

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

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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

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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.>>

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.