

HOUSE BILL No. 6481

November 7, 2018, Introduced by Rep. VerHeulen and referred to the Committee on Financial Liability Reform.

A bill to amend 1965 PA 314, entitled "Public employee retirement system investment act," by amending sections 13, 13c, 13d, and 20m (MCL 38.1133, 38.1133c, 38.1133d, and 38.1140m), section 13 as amended by 2017 PA 203, section 13c as added by 2008 PA 233, section 13d as added by 2008 PA 232, and section 20m as amended by 2014 PA 185.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) This act supersedes any investment authority
2 previously granted to a system under any other law of this state.

3 (2) The assets of a system may be invested, reinvested, held
4 in nominee form, and managed by an investment fiduciary subject to
5 the terms, conditions, and limitations provided in this act. An
6 investment fiduciary of a defined contribution plan may arrange for
7 1 or more investment options to be directed by the participants of

1 the defined contribution plan. The limitations on the percentage of
2 total assets for investments provided in this act do not apply to a
3 defined contribution plan in which a participant directs the
4 investment of the assets in his or her individual account, and that
5 participant is not considered an investment fiduciary under this
6 act.

7 (3) An investment fiduciary shall discharge his or her duties
8 solely in the interest of the participants and the beneficiaries,
9 and shall do all of the following:

10 (a) Act with the same care, skill, prudence, and diligence
11 under the circumstances then prevailing that a prudent person
12 acting in a similar capacity and familiar with those matters would
13 use in the conduct of a similar enterprise with similar aims.

14 (b) Act with due regard for the management, reputation, and
15 stability of the issuer and the character of the particular
16 investments being considered.

17 (c) Make investments for the exclusive purposes of providing
18 benefits to participants and participants' beneficiaries, and of
19 defraying reasonable expenses of investing the assets of the
20 system.

21 (d) Give appropriate consideration to those facts and
22 circumstances that the investment fiduciary knows or should know
23 are relevant to the particular investment or investment course of
24 action involved, including the role the investment or investment
25 course of action plays in that portion of the system's investments
26 for which the investment fiduciary has responsibility; and act
27 accordingly. For purposes of this subsection, "appropriate

1 consideration" includes, but is not limited to, a determination by
2 the investment fiduciary that a particular investment or investment
3 course of action is reasonably designed, as part of the investments
4 of the system, to further the purposes of the system, taking into
5 consideration the risk of loss and the opportunity for gain or
6 other return associated with the investment or investment course of
7 action; and consideration of the following factors as they relate
8 to the investment or investment course of action:

9 (i) The diversification of the investments of the system.

10 (ii) The liquidity and current return of the investments of
11 the system relative to the anticipated cash flow requirements of
12 the system.

13 (iii) The projected return of the investments of the system
14 relative to the funding objectives of the system.

15 (e) Give appropriate consideration to investments that would
16 enhance the general welfare of this state and its citizens if those
17 investments offer the safety and rate of return comparable to other
18 investments permitted under this act and available to the
19 investment fiduciary at the time the investment decision is made.

20 (f) Prepare and maintain written objectives, policies, and
21 strategies with clearly defined accountability and responsibility
22 for implementing and executing the system's investments.

23 (g) Monitor the investment of the system's assets with regard
24 to the limitations on those investments under this act. Upon
25 discovery that an investment causes the system to exceed a
26 limitation prescribed in this act, the investment fiduciary shall
27 reallocate assets in a prudent manner to comply with the prescribed

1 limitation.

2 (h) Prepare and maintain written policies regarding ethics and
3 professional training and education, including travel, which
4 policies contain clearly defined accountability and reporting
5 requirements for the system's investment fiduciaries.

6 (i) Publish a summary annual report that includes all of the
7 following:

8 (i) The name of the system.

9 (ii) The names of the system's investment fiduciaries.

10 (iii) The names of the system's service providers.

11 (iv) The system's assets and liabilities and changes in net
12 plan assets on a plan-year basis.

13 (v) The system's funded ratio based on the ratio of valuation
14 assets to actuarial accrued liabilities on a plan-year basis.

15 (vi) Except as otherwise provided in this subparagraph, the
16 system's investment performance net of fees on a rolling calendar-
17 year basis for the previous 1-, 3-, 5-, 7-, and 10-year periods.
18 For a system for which the state treasurer is the investment
19 fiduciary, the summary annual report must include the system's
20 investment performance net of fees on a rolling calendar-year and
21 fiscal-year basis for the previous 1-, 3-, 5-, 7-, and 10-year
22 periods.

23 (vii) The system's administrative and investment expenditures
24 pursuant to standards of the Governmental Accounting Standards
25 Board, including, but not limited to, a list of all expenditures
26 made with soft dollars and all expenditures for professional
27 training and education, including travel expenditures, by or on

1 behalf of system board members that are paid by the system, if any.

2 (viii) The system's itemized budget containing all projected
3 expenditures, including, but not limited to, expenditures for
4 professional training and education, including travel expenditures,
5 by or on behalf of system board members that are paid by the
6 system.

7 (ix) The following information as provided in the system's
8 most recent annual actuarial valuation report:

9 (A) The number of active members.

10 (B) The number of retirees and beneficiaries.

11 (C) The average annual retirement allowance.

12 (D) The total annual retirement allowances being paid.

13 (E) The valuation payroll.

14 (F) The employer's computed normal cost of benefits expressed
15 as a percentage of valuation payroll.

16 (G) The employer's total contribution rate expressed as a
17 percentage of valuation payroll.

18 (H) The weighted average of member contributions, if any.

19 (I) The actuarial assumed rate of investment return.

20 (J) The actuarial assumed rate of long-term wage inflation.

21 (K) The smoothing method utilized to determine the funding
22 value of assets.

23 (L) The amortization method and period utilized for funding
24 the system's unfunded actuarial accrued liabilities, if any.

25 (M) The system's actuarial cost method.

26 (N) Whether system membership is open or closed to specific
27 groups of employees.

1 (O) The actuarial assumed rate of health care inflation.

