

**SUBSTITUTE FOR
HOUSE BILL NO. 5323**

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending sections 13, 15, 19, 20c, 20d, and 20k (MCL 38.1133,
38.1135, 38.1139, 38.1140c, 38.1140d, and 38.1140k), section 13 as
amended by 2009 PA 84, section 15 as amended and section 20k as
added by 1996 PA 485, sections 19 and 20d as amended by 2008 PA
425, and section 20c as amended by 2000 PA 307.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) The provisions of this act shall supersede any
2 investment authority previously granted to a system under any other
3 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 to
6 the terms, conditions, and limitations provided in this act. An

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

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

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

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

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

23 (d) Give appropriate consideration to those facts and
24 circumstances that the investment fiduciary knows or should know
25 are relevant to the particular investment or investment course of
26 action involved, including the role the investment or investment
27 course of action plays in that portion of the system's investments

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

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

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

15 (iii) The projected return of the investments of the system
16 relative to the funding objectives of the system.

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

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

25 (g) Monitor the investment of the system's assets with regard
26 to the limitations on those investments pursuant to this act. Upon
27 discovery that an investment causes the system to exceed a

1 limitation prescribed in this act, the investment fiduciary shall
2 reallocate assets in a prudent manner in order to comply with the
3 prescribed limitation.

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

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

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

12 (c) The state police retirement system created under the state
13 police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

14 (d) The public school employees retirement system created
15 under the public school employees retirement act of 1979, 1980 PA
16 300, MCL 38.1301 to 38.1408.

17 (5) An investment fiduciary may use a portion of the income of
18 the system to defray the costs of investing, managing, and
19 protecting the assets of the system, **INCLUDING PROVIDING**
20 **PROFESSIONAL TRAINING AND EDUCATION**; may retain investment and all
21 other services necessary for the conduct of the affairs of the
22 system, **INCLUDING INVESTMENT ADVISORS, CONSULTANTS, CUSTODIANS,**
23 **AUDITORS, ATTORNEYS, ACTUARIES, ADMINISTRATORS, AND PHYSICIANS**; and
24 may pay reasonable compensation for those services. Subject to an
25 annual appropriation by the legislature, a deduction from the
26 income of a state administered system resulting from the payment of
27 those costs shall be made.

1 (6) BEFORE ANY INVESTMENT SERVICES ARE PROVIDED, ALL
2 INVESTMENT SERVICE PROVIDERS SHALL PROVIDE THE INVESTMENT FIDUCIARY
3 OF THE SYSTEM WITH COMPLETE WRITTEN DISCLOSURE OF ALL FEES OR OTHER
4 COMPENSATION ASSOCIATED WITH THEIR RELATIONSHIP WITH THE SYSTEM.
5 AFTER INVESTMENT SERVICES ARE PROVIDED TO THE INVESTMENT FIDUCIARY
6 OF THE SYSTEM, ALL INVESTMENT SERVICE PROVIDERS SHALL PROVIDE ON AN
7 ANNUAL BASIS WRITTEN DISCLOSURE OF ALL FEES INCLUDING, BUT NOT
8 LIMITED TO, COMMISSIONS, 12B-1 AND RELATED FEES, COMPENSATION PAID
9 OR TO BE PAID TO THIRD PARTIES, AND ANY OTHER COMPENSATION PAID BY
10 THE SYSTEM TO THE INVESTMENT FIDUCIARY OF THE SYSTEM. AS USED IN
11 THIS SUBSECTION, "INVESTMENT SERVICE PROVIDER" MEANS ANY
12 INDIVIDUAL, THIRD-PARTY AGENT OR CONSULTANT, OR COMPANY WHICH
13 RECEIVES DIRECT OR INDIRECT COMPENSATION FOR CONSULTING, MANAGING,
14 BROKERAGE, OR CUSTODY OF THE SYSTEM'S ASSETS. A RETIREMENT SYSTEM
15 IS NOT AN INVESTMENT SERVICE PROVIDER.

16 (7) ~~(6)~~—The system shall be a separate and distinct trust fund
17 and the assets of the system shall be for the exclusive benefit of
18 the participants and their beneficiaries and of defraying
19 reasonable expenses of investing the assets of the system. With
20 respect to a system, an investment fiduciary shall not cause the
21 system to engage in a transaction if he or she knows or should know
22 that the transaction is any of the following, either directly or
23 indirectly:

24 (a) A sale or exchange or a leasing of any property from the
25 system to a party in interest for less than the fair market value,
26 or from a party in interest to the system for more than the fair
27 market value.

1 (b) A lending of money or other extension of credit from the
2 system to a party in interest without the receipt of adequate
3 security and a reasonable rate of interest, or from a party in
4 interest to the system with the provision of excessive security or
5 at an unreasonably high rate of interest.

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

9 (d) The furnishing of goods, services, or facilities from the
10 system to a party in interest for less than adequate consideration,
11 or from a party in interest to the system for more than adequate
12 consideration.

