

SUBSTITUTE FOR
HOUSE BILL NO. 6500

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending sections 12d, 13, 19, 20d, 20j, and 20k (MCL 38.1132d,
38.1133, 38.1139, 38.1140d, 38.1140j, and 38.1140k), sections 12d,
19, and 20d as amended by 2000 PA 307, section 13 as amended by
2008 PA 273, and sections 20j and 20k as added by 1996 PA 485, and
by adding section 19a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

6 (2) "Net earnings available for fixed charges" means net
7 income after deducting operating and maintenance expenses, taxes

1 other than federal and state income taxes, depreciation, and
2 depletion, but excluding extraordinary expenses appearing in the
3 regular financial statements of the system.

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

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

14 (a) An investment fiduciary, counsel, or employee of the
15 system.

16 (b) A person providing services to the system.

17 (c) The political subdivision sponsoring the system.

18 (d) An organization, any of whose members are covered by the
19 system.

20 (e) A spouse, ancestor, lineal descendant, or spouse of a
21 lineal descendant of an individual described in subdivision (a) or
22 (b).

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

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

1 (6) "PRIVATE EQUITY" MEANS AN ASSET CLASS CONSISTING OF EQUITY
2 OR DEBT SECURITIES IN ENTITIES THAT ARE NOT PUBLICLY TRADED, WHICH
3 MAY INCLUDE, BUT ARE NOT LIMITED TO, INVESTMENTS IN LEVERAGED
4 BUYOUTS, VENTURE CAPITAL, GROWTH CAPITAL, DISTRESSED OR SPECIAL
5 SITUATIONS, MEZZANINE CAPITAL, AND SECONDARY INVESTMENTS IN EQUITY
6 OR DEBT INTERESTS.

7 Sec. 13. (1) The provisions of this act shall supersede any
8 investment authority previously granted to a system under any other
9 law of this state.

10 (2) The assets of a system may be invested, reinvested, held
11 in nominee form, and managed by an investment fiduciary subject to
12 the terms, conditions, and limitations provided in this act. An
13 investment fiduciary of a defined contribution plan may arrange for
14 1 or more investment options to be directed by the participants of
15 the defined contribution plan. The limitations on the percentage of
16 total assets for investments provided in this act do not apply to a
17 defined contribution plan in which a participant directs the
18 investment of the assets in his or her individual account, and that
19 participant is not considered an investment fiduciary under this
20 act.

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

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

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

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

8 (d) Give appropriate consideration to those facts and
9 circumstances that the investment fiduciary knows or should know
10 are relevant to the particular investment or investment course of
11 action involved, including the role the investment or investment
12 course of action plays in that portion of the system's investments
13 for which the investment fiduciary has responsibility; and act
14 accordingly. For purposes of this subsection, "appropriate
15 consideration" includes, but is not limited to, a determination by
16 the investment fiduciary that a particular investment or investment
17 course of action is reasonably designed, as part of the investments
18 of the system, to further the purposes of the system, taking into
19 consideration the risk of loss and the opportunity for gain or
20 other return associated with the investment or investment course of
21 action; and consideration of the following factors as they relate
22 to the investment or investment course of action:

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

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

27 (iii) The projected return of the investments of the system

1 relative to the funding objectives of the system.

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

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

10 (g) Monitor the investment of the system's assets with regard
11 to the limitations on those investments pursuant to this act. Upon
12 discovery that an investment causes the system to exceed a
13 limitation prescribed in this act, the investment fiduciary shall
14 reallocate assets in a prudent manner in order to comply with the
15 prescribed limitation.

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

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

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

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

26 (d) The public school employees retirement system created
27 under the public school employees retirement act of 1979, 1980 PA

1 300, MCL 38.1301 to 38.1408.

2 (5) An investment fiduciary may use a portion of the income of
3 the system to defray the costs of investing, managing, and
4 protecting the assets of the system **INCLUDING PROVIDING**
5 **PROFESSIONAL TRAINING AND EDUCATION**; may retain investment and all
6 other services necessary for the conduct of the affairs of the
7 system; and may pay reasonable compensation for those services.
8 Subject to an annual appropriation by the legislature, a deduction
9 from the income of a state administered system resulting from the
10 payment of those costs shall be made.

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

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

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

27 (c) A transfer to, or use by or for the benefit of, the

1 political subdivision sponsoring the system of any assets of the
2 system for less than adequate consideration.

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

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

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

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

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

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

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

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

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

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

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

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

11 (b) Be a bank as defined under the investment advisers act of
12 1940, **15 USC 80B-1 TO 80B-21**.

