

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4480

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending sections 9 and 88c (MCL 125.2009 and 125.2088c), as
amended by 2012 PA 145.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) The fund shall transmit to ~~the~~ **EACH MEMBER OF THE**
2 legislature, **THE GOVERNOR, THE CLERK OF THE HOUSE OF**
3 **REPRESENTATIVES, THE SECRETARY OF THE SENATE, AND THE SENATE AND**
4 **HOUSE FISCAL AGENCIES** annually a ~~status~~ report of its activities.
5 ~~The report shall include, but not be limited to, information on~~
6 ~~name and location of all applicants, amount and type of financial~~
7 ~~assistance being requested, type of project or product being~~
8 ~~financed, number of net jobs created or retained, duration of~~

1 ~~financial assistance, amount of financial support other than state~~
2 ~~resources, and the status of any loans of the fund, excluding~~
3 ~~industrial development revenue loans, which are in default. THE~~
4 REPORT SHALL BE TRANSMITTED NOT LATER THAN APRIL 10 OF EACH YEAR
5 FOR ACTIVITIES IN THE IMMEDIATELY PRECEDING STATE FISCAL YEAR. The
6 report shall not include information exempt from disclosure under
7 section 5. THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF
8 THE FOLLOWING FOR EACH PROGRAM OPERATED UNDER THIS ACT:

9 (A) A LIST OF ENTITIES THAT RECEIVED FINANCIAL ASSISTANCE.

10 (B) THE TYPE OF PROJECT OR PRODUCT BEING FINANCED.

11 (C) THE AMOUNT AND TYPE OF FINANCIAL ASSISTANCE.

12 (D) FOR EACH SEPARATE FORM OF FINANCIAL ASSISTANCE, ALL OF THE
13 FOLLOWING:

14 (i) THE NUMBER OF NEW JOBS COMMITTED OR PROJECTED WHEN THE
15 FINANCIAL ASSISTANCE WAS APPLIED FOR.

16 (ii) THE NUMBER OF RETAINED JOBS COMMITTED OR PROJECTED WHEN
17 THE FINANCIAL ASSISTANCE WAS APPLIED FOR.

18 (iii) THE ACTUAL NUMBER OF NEW JOBS CREATED THAT ARE NOT
19 TEMPORARY EMPLOYEES.

20 (iv) THE ACTUAL NUMBER OF RETAINED JOBS THAT ARE NOT TEMPORARY
21 EMPLOYEES.

22 (v) THE AVERAGE ANNUAL SALARY OF THE NEW JOBS CREATED THAT ARE
23 NOT TEMPORARY EMPLOYEES.

24 (vi) THE AVERAGE ANNUAL SALARY OF THE RETAINED JOBS THAT ARE
25 NOT TEMPORARY EMPLOYEES.

26 (E) THE DURATION OF THE FINANCIAL ASSISTANCE.

27 (F) THE AMOUNT OF FINANCIAL SUPPORT OTHER THAN STATE

House Bill No. 4480 as amended December 17, 2014

1 RESOURCES.

2 (G) MONEY OR OTHER REVENUE OR PROPERTY RETURNED TO THE FUND,
3 INCLUDING ANY REPAYMENTS THROUGH A CLAWBACK PROVISION IN THE
4 AGREEMENT.

5 (H) THE STATUS OF ALL LOANS OF THE FUND.

6 (I) A LIST OF ALL ENTITIES THAT ARE IN BANKRUPTCY, THAT THE
7 FUND HAS RECEIVED ACTUAL NOTICE OF, FILED BY A DIRECT RECIPIENT OF
8 AN ACTIVE SINGLE INCENTIVE OF AT LEAST \$500,000.00. IN ADDITION,
9 THE FUND SHALL, WITHIN 120 DAYS AFTER THE FUND RECEIVES NOTICE,
10 PROVIDE A REPORT OF THE NOTICE OF BANKRUPTCY <<ON ITS WEBSITE AND
11 SHALL FORWARD THE REPORT>> TO EACH OF THE
12 FOLLOWING:

13 (i) THE SENATE MAJORITY LEADER AND THE SENATE MINORITY LEADER.

14 (ii) THE SPEAKER OF THE HOUSE AND THE HOUSE MINORITY LEADER.

15 (iii) THE MEMBERS OF THE HOUSE COMMERCE COMMITTEE.

16 (iv) THE MEMBERS OF THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON
17 GENERAL GOVERNMENT.