2 (x) In addition to the expenditures reported under
3 subparagraph (vii), for a large sponsored system a travel report
4 listing all travel outside this state in the immediately preceding
5 fiscal year that was funded in whole or in part with public funds.
6 The report must include the total expenses for all out-of-state
7 travel funded during the immediately preceding fiscal year and all
8 of the following information for each travel occurrence:

9 (A) The name of each person receiving reimbursement for travel
10 outside this state or whose travel costs were paid by the large
11 sponsored system and funded in whole or in part with public funds.

12 (B) The destination.

13 (C) The dates.

14 (D) A brief statement of the reason for the travel.

15 (E) An itemization of the transportation and related costs,
16 including, but not limited to, the amount for food, lodging, and
17 vehicle rental and listing the names of hotels, restaurants,
18 vehicle rental agencies, and vehicle models.

19 (xi) For a state unit, an executive summary of both of the
20 following:

21 (A) The state unit's unfunded actuarial accrued liabilities
22 for retiree health and pension.

23 (B) The information described in subparagraph (v).

24 (j) An investment fiduciary of a large sponsored system shall
25 submit a summary annual report described in subdivision (i) to the
26 financial review commission created under the Michigan financial
27 review commission act, 2014 PA 181, MCL 141.1631 to 141.1643.

1 (k) For a state unit, submit the executive summary required
2 under subdivision (i) (xi) to the senate and house of
3 representatives appropriations committees and the senate and house
4 fiscal agencies not less than 30 days after publication.

5 (l) For a system other than a state unit, submit the summary
6 annual report published under subdivision (i) to the department of
7 treasury not less than 30 days after publication.

8 (4) An investment fiduciary who is an investment fiduciary of
9 any of the following shall comply with the divestment from terror
10 act, 2008 PA 234, MCL 129.291 to 129.301, in making investments
11 under this act:

12 (a) The Tier 1 retirement plan available under the state
13 employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69.

14 (b) The Tier 1 retirement plan available under the judges
15 retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

16 (c) The Michigan state police retirement system created under
17 the state police retirement act of 1986, 1986 PA 182, MCL 38.1601
18 to ~~38.1648~~. **38.1675**.

19 (d) The Michigan public school employees' retirement system
20 created under the public school employees retirement act of 1979,
21 1980 PA 300, MCL 38.1301 to 38.1437.

22 (5) Subject to section 13g, an investment fiduciary may use a
23 portion of the system's income to defray the costs of investing,
24 managing, and protecting the assets of the system; may retain
25 investment and all other goods and services necessary for the
26 conduct of the affairs of the system, including investment
27 advisors, consultants, custodians, accountants, auditors,

1 attorneys, actuaries, investment personnel, administrators, and
2 physicians; and may enter into contracts for and pay reasonable
3 compensation for those services. Subject to an annual appropriation
4 by the legislature, a deduction from the income of a state-
5 administered system resulting from the payment of those costs must
6 be made.

7 (6) Subject to this subsection and subsection (13), an
8 investment fiduciary may use a portion of the system's income to
9 defray the costs of professional training and education, including
10 travel costs, of system board members, which professional training
11 and education, including travel, are directly related to the
12 administration, management, and operation of the system. The
13 governing board vested with the general administration, management,
14 and operation of the system or other decision-making body that is
15 responsible for implementation and supervision of the system shall
16 adopt an annual budget for professional training and education,
17 including travel, authorized under this subsection. The budget
18 adopted under this subsection must reflect the number of board
19 members, the size of the system, and the educational objectives of
20 the system. The system's total aggregate cost for professional
21 training and education, including travel costs, authorized under
22 this subsection for a fiscal year must not exceed \$150,000.00 or an
23 amount that is equal to the total number of system board members
24 multiplied by \$12,000.00, whichever is less. The system's total
25 cost for professional training and education, including travel
26 costs, authorized under this subsection for an individual system
27 board member in a fiscal year must not exceed \$30,000.00. Beginning

1 January 1, 2013, the department of treasury shall adjust the dollar
2 amounts in this subsection by an amount determined by the state
3 treasurer at the end of the immediately preceding calendar year to
4 reflect the cumulative annual percentage change in the ~~consumer~~
5 ~~price index.~~ **CONSUMER PRICE INDEX.** As used in this subsection,
6 "~~consumer price index~~" "**CONSUMER PRICE INDEX**" means the most
7 comprehensive index of consumer prices available for this state
8 from the Bureau of Labor Statistics of the United States Department
9 of Labor.

10 (7) Before any investment services are provided, an investment
11 service provider shall provide the investment fiduciary of the
12 system with a complete written disclosure of all fees or other
13 compensation associated with its relationship with the system.
14 After investment services are provided to the investment fiduciary
15 of the system, an investment service provider shall provide on an
16 annual basis written disclosure of all fees including, but not
17 limited to, commissions, 12b-1 and related fees, compensation paid
18 or to be paid to third parties, and any other compensation paid by
19 the system to the investment fiduciary of the system. As used in
20 this subsection, "investment service provider" means any
21 individual, third-party agent or consultant, or other entity that
22 receives direct or indirect compensation for consulting, investment
23 management, brokerage, or custody services related to the system's
24 assets. For purposes of this section only, investment service
25 provider does not include a retirement system.

26 (8) The system must be a separate and distinct trust fund and
27 the assets of the system must be for the exclusive benefit of the

1 participants and their beneficiaries and of defraying reasonable
2 expenses of investing the assets of the system. With respect to a
3 system, an investment fiduciary shall not cause the system to
4 engage in a transaction if he or she knows or should know that the
5 transaction is any of the following, either directly or indirectly:

6 (a) A sale or exchange or a leasing of any property from the
7 system to a party in interest for less than the fair market value,
8 or from a party in interest to the system for more than the fair
9 market value.

10 (b) A lending of money or other extension of credit from the
11 system to a party in interest without the receipt of adequate
12 security and a reasonable rate of interest, or from a party in
13 interest to the system with the provision of excessive security or
14 at an unreasonably high rate of interest.

15 (c) A transfer to, or use by or for the benefit of, the
16 political subdivision sponsoring the system of any assets of the
17 system for less than adequate consideration.

