

EXECUTIVE REORGANIZATION ORDER (EXCERPT)
E.R.O. No. 2018-5

38.1176 Creation of state of Michigan investment board within department of treasury; transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to the board; transfer of powers and duties of investment advisory committee created under MCL 16.191 to the board; abolishment of investment advisory committee.

WHEREAS, Article V, Section 1 of the Michigan Constitution of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2 of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8 of the Michigan Constitution of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, there is a continued need to reorganize functions among state departments to ensure efficient administration; and

WHEREAS, Section 91 of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.191, provides the State Treasurer with investment control over assets of certain public retirement systems in this State and established an investment advisory committee to review and make recommendations to the State Treasurer regarding investments, goals, and objectives of those retirement funds; and

WHEREAS, the State Treasurer is the sole fiduciary of, and has investment authority for, the Michigan Public School Employees' Retirement System, the Michigan State Police Retirement System and the Michigan Judges Retirement System pursuant to the Public School Employees Retirement Act of 1979, 1980 PA 300, as amended, MCL 38.1301 et seq., the State Police Retirement Act of 1986, 1986 PA 182, as amended, MCL 38.1601 et seq., and the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 et seq., respectively, and the State Treasurer is the sole custodian of the State Employees' Retirement System, pursuant to the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 et seq.; and

WHEREAS, the State Treasurer is authorized to invest the assets of those retirement systems in accordance with provisions of the Public Employee Retirement System Investment Act, 1965 PA 314, as amended, MCL 38.1132 et seq.; and

WHEREAS, the Public Employee Retirement Health Care Funding Act, 2010 PA 77, as amended, MCL 38.2731 et seq., provides that the State Treasurer is the investment fiduciary for the irrevocable trusts that prefund retiree health care benefits for the Tier 1 Plans; and

WHEREAS, the State Treasurer is responsible for the administration and investment of this State's deferred compensation plan under 1976 PA 306, as amended MCL 38.1151; and

WHEREAS, the Public School Employees Retirement Act of 1979, 1980 PA 300, as amended, MCL 38.1301 et seq.; the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 et seq.; the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 et seq.; and the Michigan Legislative Retirement System Act, 1957 PA 261, as amended, MCL 38.1001 et seq. provide that the State Treasurer is responsible for administering, investing assets, and determining the provisions and procedures of Tier 2 Plans for the Michigan Public School Employees' Retirement System, Michigan Judges Retirement System, State Employees' Retirement System, and the Michigan Legislative Retirement System, respectively; and

WHEREAS, Executive Reorganization Order No. 1996-5, MCL 38.1171, transferred the responsibility for this State's deferred compensation plans to the State Treasurer and Executive Reorganization Order No. 1999-5, MCL 38.2721, transferred certain duties to the Department of Management and Budget while providing the State Treasurer with the responsibility for approving the investment offerings provided in the Tier 2 Plans and this State's deferred compensation plans; and

WHEREAS, it is critical to the best interests of the members of the Retirement System and participating plans that their fiduciaries be held to the highest ethical standards, free of conflicts of interest and political influence; and

WHEREAS, the Investment Advisory Committee, established in 1965, has retained the same structure and governance since its establishment despite the growing importance that prudent investment plays in providing appropriate funding for retirees and the increasing complexity of investment and financial markets; and

WHEREAS, the creation of the State of Michigan Investment Board will allow the Retirement System to modernize its governance structure to further align with accepted public pension and retirement plan administration best practices to ensure that the assets of the Retirement System are overseen by a fiduciary that is held to the utmost ethical standards, is free of conflicts of interest, operates with discipline, is consistent in its investment strategy and administration, and is able to fulfill its duties to protect the interests of the members of the Retirement System; and

WHEREAS, creating the State of Michigan Investment Board will strengthen fiduciary management and

modernize oversight of the Retirement System, thus bolstering accountability and transparency of board members, the fiduciary, and investment staff to the Retirement System.