13 (8) ~~(7)~~—With respect to a system subject to this act, an
14 investment fiduciary shall not do any of the following:

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

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

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

24 (9) ~~(8)~~—This section does not prohibit an investment fiduciary
25 from doing any of the following:

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

1 (b) Receiving any reimbursement of expenses properly and
2 actually incurred in the performance of his or her duties for the
3 system.

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

7 (d) Receiving agreed upon compensation for services from the
8 system.

9 (10) ~~(9)~~—Except for an employee of a system, this state, or
10 the political subdivision sponsoring a system, when acting in the
11 capacity as an investment fiduciary, an investment fiduciary who is
12 qualified under section 12c(1)(b) shall meet 1 of the following
13 requirements:

14 (a) Be a registered investment adviser under either the
15 investment advisers act of 1940, 15 USC 80b-1 to 80b-21, the
16 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the
17 uniform securities act (2002), 2008 PA 551, MCL 451.2101 to
18 451.2703.

19 (b) Be a bank as defined under the investment advisers act of
20 1940, 15 USC 80b-1 to 80b-21.

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

22 (11) ~~(10)~~—An investment fiduciary shall not invest in a debt
23 instrument issued by a foreign country that has been identified by
24 the United States state department as engaging in or sponsoring
25 terrorism.

26 (12) ~~(11)~~—A system shall annually publish and make available
27 to the plan participants and beneficiaries a list of all expenses

1 paid by soft dollars.

2 Sec. 15. An investment fiduciary may invest in investment
3 companies registered under the investment company act of 1940,
4 title I of chapter 686, 54 Stat. 789, 15 U.S.C.—~~USC~~ 80a-1 to 80a-
5 64. The management company of the investment company shall have
6 been in operation for at least 5 years and shall have assets under
7 management of more than \$500,000,000.00. **AN INVESTMENT COMPANY MAY**
8 **BE ESTABLISHED AS A LIMITED PARTNERSHIP, CORPORATION, LIMITED**
9 **LIABILITY COMPANY, TRUST, OR OTHER ORGANIZATIONAL ENTITY FOR WHICH**
10 **THE LIABILITY OF AN INVESTOR DOES NOT EXCEED THE AMOUNT OF THE**
11 **INVESTMENT UNDER THE LAWS OF THE UNITED STATES OR THE APPLICABLE**
12 **LAWS OF THE STATE, DISTRICT, TERRITORY, OR FOREIGN COUNTRY UNDER**
13 **WHICH THE INVESTMENT COMPANY WAS ESTABLISHED.** An investment in an
14 investment company shall be considered an investment in the
15 underlying assets for all purposes under this act.

16 Sec. 19. (1) An investment fiduciary may invest up to ~~5%~~10%
17 of a system's assets in publicly or privately issued real estate
18 investment trusts or in real or personal property otherwise
19 qualified pursuant to section 15, 16, or 20c.

20 (2) In addition to investments authorized under subsection
21 (1), an investment fiduciary of a system having assets of more than
22 \$100,000,000.00 may do any of the following:

23 (a) Invest in, buy, sell, hold, improve, lease, or acquire by
24 foreclosure or an agreement in lieu of foreclosure, real or
25 personal property or an interest in real or personal property.

26 (b) Develop, maintain, operate, or lease the real or personal
27 property referred to in subdivision (a).

1 (c) Form or invest in 1 or more limited partnerships,
2 corporations, limited liability companies, trusts, or other
3 organizational entities for which liability of an investor cannot
4 exceed the amount of the investment under the laws of the United
5 States or of any state, district, or territory of the United States
6 or foreign country. The limited partnership, corporation, limited
7 liability company, trust, or other organizational entity may invest
8 in, buy, sell, hold, develop, improve, lease, or operate real or
9 personal property, or originate a mortgage or invest in an annuity
10 separate account that invests in real or personal property to hold
11 title to, improve, lease, manage, develop, maintain, or operate
12 real or personal property whether currently held or acquired after
13 the effective date of the amendatory act that added this
14 subdivision. An entity formed under this subdivision has the right
15 to exercise all powers granted to the entity by the laws of the
16 jurisdiction of formation, including, but not limited to, the power
17 to borrow money in order to provide additional capital to benefit
18 and increase the overall return on the investment held by the
19 entity.

20 (d) Invest in investments otherwise qualified pursuant to
21 subsection (1).

22 (3) Except as otherwise provided in this section, the
23 aggregate investments made under subsection (2) shall not exceed ~~5%~~
24 10% of the assets of the system. The purchase price of an
25 investment made under this section shall not exceed the appraised
26 value of the real or personal property.

27 (4) If the investment fiduciary of a system is the state

1 treasurer, investments described in subsection (1) or (2) may
2 exceed ~~5%~~10% of the assets of the system.

3 (5) An investment qualified under this section in which the
4 underlying asset is an interest in real or personal property
5 constitutes an investment under this section for the purpose of
6 meeting the asset limitations contained in this act. This
7 subsection applies even though the investment may be qualified
8 elsewhere in this act. Notwithstanding this subsection, an
9 investment fiduciary may designate a real estate investment trust
10 which satisfies the requirements of section 14(2) as an investment
11 qualified under this section or as an investment in stock under
12 section 14.

