

HOUSE BILL No. 5302

November 30, 2017, Introduced by Reps. Glenn, Albert, Crawford and Lower and referred to the Committee on Michigan Competitiveness.

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending sections 13 and 20h (MCL 38.1133 and 38.1140h), as
amended by 2016 PA 530.

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
8 the defined contribution plan. The limitations on the percentage of

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

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

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

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

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

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

1 the investment fiduciary that a particular investment or investment
2 course of action is reasonably designed, as part of the investments
3 of the system, to further the purposes of the system, taking into
4 consideration the risk of loss and the opportunity for gain or
5 other return associated with the investment or investment course of
6 action; and consideration of the following factors as they relate
7 to the 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 those
16 investments offer the safety and rate of return comparable to other
17 investments permitted under this act and available to the
18 investment fiduciary at the time the investment decision is made.

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

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

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

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

7 (i) The name of the system.

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

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

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

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

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

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

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

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

8 (A) The number of active members.

9 (B) The number of retirees and beneficiaries.

10 (C) The average annual retirement allowance.

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

12 (E) The valuation payroll.

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

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

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

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

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

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

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

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

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

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

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

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

11 (B) The destination.

12 (C) The dates.

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

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

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

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

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

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

27 (k) For a state unit, submit the executive summary required

1 under subdivision (i) *(xi)* to the senate and house of
2 representatives appropriations committees and the senate and house
3 fiscal agencies not less than 30 days after publication.

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

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

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

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

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

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

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

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

6 (6) Subject to this subsection and subsection (13), an
7 investment fiduciary may use a portion of the system's income to
8 defray the costs of professional training and education, including
9 travel costs, of system board members, which professional training
10 and education, including travel, are directly related to the
11 administration, management, and operation of the system. The
12 governing board vested with the general administration, management,
13 and operation of the system or other decision-making body that is
14 responsible for implementation and supervision of the system shall
15 adopt an annual budget for professional training and education,
16 including travel, authorized under this subsection. The budget
17 adopted under this subsection must reflect the number of board
18 members, the size of the system, and the educational objectives of
19 the system. The system's total aggregate cost for professional
20 training and education, including travel costs, authorized under
21 this subsection for a fiscal year must not exceed \$150,000.00 or an
22 amount that is equal to the total number of system board members
23 multiplied by \$12,000.00, whichever is less. The system's total
24 cost for professional training and education, including travel
25 costs, authorized under this subsection for an individual system
26 board member in a fiscal year must not exceed \$30,000.00. Beginning
27 January 1, 2013, the department of treasury shall adjust the dollar

1 amounts in this subsection by an amount determined by the state
2 treasurer at the end of the immediately preceding calendar year to
3 reflect the cumulative annual percentage change in the consumer
4 price index. As used in this subsection, "consumer price index"
5 means the most comprehensive index of consumer prices available for
6 this state from the Bureau of Labor Statistics of the United States
7 Department of Labor.

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

24 (8) The system must be a separate and distinct trust fund and
25 the assets of the system must be for the exclusive benefit of the
26 participants and their beneficiaries and of defraying reasonable
27 expenses of investing the assets of the system. With respect to a

1 system, an investment fiduciary shall not cause the system to
2 engage in a transaction if he or she knows or should know that the
3 transaction is any of the following, either directly or indirectly:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (b) Be a bank as defined under the investment advisers act of
25 1940, 15 USC 80b-1 to 80b-21.

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

27 (12) An investment fiduciary shall not invest in a debt

1 instrument issued by a foreign country that has been designated by
2 the United States Department of State as a state sponsor of terror.

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

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

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

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

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

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

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

1 disposal well facility or similar hazardous facility.

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

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

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

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

13 (iv) An Environmental Protection Agency revocation of the
14 operator's license.

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

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

24 (16) The department of treasury shall post on its website an
25 executive summary of each summary annual report submitted to the
26 department of treasury under subsection (3) (1). The executive
27 summary must include the applicable system's unfunded actuarial

1 accrued liability for ~~retiree health and pension~~. The department of
2 treasury shall submit each executive summary required under this
3 subsection to the senate and the house of representatives
4 appropriations committees and the senate and house fiscal agencies
5 not less than 30 days after posting.

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

12 Sec. 20h. (1) In addition to the provisions of this act, a
13 system is subject to the applicable accounting, auditing, and
14 reporting requirements contained in the following acts and parts of
15 acts:

16 (a) 1919 PA 71, MCL 21.41 to 21.55.

17 (b) The uniform budgeting and accounting act, 1968 PA 2, MCL
18 141.421 to 141.440a.

19 (c) Section 91 of the executive organization act of 1965, 1965
20 PA 380, MCL 16.191.

