

**SUBSTITUTE FOR
HOUSE BILL NO. 5618**

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending section 13 (MCL 38.1133), as amended by 2009 PA 84, and
by adding section 13e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 (2) The assets of a system may be invested, reinvested, held
5 in nominee form, and managed by an investment fiduciary subject to
6 the terms, conditions, and limitations provided in this act. An
7 investment fiduciary of a defined contribution plan may arrange for
8 1 or more investment options to be directed by the participants of

1 the defined contribution plan. The limitations on the percentage of
2 total assets for investments provided in this act do not apply to a
3 defined contribution plan in which a participant directs the
4 investment of the assets in his or her individual account, and that
5 participant is not considered an investment fiduciary under this
6 act.

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

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

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

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

21 (d) Give appropriate consideration to those facts and
22 circumstances that the investment fiduciary knows or should know
23 are relevant to the particular investment or investment course of
24 action involved, including the role the investment or investment
25 course of action plays in that portion of the system's investments
26 for which the investment fiduciary has responsibility; and act
27 accordingly. For purposes of this subsection, "appropriate

1 consideration" includes, but is not limited to, a determination by
2 the investment fiduciary that a particular investment or investment
3 course of action is reasonably designed, as part of the investments
4 of the system, to further the purposes of the system, taking into
5 consideration the risk of loss and the opportunity for gain or
6 other return associated with the investment or investment course of
7 action; and consideration of the following factors as they relate
8 to the investment or investment course of action:

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

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

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

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

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

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

1 prescribed limitation.

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

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

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

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

12 (d) The public school employees retirement system created
13 under the public school employees retirement act of 1979, 1980 PA
14 300, MCL 38.1301 to 38.1408.

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

23 (6) The system shall be a separate and distinct trust fund and
24 the assets of the system shall be for the exclusive benefit of the
25 participants and their beneficiaries and of defraying reasonable
26 expenses of investing the assets of the system. With respect to a
27 system, an investment fiduciary shall not cause the system to

1 engage in a transaction if he or she knows or should know that the
2 transaction is any of the following, either directly or indirectly:

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

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

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

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

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

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

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

27 (c) Receive any consideration for his or her own personal

1 account from any party dealing with the system in connection with a
2 transaction involving the assets of the system.

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

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

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

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

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

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

20 (a) Be a registered investment adviser under either the
21 investment advisers act of 1940, 15 USC 80b-1 to 80b-21, the
22 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the
23 uniform securities act (2002), 2008 PA 551, MCL 451.2101 to
24 451.2703.

25 (b) Be a bank as defined under the investment advisers act of
26 1940, 15 USC 80b-1 to 80b-21.

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

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

5 (11) SUBJECT TO THE PROVISIONS OF THIS SECTION BUT
6 NOTWITHSTANDING ANYTHING THAT MAY BE TO THE CONTRARY IN THE
7 REMAINDER OF THE ACT, [AN INVESTMENT FIDUCIARY SHALL USE BEST EFFORTS TO
8 INVEST] AT LEAST 5% OF THE INVESTMENTS [] IN
9 MICHIGAN BUSINESSES IF THE INVESTMENT FIDUCIARY IS A FIDUCIARY OF
10 ANY OF THE FOLLOWING SYSTEMS:

11 (A) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE STATE
12 EMPLOYEES' RETIREMENT ACT, 1943 PA 240, MCL 38.1 TO 38.69.

13 (B) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE JUDGES
14 RETIREMENT ACT OF 1992, 1992 PA 234, MCL 38.2101 TO 38.2670.

15 (C) THE STATE POLICE RETIREMENT SYSTEM CREATED UNDER THE STATE
16 POLICE RETIREMENT ACT OF 1986, 1986 PA 182, MCL 38.1601 TO 38.1648.

17 (D) THE TIER 1 RETIREMENT PLAN CREATED UNDER THE PUBLIC SCHOOL
18 EMPLOYEES RETIREMENT ACT OF 1979, 1980 PA 300, MCL 38.1301 TO
19 38.1437.

20 (E) THE TIER 1 RETIREMENT PLAN CREATED UNDER THE MICHIGAN
21 LEGISLATIVE RETIREMENT SYSTEM ACT, 1957 PA 261, MCL 38.1001 TO
22 38.1080.

23 (12) THE INVESTMENT FIDUCIARY SHALL SELECT A FIRM OR FIRMS
24 THAT HAVE A PHYSICAL PRESENCE IN MICHIGAN TO MANAGE INVESTMENTS
25 REQUIRED UNDER SUBSECTION (11). IN SELECTING A FIRM OR FIRMS THAT
26 HAVE A PHYSICAL PRESENCE IN MICHIGAN TO MANAGE [ALL OR A PORTION OF] THE
27 INVESTMENTS, THE INVESTMENT FIDUCIARY SHALL [] ISSUE A REQUEST FOR

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 1 PROPOSAL AND UTILIZE COMPETITIVE BIDDING.

