

HOUSE BILL No. 5760

April 1, 2004, Introduced by Rep. Koetje and referred to the Committee on Commerce.

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending section 13 (MCL 38.1133), as amended by 2000 PA 307.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) ~~The provisions of this~~ **This** act ~~shall~~
2 ~~supersede~~ **supersedes** any investment authority previously granted
3 to a system under any other law of this state.

4 (2) The assets of a system may be invested, reinvested, held
5 in nominee form, and managed by an investment fiduciary subject
6 to the terms, conditions, and limitations provided in this act.

7 An investment fiduciary of a defined contribution plan may
8 arrange for 1 or more investment options to be directed by the
9 participants of the defined contribution plan. The limitations
10 on the percentage of total assets for investments provided in
11 this act do not apply to a defined contribution plan in which a

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1 participant directs the investment of the assets in his or her
2 individual account, and that participant is not considered an
3 investment fiduciary under this act.

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

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

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

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

19 (d) Give appropriate consideration to those facts and
20 circumstances that the investment fiduciary knows or should know
21 are relevant to the particular investment or investment course of
22 action involved, including the role the investment or investment
23 course of action plays in that portion of the system's
24 investments for which the investment fiduciary has
25 responsibility; and act accordingly. For purposes of this
26 subsection, "appropriate consideration" includes, but is not
27 limited to, a determination by the investment fiduciary that a

1 particular investment or investment course of action is
2 reasonably designed, as part of the investments of the system, to
3 further the purposes of the system, taking into consideration the
4 risk of loss and the opportunity for gain or other return
5 associated with the investment or investment course of action;
6 and consideration of the following factors as they relate to the
7 investment or investment course of action:

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

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

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

14 (e) Give appropriate consideration to investments that would
15 enhance the general welfare of this state and its citizens if
16 those investments offer the safety and rate of return comparable
17 to other investments permitted under this act and available to
18 the investment fiduciary at the time the investment decision is
19 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
24 regard to the limitations on those investments pursuant to this
25 act. Upon discovery that an investment causes the system to
26 exceed a limitation prescribed in this act, the investment
27 fiduciary shall reallocate assets in a prudent manner in order to

1 comply with the prescribed limitation.

2 (4) An investment fiduciary may use a portion of the income
3 of the system to defray the costs of investing, managing, and
4 protecting the assets of the system; may retain investment and
5 all other services necessary for the conduct of the affairs of
6 the system; and may pay reasonable compensation for those
7 services. Subject to an annual appropriation by the legislature,
8 a deduction from the income of a state administered system
9 resulting from the payment of those costs shall be made.

10 (5) The system shall be a separate and distinct trust fund
11 and the assets of the system shall be for the exclusive benefit
12 of the participants and their beneficiaries and of defraying
13 reasonable expenses of investing the assets of the system. With
14 respect to a system, an investment fiduciary shall not cause the
15 system to engage in a transaction if he or she knows or should
16 know that the transaction is any of the following, either
17 directly or indirectly:

18 (a) A sale or exchange or a leasing of any property from the
19 system to a party in interest for less than the fair market
20 value, or from a party in interest to the system for more than
21 the fair market value.

22 (b) A lending of money or other extension of credit from the
23 system to a party in interest without the receipt of adequate
24 security and a reasonable rate of interest, or from a party in
25 interest to the system with the provision of excessive security
26 or at an unreasonably high rate of interest.

27 (c) A transfer to, or use by or for the benefit of, the

1 political subdivision sponsoring the system of any assets of the
2 system for less than adequate consideration.

3 (d) The furnishing of goods, services, or facilities from
4 the system to a party in interest for less than adequate
5 consideration, or from a party in interest to the system for more
6 than adequate consideration.

7 (6) With respect to a system subject to this act, an
8 investment fiduciary shall not do any of the following:

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

11 (b) In his or her individual or any other capacity act in
12 any transaction involving the system on behalf of a party whose
13 interests are adverse to the interests of the system or the
14 interest of its participants or participants' beneficiaries.

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

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

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

22 (b) Receiving any reimbursement of expenses properly and
23 actually incurred in the performance of his or her duties for the
24 system.

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

1 (d) Receiving agreed upon compensation for services from the
2 system.

3 (8) Except for an employee of a system, this state, or the
4 political subdivision sponsoring a system, when acting in the
5 capacity as an investment fiduciary, an investment fiduciary who
6 is qualified under section 12c(1)(b) shall meet 1 of the
7 following requirements:

8 (a) Be a registered investment adviser under either the
9 investment advisers act of 1940, ~~title II of chapter 686, 54~~
10 ~~Stat. 847, 15 U.S.C.~~ **USC 80b-1 to 80b-21, or the uniform**
11 **securities act, 1964 PA 265, MCL 451.501 to 451.818, or the**
12 **uniform securities act (2002), MCL 451.2101 to 451.2703.**

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

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

16 (9) An investment fiduciary shall not invest in a debt
17 instrument issued by a foreign country that has been identified
18 by the United States state department as engaging in or
19 sponsoring terrorism.

20 (10) A system shall annually publish and make available to
21 the plan participants and beneficiaries a list of all expenses
22 paid by soft dollars.

23 Enacting section 1. This amendatory act does not take
24 effect unless Senate Bill No. _____ or House Bill No. 5746
25 (request no. 06004'03) of the 92nd Legislature is enacted into
26 law.