

SENATE BILL No. 1397

June 18, 2008, Introduced by Senators CROPSEY, ALLEN, JACOBS, HUNTER and GILBERT and referred to the Committee on Commerce and Tourism.

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending section 88c (MCL 125.2088c), as added by 2005 PA 225.

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

1 exercise in similar circumstances in a like position. The fund
2 board shall maintain a reasonable diversification among 21st
3 century investments consistent with the requirements of this
4 chapter.

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

17 (3) The fund board shall ensure that a recipient of money
18 under sections 88d, 88e, 88f, and 88g agrees as a condition of
19 receiving the money not to use the money 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, the ~~Initiated Law of~~
24 1996 **IL 1**, MCL 432.201 to 432.226, a casino at which gaming is
25 conducted under the Indian gaming regulatory act, Public Law 100-
26 497, ~~102 Stat. 2467,~~ or property associated or affiliated with the
27 operation of either type of casino described in this subdivision,

1 including, but not limited to, a parking lot, hotel, motel, or
2 retail store.

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

6 (a) Provision of money to a person who has been convicted of a
7 criminal offense incident to the application for or performance of
8 a state contract or subcontract. As used in this subdivision, if a
9 person is a business entity, person includes affiliates,
10 subsidiaries, officers, directors, managerial employees, and any
11 person who, directly or indirectly, holds a pecuniary interest in
12 that business entity of 20% or more. **A DIRECTOR OR OFFICER OF A**
13 **NONPROFIT ENTITY MAY SATISFY THE REQUIREMENTS OF THIS SUBDIVISION**
14 **IF HE OR SHE FILES AN AFFIDAVIT WITH THE FUND AFFIRMING THAT HE OR**
15 **SHE HAS NOT BEEN CONVICTED OF A CRIMINAL OFFENSE INCIDENT TO THE**
16 **APPLICATION FOR OR PERFORMANCE OF A STATE CONTRACT OR SUBCONTRACT.**

17 (b) Provision of money to a person who has been convicted of a
18 criminal offense, or held liable in a civil proceeding, that
19 negatively reflects on the person's business integrity, based on a
20 finding of embezzlement, theft, forgery, bribery, falsification or
21 destruction of records, receiving stolen property, or violation of
22 state or federal antitrust statutes. As used in this subdivision,
23 if a 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. **A DIRECTOR OR OFFICER OF A**
27 **NONPROFIT ENTITY MAY SATISFY THE REQUIREMENTS OF THIS SUBDIVISION**

1 IF HE OR SHE FILES AN AFFIDAVIT WITH THE FUND AFFIRMING THAT HE OR
2 SHE HAS NOT BEEN CONVICTED OF A CRIMINAL OFFENSE, OR HELD LIABLE IN
3 A CIVIL PROCEEDING, THAT NEGATIVELY REFLECTS ON THE PERSON'S
4 BUSINESS INTEGRITY, BASED ON A FINDING OF EMBEZZLEMENT, THEFT,
5 FORGERY, BRIBERY, FALSIFICATION OR DESTRUCTION OF RECORDS,
6 RECEIVING STOLEN PROPERTY, OR VIOLATION OF STATE OR FEDERAL
7 ANTITRUST STATUTES.

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

10 (d) Provision of money that would contribute to the violation
11 of internationally recognized workers rights, as defined in section
12 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a
13 country other than the United States, including any designated zone
14 or area in that country.

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

26 (5) Before adopting a resolution that establishes or
27 substantially changes a 21st century investment program, including

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (a) "Investment fiduciary" means a person who exercises any
24 discretionary authority or control over an investment of the
25 investment fund or renders investment advice for the fund for a fee
26 or other direct or indirect compensation.

27 (b) "Investment information" means information that has not

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

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

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