

Act No. 545  
Public Acts of 2014  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

Introduced by Senator Hopgood

# **ENROLLED SENATE BILL No. 1105**

AN ACT to amend 1965 PA 314, entitled "An act to authorize the investment of assets of public employee retirement systems or plans and the contributions made by employees to retirement systems or plans created and established by the state or any political subdivision; to provide for the payment of certain costs and investment expenses; to authorize investment in variable rate interest loans; to limit employer and plan official liability for certain investment decisions; to define and limit the investments which may be made by an investment fiduciary with the assets of a public employee retirement system; and to prescribe the powers and duties of investment fiduciaries and certain state departments and officers," by amending sections 12d and 13 (MCL 38.1132d and 38.1133), section 12d as amended by 2008 PA 425 and section 13 as amended by 2014 PA 185.

*The People of the State of Michigan enact:*

Sec. 12d. (1) "National rating services" means Moody's investors service, inc.; Standard & Poor's ratings group; Fitch investors service inc.; Duff & Phelps credit rating corp.; or any other nationally recognized statistical rating organization as determined by the state treasurer.

(2) "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, but excluding extraordinary expenses appearing in the regular financial statements of the system.

(3) "Obligations" means bonds, notes, collateral trust certificates, convertible bonds, debentures, equipment trust certificates, conditional sales agreements, guaranteed mortgage certificates, pass-through certificates, participation certificates, mortgages, trust deeds, general obligation bonds, revenue bonds, or other similar interest bearing instruments of debt. Obligations may be secured or unsecured and may be publicly offered or privately placed.

(4) "Party in interest" means, as it relates to a system, any of the following:

- (a) An investment fiduciary, counsel, or employee of the system.
- (b) A person providing services to the system.
- (c) The political subdivision sponsoring the system.
- (d) An organization, any of whose members are covered by the system.
- (e) A spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subdivision (a) or (b).

(f) An entity controlled by an individual or organization described in subdivisions (a) to (e).

(5) "Plan for adjustment" means a plan for the adjustment of debts entered and approved by a federal bankruptcy court for a city that has established a large sponsored system.

(6) "Portfolio company" means an entity in which the investment fiduciary has invested or has considered investing system assets.

(7) “Private equity” means an asset class consisting of equity or debt securities in entities that are not publicly traded, that may include, but are not limited to, investments in leveraged buyouts, venture capital, growth capital, distressed or special situations, mezzanine capital, and secondary investments in equity or debt interests.

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

(2) The assets of a system may be invested, reinvested, held in nominee form, and managed by an investment fiduciary subject to the terms, conditions, and limitations provided in this act. An investment fiduciary of a defined contribution plan may arrange for 1 or more investment options to be directed by the participants of the defined contribution plan. The limitations on the percentage of total assets for investments provided in this act do not apply to a defined contribution plan in which a participant directs the investment of the assets in his or her individual account, and that participant is not considered an investment fiduciary under this act.

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

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

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

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

(d) Give appropriate consideration to those facts and circumstances that the investment fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the system’s investments for which the investment fiduciary has responsibility; and act accordingly. For purposes of this subsection, “appropriate consideration” includes, but is not limited to, a determination by the investment fiduciary that a particular investment or investment course of action is reasonably designed, as part of the investments of the system, to further the purposes of the system, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action; and consideration of the following factors as they relate to the investment or investment course of action:

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

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

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

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

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

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

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

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

(i) The name of the system.

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

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

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

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

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

(vii) The system's administrative and investment expenditures pursuant to standards of the governmental accounting standards board, including, but not limited to, a list of all expenditures made with soft dollars and all expenditures for professional training and education, including travel expenditures, by or on behalf of system board members that are paid by the system, if any.

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

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

- (A) The number of active members.
- (B) The number of retirees and beneficiaries.
- (C) The average annual retirement allowance.
- (D) The total annual retirement allowances being paid.
- (E) The valuation payroll.
- (F) The employer's computed normal cost of benefits expressed as a percentage of valuation payroll.
- (G) The employer's total contribution rate expressed as a percentage of valuation payroll.
- (H) The weighted average of member contributions, if any.
- (I) The actuarial assumed rate of investment return.
- (J) The actuarial assumed rate of long-term wage inflation.
- (K) The smoothing method utilized to determine the funding value of assets.
- (l) The amortization method and period utilized for funding the system's unfunded actuarial accrued liabilities, if any.
- (M) The system's actuarial cost method.
- (N) Whether system membership is open or closed to specific groups of employees.

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

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

(B) The destination.

(C) The dates.

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

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

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

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

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

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

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

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

(5) Subject to section 13g, an investment fiduciary may use a portion of the income of the system to defray the costs of investing, managing, and protecting the assets of the system; may retain investment and all other goods and services necessary for the conduct of the affairs of the system, including investment advisors, consultants, custodians, accountants, auditors, attorneys, actuaries, investment personnel, administrators, and physicians; and may enter into contracts for and pay reasonable compensation for those services. Subject to an annual appropriation by the legislature, a deduction from the income of a state-administered system resulting from the payment of those costs must be made.

(6) Subject to this subsection and subsection (13), an investment fiduciary may use a portion of the income of the system to defray the costs of professional training and education, including travel costs, of system board members,

which professional training and education, including travel, are directly related to the administration, management, and operation of the system. The governing board vested with the general administration, management, and operation of the system or other decision-making body that is responsible for implementation and supervision of the system shall adopt an annual budget for professional training and education, including travel, authorized under this subsection. The budget adopted under this subsection must reflect the number of board members, the size of the system, and the educational objectives of the system. The system's total aggregate cost for professional training and education, including travel costs, authorized under this subsection for a fiscal year must not exceed \$150,000.00 or an amount that is equal to the total number of system board members multiplied by \$12,000.00, whichever is less. The system's total cost for professional training and education, including travel costs, authorized under this subsection for an individual system board member in a fiscal year must not exceed \$30,000.00. Beginning January 1, 2013, the department of treasury shall adjust the dollar amounts in this subsection by an amount determined by the state treasurer at the end of the immediately preceding calendar year to reflect the cumulative annual percentage change in the consumer price index. As used in this subsection, "consumer price index" means the most comprehensive index of consumer prices available for this state from the bureau of labor statistics of the United States department of labor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The investment fiduciary shall not make an additional investment in the hazardous waste deep disposal well facility unless the investment is solely to prepare the property on which the hazardous waste deep disposal well facility is located for sale for purposes other than operation as a hazardous waste deep disposal well facility or similar hazardous facility.

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

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

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

(iii) An environmental protection agency action for a violation at the hazardous waste deep disposal well facility.

(iv) An environmental protection agency revocation of the operator's license.

(v) An environmental protection agency or department of environmental quality order to terminate operations at the hazardous waste deep disposal well facility.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor