

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 566

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending sections 5, 88c, and 88h (MCL 125.2005, 125.2088c, and
125.2088h), section 5 as amended by 2008 PA 224 and sections 88c
and 88h as added by 2005 PA 225.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) There is created by this act a public body
2 corporate and politic to be known as the Michigan strategic fund.
3 The fund shall be within the department of treasury and shall
4 exercise its prescribed statutory powers, duties, and functions
5 independently of the state treasurer. The statutory authority,
6 powers, duties, functions, records, personnel, property, unexpended
7 balances of appropriations, allocations, and other funds of the

1 fund, including the functions of budgeting, procurement, personnel,
2 and management-related functions, shall be retained by the fund,
3 and the fund shall be an autonomous entity within the department of
4 treasury in the same manner as the Michigan employment security
5 commission was designated an autonomous entity within the Michigan
6 department of labor under section 379 of the executive organization
7 act of 1965, 1965 PA 380, MCL 16.479.

8 (2) Except as otherwise provided in this act, the purposes,
9 powers, and duties of the Michigan strategic fund are vested in and
10 shall be exercised by a board of directors.

11 (3) Except as provided in subsection (4), the board shall
12 consist of the director of the department of ~~labor and economic~~
13 ~~growth~~ **LICENSING AND REGULATORY AFFAIRS** or his or her designee from
14 within the department of ~~labor and economic growth~~ **LICENSING AND**
15 **REGULATORY AFFAIRS**, the state treasurer or his or her designee from
16 within the department of treasury, the chief executive officer of
17 the MEDC **OR HIS OR HER DESIGNEE**, and 6 other members with
18 knowledge, skill, and experience in the academic, business, or
19 financial field, who shall be appointed by the governor with the
20 advice and consent of the senate. None of the 6 members appointed
21 under this section shall be employees of this state. Not less than
22 5 members of the board appointed under this subsection shall be
23 members of the private sector. Five of the 6 members appointed
24 under this subsection shall serve for fixed terms. Upon completion
25 of each fixed term expiring after December 30, 2005, a member shall
26 be appointed for a term of 4 years. Of the private sector members
27 appointed by the governor for a fixed term, 1 shall be appointed

1 from a list of 3 or more nominees of the speaker of the house of
2 representatives representing persons within the private sector with
3 experience in private equity or venture capital investments,
4 commercial lending, or commercialization of technology and 1 shall
5 be appointed from a list of 3 or more nominees of the senate
6 majority leader representing persons within the private sector with
7 experience in private equity or venture capital investments,
8 commercial lending, or commercialization of technology. A member
9 appointed under this subsection or subsection (4) shall serve until
10 a successor is appointed, and a vacancy shall be filled for the
11 balance of the unexpired term in the same manner as the original
12 appointment. The member appointed under this subsection and serving
13 without a fixed term shall serve at the pleasure of the governor.
14 Of the members appointed under this subsection and subsection (4),
15 there shall be minority, female, and small business representation.
16 After December 31, 2005, at least 2 of the members of the board
17 shall have experience in private equity or venture capital
18 investments, at least 1 of the members shall have experience in
19 commercial lending, and at least 1 of the members of the board
20 shall have experience in commercialization of technology.

21 (4) In addition to the 9 members of the board under subsection
22 (3), not later than December 15, 2005, the governor shall appoint,
23 with the advice and consent of the senate, 2 additional members to
24 the board for terms expiring December 31, 2007. After the initial
25 appointments under this subsection, members appointed under this
26 subsection shall be appointed for a term of 4 years. The members
27 appointed under this subsection shall be from the private sector

1 and shall have experience in private equity or venture capital
2 investments, commercial lending, or commercialization of
3 technology. From the date of the appointment of the members under
4 this subsection until December 31, 2015, the board shall have 11
5 members. After December 31, 2015, the board shall have 9 members
6 and no members shall be appointed under this subsection.

7 (5) The governor shall designate 1 member of the board to
8 serve as its chairperson. The governor shall designate 1 member of
9 the board to serve as president of the fund and may designate 1
10 member to serve as vice-president of the fund. The chairperson,
11 president, and vice-president, if a vice-president is designated,
12 shall serve as those officers at the pleasure of the governor.

