

SENATE BILL No. 1037

November 10, 1988, Introduced by Senator V. SMITH and referred to the Committee on Judiciary.

A bill to amend sections 13b and 13c of Act No. 314 of the Public Acts of 1965, entitled as amended

"An act to authorize the investment of assets of public employee 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 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,"

section 13b as added by Act No. 253 of the Public Acts of 1988 and section 13c as added by Act No. 252 of the Public Acts of 1988, being sections 38.1133b and 38.1133c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 13b and 13c of Act No. 314 of the
2 Public Acts of 1965, section 13b as added by Act No. 253 of the
3 Public Acts of 1988 and section 13c as added by Act No. 252 of

1 the Public Acts of 1988, being sections 38.1133b and 38.1133c of
2 the Michigan Compiled Laws, are amended to read as follows:

3 Sec. 13b. (1) As used in this section:

4 (a) "Company" means a union or association of persons for
5 carrying on a commercial or industrial enterprise. Company
6 includes, but is not limited to, a partnership, corporation,
7 association, or joint stock company.

8 (b) "Franchise" means an agreement under which the franchi-
9 see undertakes to conduct a business or sell a product or service
10 in accordance with methods and procedures prescribed by the fran-
11 chisor, and under which the franchisor undertakes to assist the
12 franchisee through advertising, promotion, and other advisory
13 services.

14 (c) Notwithstanding section 12(e), "investment" means utili-
15 zation of money in the expectation of future returns in the form
16 of income or capital gain. Investment does not include the
17 importation or exportation of goods.

18 (d) "Licensing agreement" means a contract with an individ-
19 ual or company for the sale or lease of a license that permits
20 the use of a patent, trademark, or other technology by another
21 individual or company.

22 (e) "Management agreement" means a contract in which an
23 individual or company is chosen or appointed to manage, direct,
24 or administer the affairs of another individual or company.

25 (f) "National corporation of South Africa" means a corpora-
26 tion, or a subsidiary or affiliate of a corporation, that is more
27 than 50% owned or operated by the government of South Africa.

1 (g) "Retirement system" means the Michigan public schools
2 employees' retirement system ~~---~~ created by the public school
3 employees retirement act of 1979, Act No. 300 of the Public Acts
4 of 1980, being sections 38.1301 to 38.1407 of the Michigan
5 Compiled Laws, and the state employees' retirement system created
6 by the state employees' retirement act, Act No. 240 of the Public
7 Acts of 1943, being sections 38.1 to 38.47 of the Michigan
8 Compiled Laws.

9 (h) "South Africa" includes the Republic of South Africa;
10 any territory under the administration, legal or illegal, of the
11 Republic of South Africa; and Bantustans or homelands to which
12 South African blacks are assigned on the basis of ethnic origin.

13 (2) Notwithstanding any other provision of this act, an
14 investment fiduciary for a retirement system shall not encourage
15 or condone legally required discrimination against an individual
16 on the basis of race or color by doing either of the following:

17 (a) Making a new investment of retirement system assets in
18 stocks, securities, or other obligations, EXCEPT COMMERCIAL PAPER
19 DESCRIBED IN SECTION 17(F), of a national corporation of South
20 Africa or of a United States company listed in the register
21 described in subsection (4).

22 (b) Except as provided in subsection (3), failing to divest
23 retirement system assets in stocks, securities, or other
24 obligations, EXCEPT COMMERCIAL PAPER DESCRIBED IN SECTION 17(F),
25 of a national corporation of South Africa or of a United States
26 company listed in the register described in subsection (4), as
27 follows:

1 (i) Not less than 40% of the retirement system assets shall
2 be divested not later than ~~2 years after the effective date of~~
3 ~~the amendatory act that added this section~~ JANUARY 1, 1991.

4 (ii) Not less than 60% of the retirement system assets shall
5 be divested not later than ~~3 years after the effective date of~~
6 ~~the amendatory act that added this section~~ JANUARY 1, 1992.