18 (v) THE MEMBERS OF THE SENATE ECONOMIC DEVELOPMENT COMMITTEE.

19 (vi) THE MEMBERS OF THE SENATE APPROPRIATIONS SUBCOMMITTEE ON
20 GENERAL GOVERNMENT.

21 (J) A SUMMARY OF THE APPROXIMATE ADMINISTRATIVE COSTS USED TO
22 ADMINISTER THE PROGRAMS AND ACTIVITIES AUTHORIZED UNDER THIS ACT.

23 (K) ANY OTHER INFORMATION AS REQUIRED IN THIS SECTION.

24 (2) The auditor general or a certified public accountant
25 appointed by the auditor general annually shall conduct and remit
26 to the legislature an audit of the fund and, in the conduct of the
27 audit, shall have access to all records of the fund at any time,
whether or not confidential. Each audit required by this section

1 shall include a determination of whether the fund is likely to be
2 able to continue to meet its obligations, including a report on the
3 status of outstanding loans and agreements made by the fund.

4 (3) The fund shall also transmit the ~~status report described~~
5 ~~in subsection (1) and~~ audit described in subsection (2) to the
6 chairperson and minority vice-chairperson of the senate
7 appropriations subcommittee on general government and the house of
8 representatives appropriations subcommittee on general government.
9 The fund shall make the ~~status report~~ and audit available to the
10 public on the fund's website.

11 (4) THE REPORT DESCRIBED IN SUBSECTION (1) SHALL ALSO CONTAIN
12 ALL OF THE FOLLOWING THAT ARE RELATED TO A 21ST CENTURY INVESTMENT
13 MADE BY THE FUND BOARD UNDER CHAPTER 8A:

14 (A) THE AMOUNT OF QUALIFIED VENTURE CAPITAL FUND INVESTMENTS,
15 QUALIFIED MEZZANINE FUND INVESTMENTS, AND QUALIFIED PRIVATE EQUITY
16 FUND INVESTMENTS UNDER MANAGEMENT IN THIS STATE, INCLUDING YEAR-TO-
17 YEAR GROWTH.

18 (B) THE VALUE OF LOAN ENHANCEMENT PROGRAM INVESTMENTS,
19 QUALIFIED PRIVATE EQUITY FUND INVESTMENTS, QUALIFIED MEZZANINE FUND
20 INVESTMENTS, AND QUALIFIED VENTURE CAPITAL INVESTMENTS IN QUALIFIED
21 BUSINESSES, INCLUDING YEAR-TO-YEAR GROWTH.

22 (C) A STATEMENT OF THE AMOUNT OF MONEY IN EACH LOAN RESERVE
23 FUND ESTABLISHED UNDER THE SMALL BUSINESS CAPITAL ACCESS PROGRAM
24 REQUIRED UNDER CHAPTER 8A.

25 (5) THE REPORT DESCRIBED IN SUBSECTION (1) SHALL ALSO INCLUDE,
26 BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING FOR ALL ACTIONS UNDER
27 SECTION 88R:

1 (A) THE TOTAL ACTUAL AMOUNT OF QUALIFIED INVESTMENT ATTRACTED
2 UNDER SECTION 88R AS REPORTED TO THE FUND.

3 (B) THE TOTAL ACTUAL NUMBER OF NEW JOBS CREATED UNDER SECTION
4 88R AS REPORTED TO THE FUND.

5 (C) THE ACTUAL AMOUNT OF THE GRANT, LOAN, OR OTHER ECONOMIC
6 ASSISTANCE MADE UNDER SECTION 88R SEPARATELY FOR EACH QUALIFIED
7 BUSINESS VERIFIED BY THE FUND.

8 (D) FOR EACH QUALIFIED BUSINESS, WHETHER IT IS A NEW BUSINESS,
9 WHETHER IT IS AN EXPANSION OF AN EXISTING BUSINESS, OR WHETHER IT
10 RELOCATED FROM OUTSIDE OF THIS STATE.

11 (E) AN EVALUATION OF THE AGGREGATE RETURN ON INVESTMENT THAT
12 THIS STATE REALIZES ON THE ACTUAL QUALIFIED NEW JOBS AND ACTUAL
13 QUALIFIED INVESTMENT MADE BY QUALIFIED BUSINESSES.