18 (d) The furnishing of goods, services, or facilities from the
19 system to a party in interest for less than adequate consideration,
20 or from a party in interest to the system for more than adequate
21 consideration.

22 (9) With respect to a system subject to this act, an
23 investment fiduciary shall not do any of the following:

24 (a) Deal with the assets of the system in his or her own
25 interest or for his or her own account.

26 (b) In his or her individual or any other capacity act in any
27 transaction involving the system on behalf of a party whose

1 interests are adverse to the interests of the system or the
2 interest of its participants or participants' beneficiaries.

3 (c) Receive any consideration for his or her own personal
4 account from any party dealing with the system in connection with a
5 transaction involving the assets of the system.

6 (10) This section does not prohibit an investment fiduciary
7 from doing any of the following:

8 (a) Receiving any benefit to which he or she may be entitled
9 as a participant or participant's beneficiary of the system.

10 (b) Receiving any reimbursement of expenses properly and
11 actually incurred in the performance of his or her duties for the
12 system.

13 (c) Serving as an investment fiduciary in addition to being an
14 officer, employee, agent, or other representative of the political
15 subdivision sponsoring the system.

16 (d) Receiving agreed upon compensation for services from the
17 system.

18 (11) Except for an employee of a system, this state, or the
19 political subdivision sponsoring a system, when acting in the
20 capacity as an investment fiduciary, an investment fiduciary who is
21 qualified under section 12c(1)(b) shall meet 1 of the following
22 requirements:

23 (a) Be a registered investment adviser under the investment
24 advisers act of 1940, 15 USC 80b-1 to 80b-21, or the uniform
25 securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

26 (b) Be a bank as defined under the investment advisers act of
27 1940, 15 USC 80b-1 to 80b-21.

1 (c) Be an insurance company qualified under section 16(3).

2 (12) An investment fiduciary shall not invest in a debt
3 instrument issued by a foreign country that has been designated by
4 the United States Department of State as a state sponsor of terror.

5 (13) A large sponsored system shall not pay the expenses for a
6 person to travel outside this state from funds under its control
7 unless 1 or more of the following conditions apply to the travel:

8 (a) It is required by legal mandate or court order or for law
9 enforcement purposes.

10 (b) It is necessary to protect the health or safety of
11 citizens of, or visitors to, this state or to assist other states
12 in similar circumstances.

13 (c) It is necessary to produce budgetary savings or to
14 increase revenues, including protecting existing federal funds or
15 securing additional federal funds.

16 (d) It is necessary to secure specialized training for the
17 person that is substantially related to performing the duties of
18 the position and is not available within this state.

19 (14) Subject to section 13g, an investment fiduciary of a
20 large sponsored system that invests or has invested in a hazardous
21 waste deep disposal well facility regulated under part 111 or 121
22 of the natural resources and environmental protection act, 1994 PA
23 451, MCL 324.11101 to 324.11153 and 324.12101 to 324.12117, is
24 subject to all of the following:

25 (a) The investment fiduciary shall not make an additional
26 investment in the hazardous waste deep disposal well facility
27 unless the investment is solely to prepare the property on which

1 the hazardous waste deep disposal well facility is located for sale
2 for purposes other than operation as a hazardous waste deep
3 disposal well facility or similar hazardous facility.

4 (b) The investment fiduciary shall sell, redeem, divest, or
5 withdraw all investments in the hazardous waste deep disposal well
6 facility within 180 days after any of the following circumstances
7 occur:

8 (i) The operator of the hazardous waste deep disposal well
9 facility files for bankruptcy.

10 (ii) The sale, transfer, purchase, or acquisition of a
11 controlling interest in the operator of the hazardous waste deep
12 disposal well facility.

13 (iii) An Environmental Protection Agency action for a
14 violation at the hazardous waste deep disposal well facility.

15 (iv) An Environmental Protection Agency revocation of the
16 operator's license.

17 (v) An Environmental Protection Agency or department of
18 environmental quality order to terminate operations at the
19 hazardous waste deep disposal well facility.

20 (15) For a state unit, a representative of the office of
21 retirement services in the department of technology, management,
22 and budget shall appear before the senate and house of
23 representatives appropriations committees on request of the
24 committee chair to testify about the system's summary annual report
25 required under subsection (3).

26 (16) The department of treasury shall post on its website an
27 executive summary of each summary annual report submitted to the

1 department of treasury under subsection (3) (l). The executive
2 summary must include the applicable system's unfunded actuarial
3 accrued liability for pension. The department of treasury shall
4 submit each executive summary required under this subsection to the
5 senate and the house of representatives appropriations committees
6 and the senate and house fiscal agencies not less than 30 days
7 after posting.

8 (17) As used in this section, "state unit" means a system
9 established under the state employees' retirement act, 1943 PA 240,
10 MCL 38.1 to 38.69, the public school employees retirement act of
11 1979, 1980 PA 300, MCL 38.1301 to 38.1437, the judges retirement
12 act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and the state
13 police retirement act of 1986, 1986 PA 182, MCL 38.1601 to
14 ~~38.1648~~-**38.1675**.

15 Sec. 13c. (1) As used in this section:

16 (a) "Active business operations" means all business operations
17 that are not inactive business operations.

18 (b) "Business operations" means engaging in commerce in any
19 form in Sudan, including by acquiring, developing, maintaining,
20 owning, selling, possessing, leasing, or operating equipment,
21 facilities, personnel, products, services, personal property, real
22 property, or any other apparatus of business or commerce.

23 (c) "Company" means any sole proprietorship, organization,
24 association, corporation, partnership, joint venture, limited
25 partnership, limited liability partnership, limited liability
26 company, or other entity or business association, including all
27 wholly owned subsidiaries, majority-owned subsidiaries, parent

1 companies, or affiliates of such entities or business associations,
2 that exists for profit-making purposes.

3 (d) "Complicit" means taking actions during any preceding 20-
4 month period which have directly supported or promoted the
5 genocidal campaign in Darfur, including, but not limited to,
6 preventing Darfur's victimized population from communicating with
7 each other, encouraging Sudanese citizens to speak out against an
8 internationally approved security force for Darfur, actively
9 working to deny, cover up, or alter the record on human rights
10 abuses in Darfur, or other similar actions.

