

HOUSE BILL No. 5570

May 8, 2014, Introduced by Reps. Yonker and Walsh and referred to the Committee on Detroit's Recovery and Michigan's Future.

A bill to amend 1965 PA 314, entitled "Public employee retirement system investment act," by amending sections 12e and 13 (MCL 38.1132e and 38.1133), section 12e as added by 1996 PA 485 and section 13 as amended by 2012 PA 347, and by adding section 13g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12e. (1) **"QUALIFIED SYSTEM" MEANS A SYSTEM CREATED AND**
2 **ESTABLISHED BY A CITY WITH A POPULATION OF MORE THAN 600,000.**

3 (2) ~~(1)~~—"Small business" means a corporation, partnership,
4 sole proprietorship, or other entity ~~which~~ **THAT** does not meet the
5 specific requirements of investments permitted under this act.

6 (3) ~~(2)~~—"Small business investment company" means an
7 incorporated body or a limited partnership under section 301 of
8 title III of the small business investment act of 1958, Public Law
9 85-699, 15 ~~U.S.C.~~ **USC** 681.

1 (4) ~~(3)~~ "Soft dollar" means brokerage commissions that are
2 used by the system to purchase goods or services.

3 (5) ~~(4)~~ "Stock" means capital stock, common stock, preferred
4 stock, American depository receipts, or any other evidence of
5 residual ownership of a corporation.

6 (6) ~~(5)~~ "System" means a public employee retirement system
7 created and established by this state or any political subdivision
8 of this state.

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

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

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

26 (a) Act with the same care, skill, prudence, and diligence
27 under the circumstances then prevailing that a prudent person

1 acting in a similar capacity and familiar with those matters would
2 use in the conduct of a similar enterprise with similar aims.

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

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

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

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

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

1 system.

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

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

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

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

18 (h) Prepare and maintain written policies regarding ethics and
19 professional training and education, including travel, which
20 policies contain clearly defined accountability and reporting
21 requirements for the system's investment fiduciaries.

22 (i) Publish a summary annual report that includes all of the
23 following:

24 (i) The name of the system.

25 (ii) The names of the system's investment fiduciaries.

26 (iii) The names of the system's service providers.

27 (iv) The system's assets and liabilities and changes in net

1 plan assets on a plan-year basis.

2 (v) The system's funded ratio based upon the ratio of
3 valuation assets to actuarial accrued liabilities on a plan-year
4 basis.

5 (vi) Except as otherwise provided in this subparagraph, the
6 system's investment performance net of fees on a rolling calendar-
7 year basis for the previous 1-, 3-, 5-, 7-, and 10-year periods.
8 For a system for which the state treasurer is the investment
9 fiduciary, the summary annual report shall include the system's
10 investment performance net of fees on a rolling calendar-year and
11 fiscal-year basis for the previous 1-, 3-, 5-, 7-, and 10-year
12 periods.

13 (vii) The system's administrative and investment expenditures
14 pursuant to standards of the governmental accounting standards
15 board, including, but not limited to, a list of all expenditures
16 made with soft dollars and all expenditures for professional
17 training and education, including travel expenditures, by or on
18 behalf of system board members that are paid by the system, if any.

19 (viii) The system's itemized budget containing all projected
20 expenditures, including, but not limited to, expenditures for
21 professional training and education, including travel expenditures,
22 by or on behalf of system board members that are paid by the
23 system.

24 (ix) The following information as provided in the system's most
25 recent annual actuarial valuation report:

26 (A) The number of active members.

27 (B) The number of retirees and beneficiaries.

1 (C) The average annual retirement allowance.

2 (D) The total annual retirement allowances being paid.

3 (E) The valuation payroll.

4 (F) The employer's computed normal cost of benefits expressed
5 as a percentage of valuation payroll.

6 (G) The employer's total contribution rate expressed as a
7 percentage of valuation payroll.

8 (H) The weighted average of member contributions, if any.

9 (I) The actuarial assumed rate of investment return.

10 (J) The actuarial assumed rate of long-term wage inflation.

11 (K) The smoothing method utilized to determine the funding
12 value of assets.

13 (L) The amortization method and period utilized for funding the
14 system's unfunded actuarial accrued liabilities, if any.

15 (M) The system's actuarial cost method.

16 (N) Whether system membership is open or closed to specific
17 groups of employees.