14 (6) THE REPORT DESCRIBED IN SUBSECTION (1) SHALL ALSO INCLUDE,
15 BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING FOR ALL ACTIONS UNDER
16 CHAPTER 8B:

17 (A) FOR TOURISM PROMOTION EFFORTS, ALL OF THE FOLLOWING:

18 (i) AN ITEMIZED LIST, BY MARKET, OF HOW MUCH WAS SPENT, TYPES
19 OF MEDIA PURCHASED, AND TARGET OF THE TOURISM PROMOTION CAMPAIGN.

20 (ii) THE RETURN ON INVESTMENT ANALYSIS THAT UTILIZES EXISTING
21 BASELINE DATA AND COMPARES RESULTS WITH PRIOR OUTCOME EVALUATIONS
22 FUNDED BY TRAVEL MICHIGAN.

23 (B) FOR BUSINESS DEVELOPMENT EFFORTS, ALL OF THE FOLLOWING:

24 (i) AN ITEMIZED LIST, BY MARKET, OF HOW MUCH WAS SPENT, TYPES
25 OF MEDIA PURCHASED, AND TARGET OF THE BUSINESS PROMOTION CAMPAIGN.

26 (ii) A PERFORMANCE ANALYSIS THAT COMPARES THE PROGRAM OR
27 CAMPAIGN OBJECTIVES AND OUTCOME OF THE CAMPAIGN OR PROGRAM.

1 (7) THE REPORT DESCRIBED IN SUBSECTION (1) SHALL ALSO INCLUDE,
2 BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING FOR ALL ACTIONS UNDER
3 SECTION 90D:

4 (A) THE TOTAL ACTUAL AMOUNT OF PRIVATE INVESTMENT ATTRACTED
5 UNDER SECTION 90D AS REPORTED TO THE FUND.

6 (B) THE ACTUAL AMOUNT OF THE COMMUNITY REVITALIZATION
7 INCENTIVES MADE UNDER CHAPTER 8C SEPARATELY FOR EACH PROJECT.

8 (C) THE TOTAL ACTUAL AMOUNT OF SQUARE FOOTAGE REVITALIZED OR
9 ADDED FOR EACH PROJECT APPROVED UNDER SECTION 90D AS REPORTED TO
10 THE FUND. WHEN REPORTING SQUARE FOOTAGE, THE PERSON MUST REPORT THE
11 SQUARE FOOTAGE BY CATEGORY, INCLUDING, BUT NOT LIMITED TO,
12 COMMERCIAL, RESIDENTIAL, OR RETAIL.

13 (D) THE AGGREGATE INCREASE IN TAXABLE VALUE OF ALL PROPERTY
14 SUBJECT TO A WRITTEN AGREEMENT UNDER CHAPTER 8C WHEN ESTABLISHED
15 AND RECORDED BY THE LOCAL UNITS OF GOVERNMENT AND AS REPORTED TO
16 THE FUND.

17 (E) THE TOTAL ACTUAL NUMBER OF RESIDENTIAL UNITS REVITALIZED
18 OR ADDED FOR EACH PROJECT APPROVED UNDER SECTION 90D AS REPORTED TO
19 THE FUND.

20 (F) EACH PROJECT THAT RECEIVED A COMMUNITY REVITALIZATION
21 INCENTIVE OUTSIDE THE FUND PROGRAM STANDARDS AND GUIDELINES AND WHY
22 THE VARIANCE WAS GIVEN.

23 (8) BEGINNING ON AND AFTER JANUARY 1, 2012, ON A MONTHLY BASIS
24 THE FUND SHALL PROVIDE EXACT COPIES OF ALL INFORMATION REGARDING
25 ALL ACTIONS UNDER CHAPTER 8C THAT IS PROVIDED TO BOARD MEMBERS OF
26 THE FUND FOR THE PURPOSE OF MONTHLY BOARD MEETINGS, SUBJECT TO
27 CONFIDENTIALITY UNDER SECTION 5, TO EACH OF THE FOLLOWING AND POST

1 THAT INFORMATION ON THE FUND'S WEBSITE:

2 (A) THE CHAIRPERSON AND MINORITY VICE-CHAIRPERSON OF THE HOUSE
3 COMMERCE COMMITTEE.

4 (B) THE CHAIRPERSON AND MINORITY VICE-CHAIRPERSON OF THE HOUSE
5 APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT.

6 (C) THE CHAIRPERSON AND MINORITY VICE-CHAIRPERSON OF THE
7 SENATE ECONOMIC DEVELOPMENT COMMITTEE.

8 (D) THE CHAIRPERSON AND MINORITY VICE-CHAIRPERSON OF THE
9 SENATE APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT.