11 (e) "Direct holdings" in a company means all securities of
12 that company held directly by the fiduciary or in an account or
13 fund in which the fiduciary owns all shares or interests.

14 (f) "Fiduciary" means the Michigan legislative retirement
15 system board of trustees for the Tier 1 plan for the Michigan
16 legislative retirement system created by the Michigan legislative
17 retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, and the
18 treasurer of this state for the retirement systems created under
19 all of the following acts:

20 (i) The state police retirement act of 1986, 1986 PA 182, MCL
21 38.1601 to ~~38.1648~~. **38.1675**.

22 (ii) The Tier 1 retirement plan available under the judge's
23 retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

24 (iii) The Tier 1 retirement plan available under the state
25 employees retirement act, 1943 PA 240, MCL 38.1 to 38.69.

26 (iv) The public school employees retirement act of 1979, 1980
27 PA 300, MCL 38.1301 to ~~38.1408~~. **38.1437**.

1 (g) "Government of Sudan" means the government in Khartoum,
2 Sudan, which is led by the national congress party or any successor
3 government formed on or after October 13, 2006 and does not include
4 the regional government of southern Sudan.

5 (h) "Inactive business operations" means the mere continued
6 holding or renewal of rights to property previously operated for
7 the purpose of generating revenues but not presently deployed for
8 such purpose.

9 (i) "Indirect holdings" in a company means all securities of
10 that company held in an account or fund, such as a mutual fund or
11 other commingled fund, managed by 1 or more persons not employed by
12 the fiduciary, in which the fiduciary owns shares or interests
13 together with other investors not subject to the provisions of this
14 act.

15 (j) "Marginalized populations of Sudan" includes, but is not
16 limited to, all of the following:

17 (i) The portion of the population in the Darfur region that
18 has been genocidally victimized.

19 (ii) The portion of the population of southern Sudan
20 victimized by Sudan's north-south civil war.

21 (iii) The Beja, Rashidiya, and other similarly underserved
22 groups of eastern Sudan.

23 (iv) The Nubian and other similarly underserved groups in
24 Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions.

25 (v) The Amri, Hamadab, Manasir, and other similarly
26 underserved groups of northern Sudan.

27 (k) "Military equipment" means weapons, arms, military

1 supplies, and equipment that readily may be used for military
2 purposes, including, but not limited to, radar systems or military-
3 grade transport vehicles; or supplies or services sold or provided
4 directly or indirectly to any force actively participating in armed
5 conflict in Sudan.

6 (l) "Mineral extraction activities" includes exploring,
7 extracting, processing, transporting, or wholesale selling or
8 trading of elemental minerals or associated metal alloys or oxides,
9 including gold, copper, chromium, chromite, diamonds, iron, iron
10 ore, silver, tungsten, uranium, and zinc, as well as facilitating
11 such activities, including by providing supplies or services in
12 support of such activities.

13 (m) "Oil-related activities" includes, but is not limited to,
14 owning rights to oil blocks; exporting, extracting, producing,
15 refining, processing, exploring for, transporting, selling, or
16 trading of oil; constructing, maintaining, or operating a pipeline,
17 refinery, or other oil-field infrastructure; and facilitating such
18 activities, including by providing supplies or services in support
19 of such activities, provided that the mere retail sale of gasoline
20 and related consumer products shall not be considered oil-related
21 activities.

22 (n) "Power production activities" means any business operation
23 that involves a project commissioned by the national electricity
24 corporation of Sudan or other similar government of Sudan entity
25 whose purpose is to facilitate power generation and delivery,
26 including, but not limited to, establishing power-generating plants
27 or hydroelectric dams, selling or installing components for the

1 project, providing service contracts related to the installation or
2 maintenance of the project, as well as facilitating such
3 activities, including by providing supplies or services in support
4 of such activities.

5 (o) "Scrutinized company" means any company, except a social
6 development company and a company described in subsection (10) that
7 is not complicit in the Darfur genocide, that meets the criteria in
8 subparagraph (i), (ii), or (iii):

9 (i) The company has business operations that involve contracts
10 with or provision of supplies or services to 1 or more of the
11 following:

12 (A) The government of Sudan.

13 (B) Companies in which the government of Sudan has any direct
14 or indirect equity share.

15 (C) Government of Sudan-commissioned consortia or projects.

16 (D) Companies involved in government of Sudan-commissioned
17 consortia or projects and that have 1 or more of the following:

18 (I) More than 10% of the company's revenues or assets linked
19 to Sudan involve oil-related activities or mineral extraction
20 activities, less than 75% of the company's revenues or assets
21 linked to Sudan involve contracts with or provision of oil-related
22 or mineral extracting products or services to the regional
23 government of southern Sudan or a project or consortium created
24 exclusively by that regional government, and the company has failed
25 to take substantial action.

26 (II) More than 10% of the company's revenues or assets linked
27 to Sudan involve power production activities, less than 75% of the

1 company's power production activities include projects whose intent
2 is to provide power or electricity to the marginalized populations
3 of Sudan, and the company has failed to take substantial action.

4 (ii) The company is complicit in the Darfur genocide.

5 (iii) The company supplies military equipment within Sudan,
6 unless the fiduciary finds that the military equipment will not be
7 used to facilitate offensive military actions in Sudan or the
8 fiduciary finds that the company implements rigorous and verifiable
9 safeguards to prevent use of that equipment by forces actively
10 participating in armed conflict.

11 (p) "Social development company" means a company whose primary
12 purpose in Sudan is to provide humanitarian goods or services,
13 including medicine or medical equipment, agricultural supplies or
14 infrastructure, educational opportunities, journalism-related
15 activities, information or information materials, spiritual-related
16 activities, services of a purely clerical or reporting nature,
17 food, clothing, or general consumer goods that are unrelated to
18 oil-related activities, mineral extraction activities, or power
19 production activities.