13 (6) Members of the board shall serve without compensation for
14 their membership on the board, except that members of the board may
15 receive reasonable reimbursement for necessary travel and expenses.

16 (7) The board may delegate to its president, vice-president,
17 staff, or others those functions and authority that the board deems
18 necessary or appropriate, which may include the oversight and
19 supervision of employees of the fund. However, responsibilities
20 specifically vested in the board under chapter 8A shall be
21 performed by the board and shall not be transferred to the MEDC,

22 **EXCEPT THAT MICHIGAN BUSINESS DEVELOPMENT PROGRAM INCENTIVES UNDER**
23 **SECTION 88R, AND COMMUNITY REVITALIZATION INCENTIVES UNDER CHAPTER**
24 **8C, OF \$1,000,000.00 OR LESS CAN BE AUTHORIZED BY THE PRESIDENT OF**
25 **THE FUND.**

26 (8) A majority of the members of the board appointed and
27 serving constitutes a quorum for the transaction of business at a

1 meeting, or the exercise of a power or function of the fund,
2 notwithstanding the existence of 1 or more vacancies. The board may
3 act only by resolution approved by a majority of board members
4 appointed and serving. Voting upon action taken by the board shall
5 be conducted by majority vote of the members appointed and serving.
6 Members of the board may be present in person at a meeting of the
7 board or, if authorized by the bylaws of the board, by use of
8 telecommunications or other electronic equipment. The fund shall
9 meet at the call of the chair and as may be provided in the bylaws
10 of the fund. Meetings of the fund may be held anywhere within the
11 state of Michigan.

12 (9) The business of the board shall be conducted at a public
13 meeting of the board held in compliance with the open meetings act,
14 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,
15 and place of the meeting shall be given in the manner required by
16 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and shall
17 also be provided on an internet website operated by the fund. A
18 record or portion of a record, material, or other data received,
19 prepared, used, or retained by the fund or any of its centers in
20 connection with an application to or with a project or product
21 assisted by the fund or any of its centers or with an award, grant,
22 loan, or investment ~~under chapter 8A~~ that relates to financial or
23 proprietary information submitted by the applicant that is
24 considered by the applicant and acknowledged by the board **OR A**
25 **DESIGNEE OF THE BOARD** as confidential shall not be subject to the
26 disclosure requirements of the freedom of information act, 1976 PA
27 442, MCL 15.231 to 15.246. The disclosure of a record concerning

1 investment information described in section 88c under the freedom
2 of information act, 1976 PA 442, MCL 15.231 to 15.246, is subject
3 to the limitations provided in section 88c. The board may also meet
4 in closed session pursuant to the open meetings act, 1976 PA 267,
5 MCL 15.261 to 15.275, to make a determination of whether it
6 acknowledges as confidential any financial or proprietary
7 information submitted by the applicant and considered by the
8 applicant as confidential. Unless considered proprietary
9 information, the board shall not acknowledge routine financial
10 information as confidential. If the board determines that
11 information submitted to the fund is financial or proprietary
12 information and is confidential, the board shall release a written
13 statement, subject to disclosure under the freedom of information
14 act, 1976 PA 442, MCL 15.231 to 15.246, that states all of the
15 following:

16 (a) The name and business location of the person requesting
17 that the information submitted be confidential as financial or
18 proprietary information.

19 (b) That the information submitted was determined by the board
20 to be confidential as financial or proprietary information.

21 (c) A broad nonspecific overview of the financial or
22 proprietary information determined to be confidential.

23 (10) The fund shall not disclose financial or proprietary
24 information not subject to disclosure pursuant to subsection (9)
25 without consent of the applicant submitting the information.

26 (11) Any document to which the fund is a party evidencing a
27 loan, insurance, mortgage, lease, venture, or other type of

1 agreement the fund is authorized to enter into shall not be
2 considered financial or proprietary information that may be exempt
3 from disclosure under subsection (9).

4 (12) For purposes of subsections (9), (10), and (11),
5 "financial or proprietary information" means information that has
6 not been publicly disseminated or which is unavailable from other
7 sources, the release of which might cause the applicant significant
8 competitive harm.

