

HOUSE BILL No. 5170

December 4, 2013, Introduced by Reps. Switalski, Faris, Phelps, Roberts, Cavanagh, Shirkey, Townsend, McMillin, Slavens, Lane, Robinson, Dillon, Brinks, Lamonte, Cochran, Abed, Greimel and Tlaib and referred to the Committee on Commerce.

A bill to amend 1984 PA 270, entitled

"Michigan strategic fund act,"

by amending section 88c (MCL 125.2088c), as amended by 2012 PA 145.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 board shall maintain a reasonable diversification among 21st
2 century investments consistent with the requirements of this
3 chapter.

4 (2) The fund board shall select qualified private equity
5 funds, qualified venture capital funds, and qualified mezzanine
6 funds by issuing a request for proposal. At a minimum, the request
7 for proposal shall require a responding entity to disclose any
8 conflict of interest, disclose any criminal convictions, disclose
9 any investigations by the internal revenue service, the securities
10 and exchange commission, or any other federal or state taxing or
11 securities regulatory body, or court, or pertinent litigation
12 regarding the conduct of the person or entity. The fund board shall
13 establish a standard process to evaluate proposals submitted as a
14 result of a request for proposal and appoint a committee to review
15 the proposals.

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

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

22 (b) The development of a casino regulated by this state under
23 the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201
24 to 432.226, a casino at which gaming is conducted under the Indian
25 gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or
26 property associated or affiliated with the operation of either type
27 of casino described in this subdivision, including, but not limited

1 to, a parking lot, hotel, motel, or retail store.

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

5 (a) Provision of money to a person who has been convicted of a
6 criminal offense incident to the application for or performance of
7 a state contract or subcontract. As used in this subdivision, if a
8 person is a business entity, person includes affiliates,
9 subsidiaries, officers, directors, managerial employees as
10 determined by the board, and any person who, directly or
11 indirectly, holds a pecuniary interest in that business entity of
12 20% or more.

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

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

25 (d) Provision of money that would contribute to the violation
26 of internationally recognized workers rights, as defined in section
27 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a

1 country other than the United States, including any designated zone
2 or area in that country.

3 (e) Provision of money to a corporation or an affiliate of the
4 corporation who is incorporated in a tax haven country after
5 September 11, 2001, while maintaining the United States as the
6 principal market for the public trading of the corporation's stock.
7 As used in this section, "tax haven country" includes a country
8 with tax laws that facilitate avoidance by a corporation or an
9 affiliate of the corporation of United States tax obligations,
10 including Barbados, Bermuda, British Virgin Islands, Cayman
11 Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of
12 Man, the principality of Liechtenstein, the principality of Monaco,
13 and the Republic of the Seychelles.

14 (5) Before adopting a resolution that establishes or
15 substantially changes a 21st century investment program, including
16 any fees, charges, or penalties attached to that program, the fund
17 board shall give notice of the proposed resolution to the governor,
18 to the clerk of the house of representatives, to the secretary of
19 the senate, to members of the senate and house of representatives
20 appropriation committees, and to each person who requested from the
21 fund in writing or electronically to be notified regarding proposed
22 resolutions. The notice and proposed resolution and all attachments
23 shall be published on the fund's internet website at least 10 days
24 prior to the date that the proposed resolution is considered by the
25 fund board. The fund board shall hold a public hearing and offer a
26 person an opportunity to present data, views, questions, and
27 arguments. Members of the fund board or 1 or more persons

1 designated by the fund board who have knowledge of the subject
2 matter of the proposed resolution shall be present at the public
3 hearing and shall participate in the discussion of the proposed
4 resolution. The fund board may act on the proposed resolution on
5 the day of the public hearing. The fund board shall produce a final
6 decision document that describes the basis for its decision. The
7 final resolution and all attachments and the decision document
8 shall be provided to the governor, to the clerk of the house of
9 representatives, to the secretary of the senate, and to members of
10 the senate and house of representatives appropriation committees
11 and shall be published on the fund's internet website.

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

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

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

17 (c) The address to which written comments may be sent and the
18 date by which comments must be mailed or electronically
19 transmitted, which date shall not be before the date of the public
20 hearing.

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

22 (7) The fund board shall employ or contract with a fund
23 manager or other persons it considers necessary to implement this
24 section. The person employed or contracted under this subsection
25 shall have not less than 10 years' experience in commercial
26 lending, private equity, mezzanine funding, or venture capital. The
27 person employed or contracted under this section shall exercise the

1 duties of a fiduciary toward investments from the investment fund
2 under this section. Management fees payable by the fund and other
3 investors in a qualified private equity fund, a qualified mezzanine
4 fund, or a qualified venture capital fund shall be considered an
5 investment expense and not an administrative cost incurred by the
6 fund.

7 (8) Subject to subsection (9), a record received, prepared,
8 used, or retained by an investment fiduciary in connection with an
9 investment or potential investment of the investment fund that
10 relates to investment information pertaining to a portfolio company
11 in which the investment fiduciary has invested or has considered an
12 investment that is considered by the portfolio company and
13 acknowledged by the investment fiduciary as confidential, or that
14 relates to investment information whether prepared by or for the
15 investment fiduciary regarding loans and assets directly owned by
16 the investment fiduciary and acknowledged by the investment
17 fiduciary as confidential, is exempt from the disclosure
18 requirements of the freedom of information act, 1976 PA 442, MCL
19 15.231 to 15.246, if at least annually the fund provides to the
20 fund board, and makes available to the public, a report of fund
21 investments during the prior state fiscal year that includes all of
22 the following:

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

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

27 (c) The rate of return realized during the reporting period on

1 the investments of the investment fund in portfolio companies.

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

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

9 (10) **THE FUND BOARD SHALL ENSURE THAT ALL AGREEMENTS WITH**
10 **RECIPIENTS OF GRANTS, LOANS, ECONOMIC ASSISTANCE, OR COMMUNITY**
11 **REVITALIZATION INCENTIVES UNDER THIS ACT CONTAIN A CLAW BACK AND**
12 **REPAYMENT PROVISION IF PERFORMANCE UNDER THE CONTRACT RELATED TO**
13 **JOB CREATION, COMMERCIALIZATION, OR OTHER METRICS DOES NOT COMPLY**
14 **WITH THE AGREEMENT. THIS PROVISION SHALL BE PART OF THE PUBLIC**
15 **RECORD AND IS SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA**
16 **442, MCL 15.231 TO 15.246.**

17 (11) ~~(10)~~—As used in subsections (8) and (9):

18 (a) "Investment fiduciary" means a person who exercises any
19 discretionary authority or control over an investment of the
20 investment fund or renders investment advice for the fund for a fee
21 or other direct or indirect compensation.

22 (b) "Investment information" means information that has not
23 been publicly disseminated or that is unavailable from other
24 sources, the release of which might cause a portfolio company or an
25 investment fiduciary significant competitive harm. Investment
26 information includes, but is not limited to, financial performance
27 data and projections, financial statements, list of coinvestors and

1 their level of investment, product and market data, rent rolls, and
2 leases.

3 (c) "Portfolio company" means an entity in which an investment
4 fiduciary has made or considered an investment on behalf of the
5 investment fund.

6 (d) "Record" means all or part of a writing, as that term is
7 defined in section 2 of the freedom of information act, 1976 PA
8 442, MCL 15.232.