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

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

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

21 Sec. 19. (1) An investment fiduciary may invest up to ~~5%~~**10%**
22 of a system's assets in publicly or privately issued real estate
23 investment trusts or in real or personal property otherwise
24 qualified pursuant to section 15, 16, or 20c.

25 (2) In addition to investments authorized under subsection
26 (1), an investment fiduciary of a system having assets of more than
27 \$100,000,000.00 may do any of the following:

1 (a) Invest in, buy, sell, hold, improve, lease, or acquire by
2 foreclosure or an agreement in lieu of foreclosure, real or
3 personal property or an interest in real or personal property.

4 (b) Develop, maintain, operate, or lease the real or personal
5 property referred to in subdivision (a).

6 (c) Form **OR INVEST IN** 1 or more limited partnerships,
7 corporations, limited liability companies, trusts, or other
8 organizational entities for which liability of an investor cannot
9 exceed the amount of the investment under the laws of the United
10 States or of any state, district, or territory of the United States
11 **OR FOREIGN COUNTRY. THE LIMITED PARTNERSHIP, CORPORATION, LIMITED**
12 **LIABILITY COMPANY, TRUST, OR OTHER ORGANIZATIONAL ENTITY MAY INVEST**
13 **IN, BUY, SELL, HOLD, DEVELOP, IMPROVE, LEASE, OR OPERATE REAL OR**
14 **PERSONAL PROPERTY, OR ORIGINATE A MORTGAGE OR INVEST IN AN ANNUITY**
15 **SEPARATE ACCOUNT THAT INVESTS IN REAL OR PERSONAL PROPERTY** to hold
16 title to, improve, lease, manage, develop, maintain, or operate
17 real or personal property whether currently held or acquired after
18 the effective date of the amendatory act that added this
19 subdivision. An entity formed ~~pursuant to~~ **UNDER** this subdivision
20 has the right to exercise all powers granted to the entity by the
21 laws of the jurisdiction of formation, including, but not limited
22 to, the power to borrow money in order to provide additional
23 capital to benefit and increase the overall return on ~~property~~ **THE**
24 **INVESTMENT** held by the entity.

25 (d) Invest in investments otherwise qualified pursuant to
26 subsection (1).

27 (3) Except as otherwise provided in this section, the

1 aggregate investments made under subsection (2) shall not exceed 5%
2 10% of the assets of the system. The purchase price of an
3 investment made under this section shall not exceed the appraised
4 value of the real or personal property.

5 (4) If the investment fiduciary of a system is the state
6 treasurer, investments described in subsection (1) or (2) may
7 exceed ~~5%~~ 10% of the assets of the system.

8 (5) An investment qualified under this section in which the
9 underlying asset is an interest in real or personal property
10 constitutes an investment under this section for the purpose of
11 meeting the asset limitations contained in this act. This
12 subsection applies even though the investment may be qualified
13 elsewhere in this act. Notwithstanding this subsection, an
14 investment fiduciary may designate a real estate investment trust
15 which satisfies the requirements of section 14(2) as an investment
16 qualified under this section or as an investment in stock under
17 section 14.

18 **SEC. 19A. (1) AN INVESTMENT FIDUCIARY OF A SYSTEM HAVING**
19 **ASSETS OF LESS THAN \$250,000,000.00 MAY INVEST NOT MORE THAN 5% OF**
20 **THE SYSTEM'S ASSETS IN PRIVATE EQUITY. HOWEVER, IF THE SYSTEM HAS**
21 **ASSETS OF LESS THAN \$250,000,000.00, THE INVESTMENTS SHALL BE MADE**
22 **THROUGH A FUND OF FUNDS VEHICLE.**

23 (2) AN INVESTMENT FIDUCIARY OF A SYSTEM HAVING ASSETS OF
24 \$250,000,000.00 OR MORE MAY INVEST NOT MORE THAN 10% OF THE
25 SYSTEM'S ASSETS IN PRIVATE EQUITY.

26 (3) AN INVESTMENT FIDUCIARY OF A SYSTEM HAVING ASSETS OF
27 \$1,000,000,000.00 OR MORE MAY INVEST NOT MORE THAN 15% OF THE

1 SYSTEM'S ASSETS IN PRIVATE EQUITY.

2 (4) IF THE INVESTMENT FIDUCIARY IS THE STATE TREASURER,
3 INVESTMENTS DESCRIBED IN THIS SECTION SHALL NOT BE SUBJECT TO A
4 PERCENTAGE OF THE TOTAL ASSETS LIMITATION.

5 (5) AS USED IN THIS SECTION, "FUND OF FUNDS" MEANS AN
6 INVESTMENT FUND THAT USES AN INVESTMENT STRATEGY OF HOLDING A
7 PORTFOLIO OF OTHER INVESTMENT FUNDS RATHER THAN INVESTING DIRECTLY
8 IN SHARES, BONDS, OR OTHER SECURITIES.