18 (x) IN ADDITION TO THE EXPENDITURES REPORTED UNDER
19 SUBPARAGRAPH (vii), FOR A QUALIFIED SYSTEM A TRAVEL REPORT LISTING
20 ALL TRAVEL OUTSIDE THIS STATE IN THE IMMEDIATELY PRECEDING FISCAL
21 YEAR THAT WAS FUNDED IN WHOLE OR IN PART WITH PUBLIC FUNDS. THE
22 REPORT MUST INCLUDE THE TOTAL EXPENSES FOR ALL OUT-OF-STATE TRAVEL
23 FUNDED DURING THE IMMEDIATELY PRECEDING FISCAL YEAR AND ALL OF THE
24 FOLLOWING INFORMATION FOR EACH TRAVEL OCCURRENCE:

25 (A) THE NAME OF EACH PERSON RECEIVING REIMBURSEMENT FOR TRAVEL
26 OUTSIDE THIS STATE OR WHOSE TRAVEL COSTS WERE PAID BY THE QUALIFIED
27 SYSTEM.

1 (B) THE DESTINATION.

2 (C) THE DATES.

3 (D) A BRIEF STATEMENT OF THE REASON FOR THE TRAVEL.

4 (E) AN ITEMIZATION OF THE TRANSPORTATION AND RELATED COSTS,
5 INCLUDING, BUT NOT LIMITED TO, THE AMOUNT FOR FOOD, LODGING, AND
6 VEHICLE RENTAL AND LISTING THE NAMES OF HOTELS, RESTAURANTS,
7 VEHICLE RENTAL AGENCIES, AND VEHICLE MODELS.

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

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

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

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

19 (d) The Michigan public school employees' retirement system
20 created under the public school employees retirement act of 1979,
21 1980 PA 300, MCL 38.1301 to 38.1437.

22 (5) ~~An~~ **SUBJECT TO SECTION 13G, AN** investment fiduciary may use
23 a portion of the income of the system to defray the costs of
24 investing, managing, and protecting the assets of the system; may
25 retain investment and all other goods and services necessary for
26 the conduct of the affairs of the system, including investment
27 advisors, consultants, custodians, accountants, auditors,

1 attorneys, actuaries, investment personnel, administrators, and
2 physicians; and may enter into contracts for and pay reasonable
3 compensation for those services. Subject to an annual appropriation
4 by the legislature, a deduction from the income of a state-
5 administered system resulting from the payment of those costs shall
6 be made.

7 (6) Subject to this subsection **AND SUBSECTION (13)**, an
8 investment fiduciary may use a portion of the income of the system
9 to defray the costs of professional training and education,
10 including travel costs, of system board members, which professional
11 training and education, including travel, are directly related to
12 the administration, management, and operation of the system. The
13 governing board vested with the general administration, management,
14 and operation of the system or other decision-making body that is
15 responsible for implementation and supervision of the system shall
16 adopt an annual budget for professional training and education,
17 including travel, authorized under this subsection. The budget
18 adopted under this subsection shall reflect the number of board
19 members, the size of the system, and the educational objectives of
20 the system. The system's total aggregate cost for professional
21 training and education, including travel costs, authorized under
22 this subsection for a fiscal year shall not exceed \$150,000.00 or
23 an amount that is equal to the total number of system board members
24 multiplied by \$12,000.00, whichever is less. The system's total
25 cost for professional training and education, including travel
26 costs, authorized under this subsection for an individual system
27 board member in a fiscal year shall not exceed \$30,000.00.

1 Beginning January 1, 2013, the department of treasury shall adjust
2 the dollar amounts in this subsection by an amount determined by
3 the state treasurer at the end of the immediately preceding
4 calendar year to reflect the cumulative annual percentage change in
5 the consumer price index. As used in this subsection, "consumer
6 price index" means the most comprehensive index of consumer prices
7 available for this state from the bureau of labor statistics of the
8 United States department of labor.

9 (7) Before any investment services are provided, an investment
10 service provider shall provide the investment fiduciary of the
11 system with a complete written disclosure of all fees or other
12 compensation associated with its relationship with the system.
13 After investment services are provided to the investment fiduciary
14 of the system, an investment service provider shall provide on an
15 annual basis written disclosure of all fees including, but not
16 limited to, commissions, 12b-1 and related fees, compensation paid
17 or to be paid to third parties, and any other compensation paid by
18 the system to the investment fiduciary of the system. As used in
19 this subsection, "investment service provider" means any
20 individual, third-party agent or consultant, or other entity that
21 receives direct or indirect compensation for consulting, investment
22 management, brokerage, or custody services related to the system's
23 assets. Investment service provider does not include a retirement
24 system.

