

**SENATE 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, and 20d (MCL 38.1132d, 38.1133,  
38.1139, and 38.1140d), sections 12d, 19, and 20d as amended by  
2000 PA 307 and section 13 as amended by 2008 PA 273, and by adding  
section 19a.

**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  
8 other than federal and state income taxes, depreciation, and  
9 depletion, but excluding extraordinary expenses appearing in the

1 regular financial statements of the system.

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

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

12 (a) An investment fiduciary, counsel, or employee of the  
13 system.

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

15 (c) The political subdivision sponsoring the system.

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

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

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

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

26 (6) **"PRIVATE EQUITY" MEANS AN ASSET CLASS CONSISTING OF EQUITY**  
27 **OR DEBT SECURITIES IN ENTITIES THAT ARE NOT PUBLICLY TRADED, WHICH**

1 MAY INCLUDE, BUT ARE NOT LIMITED TO, INVESTMENTS IN LEVERAGED  
2 BUYOUTS, VENTURE CAPITAL, GROWTH CAPITAL, DISTRESSED OR SPECIAL  
3 SITUATIONS, MEZZANINE CAPITAL, AND SECONDARY INVESTMENTS IN EQUITY  
4 OR DEBT INTERESTS.

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

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

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

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

26 (b) Act with due regard for the management, reputation, and  
27 stability of the issuer and the character of the particular

1 investments being considered.

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

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

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

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

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

27 (e) Give appropriate consideration to investments that would

1 enhance the general welfare of this state and its citizens if those  
2 investments offer the safety and rate of return comparable to other  
3 investments permitted under this act and available to the  
4 investment fiduciary at the time the investment decision is made.

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

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

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

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

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

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

24 (d) The public school employees retirement system created  
25 under the public school employees retirement act of 1979, 1980 PA  
26 300, MCL 38.1301 to 38.1408.

27 (5) An investment fiduciary may use a portion of the income of

1 the system to defray the costs of investing, managing, and  
2 protecting the assets of the system; may retain investment and all  
3 other services necessary for the conduct of the affairs of the  
4 system; and may pay reasonable compensation for those services.  
5 Subject to an annual appropriation by the legislature, a deduction  
6 from the income of a state administered system resulting from the  
7 payment of those costs shall be made.

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

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

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

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

27 (d) The furnishing of goods, services, or facilities from the

1 system to a party in interest for less than adequate consideration,  
2 or from a party in interest to the system for more than adequate  
3 consideration.

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

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

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

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

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

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

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

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

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

27 (9) Except for an employee of a system, this state, or the

1 political subdivision sponsoring a system, when acting in the  
2 capacity as an investment fiduciary, an investment fiduciary who is  
3 qualified under section 12c(1)(b) shall meet 1 of the following  
4 requirements:

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

8 (b) Be a bank as defined under the investment advisers act of  
9 1940, **15 USC 80B-1 TO 80B-21**.

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

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

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

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

22 (2) In addition to investments authorized under subsection  
23 (1), an investment fiduciary of a system having assets of more than  
24 \$100,000,000.00 may do any of the following:

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



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

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

22 (d) Invest in investments otherwise qualified pursuant to  
23 subsection (1).

24 (3) Except as otherwise provided in this section, the  
25 aggregate investments made under subsection (2) shall not exceed 5%  
26 of the assets of the system. The purchase price of an investment  
27 made under this section shall not exceed the appraised value of the

1 real or personal property.

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

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

15 **SEC. 19A. IF THE INVESTMENT FIDUCIARY IS THE STATE TREASURER,**  
16 **INVESTMENTS IN PRIVATE EQUITY SHALL NOT BE MORE THAN 30% OF THE**  
17 **TOTAL ASSETS.**

18 Sec. 20d. (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 investments not otherwise qualified under  
21 this act, **EXCEPT AS QUALIFIED IN SECTION 19A**, whether the  
22 investments are similar or dissimilar to those specified in this  
23 act.

24 (2) An investment fiduciary of a system having assets of  
25 \$250,000,000.00 or more may invest not more than 10% of the  
26 system's assets in investments described in subsection (1).

27 (3) An investment fiduciary of a system having assets of

1 \$1,000,000,000.00 or more may invest not more than 15% of the  
2 system's assets in investments described in subsection (1).

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

6 (5) If an investment described in subsection (1) is  
7 subsequently determined to be permitted under another section of  
8 this act, then the investment shall no longer be included under  
9 this section.

10 (6) This section shall not be used to exceed a percentage of  
11 total assets limitation for an investment provided in any other  
12 section of this act.