9 Sec. 20d. (1) An investment fiduciary of a system having
10 assets of less than \$250,000,000.00 may invest not more than 5% of
11 the system's assets in investments not otherwise qualified under
12 this act, whether the investments are similar or dissimilar to
13 those specified in this act.

14 (2) An investment fiduciary of a system having assets of
15 \$250,000,000.00 or more may invest not more than 10% of the
16 system's assets in investments described in subsection (1).

17 (3) An investment fiduciary of a system having assets of
18 \$1,000,000,000.00 or more may invest not more than 15% of the
19 system's assets in investments described in subsection (1).

20 (4) An investment fiduciary of a system who is the state
21 treasurer may invest not more than ~~20%~~ 25% of the system's assets
22 in investments described in subsection (1).

23 (5) If an investment described in subsection (1) is
24 subsequently determined to be permitted under another section of
25 this act, then the investment shall no longer be included under
26 this section.

27 (6) This section shall not be used to exceed a percentage of

1 total assets limitation for an investment provided in any other
2 section of this act.

3 Sec. 20j. (1) Subject to qualification elsewhere in this act,
4 an investment fiduciary may invest in any of the following:

5 (a) A derivative that hedges positions of a nonderivative
6 component of a portfolio that clearly reduces a defined risk.

7 (b) A derivative that replicates the risk/return profile of an
8 asset or asset class, provided the asset or asset class is
9 permitted in other sections of this act.

10 (c) A derivative that rebalances the country or asset class
11 exposure of a portfolio.

12 (d) A derivative in which the investment fiduciary has
13 examined the price, yield, and duration characteristics in all
14 market environments both at the time of investment and on an
15 ongoing basis.

16 (e) A commingled or pooled investment fund that uses
17 derivatives, if the fund's use of derivatives is consistent with
18 the guidelines outlined in this section.

19 (f) Over-the-counter derivatives if, in the case of an over-
20 the-counter security, a minimum of 2 competing bids or offers are
21 obtained. All counter party risk in over-the-counter derivative
22 transactions shall be examined at the time of investment and on an
23 ongoing basis.

24 (2) The aggregate market value of the underlying security,
25 future, or other instrument or index made under this section shall
26 not exceed ~~15%~~ 30% of the assets of the system. For purposes of the
27 asset limitation in this section only, "derivatives" does not

1 include:

2 (a) Asset backed pools, mortgage backed pools, or
3 collateralized mortgage obligations that are otherwise qualified
4 under this act and are no more exposed to prepayment risk or
5 interest rate risk than the underlying collateral including planned
6 amortization classes and sequential-pay collateralized mortgage
7 obligations.

8 (b) Convertible bonds, convertible preferred stock, rights or
9 warrants to purchase stock or bonds or notes or partnership
10 interests, floating rate notes, zero coupon securities, stripped
11 principal securities, or stripped interest securities, which items
12 are otherwise qualified under this act.

13 (c) Exchange-listed derivatives trading on a daily basis and
14 settling in cash daily or having a limited and fully defined risk
15 profile at an identified, fixed cost, including futures contracts
16 and purchased options.

17 (d) Currency forwards trading on a daily basis and settling in
18 cash daily or having a limited and fully defined risk profile at an
19 identified, fixed cost.

20 (3) Notwithstanding any other provision of this act to the
21 contrary, an investment fiduciary shall not invest in derivatives
22 for the purpose of leveraging a portfolio or shorting securities as
23 a sole investment.

24 Sec. 20k. (1) Notwithstanding a percentage of total assets
25 limitation for an investment provided in any other section of this
26 act, an investment fiduciary may invest not more than 20% of a
27 system's assets in foreign securities. Except as otherwise provided

1 in this act, an investment fiduciary shall not do any of the
2 following:

3 (a) Invest in more than 5% of the outstanding foreign
4 securities of any 1 issuer.

5 (b) Invest more than 5% of a system's assets in the foreign
6 securities of any 1 issuer.

7 (2) Investments in foreign securities under this section shall
8 be made only by investment fiduciaries described in section 13(8)
9 who have demonstrated expertise in investments of that type.

10 (3) **AN INVESTMENT FIDUCIARY WHO IS THE STATE TREASURER MAY**
11 **INVEST MORE THAN 20% OF THE SYSTEM'S ASSETS IN INVESTMENTS**
12 **DESCRIBED IN SUBSECTION (1).**

13 Enacting section 1. Section 13a of the public employee
14 retirement system investment act, 1965 PA 314, MCL 38.1133a, is
15 repealed.