20 (q) "Substantial action" means adopting, publicizing, and
21 implementing a formal plan to cease scrutinized business operations
22 within 1 year and to refrain from any new business operations,
23 undertaking significant humanitarian efforts in conjunction with an
24 international organization, the government of Sudan, the regional
25 government of southern Sudan, or a nonprofit entity and evaluated
26 and certified by an independent third party to be substantial in
27 relationship to the company's Sudan business operations and of

1 benefit to 1 or more marginalized populations of Sudan, or through
2 engagement with the government of Sudan, materially improving
3 conditions for the genocidally victimized population in Darfur.

4 (2) Within 90 days after the effective date of the amendatory
5 act that added this section, the fiduciary shall make its best
6 efforts to identify all scrutinized companies in which the
7 fiduciary has direct or indirect holdings or could possibly have
8 such holdings in the future. The efforts shall include 1 or more of
9 the following:

10 (a) Reviewing and relying, as appropriate in the fiduciary's
11 judgment, on publicly available information regarding companies
12 with business operations in Sudan, including information provided
13 by nonprofit organizations, research firms, international
14 organizations, and government entities.

15 (b) Contacting asset managers contracted by the fiduciary that
16 invest in companies with business operations in Sudan.

17 (c) Contacting other institutional investors that have
18 divested from or engaged with companies that have business
19 operations in Sudan.

20 (3) At the end of the 90-day period or by the first meeting of
21 the fiduciary following the 90-day period described in subsection
22 (2), the fiduciary shall assemble all scrutinized companies
23 identified into a scrutinized companies list.

24 (4) The fiduciary shall update the scrutinized companies list
25 on a quarterly basis based on evolving information from, among
26 other sources, those sources listed in subsection (2). The
27 fiduciary shall make the scrutinized companies list freely

1 available to the fiduciaries of other public retirement systems
2 located in this state if making the list available does not violate
3 any agreements with third parties or reveal proprietary information
4 of a third party.

5 (5) The fiduciary shall adhere to the following procedure for
6 companies on the scrutinized companies list:

7 (a) The fiduciary shall immediately determine the companies on
8 the scrutinized companies list in which the fiduciary oversees
9 pursuant to its responsibilities as defined in subsection (1)(f).

10 (b) For each company identified in subdivision (a) with only
11 inactive business operations, the fiduciary shall send a written
12 notice informing the company of this section and encourage the
13 company to continue to refrain from initiating active business
14 operations in Sudan until it is able to avoid scrutinized business
15 operations and further encourage the company to engage in
16 substantial humanitarian operations in the country. The fiduciary
17 shall continue the correspondence on a semiannual basis.

18 (c) For each company newly identified in subdivision (a) with
19 active business operations, the fiduciary shall send a written
20 notice informing the company of its scrutinized company status and
21 that it may become subject to divestment by the fiduciary. The
22 notice shall offer the company the opportunity to clarify its
23 Sudan-related activities and shall encourage the company, within 90
24 days, to either cease its scrutinized business operations or
25 convert such operations to inactive business operations in order to
26 avoid qualifying for divestment by the fiduciary.

27 (d) If, within 90 days following the fiduciary's first

1 engagement with a company pursuant to subdivision (c), that company
2 ceases scrutinized business operations, the company shall be
3 removed from the scrutinized companies list and this section shall
4 cease to apply to it unless it resumes scrutinized business
5 operations. If, within 90 days following the fiduciary's first
6 engagement, the company converts its scrutinized active business
7 operations to inactive business operations, the company shall be
8 subject to this section.

9 (e) If, after 90 days following the fiduciary's first
10 engagement with a company pursuant to subdivision (c), the company
11 continues to have scrutinized active business operations, and only
12 while the company continues to have scrutinized active business
13 operations, the fiduciary shall sell, redeem, divest, or withdraw
14 all publicly traded securities of the company, according to the
15 following schedule:

16 (i) At least 50% of the assets shall be removed from the
17 fiduciary's assets under management within 9 months after the
18 company's most recent appearance on the scrutinized companies list.

19 (ii) 100% of the assets shall be removed from the fiduciary's
20 assets under management within 15 months after the company's most
21 recent appearance on the scrutinized companies list.

22 (f) Except as provided in subdivisions (g) and (h), at no time
23 shall the fiduciary acquire securities of companies on the
24 scrutinized companies list that have active business operations.

25 (g) No company which the United States government
26 affirmatively declares to be excluded from its present or any
27 future federal sanctions regime relating to Sudan shall be subject

1 to divestment or investment prohibition pursuant to subdivisions
2 (e) and (f).

3 (h) Subdivisions (e) and (f) shall not apply to indirect
4 holdings in actively managed investment funds. For purposes of this
5 section, actively managed investment funds include private equity
6 funds and publicly traded funds. Before the fiduciary invests in a
7 new private equity fund that is not in the fiduciary's portfolio as
8 ~~of the effective date of the amendatory act that added this~~
9 ~~section,~~ **JULY 17, 2018**, the fiduciary shall perform due diligence
10 to prevent investment in any private equity fund where the offering
11 memorandum or prospectus identifies the purpose of the private
12 equity fund as investing in scrutinized companies with active
13 business operations in Sudan. The fiduciary is not required to
14 identify holdings in private equity funds or submit engagement
15 letters to those funds. If the manager of a publicly traded,
16 actively managed fund that is in the fiduciary's portfolio on ~~the~~
17 ~~effective date of the amendatory act that added this section~~ **JULY**
18 **17, 2018** creates a similar publicly traded, actively managed fund
19 with indirect holdings devoid of identified scrutinized companies
20 with scrutinized active business operations as defined in this
21 section, the fiduciary shall replace all applicable investments
22 with investments in the similar fund in an expedited time frame
23 consistent with prudent investment standards.

24 (6) The fiduciary shall file a publicly available report to
25 the legislature that includes the scrutinized companies list within
26 30 days after the list is created. Annually thereafter, the
27 fiduciary shall file a publicly available report to the legislature

1 and send a copy of that report to the United States presidential
2 special envoy to Sudan that includes all of the following:

3 (a) A summary of correspondence with companies engaged by the
4 fiduciary under this section.

5 (b) All investments sold, redeemed, divested, or withdrawn in
6 compliance with this section.

7 (c) All prohibited investments under this section.

8 (d) Any progress made under subsection (5)(h).