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

22 (2) The fund board shall select qualified private equity
23 funds, qualified venture capital funds, and qualified mezzanine
24 funds by issuing a request for proposal. At a minimum, the request
25 for proposal shall require a responding entity to disclose any
26 conflict of interest, disclose any criminal convictions, disclose
27 any investigations by the internal revenue service, the securities

1 and exchange commission, or any other federal or state taxing or
2 securities regulatory body, or court, or pertinent litigation
3 regarding the conduct of the person or entity. The fund board shall
4 establish a standard process to evaluate proposals submitted as a
5 result of a request for proposal and appoint a committee to review
6 the proposals.

7 (3) The fund board shall ensure that a recipient of money
8 under sections 88d, 88e, 88f, ~~and 88g~~, **AND 88R AND CHAPTER 8C**
9 agrees as a condition of receiving the money not to use the money
10 for any of the following:

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

13 (b) The development of a casino regulated by this state under
14 the Michigan gaming control and revenue act, ~~the Initiated Law of~~
15 1996 **IL 1**, MCL 432.201 to 432.226, a casino at which gaming is
16 conducted under the Indian gaming regulatory act, Public Law 100-
17 497, 102 Stat. 2467, or property associated or affiliated with the
18 operation of either type of casino described in this subdivision,
19 including, but not limited to, a parking lot, hotel, motel, or
20 retail store.

21 (4) The fund board shall establish requirements to ensure that
22 money expended under sections 88d, 88e, 88f, ~~and 88g~~, **AND 88R AND**
23 **CHAPTER 8C** shall not be used for any of the following:

24 (a) Provision of money to a person who has been convicted of a
25 criminal offense incident to the application for or performance of
26 a state contract or subcontract. As used in this subdivision, if a
27 person is a business entity, person includes affiliates,

1 subsidiaries, officers, directors, managerial employees **AS**
2 **DETERMINED BY THE BOARD**, and any person who, directly or
3 indirectly, holds a pecuniary interest in that business entity of
4 20% or more.

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

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

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

22 (e) Provision of money to a corporation or an affiliate of the
23 corporation who is incorporated in a tax haven country after
24 September 11, 2001, while maintaining the United States as the
25 principal market for the public trading of the corporation's stock.
26 As used in this section, "tax haven country" includes a country
27 with tax laws that facilitate avoidance by a corporation or an

1 affiliate of the corporation of United States tax obligations,
2 including Barbados, Bermuda, British Virgin Islands, Cayman
3 Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of
4 Man, the principality of Liechtenstein, the principality of Monaco,
5 and the Republic of the Seychelles.

6 (5) Before adopting a resolution that establishes or
7 substantially changes a 21st century investment program, including
8 any fees, charges, or penalties attached to that program, the fund
9 board shall give notice of the proposed resolution to the governor,
10 to the clerk of the house of representatives, to the secretary of
11 the senate, to members of the senate and house of representatives
12 appropriation committees, and to each person who requested from the
13 fund in writing or electronically to be notified regarding proposed
14 resolutions. The notice and proposed resolution and all attachments
15 shall be published on the fund's internet website. The fund board
16 shall hold a public hearing not sooner than 14 days and not longer
17 than 30 days from the date notice of a proposed resolution is given
18 and offer a person an opportunity to present data, views,
19 questions, and arguments. Members of the fund board or 1 or more
20 persons designated by the fund board who have knowledge of the
21 subject matter of the proposed resolution shall be present at the
22 public hearing and shall participate in the discussion of the
23 proposed resolution. The fund board may act on the proposed
24 resolution no sooner than 14 days after the public hearing. The
25 fund board shall produce a final decision document that describes
26 the basis for its decision. The final resolution and all
27 attachments and the decision document shall be provided to the

1 governor, to the clerk of the house of representatives, to the
2 secretary of the senate, and to members of the senate and house of
3 representatives appropriation committees and shall be published on
4 the fund's internet website.

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

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

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

10 (c) The address to which written comments may be sent and the
11 date by which comments must be mailed or electronically
12 transmitted, which date shall not be before the date of the public
13 hearing.

