

SENATE BILL No. 566

July 13, 2011, Introduced by Senator PAPPAGEORGE and referred to the Committee on Economic Development.

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
8 fund, including the functions of budgeting, procurement, personnel,

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

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

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

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

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

1 technology. From the date of the appointment of the members under
2 this subsection until December 31, 2015, the board shall have 11
3 members. After December 31, 2015, the board shall have 9 members
4 and no members shall be appointed under this subsection.

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

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

14 (7) The board may delegate to its president, vice-president,
15 staff, or others those functions and authority that the board deems
16 necessary or appropriate, which may include the oversight and
17 supervision of employees of the fund. However, responsibilities
18 specifically vested in the board under chapter 8A shall be
19 performed by the board and shall not be transferred to the MEDC,
20 **EXCEPT THAT COMMUNITY REVITALIZATION INCENTIVES UNDER CHAPTER 8C OF**
21 **\$1,000,000.00 OR LESS CAN BE AUTHORIZED BY THE PRESIDENT OF THE**
22 **FUND.**

23 (8) A majority of the members of the board appointed and
24 serving constitutes a quorum for the transaction of business at a
25 meeting, or the exercise of a power or function of the fund,
26 notwithstanding the existence of 1 or more vacancies. The board may
27 act only by resolution approved by a majority of board members

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

9 (9) The business of the board shall be conducted at a public
10 meeting of the board held in compliance with the open meetings act,
11 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,
12 and place of the meeting shall be given in the manner required by
13 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and shall
14 also be provided on an internet website operated by the fund. A
15 record or portion of a record, material, or other data received,
16 prepared, used, or retained by the fund or any of its centers in
17 connection with an application to or with a project or product
18 assisted by the fund or any of its centers or with an award, grant,
19 loan, or investment under chapter 8A that relates to financial or
20 proprietary information submitted by the applicant that is
21 considered by the applicant and acknowledged by the board as
22 confidential shall not be subject to the disclosure requirements of
23 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
24 The disclosure of a record concerning investment information
25 described in section 88c under the freedom of information act, 1976
26 PA 442, MCL 15.231 to 15.246, is subject to the limitations
27 provided in section 88c. The board may also meet in closed session

1 pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to
2 15.275, to make a determination of whether it acknowledges as
3 confidential any financial or proprietary information submitted by
4 the applicant and considered by the applicant as confidential.
5 Unless considered proprietary information, the board shall not
6 acknowledge routine financial information as confidential. If the
7 board determines that information submitted to the fund is
8 financial or proprietary information and is confidential, the board
9 shall release a written statement, subject to disclosure under the
10 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, that
11 states all of the following:

12 (a) The name and business location of the person requesting
13 that the information submitted be confidential as financial or
14 proprietary information.

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

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

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

22 (11) Any document to which the fund is a party evidencing a
23 loan, insurance, mortgage, lease, venture, or other type of
24 agreement the fund is authorized to enter into shall not be
25 considered financial or proprietary information that may be exempt
26 from disclosure under subsection (9).

27 (12) For purposes of subsections (9), (10), and (11),

1 "financial or proprietary information" means information that has
2 not been publicly disseminated or which is unavailable from other
3 sources, the release of which might cause the applicant significant
4 competitive harm.

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

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

1 result of a request for proposal and appoint a committee to review
2 the proposals.

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

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

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

17 (4) The fund board shall establish requirements to ensure that
18 money expended under sections 88d, 88e, 88f, ~~and 88g~~, **88R, AND**
19 **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, and any
25 person who, directly or indirectly, holds a pecuniary interest in
26 that business entity of 20% or more.

27 (b) Provision of money to a person who has been convicted of a

1 criminal offense, or held liable in a civil proceeding, that
2 negatively reflects on the person's business integrity, based on a
3 finding of embezzlement, theft, forgery, bribery, falsification or
4 destruction of records, receiving stolen property, or violation of
5 state or federal antitrust statutes. As used in this subdivision,
6 if a 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. The fund board
11 shall hold a public hearing not sooner than 14 days and not longer
12 than 30 days from the date notice of a proposed resolution is given
13 and offer a person an opportunity to present data, views,
14 questions, and arguments. Members of the fund board or 1 or more
15 persons designated by the fund board who have knowledge of the
16 subject matter of the proposed resolution shall be present at the
17 public hearing and shall participate in the discussion of the
18 proposed resolution. The fund board may act on the proposed
19 resolution no sooner than 14 days after the public hearing. The
20 fund board shall produce a final decision document that describes
21 the basis for its decision. The final resolution and all
22 attachments and the decision document shall be provided to the
23 governor, to the clerk of the house of representatives, to the
24 secretary of the senate, and to members of the senate and house of
25 representatives appropriation committees and shall be published on
26 the fund's internet website.

