 recorded.

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

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

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

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



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

14 (14) The issuance of bonds and notes under this act is  
15 subject to the agency financing reporting act.

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

21 Enacting section 1. This amendatory act does not take  
22 effect unless Senate Bill No. \_\_\_\_ or House Bill No. 5746  
23 (request no. 06004'03) of the 92nd Legislature is enacted into  
24 law.