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

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

27 (8) Subject to subsection (9), a record received, prepared,

1 used, or retained by an investment fiduciary in connection with an
2 investment or potential investment of the investment fund that
3 relates to investment information pertaining to a portfolio company
4 in which the investment fiduciary has invested or has considered an
5 investment that is considered by the portfolio company and
6 acknowledged by the investment fiduciary as confidential, or that
7 relates to investment information whether prepared by or for the
8 investment fiduciary regarding loans and assets directly owned by
9 the investment fiduciary and acknowledged by the investment
10 fiduciary as confidential, is exempt from the disclosure
11 requirements of the freedom of information act, 1976 PA 442, MCL
12 15.231 to 15.246, if at least annually the fund provides to the
13 fund board, and makes available to the public, a report of fund
14 investments during the prior state fiscal year that includes all of
15 the following:

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

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

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

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

24 (9) If a record described in subsection (8) is an agreement or
25 instrument to which an investment fiduciary is a party, only those
26 parts of the record that contain investment information are exempt
27 from the disclosure requirements of the freedom of information act,

1 1976 PA 442, MCL 15.231 to 15.246.

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

3 (a) "Investment fiduciary" means a person who exercises any
4 discretionary authority or control over an investment of the
5 investment fund or renders investment advice for the fund for a fee
6 or other direct or indirect compensation.

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

15 (c) "Portfolio company" means an entity in which an investment
16 fiduciary has made or considered an investment on behalf of the
17 investment fund.

18 (d) "Record" means all or part of a writing, as that term is
19 defined in section 2 of the freedom of information act, 1976 PA
20 442, MCL 15.232.

21 Sec. 88h. (1) The jobs for Michigan investment fund is created
22 within the fund as a permanent fund authorized by section 19 of
23 article IX of the state constitution of 1963. Money in the
24 investment fund at the close of the fiscal year shall remain in the
25 investment fund and shall not lapse to the general fund. Money in
26 the investment fund shall not be transferred to another
27 governmental entity or a separate legal entity and public body

1 corporate established under the urban cooperation act of 1967, 1967
 2 (Ex Sess) PA 7, MCL 124.501 to 124.512, except as authorized in
 3 this chapter.

4 (2) Money or other assets deposited in the investment fund
 5 shall be held as permanent funds as provided under section 19 of
 6 article IX of the state constitution of 1963 and invested only as
 7 authorized under this chapter, including, but not limited to,
 8 investments in the stock of a company, association, or corporation.

9 (3) The investment fund shall be invested as authorized under
 10 this chapter for the benefit of the people of the state of Michigan
 11 and for the purpose of creating incentives for the following in
 12 this state:

13 ~~—— (a) Diversifying the economy.~~

14 (A) ~~(b)~~ Retaining or creating jobs.

15 (B) ~~(c)~~ Increasing capital investment activity.

16 (C) ~~(d)~~ Increasing commercial lending activity.

17 (D) ~~(e)~~ Encouraging the development and commercialization of
 18 competitive edge technologies.

19 (E) **REVITALIZING MICHIGAN COMMUNITIES.**

20 (4) Funds or other assets of the investment fund also may be
 21 invested in debt instruments or debt obligations for loans or
 22 guarantees authorized under this chapter.

23 (5) The investment fund shall consist of all of the following:

24 (a) Any funds appropriated to, transferred to, or deposited in
 25 the investment fund from the 21st century jobs trust fund under the
 26 Michigan trust fund act, 2000 PA 489, MCL 12.251 to ~~12.256~~ **12.260**.

27 (b) Earnings, royalties, return on investments, return of

1 principal, payments made, or other money received by or payable to
2 the fund under agreements related to grants, loans, investments, or
3 expenditures by the fund under this chapter **OR CHAPTER 8C**.

4 (c) Assets, property, money, earnings, royalties, return on
5 investments, return of principal, payments made, or other money
6 owed, received by, or payable to the fund or the Michigan economic
7 development corporation under agreements related to grants, loans,
8 investments, or other payments funded by appropriations from the
9 state general fund or tobacco settlement revenue under 1 or more of
10 the following:

11 (i) Section 418 of 1999 PA 120, commonly known as the health
12 and aging research and development initiative or the Michigan life
13 sciences corridor initiative, or any successor program.