2 (13) [TO THE EXTENT FEASIBLE,] AT LEAST 1/2 OF THE []
 3 INVESTMENTS IN MICHIGAN
 4 BUSINESSES UNDER THIS ACT SHALL BE IN [SPECIFIC INVESTMENT IN A MICHIGAN
 5 BUSINESS] WITH A PHYSICAL
 6 PRESENCE IN [A CITY] OF PROMISE. [

7 (14) THE [FIDUCIARY] SHALL USE HIS OR HER BEST EFFORTS TO
 8 ASSURE THAT THE [] PERCENTAGE OF INVESTMENTS IDENTIFIED IN
 9 SUBSECTION (11) IS OBTAINED NOT LATER THAN JANUARY 1, 2015. THE
 10 [FIDUCIARY] SHALL REPORT TO THE LEGISLATURE ON A [SEMIANNUAL]
 11 BASIS ON THE STATUS AND NATURE OF THE INVESTMENTS REQUIRED UNDER
 12 SUBSECTION (11). THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

13 (A) THE TYPES OF BUSINESS CHOSEN FOR INVESTMENT.

14 (B) THE STATUS OF INVESTMENTS.

15 (C) THE NAMES OF APPLICANTS WHO WERE DENIED.

16 (D) THE REASONS FOR DENIAL OF THE APPLICATIONS.

17 [(E) ISSUES RELATED TO INVESTMENTS UNDER SUBSECTION (13).]

18 (15) ~~(11)~~ A system shall annually publish and make available
 19 to the plan participants and beneficiaries a list of all expenses
 20 paid by soft dollars.

21 (16) AS USED IN THIS SECTION, "MICHIGAN BUSINESS" MEANS A
 22 BUSINESS WITH A STATED COMMITMENT TO BEGIN OPERATIONS, EXPAND, OR
 23 CONTINUE IN THIS STATE. THE FORM OF INVESTMENT SHALL INCLUDE, BUT
 24 NOT BE LIMITED TO, ANY FORM OF INVESTMENT AUTHORIZED UNDER THIS
 25 ACT, VENTURE CAPITAL FIRMS LOCATED IN THIS STATE, PRIVATE EQUITY,
 26 MEZZANINE, AND OTHER INVESTMENTS, NOTWITHSTANDING LIMITATIONS THAT
 27 MAY BE IMPOSED IN OTHER SECTIONS OF THIS ACT.

SEC. 13E. A SYSTEM THAT UTILIZES AN INVESTMENT FIDUCIARY THAT

1 RENDERS INVESTMENT ADVICE SHALL, TO THE EXTENT FEASIBLE, ESTABLISH
2 STANDARDS AND PROCEDURES TO ENSURE THE CONSIDERATION OF QUALIFIED
3 FIDUCIARIES THAT ARE EMERGING FUND MANAGERS OR EMERGING BROKER-
4 DEALERS. THE STANDARDS AND PROCEDURES UTILIZED BY EACH INVESTMENT
5 FIDUCIARY FOR REVIEW AND EVALUATION OF CONTRACT PROPOSALS SHALL
6 INCLUDE A COMPONENT THAT GIVES CONSIDERATION TO WHETHER THE
7 APPLICANT IS AN EMERGING FUND MANAGER OR EMERGING BROKER-DEALER.
8 THE SYSTEM SHALL REPORT ON THE METHODS AND RESULTS OF THE REQUIRED
9 STANDARDS AND PROCEDURES ENSURING THE CONSIDERATION OF EMERGING
10 FUND MANAGERS AND EMERGING BROKER-DEALERS. THE REPORT MAY BE
11 PROVIDED BY INCLUSION OF INFORMATION ON THE METHODS AND RESULTS OF
12 THE STANDARDS AND PROCEDURES ENSURING THE CONSIDERATION OF EMERGING
13 FUND MANAGERS AND EMERGING BROKER-DEALERS IN THE ANNUAL FINANCIAL
14 REPORT REQUIRED UNDER THE UNIFORM BUDGETING AND ACCOUNTING ACT,
15 1968 PA 2, MCL 141.421 TO 141.440A, OR IN THE SUMMARY ANNUAL REPORT
16 AS PROVIDED UNDER SECTION 20H(2) OR, IF THE SYSTEM IS A STATE
17 SYSTEM, IN THE ANNUAL FINANCIAL REPORT REQUIRED UNDER SECTION 4A OF
18 1919 PA 71, MCL 21.44A. THE REPORT MAY INCLUDE DATA DISAGGREGATED
19 BY FUND SIZE OR CAPITALIZATION.