

Act No. 425  
Public Acts of 2008  
Approved by the Governor  
January 5, 2009  
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EFFECTIVE DATE: January 6, 2009

**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2008**

**Introduced by Reps. Robert Jones, Griffin, Spade, Brown, Valentine, Ebli, Lemmons, Wojno, Byrnes,  
Bieda, Dean and Meadows**

# **ENROLLED HOUSE BILL No. 6500**

AN ACT to amend 1965 PA 314, entitled "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," 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:*

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

(2) "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, but excluding extraordinary expenses appearing in the regular financial statements of the system.

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

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

- (a) An investment fiduciary, counsel, or employee of the system.
- (b) A person providing services to the system.
- (c) The political subdivision sponsoring the system.
- (d) An organization, any of whose members are covered by the system.
- (e) A spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subdivision (a) or (b).
- (f) An entity controlled by an individual or organization described in subdivisions (a) to (e).

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

(6) "Private equity" means an asset class consisting of equity or debt securities in entities that are not publicly traded, which may include, but are not limited to, investments in leveraged buyouts, venture capital, growth capital, distressed or special situations, mezzanine capital, and secondary investments in equity or debt interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) An investment fiduciary may use a portion of the income of the system to defray the costs of investing, managing, and protecting the assets of the system; may retain investment and all other services necessary for the conduct of the affairs of the system; and may pay reasonable compensation for those services. Subject to an annual appropriation by the legislature, a deduction from the income of a state administered system resulting from the payment of those costs shall be made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Form or invest in 1 or more limited partnerships, corporations, limited liability companies, trusts, or other organizational entities for which liability of an investor cannot exceed the amount of the investment under the laws of the United States or of any state, district, or territory of the United States or foreign country. The limited partnership, corporation, limited liability company, trust, or other organizational entity may invest in, buy, sell, hold, develop, improve, lease, or operate real or personal property, or originate a mortgage or invest in an annuity separate account that invests in real or personal property to hold title to, improve, lease, manage, develop, maintain, or operate real or personal property whether currently held or acquired after the effective date of the amendatory act that added this subdivision. An entity formed under this subdivision has the right to exercise all powers granted to the entity by the

laws of the jurisdiction of formation, including, but not limited to, the power to borrow money in order to provide additional capital to benefit and increase the overall return on the investment held by the entity.

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

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

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

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

Sec. 19a. If the investment fiduciary is the state treasurer, investments in private equity shall not be more than 30% of the total assets.

Sec. 20d. (1) An investment fiduciary of a system having assets of less than \$250,000,000.00 may invest not more than 5% of the system's assets in investments not otherwise qualified under this act, except as qualified in section 19a, whether the investments are similar or dissimilar to those specified in this act.

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

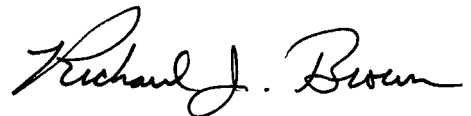
(3) An investment fiduciary of a system having assets of \$1,000,000,000.00 or more may invest not more than 15% of the system's assets in investments described in subsection (1).

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

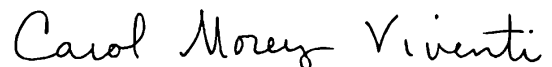
(5) If an investment described in subsection (1) is subsequently determined to be permitted under another section of this act, then the investment shall no longer be included under this section.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

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Governor