14 (ii) Section 410 of 2000 PA 292, commonly known as the health
15 and aging research and development initiative or the Michigan life
16 sciences corridor initiative, or any successor program.

17 (iii) Section 410 of 2001 PA 80, commonly known as the health
18 and aging research and development initiative or the Michigan life
19 sciences corridor initiative, or any successor program.

20 (iv) Section 410 of 2002 PA 517, commonly known as the Michigan
21 life sciences corridor initiative, or any successor program.

22 (v) Section 410 of 2003 PA 169, commonly known as the Michigan
23 life sciences and technology tri-corridor initiative, or any
24 successor program.

25 (vi) Section 510 of 2004 PA 354, commonly known as the Michigan
26 technology tri-corridor and life sciences initiative, or any
27 successor program.

1 (vii) Section 801 of 2005 PA 11, commonly known as the
2 technology tri-corridor and life sciences initiative, or any
3 successor program.

4 (viii) Section 381(1)(c) of 2003 PA 173, providing for payments
5 to the life sciences commercial development fund.

6 (d) Money or assets received by the state treasurer or the
7 fund from any source for deposit in the investment fund.

8 (e) Interest and earnings on any funds or other assets
9 deposited in the investment fund or other net income of the
10 investment fund.

11 (6) The net income of the investment fund may be expended by
12 the fund only for purposes authorized under this chapter **OR CHAPTER**
13 **8C** pursuant to an appropriation authorized by law. As used in this
14 section, the net income of the investment fund shall be computed
15 annually as of the last day of the state fiscal year in accordance
16 with generally accepted accounting principles, excluding any
17 unrealized gains or losses.

18 (7) The fund board shall be the trustees of the investment
19 fund and shall direct the investment and reinvestment of the funds
20 and assets of the investment fund as provided under, and consistent
21 with the objectives of, this chapter **OR CHAPTER 8C**.

22 (8) The fund board may establish restricted subaccounts within
23 the investment fund as necessary to administer the investment fund.
24 The fund board may contract with the state treasurer to assist the
25 fund board in administering the investment fund. The fund board may
26 authorize money in the investment fund not invested as authorized
27 under sections 88d, 88e, 88f, ~~and 88g~~, **AND 88R AND CHAPTER 8C** to be

1 managed by the state treasurer as part of the common cash fund of
2 this state under 1967 PA 55, MCL 12.51 to 12.53. Money managed by
3 the state treasurer under this subsection shall be separately
4 accounted for by the state treasurer. When authorized under this
5 subsection, the state treasurer may invest the funds or assets of
6 the investment fund in any investment authorized under 1855 PA 105,
7 MCL 21.141 to 21.147, for surplus funds of this state, in
8 obligations issued by any state or political subdivision or
9 instrumentality of the United States, or in any obligation issued,
10 assumed, or guaranteed by a solvent entity created or existing
11 under the laws of the United States or of any state, district, or
12 territory of the United States, which are not in default as to
13 principal or interest.

14 (9) A member of the fund board or officer of the fund shall
15 not gain from any investment of funds or assets of the investment
16 fund. A member of the fund board or officer of the fund shall not
17 have any direct or indirect interest in an investment of funds or
18 assets of the investment fund. A member of the fund board or person
19 connected with the investment fund directly or indirectly, for
20 himself or herself, or as an agent or partner of others, shall not
21 borrow any of the funds or assets of the investment fund or in any
22 manner use funds or assets of the investment fund except as
23 authorized under this chapter. A member of the fund board or
24 officer of the fund shall not become an endorser or surety or
25 become in any manner an obligor for money loaned by or borrowed
26 from the investment fund. Failure to comply with this subsection
27 constitutes misconduct in office subject to removal under section

1 94. IN ADDITION TO ANY OTHER SANCTION, A PERSON WHO VIOLATES THIS
2 SUBSECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
3 FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR
4 BOTH.

5 Enacting section 1. This amendatory act does not take effect
6 unless all of the following bills of the 96th Legislature are
7 enacted into law:

8 (a) Senate Bill No. 567.

9 (b) Senate Bill No. 568.