



**House
Legislative
Analysis
Section**

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**STRATEGIC FUND: DISBURSEMENT
BY LEGISLATIVE APPROPRIATION**

**House Bill 6063 as introduced
First Analysis (12-10-02)**

**Sponsor: Rep. Leon Drolet
Committee: Commerce**

THE APPARENT PROBLEM:

The Michigan Strategic Fund was created by Public Act 270 of 1984. The MSF was transferred in 1999 by executive order from the Michigan Jobs Commission to the Department of Management and Budget. In its Appropriations Summary and Analysis of the fiscal year 2002-2003 budget issued in November 2002, the House Fiscal Agency describes the MSF as “an autonomous agency within the Department of Management and Budget [that] houses the state’s economic development programs. Programs are administered through the Michigan Economic Development Corporation (MEDC) – a public corporation that represents a partnership between the MSF and local economic development corporations and partners. The MEDC administers various programs aimed at retaining and attracting businesses to Michigan, assisting Michigan business with expansion plans, and providing financial support for local units of government to provide infrastructure improvements necessary for economic development projects”.

The MSF receives revenue from a variety of sources, notably including revenues from Indian tribal casinos. When Governor Engler initially negotiated compacts regarding casino gaming with Michigan Indian tribes in the early 1990’s, the agreement called for the MSF to receive eight percent of the net win from gaming operations as long as there were no non-Indian casinos permitted in the state. A 1996 Michigan Court of Appeals decision (*Tiger Stadium Fan Club, Inc. v Governor*) said that these Indian gaming revenues were “public funds not subject to appropriation [by the legislature]”. This ruling came in response to a challenge to the use of MSF funds in financing infrastructure improvements related to the construction of a new baseball stadium in Detroit, now known as Comerica Park. The court ruled that this use of the MSF funds did not violate either the “appropriations clause” or the “separation of powers clause” of the state constitution. Because of the nature of the negotiations, said the court, “the

revenues are not paid as a tax or a fee, or pursuant to a legislative act”.

With the advent of non-Indian casino gaming, the original casino gaming contributions are no longer required, but, as the House Fiscal Agency has noted, “revenue from newer tribal casinos is still received and expended by the MEDC, as is revenue generated from the repayment of loans and other similar sources . . . indirectly tied to the tribal gaming revenue”. The HFA points out that, “The MEDC categorizes these revenues as corporate revenues and the distribution of this revenue has not been subject to legislative appropriations”. Some people believe this revenue should be designated as public revenue subject to legislative appropriation in order for the legislature to have the proper oversight over the spending of public money.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Strategic Fund Act to declare that, notwithstanding any other provision in the act, all money and assets of the fund are public money and assets, and to require that they be disbursed only as provided by law in an appropriation (by the legislature).

MCL 125.2014a

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no impact on state revenues and no direct impact on state costs but could affect the distribution of funds held by the Michigan Strategic Fund. The HFA cites MEDC estimates that it will receive about \$25.3 million in corporate revenue in fiscal year 2003; \$30.8 million for fiscal year 2004; and \$36.8 million for fiscal year 2005. The agency says that the MEDC has committed future funds to a number of projects, including the NextEnergy initiative (\$52.5 million over three years); the SmartZones program

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(\$4.5 million); and in-state and out-of-state marketing (\$5 million). For fiscal year 2003, MEDC has budgeted \$10 million for general operations and programs. The agency expects the balance of uncommitted corporate funds to be about \$10.8 million by the end of fiscal year 2003. (HFA committee analysis dated 11-12-02. Other information from that document is used elsewhere in this analysis.)

ARGUMENTS:

For:

The bill would provide more legislative oversight over how money in the state's strategic fund is spent and, as a result, more oversight over the activities of the state's major economic development agency, the Michigan Economic Development Corporation. If the state is to be engaged in "picking winners and losers" through the use of public funds (rather than through across-the-board tax policies), the legislature ought to be involved. It makes sense, if the MSF funds are public funds, that they be distributed only after a legislative appropriation. Note, for example, that the 1996 court decision stemmed from a controversy over whether funds should be spent on projects related to the building of a new stadium. Whatever one thinks of such a project, shouldn't that kind of decision be made by the legislature?

Against:

With the economy in the doldrums, relatively speaking, it hardly seems the time to tinker with the state's successful approach to economic development. The advantage of having an economic development agency somewhat separated from state government is to provide economic development specialists the flexibility to respond quickly to current needs. The courts have said that certain revenues related to Indian casino gaming flowing into the Michigan Strategic Fund are public funds but not subject to legislative appropriations. (The court said the revenues were not the result of taxes, fees, or legislative acts.) It is not clear what beneficial public policy goals would be accomplished as a result of contravening this decision. It should be noted that, reportedly, significant amounts of the revenues in question are to be dedicated in the near future to new economic development programs that were themselves approved by the legislature. Money in the MSF must be used for purposes described in the Michigan Strategic Fund Act, which was also approved by the legislature.

POSITIONS:

The Michigan Economic Development Corporation does not support the bill. (12-9-02)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.