25 (8) The system shall be a separate and distinct trust fund and
26 the assets of the system shall be for the exclusive benefit of the
27 participants and their beneficiaries and of defraying reasonable

1 expenses of investing the assets of the system. With respect to a
2 system, an investment fiduciary shall not cause the system to
3 engage in a transaction if he or she knows or should know that the
4 transaction is any of the following, either directly or indirectly:

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

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

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

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

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

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

25 (b) In his or her individual or any other capacity act in any
26 transaction involving the system on behalf of a party whose
27 interests are adverse to the interests of the system or the

1 interest of its participants or participants' beneficiaries.

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

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

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

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

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

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

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

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

1 (12) An investment fiduciary shall not invest in a debt
2 instrument issued by a foreign country that has been designated by
3 the United States department of state as a state sponsor of terror.

4 (13) A QUALIFIED SYSTEM SHALL NOT PAY THE EXPENSES FOR A
5 PERSON TO TRAVEL OUTSIDE THIS STATE FROM FUNDS UNDER ITS CONTROL
6 UNLESS 1 OR MORE OF THE FOLLOWING CONDITIONS APPLY TO THE TRAVEL:

7 (A) IT IS REQUIRED BY LEGAL MANDATE OR COURT ORDER OR FOR LAW
8 ENFORCEMENT PURPOSES.

9 (B) IT IS NECESSARY TO PROTECT THE HEALTH OR SAFETY OF
10 CITIZENS OF, OR VISITORS TO, THIS STATE OR TO ASSIST OTHER STATES
11 IN SIMILAR CIRCUMSTANCES.

12 (C) IT IS NECESSARY TO PRODUCE BUDGETARY SAVINGS OR TO
13 INCREASE REVENUES, INCLUDING PROTECTING EXISTING FEDERAL FUNDS OR
14 SECURING ADDITIONAL FEDERAL FUNDS.

15 (D) IT IS NECESSARY TO COMPLY WITH FEDERAL REQUIREMENTS.

16 (E) IT IS NECESSARY TO SECURE SPECIALIZED TRAINING FOR STAFF
17 THAT IS ESSENTIAL TO PERFORMING THE DUTIES OF THE POSITION AND IS
18 NOT AVAILABLE WITHIN THIS STATE.

19 (F) IT IS FINANCED ENTIRELY BY FEDERAL FUNDS OR BY PRIVATE
20 FUNDS GRANTED EXPRESSLY FOR THE PURPOSE OF THE TRAVEL.

21 SEC. 13G. (1) SUBJECT TO A PLAN FOR ADJUSTMENT, EACH QUALIFIED
22 SYSTEM SHALL ESTABLISH AN INVESTMENT COMMITTEE.

23 (2) THE INVESTMENT COMMITTEE SHALL RECOMMEND TO THE GOVERNING
24 BOARD OF THE QUALIFIED SYSTEM INVESTMENT MANAGEMENT DECISIONS,
25 INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

26 (A) THE DEVELOPMENT OF INVESTMENT OBJECTIVES, INVESTMENT
27 ASSUMPTIONS, AND PERFORMANCE MEASUREMENT STANDARDS CONSISTENT WITH

1 THE NEEDS OF THE QUALIFIED SYSTEM.

2 (B) THE SELECTION, MONITORING, EVALUATION, AND REMOVAL OF
3 CUSTODIANS AND QUALIFIED INVESTMENT MANAGERS.

4 (C) ASSET ALLOCATION.

5 (D) BENEFIT ENHANCEMENTS OR RESTORATIONS.

6 (E) PERFORMING OR ORDERING ASSET LIABILITY VALUATION STUDIES
7 FOR THE QUALIFIED SYSTEM NOT LESS FREQUENTLY THAN EVERY 2 YEARS.

8 (F) APPROVAL OR ACCEPTANCE OF ALL ANNUAL AUDITS AND ACTUARIAL
9 AND FINANCIAL REPORTS BEFORE FINALIZATION.

10 (G) INTERPRETATION OF THE QUALIFIED SYSTEM'S GOVERNING
11 DOCUMENTS, APPLICABLE LAWS, PLANS OF ADJUSTMENT APPROVED BY UNITED
12 STATES BANKRUPTCY COURTS, AND OTHER FINANCIAL DETERMINATIONS
13 AFFECTING THE QUALIFIED SYSTEM'S FUNDING OR BENEFIT LEVELS.

14 (H) APPROVAL AND IMPLEMENTATION OF ANY FISCAL RESPONSIBILITY
15 ACTIONS PROVIDED FOR IN THE QUALIFIED SYSTEM'S GOVERNING DOCUMENTS,
16 INCLUDING INCREASED MEMBER CONTRIBUTIONS OR BENEFIT REDUCTIONS.