10 (9) THE REPORT DESCRIBED IN SUBSECTION (1) SHALL ALSO INCLUDE
11 A SUMMARY OF THE APPROXIMATE ADMINISTRATIVE COSTS USED TO
12 ADMINISTER THE PROGRAMS AND ACTIVITIES AUTHORIZED IN THE FOLLOWING
13 SECTIONS:

14 (A) SECTION 88B.

15 (B) SECTION 88H.

16 (C) SECTION 90B.

17 (10) THE REPORT DESCRIBED IN SUBSECTION (1) SHALL ALSO
18 INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING FOR ALL
19 ACTIONS FOR BUSINESS INCUBATORS APPROVED BY THE FUND AFTER THE
20 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION:

21 (A) THE NUMBER OF NEW JOBS CREATED AND PROJECTED NEW JOB
22 GROWTH BY CURRENT CLIENTS OF THE BUSINESS INCUBATOR.

23 (B) AMOUNTS OF OTHER FUNDS LEVERAGED BY CURRENT CLIENTS OF THE
24 BUSINESS INCUBATOR,

25 (C) INCREASES IN REVENUE FOR CURRENT CLIENTS OF THE BUSINESS
26 INCUBATOR.

27 (11) THE REPORT DESCRIBED IN SUBSECTION (1) SHALL ALSO INCLUDE

House Bill No. 4480 as amended December 17, 2014
as amended December 18, 2014

1 THE ACTUAL REPAYMENTS RECEIVED BY THE FUND FOR FAILURE TO COMPLY
2 WITH CLAWBACK PROVISIONS OF THE WRITTEN AGREEMENT UNDER ALL OF THE
3 FOLLOWING:

4 (A) SECTION 78.

5 (B) SECTION 88D.

6 (C) SECTION 88K.

7 (D) SECTION 88Q.

8 (E) SECTION 88R.

9 (F) SECTION 90B.

10 (12) BEGINNING ON JULY 1, 2015, THE FUND SHALL POST ON THE
11 FUND'S WEBSITE A LIST OF EACH CONTRACT, AGREEMENT, OR OTHER WRITTEN
12 LOAN OR GRANT DOCUMENTATION FOR FINANCIAL ASSISTANCE UNDER SECTIONS
13 88R AND 90B THAT THE FUND ENTERED INTO OR MODIFIED IN THE
14 IMMEDIATELY PRECEDING FISCAL YEAR.

15 (13) BEGINNING ON JULY 1, 2015, THE FUND SHALL POST AND UPDATE
16 PERIODICALLY ALL OF THE FOLLOWING ON ITS WEBSITE FOR ALL LOANS MADE
17 UNDER SECTIONS 88R AND 90B:

18 (A) A DESCRIPTION OF THE PROJECT FOR WHICH THE LOAN WAS MADE.

19 (B) THE TOTAL AMOUNT OF THE LOAN.

<<(C) WHETHER PAYMENTS ON THE LOAN BALANCE ARE CURRENT OR
DELINQUENT.>>

[(D) THE INTEREST RATE OF THE LOAN.]

20 (14) BEGINNING JULY 1, 2015, THE REPORT DESCRIBED IN
21 SUBSECTION (1) SHALL ALSO CONTAIN ALL OF THE FOLLOWING FOR EACH
22 PROGRAM THAT PROVIDES FINANCIAL ASSISTANCE UNDER THIS ACT THAT
23 REQUIRES A SITE VISIT:

24 (A) A COPY OF THE SITE VISIT GUIDELINES FOR THAT PROGRAM.

25 (B) THE NUMBER OF SITE VISITS CONDUCTED UNDER THAT PROGRAM.

<<(C) THE CHIEF COMPLIANCE OFFICER SHALL REVIEW AND EVALUATE
COMPLIANCE WITH THE SITE VISIT GUIDELINES.>>

26 (15) THE FUND SHALL POST ON ITS WEBSITE AND UPDATE
27 PERIODICALLY ALL OF THE INFORMATION DESCRIBED IN SUBSECTION (14).

1 (16) AS USED IN THIS SECTION, "FINANCIAL ASSISTANCE" MEANS
2 GRANTS, LOANS, OTHER ECONOMIC ASSISTANCE, AND ANY OTHER INCENTIVES
3 OR ASSISTANCE UNDER THIS ACT.