7 (iii) Not less than 80% of the retirement system assets
8 shall be divested not later than ~~4 years after the effective~~
9 ~~date of the amendatory act that added this section~~ JANUARY 1,
10 1993.

11 (iv) Not less than 100% of the retirement system assets
12 shall be divested not later than ~~5 years after the effective~~
13 ~~date of the amendatory act that added this section~~ JANUARY 1,
14 1994.

15 (3) If the state treasurer determines that divestment would
16 jeopardize the fiscal integrity of a retirement system, the state
17 treasurer may extend for not more than 1 year the deadlines under
18 subsection (2)(b) for divestment of the assets of that retirement
19 system.

20 (4) The state treasurer shall develop and maintain a regis-
21 ter of United States companies that have 1 or more of the
22 following:

23 (a) An investment in South Africa.

24 (b) A franchise with an individual or company located in
25 South Africa.

26 (c) A licensing agreement with an individual or company
27 located in South Africa.

1 (d) A management agreement with an individual or company
2 located in South Africa.

3 (5) The state treasurer shall provide the register described
4 in subsection (4) to each board of a retirement system. The reg-
5 ister shall be provided at least annually and whenever a change
6 is made in the register. The state treasurer shall also notify a
7 board of a system of those investments that the retirement system
8 has in a company included in the register.

9 (6) Not less than 90 days before the register is provided to
10 the boards of retirement systems as required by subsection (5),
11 the state treasurer shall provide the chief executive officer of
12 each United States company that is placed on the register and the
13 legislature with all of the following information:

14 (a) Notice that the company is being placed on the
15 register.

16 (b) The reason why the company is being placed on the
17 register.

18 (c) The current value of system assets invested in the
19 company.

20 (d) Any other information that the state treasurer considers
21 necessary or appropriate.

22 (7) The state treasurer shall annually report to the legis-
23 lature on divestment under this section. The report shall
24 include, but is not limited to, all of the following
25 information:

26 (a) The progress of systems in implementing the divestment
27 of assets required by this section.

1 (b) The register described in subsection (4).

2 (c) The reason companies have been added to the register.

3 (d) The names of companies that the state treasurer is con-
4 sidering adding to the register.

5 (e) The amount of retirement system assets invested in com-
6 panies included in the register.

7 (f) The financial cost to the state of divestment under this
8 section.

9 (g) Any other information that the state treasurer considers
10 necessary or appropriate.

11 (8) The investment fiduciary of each retirement system shall
12 report annually to the governor and the legislature any gains or
13 losses in the value of the investment portfolio of the retirement
14 system and in the portfolio's investment performance attributable
15 to the implementation of subsection (2).

16 (9) If there is any gain in the value of the investment
17 portfolio of the retirement system or the portfolio's investment
18 performance that is attributable to the implementation of
19 subsection (2), then those gains shall be recorded annually and
20 shall be used to compensate for any losses or diminution in value
21 attributable to the implementation of subsection (2) in subse-
22 quent years.

23 (10) This section shall only apply until the state treasurer
24 determines and notifies the investment fiduciaries of the retire-
25 ment systems that both of the following conditions of fact
26 exist:

1 (a) Full citizenship and equal political rights concerning
2 all matters of national policy have been granted and are in
3 effect for all South African people, regardless of race.

4 (b) Legal restrictions on the freedom of all South African
5 people to live, travel, and work anywhere in their country have
6 been removed and no longer exist.

7 (11) This section does not alter or diminish the existing
8 fiduciary or statutory obligations and other terms, conditions,
9 and limitations on the investment of retirement system assets for
10 the exclusive interest and benefit of participants and beneficia-
11 ries of the retirement systems.

12 Sec. 13c. (1) As used in this section:

13 (a) "Company" means a union or association of persons for
14 carrying on a commercial or industrial enterprise. Company
15 includes, but is not limited to, a partnership, corporation,
16 association, or joint stock company.