NOW, THEREFORE, I, Richard D. Snyder, Governor of the state of Michigan, pursuant to the powers vested in me by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Act 314" means the Public Employee Retirement System Investment Act, 1965 PA 314, as amended, MCL 38.1132 et seq.

B. "Authorizing Statutes" means any public act, resolution, order or agreement which conveys upon the State Treasurer the authority or duty to invest the assets or monies of the Retirement System.

C. "Board" means the State of Michigan Investment Board created in Section II of this Order.

D. "Bureau of Investments" means the bureau within the Department charged with investing the assets of the Retirement System in accordance with Act 314 and the Authorizing Statutes.

E. "Chief Investment Officer" means the individual appointed by the State Treasurer, in consultation with the Board, and shall be part of the classified civil service and manage the day-to-day functions of the Bureau of Investments, including executing investments and delegating authority to execute the proper and efficient investment of funds of this State pursuant to state statutes.

F. "Defined Contribution Plans" or "DC Plans" means the Tier 2 Plans, as defined in this Order, and 457 deferred compensation retirement plans established pursuant to 1976 PA 306, as amended, MCL 38.1151.

G. "Department" means the principal department of state government created as the Department of Treasury by Section 75 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.175.

H. "Investment Advisory Committee" means the investment advisory committee established pursuant to Section 91 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.191, as abolished by this Order.

I. "Military Retirement System" means the retirement allowance, pension, or other retirement benefits provided under the Michigan Military Act, 1967 PA 150, as amended, MCL 32.501 et seq., and further governed by Executive Reorganization Order No. 2015-4, MCL 38.1174.

J. "OPEB" means other post-employment benefits, which in this context are the irrevocable trusts that prefund retiree health care benefits for the Tier 1 Plans and in which the State Treasurer is appointed as investment fiduciary pursuant to the Public Employee Retirement Health Care Funding Act, 2010 PA 77, as amended, MCL 38.2731 et seq.

K. "Retirement System" means the Tier 1 Plans, Tier 2 Plans, the Military Retirement System, DC Plans, and OPEB, for all of which the State Treasurer is either the fiduciary or has investment authority.

L. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of the Management and Budget Act, 1984 PA 431, MCL 18.1321.

M. "State Treasurer" means the individual appointed by the Governor as director of the Department.

N. "Tier 1 Plans" means the defined benefit retirement plans of the Michigan Public School Employees' Retirement System created by the Public School Employees Retirement Act of 1979, 1980 PA 300, as amended, MCL 38.1301 et seq., the State Employees' Retirement System created by the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 et seq., the Michigan State Police Retirement System, created by the State Police Retirement Act of 1986, 1986 PA 182, as amended, MCL 38.1601 et seq., and the Michigan Judges Retirement System created by the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 et seq.

O. "Tier 2 Plans" means the Tier 2 retirement plans established pursuant to section 401(k) or section 457 of the Internal Revenue Code, and provided for in applicable portions of the Michigan Public School Employees' Retirement System under the Public School Employees Retirement Act of 1979, 1980 PA 300, as amended, MCL 38.1301 et seq., the Michigan Judges Retirement System under the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 et seq., the State Employees' Retirement System under the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 et seq., the Michigan Legislative Retirement System under the Michigan Legislative Retirement System Act, 1957 PA 261, as amended, MCL 38.1001 et seq., and on behalf of other eligible state or local entities or authorities as provided for by current and subsequent state law, and for which the State Treasurer has the responsibility of investing assets of and determining the provisions and procedures.

II. CREATION OF THE STATE OF MICHIGAN INVESTMENT BOARD

A. The State of Michigan Investment Board is created within the Department. The Board shall be the investment fiduciary with respect to the investment and function of the Retirement System for which the State Treasurer currently has fiduciary responsibilities or investment authority. All statutory powers, duties, functions, and responsibilities of the State Treasurer created under Act 314 or the Authorizing Statutes are transferred to the Board. All statutory powers, duties, functions, and responsibilities of the Investment Advisory Committee created under Section 91 of 1965 PA 380, MCL 16.191, are transferred to the Board. The Investment Advisory Committee is abolished.