4 Sec. 88c. (1) The fund board shall exercise the duties of a
5 fiduciary with respect to 21st century investments consistent with
6 the purposes of this chapter. The prudent investor rule shall be
7 applied by the fund board and any agent of the fund board in the
8 management of 21st century investments. The prudent investor rule
9 as applied to 21st century investments means that in making 21st
10 century investments, the fund board shall exercise the judgment and
11 care under the circumstances then prevailing that an institutional
12 investor of ordinary prudence, discretion, and intelligence would
13 exercise in similar circumstances in a like position. The fund
14 board shall maintain a reasonable diversification among 21st
15 century investments consistent with the requirements of this
16 chapter.

17 (2) The fund board shall select qualified private equity
18 funds, qualified venture capital funds, and qualified mezzanine
19 funds by issuing a request for proposal. At a minimum, the request
20 for proposal shall require a responding entity to disclose any
21 conflict of interest, disclose any criminal convictions, disclose
22 any investigations by the internal revenue service, the securities
23 and exchange commission, or any other federal or state taxing or
24 securities regulatory body, or court, or pertinent litigation
25 regarding the conduct of the person or entity. The fund board shall
26 establish a standard process to evaluate proposals submitted as a
27 result of a request for proposal and appoint a committee to review

1 the proposals.

2 (3) The fund board shall ensure that a recipient of money
3 under sections 88d, 88e, 88f, 88g, 88q, and 88r and chapter 8C
4 agrees as a condition of receiving the money not to use the money
5 for any of the following:

6 (a) The development of a stadium or arena for use by a
7 professional sports team.

8 (b) The development of a casino regulated by this state under
9 the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201
10 to 432.226, a casino at which gaming is conducted under the Indian
11 gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or
12 property associated or affiliated with the operation of either type
13 of casino described in this subdivision, including, but not limited
14 to, a parking lot, hotel, motel, or retail store.

15 (4) The fund board shall establish requirements to ensure that
16 money expended under sections 88d, 88e, 88f, 88g, **88K**, 88q, and 88r
17 and chapter 8C shall not be used for any of the following:

18 (a) Provision of money to a person who has been convicted of a
19 criminal offense incident to the application for or performance of
20 a state contract or subcontract. As used in this subdivision, if a
21 person is a business entity, person includes affiliates,
22 subsidiaries, officers, directors, managerial employees as
23 determined by the board, and any person who, directly or
24 indirectly, holds a pecuniary interest in that business entity of
25 20% or more.

26 (b) Provision of money to a person who has been convicted of a
27 criminal offense, or held liable in a civil proceeding, that

1 negatively reflects on the person's business integrity, based on a
2 finding of embezzlement, theft, forgery, bribery, falsification or
3 destruction of records, receiving stolen property, ~~or~~ violation of
4 state or federal antitrust statutes, **OR FOR ANY ADDITIONAL FINDINGS**
5 **AS DETERMINED BY THE FUND BOARD.** As used in this subdivision, if a
6 person is a business entity, person includes affiliates,
7 subsidiaries, officers, directors, managerial employees, and any
8 person who, directly or indirectly, holds a pecuniary interest in
9 that business entity of 20% or more.

10 (c) Provision of money to a business enterprise to induce
11 qualified businesses or small businesses to leave this state.

12 (d) Provision of money that would contribute to the violation
13 of internationally recognized workers rights, as defined in section
14 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a
15 country other than the United States, including any designated zone
16 or area in that country.

17 (e) Provision of money to a corporation or an affiliate of the
18 corporation who is incorporated in a tax haven country after
19 September 11, 2001, while maintaining the United States as the
20 principal market for the public trading of the corporation's stock.
21 As used in this section, "tax haven country" includes a country
22 with tax laws that facilitate avoidance by a corporation or an
23 affiliate of the corporation of United States tax obligations,
24 including Barbados, Bermuda, British Virgin Islands, Cayman
25 Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of
26 Man, the principality of Liechtenstein, the principality of Monaco,
27 and the Republic of the Seychelles.