21 (2) A system shall retain its financial records for a minimum
22 period of 6 years from the date of the creation of the record
23 unless state or federal law requires a longer retention period. As
24 used in this subsection, "financial records" includes, but is not
25 limited to, records pertaining to expenditures for professional
26 training and education, including travel expenditures, by or on
27 behalf of system board members that are paid by the system.

1 (3) Except as otherwise provided in this subsection,
2 information regarding the calculation of actual or estimated
3 retirement benefits for members of the system is exempt from
4 disclosure by the system or the political subdivision sponsoring
5 the system pursuant to section 13(1)(d) of the freedom of
6 information act, 1976 PA 442, MCL 15.243. Upon a majority vote of
7 the governing body of the political subdivision sponsoring the
8 system, the system shall provide the designated representative of
9 the political subdivision with a reasonable opportunity to inspect,
10 copy, or receive copies of all information regarding the
11 calculation of actual or estimated retirement benefits for members
12 of the system. The system may require that information provided by
13 the system under this subsection be provided only on a promise of
14 confidentiality by the political subdivision sponsoring the system.
15 A system may make reasonable rules to ensure the confidentiality of
16 records exempt from disclosure under applicable state and federal
17 law. The system may charge a fee under this subsection in
18 accordance with section 4 of the freedom of information act, 1976
19 PA 442, MCL 15.234. All fees and expenses incurred by the political
20 subdivision sponsoring the system that are related to this
21 subsection ~~shall~~**MUST** be borne by the political subdivision and
22 ~~shall~~**MUST** not be deducted from or offset against the political
23 subdivision's required pension contributions to the system.

24 (4) Except as otherwise provided in this subsection, a system
25 shall have an annual actuarial valuation with assets valued on a
26 market-related basis. The actuarial present value of total
27 projected benefits must include all pension benefits to be provided

1 by the system to members or beneficiaries under the terms of the
2 system and any additional statutory or contractual agreements to
3 provide pension benefits through the system that are in force at
4 the actuarial valuation date, including, but not limited to,
5 service credits purchased by members, deferred retirement option
6 plans, early retirement programs, and postretirement adjustment
7 programs. A system that has assets of less than \$20,000,000.00 is
8 only required to have an actuarial valuation as required under this
9 subsection done every other year.

10 (5) A system shall provide a supplemental actuarial analysis
11 before adoption of pension benefit changes. System assets must not
12 be used for any actuarial expenses related to the supplemental
13 actuarial analysis under this subsection. The supplemental
14 actuarial analysis must be provided by the system's actuary and
15 must include an analysis of the long-term costs associated with any
16 proposed pension benefit change. The supplemental actuarial
17 analysis must be provided to the board of the particular system and
18 to the decision-making body that will approve the proposed pension
19 benefit change at least 7 days before the proposed pension benefit
20 change is adopted. For purposes of this subsection, "proposed
21 pension benefit change" means a proposal to ~~change~~**INCREASE** the
22 amount of pension benefits received by persons entitled to pension
23 benefits under the system. Proposed pension benefit change does not
24 include a proposed change to a health care plan or health benefits.

25 (6) The system shall make the summary annual report created
26 under section 13 available to the plan participants and
27 beneficiaries and the citizens of the political subdivision

1 sponsoring the system. If the system has a website, the system
2 shall publish the summary annual report on the website. If the
3 system does not have a website, the political subdivision
4 sponsoring the system shall publish the summary annual report on a
5 website that the political subdivision has created or may create.

6 ~~—— (7) For a system other than a state unit, if the system's~~
7 ~~actuarial accrued liability for retiree health or pension is not at~~
8 ~~least 60% funded according to the most recent summary annual report~~
9 ~~created under section 13, the system shall post an informational~~
10 ~~report on the system's website outlining the steps, if any, the~~
11 ~~system may be taking to decrease the system's unfunded actuarial~~
12 ~~accrued liability. If the system does not have a website, the~~
13 ~~political subdivision sponsoring the system shall make the steps~~
14 ~~the system may be taking under this subsection available to the~~
15 ~~plan participants and beneficiaries and the citizens of the~~
16 ~~political subdivision. The system shall submit to the department of~~
17 ~~treasury, in a reasonable time frame and in a manner determined by~~
18 ~~the department of treasury, the steps the system may be taking~~
19 ~~under this subsection. As used in this subsection, "state unit"~~
20 ~~means that term as defined in section 13.~~

21 Enacting section 1. This amendatory act does not take effect
22 unless Senate Bill No. ___ or House Bill No. 5298 (request no.
23 00251'17 *) of the 99th Legislature is enacted into law.