B. The Board consists of the following five individuals:

1. The State Treasurer, who shall serve without designee and shall serve as the Board's chairperson.
2. The State Budget Director who shall serve without designee.
3. Three individuals appointed by the Governor who shall have knowledge or experience in securities investment, pension administration, or pension law, past or current fiduciary oversight experience of investment pools similar to the Retirement System, or extensive professional financial knowledge and experience. An individual appointed to serve on the Board, or such individual's spouse or other immediate family-member, shall not be employed by or otherwise receive compensation directly or indirectly from an entity engaged by the Retirement System or the Bureau of Investments. The appointed members of the Board are subject to all restrictions and limitations with respect to eligibility and appointment described in this Order.

C. The appointed members shall serve a term of four years, except initially, one member shall be appointed to a two-year term, one member shall be appointed to a three-year term, and one member shall be appointed to a four-year term. A member of the Board may be appointed to no more than two consecutive four-year terms, in addition to one partial term. A member may serve until his or her successor is appointed. A member shall not serve more than 10 years.

D. A vacancy in the membership of the Board shall be filled by appointment by the Governor in accordance with this Order for the remainder of the unexpired term. A vacancy automatically occurs by death, resignation, failure of the member to attend three consecutive meetings unless excused by majority vote of the other Board members, or in the event of either a conflict of interest uncured within 30 days or a member's failure to duly execute the ethics policy adopted by the Board.

E. An individual is not eligible for appointment to the Board, and any member currently serving is removed automatically, if any of the following apply to that individual:

1. The individual has been indicted or charged with, convicted of, pleaded guilty or nolo contendere to, or forfeited bail concerning, a felony, or a misdemeanor involving fraud, theft, or dishonesty under the laws of any jurisdiction in the United States;
2. The individual has had a judgment entered against him or her by a court of competent jurisdiction in a civil matter involving a breach of fiduciary duties;
3. The individual has been the subject of an adverse action by the Securities and Exchange Commission which resulted in any settlement, sanction, payment of a fine, injunction, or other negative finding, whether individually, or as a partner, principal member, managing director, or other position of leadership of any entity subject to such penalty or finding;
4. The individual, or their spouse or an immediate family-member, is or becomes employed by a service provider to the Retirement System or Bureau of Investments; or
5. The individual, or their spouse or an immediate family-member: is an endorser or obligor, or provider of surety, for any money loaned to or borrowed from the Retirement System; or, is borrowing any of the money or other assets of the Retirement System.

F. The Board shall conduct its business at public meetings in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 et seq.

1. Members of the Board may attend and participate in a meeting of the Board using telecommunication or other electronic equipment provided all members of the Board, and the public attending the meeting, are able to hear one another and can communicate effectively and that the members of the Board and the public can actively participate in the open meeting.

2. If the State Treasurer, as chairperson, attends a meeting of the Board through electronic means or is unable to attend a meeting, the State Treasurer shall appoint, from the members physically present at such meeting, a member of the Board to serve as chairperson of that meeting only. This appointment as chairperson shall be limited in scope to allow for the administration of the meeting, surviving only for that particular meeting and terminate immediately upon adjournment.

G. The members of the Board shall serve without compensation but may receive reasonable reimbursement for all actual necessary travel and expenses incurred to attend official Board meetings.

H. The members of the Board shall meet quarterly to:

1. Conduct the official business of the Board, pursuant to its fiduciary duties, Act 314, and this Order;
2. Review investment reports and monitor investment performance;
3. Approve an investment policy statement for the Retirement System, to be signed by the State Treasurer as chairperson, in which the Board delegates appropriate authorities and powers as it deems necessary;
4. As required by this Order, approve the asset allocation targets of the Tier 1 Plans and OPEB approximately every two (2) years; and
5. Review the investment performance of the DC Plans, which information shall be incorporated into the quarterly information.