9 (7) This section is effective until the first occurrence of
10 any of the following:

11 (a) The United States ~~congress~~**CONGRESS** or the ~~president~~
12 **PRESIDENT** of the United States declares that the Darfur genocide
13 has been halted for at least 12 months.

14 (b) The United States revokes all sanctions imposed against
15 the government of Sudan.

16 (c) The ~~congress~~**CONGRESS** or ~~president~~**PRESIDENT** of the United
17 States declares that the government of Sudan has honored its
18 commitments to cease attacks on civilians, demobilize and
19 demilitarize the Janjaweed and associated militias, grant free and
20 unfettered access for deliveries of humanitarian assistance, and
21 allow for the safe and voluntary return of refugees and internally
22 displaced persons.

23 (d) The ~~congress~~**CONGRESS** or ~~president~~**PRESIDENT** of the United
24 States, through legislation or executive order, declares that
25 mandatory divestment of the type provided for in this act
26 interferes with the conduct of United States foreign policy.

27 (8) With respect to actions taken in compliance with this

1 section, including all good faith determinations regarding
2 companies as required by this section, the fiduciary shall be
3 exempt from any conflicting statutory or common law obligations,
4 including any obligations in respect to choice of asset managers,
5 investment funds, or investments for the fiduciary's securities
6 portfolios.

7 (9) The fiduciary, members of an investment advisory
8 committee, and any person with decision-making authority with
9 regard to investments of the fiduciary shall not be held liable for
10 any action undertaken for the purpose of complying with or
11 executing the mandates required under this section.

12 (10) Scrutinized company does not include a company that the
13 federal government has affirmatively excluded from federal
14 sanctions for business the scrutinized company conducts relating to
15 Sudan, or that has consistently obtained applicable licenses or
16 approvals to conduct transactions with Sudan. If the fiduciary
17 becomes aware at any time that a company that has not been
18 affirmatively excluded from federal sanctions for business it
19 conducts relating to Sudan and has not received from the United
20 States government applicable licenses or approvals to conduct
21 transactions with Sudan, that company is immediately subject to
22 subsection (5).

23 (11) If any provision, section, subsection, sentence, clause,
24 phrase, or word of this legislation or its application to any
25 person or circumstance is found to be invalid, illegal,
26 unenforceable, or unconstitutional, the same is hereby declared to
27 be severable and the balance of this legislation shall remain

1 effective and functional notwithstanding such invalidity,
2 illegality, unenforceability, or unconstitutionality.

3 Sec. 13d. (1) As used in this section:

4 (a) "Active business operations" means all business operations
5 that are not inactive business operations.

6 (b) "Business operations" means engaging in commerce in any
7 form in Iran, including by acquiring, developing, maintaining,
8 owning, selling, possessing, leasing, or operating equipment,
9 facilities, personnel, products, services, personal property, real
10 property, or any other apparatus of business or commerce.

11 (c) "Company" means any sole proprietorship, organization,
12 association, corporation, partnership, joint venture, limited
13 partnership, limited liability partnership, limited liability
14 company, or other entity or business association, including all
15 wholly owned subsidiaries, majority-owned subsidiaries, parent
16 companies, or affiliates of such entities or business associations,
17 that exists for profit-making purposes.

18 (d) "Direct holdings" in a company means all securities of
19 that company held directly by the fiduciary or in an account or
20 fund in which the fiduciary owns all shares or interests.

21 (e) "Fiduciary" means the Michigan legislative retirement
22 system board of trustees for the Tier 1 plan for the Michigan
23 legislative retirement system created by the Michigan legislative
24 retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, and the
25 treasurer of this state for the retirement systems created under
26 all of the following acts:

27 (i) The state police retirement act of 1986, 1986 PA 182, MCL

1 38.1601 to ~~38.1648~~**38.1675**.

2 (ii) The Tier 1 retirement plan available under the judge's
3 retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

4 (iii) The Tier 1 retirement plan available under the state
5 employees retirement act, 1943 PA 240, MCL 38.1 to 38.69.

6 (iv) The public school employees retirement act of 1979, 1980
7 PA 300, MCL 38.1301 to ~~38.1408~~**38.1437**.

8 (f) "Government of Iran" means the government of Iran, its
9 instrumentalities, and companies owned or controlled by the
10 government of Iran.

11 (g) "Inactive business operations" means the mere continued
12 holding or renewal of rights to property previously operated for
13 the purpose of generating revenues but not presently deployed for
14 such purpose.

15 (h) "Indirect holdings" in a company means all securities of
16 that company held in an account or fund, such as a mutual fund or
17 other commingled fund, managed by 1 or more persons not employed by
18 the fiduciary, in which the fiduciary owns shares or interests
19 together with other investors not subject to the provisions of this
20 act.

21 (i) "Iran" means the Islamic republic of Iran.

22 (j) "Military equipment" means weapons, arms, military
23 supplies, and equipment that readily may be used for military
24 purposes, including, but not limited to, radar systems or military-
25 grade transport vehicles.

26 (k) "Mineral extraction activities" includes exploring,
27 extracting, processing, transporting, or wholesale selling or

1 trading of elemental minerals or associated metal alloys or oxides,
2 including gold, copper, chromium, chromite, diamonds, iron, iron
3 ore, silver, tungsten, uranium, and zinc, as well as facilitating
4 such activities, including by providing supplies or services in
5 support of such activities.

6 (l) "Oil-related activities" includes, but is not limited to,
7 owning rights to oil blocks; exporting, extracting, producing,
8 refining, processing, exploring for, transporting, selling, or
9 trading of oil; constructing, maintaining, or operating a pipeline,
10 refinery, or other oil-field infrastructure; and facilitating such
11 activities, including by providing supplies or services in support
12 of such activities, provided that the mere retail sale of gasoline
13 and related consumer products shall not be considered oil-related
14 activities.

15 (m) "Petroleum resources" means petroleum or natural gas.

16 (n) "Power production activities" means any business operation
17 that involves a project commissioned by the government of Iran
18 whose purpose is to facilitate power generation and delivery,
19 including, but not limited to, establishing power-generating plants
20 or hydroelectric dams, selling or installing components for the
21 project, providing service contracts related to the installation or
22 maintenance of the project, as well as facilitating such
23 activities, including by providing supplies or services in support
24 of such activities.