27 (6) The notice described in subsection (5) shall include all

1 of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 or other direct or indirect compensation.

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

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

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

16 Sec. 88h. (1) The jobs for Michigan investment fund is created
17 within the fund as a permanent fund authorized by section 19 of
18 article IX of the state constitution of 1963. Money in the
19 investment fund at the close of the fiscal year shall remain in the
20 investment fund and shall not lapse to the general fund. Money in
21 the investment fund shall not be transferred to another
22 governmental entity or a separate legal entity and public body
23 corporate established under the urban cooperation act of 1967, 1967
24 (Ex Sess) PA 7, MCL 124.501 to 124.512, except as authorized in
25 this chapter.

26 (2) Money or other assets deposited in the investment fund
27 shall be held as permanent funds as provided under section 19 of

1 article IX of the state constitution of 1963 and invested only as
2 authorized under this chapter, including, but not limited to,
3 investments in the stock of a company, association, or corporation.

4 (3) The investment fund shall be invested as authorized under
5 this chapter for the benefit of the people of the state of Michigan
6 and for the purpose of creating incentives for the following in
7 this state:

8 (a) Diversifying the economy.

9 (b) Retaining or creating jobs.

10 (c) Increasing capital investment activity.

11 (d) Increasing commercial lending activity.

12 (e) Encouraging the development and commercialization of
13 competitive edge technologies.

14 **(F) REVITALIZING MICHIGAN COMMUNITIES.**

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

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

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

22 (b) Earnings, royalties, return on investments, return of
23 principal, payments made, or other money received by or payable to
24 the fund under agreements related to grants, loans, investments, or
25 expenditures by the fund under this chapter **OR CHAPTER 8C**.

26 (c) Assets, property, money, earnings, royalties, return on
27 investments, return of principal, payments made, or other money

1 owed, received by, or payable to the fund or the Michigan economic
2 development corporation under agreements related to grants, loans,
3 investments, or other payments funded by appropriations from the
4 state general fund or tobacco settlement revenue under 1 or more of
5 the following:

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

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

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

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

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

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

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

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

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

3 (e) Interest and earnings on any funds or other assets
4 deposited in the investment fund or other net income of the
5 investment fund.

6 **(F) ANY OTHER FUNDS APPROPRIATED FOR PROGRAMS UNDER CHAPTER 8C**
7 **AND ANY REPAYMENTS OF LOANS UNDER CHAPTER 8C.**

8 (6) The net income of the investment fund may be expended by
9 the fund only for purposes authorized under this chapter **OR CHAPTER**
10 **8C** pursuant to an appropriation authorized by law. As used in this
11 section, the net income of the investment fund shall be computed
12 annually as of the last day of the state fiscal year in accordance
13 with generally accepted accounting principles, excluding any
14 unrealized gains or losses.

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

19 (8) The fund board may establish restricted subaccounts within
20 the investment fund as necessary to administer the investment fund.
21 The fund board may contract with the state treasurer to assist the
22 fund board in administering the investment fund. The fund board may
23 authorize money in the investment fund not invested as authorized
24 under sections 88d, 88e, 88f, ~~and~~ 88g, **88R, AND CHAPTER 8C** to be
25 managed by the state treasurer as part of the common cash fund of
26 this state under 1967 PA 55, MCL 12.51 to 12.53. Money managed by
27 the state treasurer under this subsection shall be separately

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

11 (9) A member of the fund board or officer of the fund shall
12 not gain from any investment of funds or assets of the investment
13 fund. A member of the fund board or officer of the fund shall not
14 have any direct or indirect interest in an investment of funds or
15 assets of the investment fund. A member of the fund board or person
16 connected with the investment fund directly or indirectly, for
17 himself or herself, or as an agent or partner of others, shall not
18 borrow any of the funds or assets of the investment fund or in any
19 manner use funds or assets of the investment fund except as
20 authorized under this chapter. A member of the fund board or
21 officer of the fund shall not become an endorser or surety or
22 become in any manner an obligor for money loaned by or borrowed
23 from the investment fund. Failure to comply with this subsection
24 constitutes misconduct in office subject to removal under section
25 94.

26 Enacting section 1. This amendatory act does not take effect
27 unless all of the following bills of the 96th Legislature are

1 enacted into law:

2 (a) Senate Bill No. 568.

3

4 (b) Senate Bill No. 567.

5