I. The Board may meet at other times at the request of the State Treasurer as the chairperson of the Board.

J. Members of the Board shall not individually meet with any manager, broker, consultant, investment manager, or other provider of investment related services that has, or reasonably may be in a position to have, business with the Board for the purpose of discussing matters related to official Board business without approval of a majority of

members of the Board. However, the State Treasurer, as chairperson, shall be permitted to meet with service providers or potential service providers.

K. Upon approval by the Board, the State Treasurer, as chairperson, may directly or indirectly invest the Retirement System assets.

L. The Board shall approve and adopt a set of ethics rules and code of conduct applicable to its members, with periodic updates to be approved as deemed necessary by the Board, and to be signed by the State Treasurer as chairperson of the Board. The Bureau of Investments's staff shall cause the current approved and adopted ethics rules and code of conduct to be posted to the Bureau of Investments's public website.

M. The Board shall provide each of its members with copies of the Board's ethics rules and code of conduct, current investment policy statement(s), policies and procedures applicable to Board meetings, statutes, administrative rules and expectations governing public meetings in this State, and any other matters that are central to membership on the Board. Each Board member shall, within 14 days of receiving this information, certify and sign an attestation of their receipt and acknowledgement of information presented. The Bureau of Investments's staff shall publish or cause to be published each certification to the Bureau of Investments's public website.

N. When a vacancy occurs in the position of Chief Investment Officer, the State Treasurer, in consultation with the Board, shall appoint a Chief Investment Officer to manage and direct the day-to-day investment and administrative management functions of the Bureau of Investments. The Chief Investment Officer shall be part of the classified civil service.

III. ADDITIONAL RESPONSIBILITIES OF BOARD

A. The Board shall act as the investment fiduciary and custodian of the Retirement System's assets.

B. The Board shall cause the Bureau of Investments to invest, reinvest, assign, reassign, sell, transfer, and manage the investment funds and portfolios of the Retirement System.

C. The Board may solicit proxies in connection with contests for corporate control of corporations in which the Retirement System has made an investment; use nominees to facilitate transfers; and take any other action necessary and prudent in the investment of the Retirement System's assets pursuant to this Order, Act 314, and as may otherwise be authorized under the laws of this State.

D. The Board shall approve any changes to the investment manager lineup of the DC plans based on the recommendation of the Bureau of Investments, working in consultation with the Office of Retirement Services. The Office of Retirement Services shall have the exclusive responsibility to execute or sign any agreement with the DC Plan's investment managers.

E. As it relates to this Order, any authority, duties, and obligations under Act 314 shall be exercised only by the Board.

F. The Board has the exclusive authority, right, duty, or obligation to perform the following:

1. Act in accordance with the fiduciary duties prescribed to the Board as custodian and investment fiduciary of the Retirement System's assets;
2. Cause the investment and reinvestment of the Retirement System's assets, through the Bureau of Investments, in accordance with the provisions and standards of Act 314 and the Authorizing Statutes; and
3. Sue and be sued in its own name and be responsible for instituting or defending against legal proceedings arising out of the investment of the Retirement System's assets.

G. In addition to any other rights, responsibilities, powers, and duties granted by law, the Board shall have the exclusive right to cause the Bureau of Investments to perform the following:

1. Collect the principal and interest or other income and dividends of investments when due and payable, and pay the principal and interest or other income and dividends, when so collected, into the appropriate fund as directed by the applicable Authorizing Statutes;
2. Invest and reinvest the Retirement System's assets in any manner provided for in Act 314 and the Authorizing Statutes;
3. Account for all principal, interest, other income and dividends, and expenses of and related to investment of the Retirement System's assets and other funds that the Board invests;
4. Expend appropriated funds from investment income to support the investment of and accounting for the Retirement System's assets, and for all other support purposes necessary to the activities of the Board; including the payment of professional development and licensing expenses or professional dues for the employees of the Bureau of Investments;
5. Exercise any shareholder or other voting rights arising from an investment;
6. Exercise any other right or action or fulfill any obligations necessary to accomplish the Board's mission or comply with the laws of this State and this Order;
7. Negotiate with, select, and retain: investment managers and service providers; portfolio systems services; consultants; investment information resources; and any other sources of expertise, research, or services necessary to conduct investment activities, protect the assets of the Retirement System, or to otherwise support the management of assets of the Retirement System; and

8. Perform necessary due diligence to source new investment opportunities and monitor existing investments,

which may include on-site meetings with current or potential investment managers and investment funds, on-site inspection of physical assets, or on-site investor meetings necessary for the proper management of the assets of the Retirement System.