25 (o) "Scrutinized company" means any company not described in
26 subsection (10) that has business operations that involve contracts
27 with or provision of supplies or services to the government of

1 Iran; companies in which the government of Iran has any direct or
2 indirect equity share, consortiums, or projects commissioned by the
3 government of Iran; or companies involved in consortiums and
4 projects commissioned by the government of Iran and 1 or more of
5 the following:

6 (i) More than 10% of the company's total revenues or assets
7 are linked to Iran, and involve oil-related activities or mineral-
8 extraction activities, and the company has failed to take
9 substantial action.

10 (ii) The company has, with actual knowledge, on or after
11 August 5, 1996, made an investment of \$20,000,000.00 or more, or
12 any combination of investments of at least \$10,000,000.00 each,
13 which in the aggregate equals or exceeds \$20,000,000.00 in any 12-
14 month period, and which directly or significantly contributes to
15 the enhancement of Iran's ability to develop petroleum resources.

16 (p) "Substantial action" means adopting, publicizing, and
17 implementing a formal plan to cease scrutinized business operations
18 within 1 year and to refrain from any new business operations.

19 (2) Within 90 days after the effective date of the amendatory
20 act that added this section, the fiduciary shall make its best
21 efforts to identify all scrutinized companies in which the
22 fiduciary has direct or indirect holdings or could possibly have
23 such holdings in the future. The efforts may include 1 or more of
24 the following:

25 (a) Reviewing and relying, as appropriate in the fiduciary's
26 judgment, on publicly available information regarding companies
27 with business operations in Iran, including information provided by

1 nonprofit organizations, research firms, international
2 organizations, and government entities.

3 (b) Contacting asset managers contracted by the fiduciary that
4 invest in companies with business operations in Iran.

5 (c) Contacting other institutional investors that have
6 divested from or engaged with companies that have business
7 operations in Iran.

8 (d) Reviewing the laws of the United States regarding the
9 levels of business activity that would cause application of
10 sanctions against companies conducting business or investing in
11 countries that are designated state sponsors of terror.

12 (3) At the end of the 90-day period or by the first meeting of
13 the fiduciary following the 90-day period described in subsection
14 (2), the fiduciary shall assemble all scrutinized companies
15 identified into a scrutinized companies list.

16 (4) The fiduciary shall update the scrutinized companies list
17 on a quarterly basis based on evolving information from, among
18 other sources, those sources listed in subsection (2). The
19 fiduciary shall make the scrutinized companies list freely
20 available to the fiduciaries of other public retirement systems
21 located in this state if making the list available does not violate
22 any agreements with third parties or reveal proprietary information
23 of a third party.

24 (5) The fiduciary shall adhere to the following procedure for
25 companies on the scrutinized companies list:

26 (a) The fiduciary shall immediately determine the companies on
27 the scrutinized companies list in which the fiduciary oversees

1 pursuant to its responsibilities as described in subsection (1)(e).

2 (b) For each company identified in subdivision (a) with only
3 inactive business operations, not later than 60 days after the
4 identification of the company, the fiduciary shall send a written
5 notice informing the company of this section and encourage the
6 company to continue to refrain from initiating active business
7 operations in Iran until it is able to avoid scrutinized business
8 operations. The fiduciary shall continue the correspondence on a
9 semiannual basis.

10 (c) For each company newly identified in subdivision (a) with
11 active business operations, not later than 60 days after the
12 company is newly identified, the fiduciary shall send a written
13 notice informing the company of its scrutinized company status and
14 that it may become subject to divestment by the fiduciary. The
15 notice shall offer the company the opportunity to clarify its Iran-
16 related activities and shall encourage the company, within 90 days,
17 to either cease its scrutinized business operations through
18 substantial action or convert such operations to inactive business
19 operations in order to avoid qualifying for divestment by the
20 fiduciary.

21 (d) If, within 90 days following the fiduciary's first
22 engagement with a company pursuant to subdivision (c), that company
23 announces a plan of substantial action, the company shall be
24 removed from the scrutinized companies list and this section shall
25 cease to apply to it unless it fails to implement its plan of
26 substantial action within the designated time frame. If, within 90
27 days following the fiduciary's first engagement, the company

1 converts its active business operations to inactive business
2 operations, the company shall be subject to this section.

3 (e) If, after 90 days following the fiduciary's first
4 engagement with a company pursuant to subdivision (c), the company
5 continues to have active business operations, and only while the
6 company continues to have active business operations, the fiduciary
7 shall sell, redeem, divest, or withdraw all publicly traded
8 securities of the company, according to the following schedule:

9 (i) At least 50% of the assets shall be removed from the
10 fiduciary's assets under management within 9 months after the
11 company's most recent appearance on the scrutinized companies list.

12 (ii) 100% of the assets shall be removed from the fiduciary's
13 assets under management within 15 months after the company's most
14 recent appearance on the scrutinized companies list.

15 (f) Except as provided in subdivisions (g) and (h), at no time
16 shall the fiduciary acquire securities of companies on the
17 scrutinized companies list that have active business operations.

18 (g) No company which the United States government
19 affirmatively declares to be excluded from its present or any
20 future federal sanctions regime relating to Iran shall be subject
21 to divestment or investment prohibition pursuant to subdivisions
22 (e) and (f).

23 (h) Subdivisions (e) and (f) shall not apply to indirect
24 holdings in actively managed investment funds. For purposes of this
25 section, actively managed investment funds include private equity
26 funds and publicly traded funds. Before the fiduciary invests in a
27 new private equity fund or publicly traded fund that is not in the

1 fiduciary's portfolio as of ~~the effective date of the amendatory~~
2 ~~act that added this section,~~ **JULY 17, 2008**, the fiduciary shall
3 perform due diligence to prevent investment in any private equity
4 fund or publicly traded fund where the offering memorandum or
5 prospectus identifies a purpose of the private equity fund or
6 publicly traded fund as investing in scrutinized companies with
7 active business operations in Iran. The fiduciary is not required
8 to identify holdings in private equity funds or submit engagement
9 letters to those funds. If the manager of a publicly traded,
10 actively managed fund that is in the fiduciary's portfolio on ~~the~~
11 ~~effective date of the amendatory act that added this section~~ **JULY**
12 **17, 2008** creates a similar publicly traded, actively managed fund
13 with indirect holdings devoid of identified scrutinized companies
14 with scrutinized active business operations as defined in this
15 section, the fiduciary shall replace all applicable investments
16 with investments in the similar fund in an expedited time frame
17 consistent with prudent investment standards.

