

HOUSE BILL No. 5294

September 2, 2009, Introduced by Reps. Knollenberg, Walsh and Geiss and referred to the Committee on Intergovernmental and Regional Affairs.

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending section 13 (MCL 38.1133), as amended by 2008 PA 425.

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

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

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

8 (a) Act with the same care, skill, prudence, and diligence
9 under the circumstances then prevailing that a prudent person
10 acting in a similar capacity and familiar with those matters would
11 use in the conduct of a similar enterprise with similar 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 investments
24 for which the investment fiduciary has responsibility; and act
25 accordingly. For purposes of this subsection, "appropriate
26 consideration" includes, but is not limited to, a determination by
27 the investment fiduciary that a particular investment or investment

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

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

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

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

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

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

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

27 (4) An investment fiduciary who is an investment fiduciary of

1 any of the following shall comply with the divestment from terror
2 act, 2008 PA 234, MCL 129.291 to 129.301, in making investments
3 under this act:

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

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

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

10 (d) The public school employees retirement system created
11 under the public school employees retirement act of 1979, 1980 PA
12 300, MCL 38.1301 to 38.1408.

13 (5) An investment fiduciary may use a portion of the income of
14 the system to defray the costs of investing, managing, and
15 protecting the assets of the system; may retain investment and all
16 other services necessary for the conduct of the affairs of the
17 system; and may pay reasonable compensation for those services.
18 Subject to an annual appropriation by the legislature, a deduction
19 from the income of a state administered system resulting from the
20 payment of those costs shall be made.

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

1 (a) A sale or exchange or a leasing of any property from the
2 system to a party in interest for less than the fair market value,
3 or from a party in interest to the system for more than the fair
4 market value.

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

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

13 (d) The furnishing of goods, services, or facilities from the
14 system to a party in interest for less than adequate consideration,
15 or from a party in interest to the system for more than adequate
16 consideration.

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

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

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

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

1 (8) This section does not prohibit an investment fiduciary
2 from doing any of the following:

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

5 (b) Receiving any reimbursement of expenses properly and
6 actually incurred in the performance of his or her duties for the
7 system.

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

11 (d) Receiving agreed upon compensation for services from the
12 system.

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

18 (a) Be a registered investment adviser under either the
19 investment advisers act of 1940, 15 USC 80b-1 to 80b-21, or the
20 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

21 (b) Be a bank as defined under the investment advisers act of
22 1940, 15 USC 80b-1 to 80b-21.

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

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

1 (11) A system shall annually publish and make available to the
2 plan participants and beneficiaries a list of all expenses paid by
3 soft dollars.

4 (12) A SYSTEM SHALL ANNUALLY PUBLISH AND MAKE AVAILABLE TO THE
5 PLAN PARTICIPANTS AND BENEFICIARIES A LIST OF ALL THE INVESTMENTS
6 MADE ON THEIR BEHALF AND INFORMATION FROM WHICH A REASONABLE PERSON
7 COULD CONCLUDE THE BASIS FOR THE INVESTMENT DECISION. INVESTMENT
8 DECISIONS AND EXPENSES MADE BY A SYSTEM THAT IS A POLITICAL
9 SUBDIVISION SHALL BE AT LEAST AS PRUDENT AS THOSE MADE BY A
10 POLITICAL SUBDIVISION THAT PARTICIPATES IN THE MUNICIPAL EMPLOYEES
11 RETIREMENT ACT OF 1984, 1984 PA 427, MCL 38.1501 TO 38.1555.