IV. ADDITIONAL FIDUCIARY RESPONSIBILITIES OF THE BOARD

A. The Board is authorized to invest and to cause the Bureau of Investments to invest the Retirement System's assets, in accordance with the fiduciary duties pursuant to Act 314, and in accordance with state and federal law, rules, and regulations and any applicable resolution, contract, or memorandum of understanding. The authority to invest the assets of the Retirement System includes the exclusive power to execute all contracts, agreements, or other such legal documents necessary to effectuate the investment of funds or implementation of any portfolio management system, and the authority to delegate all applicable powers and duties to the Bureau of Investments, as the Board deems necessary, to prudently manage the assets of the Retirement System.

B. The Board is the custodian of the assets of the Military Retirement System and is responsible for investing its assets in accordance with state and federal law.

V. ADDITIONAL ADMINISTRATION ISSUES RELATED OF THE BOARD AND BUREAU OF INVESTMENTS

A. In addition to the limitations contained in Section 13e of Act 314, as amended, MCL 38.1133e, the Board shall be prohibited from paying any fees, including contingency fee arrangements, or any other remuneration, directly or indirectly and whether from the Retirement System's assets or otherwise, to service providers if such service provider or a covered associate of a service provider made a contribution in the immediately preceding 36-calendar-month period to an incumbent or candidate of an elected office within the executive branch or a principal department of this State. The Board may implement this limitation through policies, procedures, or otherwise as it deems appropriate. The terms "service provider" and "covered associate of the service provider" shall have the same meanings afforded to each in MCL 38.1133e.

B. The Tier 1 Plans, the Military Retirement System, and OPEB shall be referred to as the "State of Michigan Retirement System" for purposes of any and all investments, agreements, contracts, certificates, or such other documents entered into in conjunction with any transaction or business, or in connection with the exercise of the Board's powers and authority pursuant to the Authorizing Statutes or this Order. Any and all investments, agreements, contracts, certificates, or such other documents executed under the name "State Treasurer of the State of Michigan, Custodian of the Michigan Public School Employees' Retirement System, State Employees' Retirement System, Michigan State Police Retirement System, and Michigan Judges Retirement System" or other similar name associated with the federal tax identification number 38-2836023 are, or shall remain, duly authorized and in force under such name. Nothing in this section shall be construed to transfer any assets of the Tier 1 Plans, the Military Retirement System, or OPEB to any successor trust or trustee.

C. Bureau of Investment staff shall present information to the Board at its regular quarterly meeting, including updated asset allocation targets and ranges for the Tier 1 Plans and OPEB approximately every two years, contingent upon market, regulatory, legal or other applicable circumstances related to the Retirement System's investable assets. Bureau of Investment staff shall also present information related to the quarterly investment performance of the DC Plans to the Board at its regular quarterly meetings.

VI. MISCELLANEOUS

A. All rules, orders, contracts, plans, investments, and agreements relating to the functions transferred by this Order lawfully adopted or executed before the effective date of this Order shall continue to be effective unless and until revised, amended, or rescinded.

B. Any suit, action, or other proceeding lawfully commenced by or against any department identified in Section I of this Order before the effective date of this Order shall not abate by reason of the taking effect of this Order. Any lawfully commenced suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements of Section 2 of Article V of the Michigan Constitution of 1963, this Order shall be effective 60 days after the filing of this Order.

History: 2018, E.R.O. No. 2018-5, Eff. Nov. 27, 2018

Compiler's Notes: Executive Reorganization Order No. 2018-5 was promulgated September 27, 2018, as Executive Order No. 2018-10, Eff. Nov. 27, 2018.