17 (3) THE INVESTMENT COMMITTEE SHALL DO ALL OF THE FOLLOWING:

18 (A) SELECT, APPOINT, MONITOR, AND EVALUATE ADVISORS OR
19 CONSULTANTS TO THE INVESTMENT COMMITTEE.

20 (B) SELECT, APPOINT, MONITOR, AND EVALUATE ADVISORS OR
21 CONSULTANTS TO THE QUALIFIED SYSTEM.

22 (C) SELECT, APPOINT, MONITOR, AND EVALUATE THE QUALIFIED
23 SYSTEM'S CHIEF FINANCIAL OFFICER.

24 (D) NOTWITHSTANDING SECTION 20H(6), APPROVE A QUALIFIED
25 SYSTEM'S SUMMARY ANNUAL REPORT CREATED UNDER SECTION 13 BEFORE THE
26 SUMMARY ANNUAL REPORT IS MADE PUBLIC.

27 (4) THE INVESTMENT COMMITTEE MAY REMOVE AN ADVISOR,

1 CONSULTANT, OR CHIEF FINANCIAL OFFICER APPOINTED UNDER SUBSECTION
2 (3).

3 (5) THE INVESTMENT COMMITTEE SHALL SUBMIT ITS RECOMMENDATION
4 UNDER SUBSECTION (2) TO THE BOARD. THE BOARD SHALL HAVE NOT MORE
5 THAN 45 DAYS FROM THE DATE OF THE SUBMISSION, OR 10 BUSINESS DAYS
6 IF THE COMMITTEE DETERMINES IN GOOD FAITH THAT EMERGENCY ACTION IS
7 REQUIRED, TO APPROVE OR DISAPPROVE THE RECOMMENDATION. IF THE BOARD
8 DOES NOT ACT WITHIN 45 DAYS OR 10 DAYS, AS APPLICABLE, THE
9 RECOMMENDATION IS CONSIDERED APPROVED BY THE BOARD AND THE CHIEF
10 FINANCIAL OFFICER SHALL IMPLEMENT THE RECOMMENDATION.

11 (6) IF THE BOARD DISAPPROVES THE INVESTMENT COMMITTEE'S
12 RECOMMENDATION WITHIN 45 DAYS OR 10 DAYS, AS APPLICABLE, THE BOARD
13 SHALL, WITHIN 45 DAYS OF ITS DISAPPROVAL OF THE COMMITTEE'S
14 RECOMMENDATION, SUBMIT TO THE COMMITTEE A WRITTEN ALTERNATIVE
15 RECOMMENDATION. THE COMMITTEE SHALL HAVE 45 DAYS TO REVIEW THE
16 BOARD'S ALTERNATIVE RECOMMENDATION AND MAY REQUEST A CONFERENCE
17 WITH THE BOARD TO DISCUSS THE ALTERNATIVE RECOMMENDATION. AFTER THE
18 CONFERENCE WITH THE BOARD OR, IF NO CONFERENCE IS HELD, NOT LATER
19 THAN 45 DAYS AFTER THE COMMITTEE RECEIVES THE ALTERNATIVE
20 RECOMMENDATION, THE COMMITTEE SHALL APPROVE EITHER THE COMMITTEE'S
21 RECOMMENDATION OR THE BOARD'S ALTERNATIVE RECOMMENDATION. IF THE
22 COMMITTEE REJECTS THE BOARD'S ALTERNATIVE RECOMMENDATION, THE
23 COMMITTEE SHALL PROVIDE THE BOARD WITH WRITTEN EXPLANATION OF THE
24 REJECTION. THE CHIEF FINANCIAL OFFICER SHALL IMPLEMENT THE
25 ALTERNATE RECOMMENDATION SUBMITTED BY THE BOARD OR THE
26 RECOMMENDATION SUBMITTED BY THE COMMITTEE, WHICHEVER IS APPROVED BY
27 THE COMMITTEE.

1 (7) AS USED IN THIS SECTION:

2 (A) "BOARD" MEANS THE GOVERNING BOARD OF A QUALIFIED SYSTEM.

3 (B) "CHIEF FINANCIAL OFFICER" MEANS THE CHIEF FINANCIAL
4 OFFICER OF A QUALIFIED SYSTEM.

5 (C) "INVESTMENT COMMITTEE" OR "COMMITTEE" MEANS AN INVESTMENT
6 COMMITTEE ESTABLISHED UNDER SUBSECTION (1).

7 (D) "PLAN FOR ADJUSTMENT" MEANS THE PLAN FOR THE ADJUSTMENT OF
8 DEBTS ENTERED AND APPROVED BY A FEDERAL BANKRUPTCY COURT FOR A CITY
9 THAT HAS ESTABLISHED A QUALIFIED SYSTEM.