1 (5) Before adopting a resolution that establishes or
2 substantially changes a 21st century investment program, including
3 any fees, charges, or penalties attached to that program, the fund
4 board shall give notice of the proposed resolution to the governor,
5 to the clerk of the house of representatives, to the secretary of
6 the senate, to members of the senate and house of representatives
7 appropriation committees, and to each person who requested from the
8 fund in writing or electronically to be notified regarding proposed
9 resolutions. The notice and proposed resolution and all attachments
10 shall be published on the fund's internet website at least 10 days
11 prior to the date that the proposed resolution is considered by the
12 fund board. The fund board shall hold a public hearing and offer a
13 person an opportunity to present data, views, questions, and
14 arguments. Members of the fund board or 1 or more persons
15 designated by the fund board who have knowledge of the subject
16 matter of the proposed resolution shall be present at the public
17 hearing and shall participate in the discussion of the proposed
18 resolution. The fund board may act on the proposed resolution on
19 the day of the public hearing. The fund board shall produce a final
20 decision document that describes the basis for its decision. The
21 final resolution and all attachments and the decision document
22 shall be provided to the governor, to the clerk of the house of
23 representatives, to the secretary of the senate, and to members of
24 the senate and house of representatives appropriation committees
25 and shall be published on the fund's internet website.

26 (6) The notice described in subsection (5) shall include all
27 of the following:

1 (a) A copy of the proposed resolution and all attachments.

2 (b) A statement that the addressee may express any data,
3 views, or arguments regarding the proposed resolution.

4 (c) The address to which written comments may be sent and the
5 date by which comments must be mailed or electronically
6 transmitted, which date shall not be before the date of the public
7 hearing.

8 (d) The date, time, and place of the public hearing.

9 (7) The fund board shall employ or contract with a fund
10 manager or other persons it considers necessary to implement this
11 section. The person employed or contracted under this subsection
12 shall have not less than 10 years' experience in commercial
13 lending, private equity, mezzanine funding, or venture capital. The
14 person employed or contracted under this section shall exercise the
15 duties of a fiduciary toward investments from the investment fund
16 under this section. Management fees payable by the fund and other
17 investors in a qualified private equity fund, a qualified mezzanine
18 fund, or a qualified venture capital fund shall be considered an
19 investment expense and not an administrative cost incurred by the
20 fund.

21 (8) Subject to subsection (9), a record received, prepared,
22 used, or retained by an investment fiduciary in connection with an
23 investment or potential investment of the investment fund that
24 relates to investment information pertaining to a portfolio company
25 in which the investment fiduciary has invested or has considered an
26 investment that is considered by the portfolio company and
27 acknowledged by the investment fiduciary as confidential, or that

1 relates to investment information whether prepared by or for the
2 investment fiduciary regarding loans and assets directly owned by
3 the investment fiduciary and acknowledged by the investment
4 fiduciary as confidential, is exempt from the disclosure
5 requirements of the freedom of information act, 1976 PA 442, MCL
6 15.231 to 15.246, if at least annually the fund provides to the
7 fund board, and makes available to the public, a report of fund
8 investments during the prior state fiscal year that includes all of
9 the following:

10 (a) The name of each portfolio company in which the investment
11 fund invested during the reporting period.

12 (b) The aggregate amount of money invested by the investment
13 fund in portfolio companies during the reporting period.

14 (c) The rate of return realized during the reporting period on
15 the investments of the investment fund in portfolio companies.

16 (d) The source of any public funds invested by the investment
17 fund in portfolio companies during the reporting period.

18 (9) If a record described in subsection (8) is an agreement or
19 instrument to which an investment fiduciary is a party, only those
20 parts of the record that contain investment information are exempt
21 from the disclosure requirements of the freedom of information act,
22 1976 PA 442, MCL 15.231 to 15.246.

23 (10) As used in subsections (8) and (9):

24 (a) "Investment fiduciary" means a person who exercises any
25 discretionary authority or control over an investment of the
26 investment fund or renders investment advice for the fund for a fee
27 or other direct or indirect compensation.

1 (b) "Investment information" means information that has not
2 been publicly disseminated or that is unavailable from other
3 sources, the release of which might cause a portfolio company or an
4 investment fiduciary significant competitive harm. Investment
5 information includes, but is not limited to, financial performance
6 data and projections, financial statements, list of coinvestors and
7 their level of investment, product and market data, rent rolls, and
8 leases.

9 (c) "Portfolio company" means an entity in which an investment
10 fiduciary has made or considered an investment on behalf of the
11 investment fund.

12 (d) "Record" means all or part of a writing, as that term is
13 defined in section 2 of the freedom of information act, 1976 PA
14 442, MCL 15.232.

15 Enacting section 1. This amendatory act does not take effect
16 unless all of the following bills of the 97th Legislature are
17 enacted into law:

18 (a) Senate Bill No. 271.

19 (b) House Bill No. 4481.

20 (c) House Bill No. 4482.