

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~~

House Bill No. 4480 (H-3) as amended November 12, 2014

~~financial assistance, amount of financial support other than state  
resources, and the status of any loans of the fund, excluding  
industrial development revenue loans, which are in default.~~ THE

REPORT SHALL BE TRANSMITTED NOT LATER THAN APRIL 10 OF EACH YEAR

FOR ACTIVITIES IN THE IMMEDIATELY PRECEDING STATE FISCAL YEAR. The

report shall not include information exempt from disclosure under

section 5. THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF

THE FOLLOWING FOR EACH PROGRAM OPERATED UNDER THIS ACT:

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

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

(C) THE AMOUNT AND TYPE OF FINANCIAL ASSISTANCE.

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

[ (i) THE NUMBER OF NEW JOBS COMMITTED OR PROMISED WHEN THE FINANCIAL  
ASSISTANCE WAS APPLIED FOR.

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

(iii) THE ACTUAL NUMBER OF NEW FULL-TIME JOBS CREATED THAT ARE NOT  
TEMPORARY OR CONTRACT EMPLOYEES.

(iv) THE ACTUAL NUMBER OF FULL-TIME RETAINED JOBS THAT ARE NOT  
TEMPORARY OR CONTRACT EMPLOYEES.

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

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

(vii) A COPY OF THE AGREEMENT ENTERED TO RECEIVE ANY FINANCIAL  
ASSISTANCE AND ANY REVISIONS TO THAT AGREEMENT.]

(E) THE DURATION OF THE FINANCIAL ASSISTANCE.

(F) THE AMOUNT OF FINANCIAL SUPPORT OTHER THAN STATE  
RESOURCES.

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

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

]

(I) A LIST OF ALL ENTITIES THAT ARE IN BANKRUPTCY, THAT THE  
FUND HAS RECEIVED ACTUAL NOTICE OF, FILED BY A DIRECT RECIPIENT OF

1 A SINGLE INCENTIVE OF AT LEAST \$500,000.00. IN ADDITION, THE FUND  
2 SHALL, WITHIN 120 DAYS AFTER THE FUND RECEIVES NOTICE, PROVIDE A  
3 REPORT OF THE NOTICE OF BANKRUPTCY ON ITS WEBSITE AND SHALL FORWARD  
4 THE REPORT TO EACH OF THE FOLLOWING:

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

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

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

8 (iv) THE MEMBERS OF THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON  
9 GENERAL GOVERNMENT.

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

11 (vi) THE MEMBERS OF THE SENATE APPROPRIATIONS SUBCOMMITTEE ON  
12 GENERAL GOVERNMENT.

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

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

16 (2) The auditor general or a certified public accountant  
17 appointed by the auditor general annually shall conduct and remit  
18 to the legislature an audit of the fund and, in the conduct of the  
19 audit, shall have access to all records of the fund at any time,  
20 whether or not confidential. Each audit required by this section  
21 shall include a determination of whether the fund is likely to be  
22 able to continue to meet its obligations, including a report on the  
23 status of outstanding loans and agreements made by the fund.

24 (3) The fund shall also transmit the ~~status report described~~  
25 ~~in subsection (1) and~~ audit described in subsection (2) to the  
26 chairperson and minority vice-chairperson of the senate  
27 appropriations subcommittee on general government and the house of

1 representatives appropriations subcommittee on general government.  
2 The fund shall make the ~~status~~-report and audit available to the  
3 public on the fund's website.

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

7 (A) THE AMOUNT OF QUALIFIED VENTURE CAPITAL FUND INVESTMENTS,  
8 QUALIFIED MEZZANINE FUND INVESTMENTS, AND QUALIFIED PRIVATE EQUITY  
9 FUND INVESTMENTS UNDER MANAGEMENT IN THIS STATE, INCLUDING YEAR-TO-  
10 YEAR GROWTH.

11 (B) THE VALUE OF LOAN ENHANCEMENT PROGRAM INVESTMENTS,  
12 QUALIFIED PRIVATE EQUITY FUND INVESTMENTS, QUALIFIED MEZZANINE FUND  
13 INVESTMENTS, AND QUALIFIED VENTURE CAPITAL INVESTMENTS IN QUALIFIED  
14 BUSINESSES, INCLUDING YEAR-TO-YEAR GROWTH.

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

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

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

23 (B) THE TOTAL ACTUAL NUMBER OF NEW JOBS CREATED UNDER SECTION  
24 88R AS REPORTED TO THE FUND.

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

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

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

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

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

11 (i) AN ITEMIZED LIST BY MARKET OF HOW MUCH WAS SPENT, WHEN THE  
12 PROMOTION OCCURRED, AND THE TYPES OF MEDIA PURCHASED.

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

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

17 (i) AN ITEMIZED LIST BY MARKET OF HOW MUCH WAS SPENT, WHEN THE  
18 PROMOTION OCCURRED, AND THE TYPES OF MEDIA PURCHASED.

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

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

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

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

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

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

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

13 (F) EACH PROJECT THAT RECEIVED A COMMUNITY REVITALIZATION  
14 INCENTIVE OUTSIDE THE FUND PROGRAM STANDARDS AND GUIDELINES AND WHY  
15 THE VARIANCE WAS GIVEN.