13 Sec. 20c. (1) ~~A financial institution, a trust company, a~~
14 ~~management company qualified under section 15, or any affiliate of~~
15 ~~a person described in this section if that affiliate qualifies as~~
16 ~~an investment fiduciary under section 13(8)(a), retained to act as~~
17 ~~an~~AN investment fiduciary may invest the assets of a system in any
18 collective investment fund, common trust fund, or pooled fund that
19 is established and maintained for investment of those assets ~~by the~~
20 ~~financial institution, trust company, or management company~~ under
21 federal or state statutes or rules or regulations **OR AN APPLICABLE**
22 **FOREIGN LAW. THE INVESTMENT FIDUCIARY OF THE COLLECTIVE INVESTMENT**
23 **FUND, COMMON TRUST FUND, OR POOLED FUND SHALL BE A FINANCIAL**
24 **INSTITUTION, A TRUST COMPANY, A MANAGEMENT COMPANY QUALIFIED UNDER**
25 **SECTION 13(10)(A), OR AN AFFILIATE OF 1 OF THESE ENTITIES IF THAT**
26 **AFFILIATE QUALIFIES AS AN INVESTMENT FIDUCIARY UNDER SECTION**
27 **13(10)(A). THE COLLECTIVE INVESTMENT FUND, COMMON TRUST FUND, OR**

1 POOLED FUND MAY BE ESTABLISHED AS A LIMITED PARTNERSHIP,
2 CORPORATION, LIMITED LIABILITY COMPANY, TRUST, OR OTHER
3 ORGANIZATIONAL ENTITY FOR WHICH LIABILITY OF ANY INVESTOR DOES NOT
4 EXCEED THE AMOUNT OF THE INVESTMENT UNDER THE LAWS OF THE UNITED
5 STATES OR THE LAWS OF THE STATE, DISTRICT, TERRITORY, OR FOREIGN
6 COUNTRY THAT APPLIED TO THE ORGANIZATION OF THE COLLECTIVE
7 INVESTMENT FUND, COMMON TRUST FUND, OR POOLED FUND. A POOL IN WHICH
8 THE STATE TREASURER HAS ADMINISTRATIVE OR INVESTMENT AUTHORITY AND
9 THE INVESTMENT POOLS OF THE MUNICIPAL EMPLOYEES RETIREMENT SYSTEM
10 AND RETIREMENT BOARD CREATED UNDER THE MUNICIPAL EMPLOYEES
11 RETIREMENT ACT OF 1984, 1984 PA 427, MCL 38.1501 TO 38.1558, ARE
12 NOT POOLED FUNDS FOR PURPOSES OF THIS SECTION. An investment in a
13 collective investment fund, common trust fund, or pooled fund shall
14 be considered an investment in the underlying assets of that fund
15 for all purposes under this act.

16 (2) As used in this section, "financial institution" means a
17 state or nationally chartered bank or a state or federally
18 chartered savings and loan association, savings bank, or credit
19 union whose deposits are insured by an agency of the United States
20 government and which maintains a principal office or branch office
21 located in this state under the laws of this state or the United
22 States.

23 Sec. 20d. (1) An investment fiduciary of a system having
24 assets of less than \$250,000,000.00 may invest not more than ~~5%~~15%
25 of the system's assets in investments not otherwise qualified under
26 this act, except as qualified in section 19a, whether the
27 investments are similar or dissimilar to those specified in this

1 act.

2 (2) An investment fiduciary of a system having assets of
3 \$250,000,000.00 or more **BUT LESS THAN \$1,000,000,000.00** may invest
4 not more than ~~10%~~20% of the system's assets in investments
5 described in subsection (1).

6 (3) An investment fiduciary of a system having assets of
7 \$1,000,000,000.00 or more may invest not more than ~~15%~~25% of the
8 system's assets in investments described in subsection (1).

9 (4) An investment fiduciary of a system who is the state
10 treasurer may invest not more than ~~20%~~30% of the system's assets
11 in investments described in subsection (1).

12 (5) If an investment described in subsection (1) is
13 subsequently determined to be permitted under another section of
14 this act, then the investment shall no longer be included under
15 this section.

16 (6) This section shall not be used to exceed a percentage of
17 total assets limitation for an investment provided in any other
18 section of this act.

19 Sec. 20k. (1) Notwithstanding a percentage of total assets
20 limitation for an investment provided in any other section of this
21 act, an investment fiduciary may invest not more than 20% of a
22 system's assets in foreign securities. Except as otherwise provided
23 in this act, an investment fiduciary shall not do any of the
24 following:

25 (a) Invest in more than 5% of the outstanding foreign
26 securities of any 1 issuer.

27 (b) Invest more than 5% of a system's assets in the foreign

1 securities of any 1 issuer.

2 (2) Investments in foreign securities under this section shall
3 be made only by investment fiduciaries described in section ~~13(8)~~
4 **13(10)** who have demonstrated expertise in investments of that type.