18 (6) The fiduciary shall file a publicly available report to
19 the legislature that includes the scrutinized companies list within
20 30 days after the list is created. Annually thereafter, the
21 fiduciary shall file a publicly available report to the legislature
22 that includes all of the following:

23 (a) A summary of correspondence with companies engaged by the
24 fiduciary under this section.

25 (b) All investments sold, redeemed, divested, or withdrawn in
26 compliance with this section.

27 (c) All prohibited investments under this section.

1 (d) Any progress made under subsection (5) (h).

2 (7) This section is no longer effective upon the occurrence of
3 1 or more of the following:

4 (a) The ~~congress~~**CONGRESS** or ~~president~~**PRESIDENT** of the United
5 States affirmatively and unambiguously states, through legislation,
6 executive order, or written certification from the ~~president~~
7 **PRESIDENT** to ~~congress~~**CONGRESS**, that the government of Iran has
8 ceased to acquire weapons of mass destruction and support
9 international terrorism.

10 (b) The United States revokes all sanctions imposed against
11 the government of Iran.

12 (c) The ~~congress~~**CONGRESS** or ~~president~~**PRESIDENT** of the United
13 States affirmatively and unambiguously states, through legislation,
14 executive order, or written certification from the ~~president~~
15 **PRESIDENT** to ~~congress~~**CONGRESS**, that mandatory divestment of the
16 type provided for in this section interferes with the conduct of
17 United States foreign policy.

18 (8) With respect to actions taken in compliance with this
19 section, including all good faith determinations regarding
20 companies as required by this section, the fiduciary shall be
21 exempt from any conflicting statutory or common law obligations,
22 including any obligations in respect to choice of asset managers,
23 investment funds, or investments for the fiduciary's securities
24 portfolios.

25 (9) The fiduciary, members of an investment advisory
26 committee, and any person with decision-making authority with
27 regard to investments of the fiduciary shall not be held liable for

1 any action undertaken for the purpose of complying with or
2 executing the mandates required under this section.

3 (10) Scrutinized company does not include a company that the
4 federal government has affirmatively excluded from federal
5 sanctions for business the scrutinized company conducts relating to
6 Iran, or that has consistently obtained applicable licenses or
7 approvals to conduct transactions with Iran. If the fiduciary
8 becomes aware at any time that a company that has not been
9 affirmatively excluded from federal sanctions for business it
10 conducts relating to Iran and has not received from the United
11 States government applicable licenses or approvals to conduct
12 transactions with Iran, that company is immediately subject to
13 subsection (5).

14 (11) If any provision, section, subsection, sentence, clause,
15 phrase, or word of this legislation or its application to any
16 person or circumstance is found to be invalid, illegal,
17 unenforceable, or unconstitutional, the same is hereby declared to
18 be severable and the balance of this legislation shall remain
19 effective and functional notwithstanding such invalidity,
20 illegality, unenforceability, or unconstitutionality.

21 Sec. 20m. (1) The governing board vested with the general
22 administration, management, and operation of a system or other
23 decision-making body that is responsible for implementation and
24 supervision of any system shall confirm in the annual actuarial
25 valuation required under section 20h and the summary annual report
26 required under section 13 that each system under this act provides
27 for the payment of the required employer contribution as provided

1 in this section and shall confirm in the summary annual report that
2 the system has received the required employer contribution for the
3 year covered in the summary annual report. The required employer
4 contribution is the actuarially determined contribution amount. An
5 annual required employer contribution in a system under this act
6 shall consist of a current service cost payment and a payment of at
7 least the annual accrued amortized interest on any unfunded
8 actuarial liability and the payment of the annual accrued amortized
9 portion of the unfunded principal liability. For fiscal years that
10 begin before January 1, 2006, the required employer contribution
11 shall not be determined using an amortization period greater than
12 40 years. Except as otherwise provided in this section, for fiscal
13 years that begin after December 31, 2005, the required employer
14 contribution shall not be determined using an amortization period
15 greater than 30 years. For the Tier 1 retirement plan under the
16 state employees' retirement system, created under the state
17 employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69; the
18 Michigan public school employees' retirement created under the
19 public school employees retirement act of 1979, 1980 PA 300, MCL
20 38.1301 to 38.1437; and the Michigan state police retirement system
21 created under the state police retirement act of 1986, 1986 PA 182,
22 MCL 38.1601 to ~~38.1648~~, **38.1675**, only, for the fiscal year
23 beginning October 1, 2006, the contribution for the unfunded
24 actuarial accrued liability shall be equal to the product of the
25 assumed real rate of investment return times the unfunded actuarial
26 accrued liability. In a plan year, any current service cost payment
27 may be offset by a credit for amortization of accrued assets, if

1 any, in excess of actuarial accrued liability. A required employer
2 contribution for a system administered under this act shall
3 allocate the actuarial present value of future plan benefits
4 between the current service costs to be paid in the future and the
5 actuarial accrued liability. The governing board vested with the
6 general administration, management, and operation of a system or
7 other decision-making body that is responsible for implementation
8 and supervision of a system shall act upon the recommendation of an
9 actuary and the board and the actuary shall take into account the
10 standards of practice of the actuarial standards board of the
11 American academy of actuaries in making the determination of the
12 required employer contribution.

13 (2) Subsection (1) applies to a large sponsored system except
14 as otherwise provided in a plan for adjustment. As used in this
15 subsection, "plan for adjustment" means that term as defined in
16 section 13g.

17 Enacting section 1. This amendatory act does not take effect
18 unless Senate Bill No. _____ or House Bill No. 6475 (request no.
19 05259'18) of the 99th Legislature is enacted into law.