17 (b) "Franchise" means an agreement under which the franchi-
18 see undertakes to conduct a business or sell a product or service
19 in accordance with methods and procedures prescribed by the fran-
20 chisor, and under which the franchisor undertakes to assist the
21 franchisee through advertising, promotion, and other advisory
22 services.

23 (c) Notwithstanding section 12(e), "investment" means utili-
24 zation of money in the expectation of future returns in the form
25 of income or capital gain. Investment does not include the
26 importation or exportation of goods.

1 (d) "Licensing agreement" means a contract with an
2 individual or company for the sale or lease of a license that
3 permits the use of a patent, trademark, or other technology by
4 another individual or company.

5 (e) "Management agreement" means a contract in which an
6 individual or company is chosen or appointed to manage, direct,
7 or administer the affairs of another individual or company.

8 (f) "National corporation of South Africa" means a corpora-
9 tion, or a subsidiary or affiliate of a corporation, that is more
10 than 50% owned or operated by the government of South Africa.

11 (g) "Retirement system" means the Michigan legislative
12 retirement system created by the Michigan legislative retirement
13 system act, Act No. 261 of the Public Acts of 1957, being sec-
14 tions 38.1001 to 38.1060 of the Michigan Compiled Laws, a fire
15 and police department pension and retirement system created under
16 Act No. 345 of the Public Acts of 1937, being sections 38.551 to
17 38.562 of the Michigan Compiled Laws, the state of Michigan
18 judges' retirement system created by the judges' retirement act,
19 Act No. 198 of the Public Acts of 1951, being sections 38.801 to
20 38.831 of the Michigan Compiled Laws, the state of Michigan pro-
21 bate judges retirement system created by the probate judges
22 retirement act, Act No. 165 of the Public Acts of 1954, being
23 sections 38.901 to 38.933 of the Michigan Compiled Laws, and the
24 Michigan state police retirement system created by the state
25 police retirement act of 1986, Act No. 182 of the Public Acts of
26 1986, being sections 38.1601 to 38.1648 of the Michigan Compiled
27 Laws.

1 (h) "South Africa" includes the Republic of South Africa;
2 any territory under the administration, legal or illegal, of the
3 Republic of South Africa; and Bantustans or homelands to which
4 South African blacks are assigned on the basis of ethnic origin.

5 (2) Notwithstanding any other provision of this act, an
6 investment fiduciary for a retirement system shall not encourage
7 or condone legally required discrimination against an individual
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8 jeopardize the fiscal integrity of a retirement system, the state
9 treasurer may extend for not more than 1 year the deadlines under
10 subsection (2)(b) for divestment of the assets of that retirement
11 system.

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15 lature on divestment under this section. The report shall
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22 (d) The names of companies that the state treasurer is con-
23 sidering adding to the register.

24 (e) The amount of retirement system assets invested in com-
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26 (f) The financial cost to the state of divestment under this
27 section.

1 (g) Any other information that the state treasurer considers
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3 (8) The investment fiduciary of each retirement system shall
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7 to the implementation of subsection (2).

8 (9) If there is any gain in the value of the investment
9 portfolio of the retirement system or the portfolio's investment
10 performance that is attributable to the implementation of
11 subsection (2), then those gains shall be recorded annually and
12 shall be used to compensate for any losses or diminution in value
13 attributable to the implementation of subsection (2) in subse-
14 quent years.

15 (10) This section shall only apply until the state treasurer
16 determines and notifies the investment fiduciaries of the retire-
17 ment systems that both of the following conditions of fact
18 exist:

19 (a) Full citizenship and equal political rights concerning
20 all matters of national policy have been granted and are in
21 effect for all South African people, regardless of race.

22 (b) Legal restrictions on the freedom of all South African
23 people to live, travel, and work anywhere in their country have
24 been removed and no longer exist.

25 (11) This section does not alter or diminish the existing
26 fiduciary or statutory obligations and other terms, conditions,
27 and limitations on the investment of retirement system assets for

1 the exclusive interest and benefit of participants and
 2 beneficiaries of the retirement systems.

3 Section 2. This amendatory act shall take effect January 1,
 4 1989.