16 (G) A SUMMARY OF THE PROJECTED AND ACTUAL AGGREGATED TAXPAYER  
17 RETURN ON INVESTMENT FOR EACH ELIGIBLE INVESTMENT THAT RECEIVED A  
18 DISTRIBUTION IN THE REPORTING PERIOD.

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

25 (A) THE CHAIRPERSON AND MINORITY VICE-CHAIRPERSON OF THE HOUSE  
26 COMMERCE COMMITTEE.

27 (B) THE CHAIRPERSON AND MINORITY VICE-CHAIRPERSON OF THE HOUSE

1 APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT.

2 (C) THE CHAIRPERSON AND MINORITY VICE-CHAIRPERSON OF THE  
3 SENATE ECONOMIC DEVELOPMENT COMMITTEE.

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

6 (9) THE REPORT DESCRIBED IN SUBSECTION (1) SHALL ALSO INCLUDE  
7 THE ACTUAL ADMINISTRATIVE COSTS AND THE ACTUAL ADMINISTRATIVE COSTS  
8 AS A PERCENTAGE OF TOTAL COSTS USED TO ADMINISTER THE PROGRAMS  
9 DESCRIBED IN THE FOLLOWING SECTIONS:

10 (A) SECTION 88B.

11 (B) SECTION 88H.

12 (C) SECTION 90B.

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

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

19 (B) AMOUNTS OF OTHER FUNDS LEVERAGED BY CURRENT CLIENTS OF THE  
20 BUSINESS INCUBATOR,

21 (C) INCREASES IN REVENUE FOR CURRENT CLIENTS OF THE BUSINESS  
22 INCUBATOR.

23 (11) THE REPORT DESCRIBED IN SUBSECTION (1) SHALL ALSO INCLUDE  
24 THE ACTUAL REPAYMENTS RECEIVED BY THE FUND FOR FAILURE TO COMPLY  
25 WITH PROVISIONS OF THE WRITTEN AGREEMENT UNDER ALL OF THE  
26 FOLLOWING:

27 (A) SECTION 78(2)(C) AND (4)(C).

1 (B) SECTION 88D(2)(E) AND (6)(H).

2 (C) SECTION 88K(3)(D).

3 (D) SECTION 88Q(5)(I).

4 (E) SECTION 88R(2)(B) (*iv*).

5 (F) SECTION 90B(7).

6 (12) BEGINNING ON JANUARY 1, 2014, THE FUND SHALL POST ON THE  
7 FUND'S WEBSITE A COPY OF EACH CONTRACT, AGREEMENT, OR OTHER WRITTEN  
8 LOAN OR GRANT DOCUMENTATION FOR FINANCIAL ASSISTANCE UNDER SECTIONS  
9 88R AND 90B THAT THE FUND ENTERED INTO OR MODIFIED IN THE  
10 IMMEDIATELY PRECEDING FISCAL YEAR.

11 (13) BEGINNING ON JANUARY 1, 2014, THE FUND SHALL POST AND  
12 UPDATE PERIODICALLY ALL OF THE FOLLOWING ON ITS WEBSITE FOR ALL  
13 LOANS MADE UNDER SECTIONS 88R AND 90B:

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

15 (B) THE TOTAL AMOUNT OF THE LOAN.

16 (C) OUTSTANDING BALANCE OF THE LOAN.

17 (D) WHETHER PAYMENTS ON THE LOAN BALANCE ARE CURRENT OR  
18 DELINQUENT.

19 (E) THE INTEREST RATE OF THE LOAN.

20 (14) BEGINNING JANUARY 1, 2014, 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) COPY OF THE SITE VISIT GUIDELINES FOR THAT PROGRAM.

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

26 (C) THE NUMBER OF SITE VISIT REPORTS THAT WERE AUDITED BY THE  
27 FUND TO ENSURE COMPLIANCE.

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

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

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

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

1 establish a standard process to evaluate proposals submitted as a  
2 result of a request for proposal and appoint a committee to review  
3 the proposals.

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

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

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

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

20 (a) Provision of money to a person who has been convicted of a  
21 criminal offense incident to the application for or performance of  
22 a state contract or subcontract. As used in this subdivision, if a  
23 person is a business entity, person includes affiliates,  
24 subsidiaries, officers, directors, managerial employees as  
25 determined by the board, and any person who, directly or  
26 indirectly, holds a pecuniary interest in that business entity of  
27 20% or more.

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

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

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

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

1 Man, the principality of Liechtenstein, the principality of Monaco,  
2 and the Republic of the Seychelles.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (9) If a record described in subsection (8) is an agreement or  
21 instrument to which an investment fiduciary is a party, only those  
22 parts of the record that contain investment information are exempt  
23 from the disclosure requirements of the freedom of information act,  
24 1976 PA 442, MCL 15.231 to 15.246.

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

26 (a) "Investment fiduciary" means a person who exercises any  
27 discretionary authority or control over an investment of the

1 investment fund or renders investment advice for the fund for a fee  
2 or other direct or indirect compensation.

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

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

14 (d) "Record" means all or part of a writing, as that term is  
15 defined in section 2 of the freedom of information act, 1976 PA  
16 442, MCL 15.232.

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

20 (a) Senate Bill No. 271.

21 (b) House Bill No. 4481.

22 (c) House Bill No. 4482.