

Act No. 185
Public Acts of 2014
Approved by the Governor
June 19, 2014
Filed with the Secretary of State
June 20, 2014
EFFECTIVE DATE: June 20, 2014

**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Reps. Yonker and Walsh

ENROLLED HOUSE BILL No. 5570

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 12c, 13, 13e, and 20m (MCL 38.1132c, 38.1133, 38.1133e, and 38.1140m), sections 12c, 13, and 20m as amended and section 13e as added by 2012 PA 347, and by adding section 13g.

The People of the State of Michigan enact:

Sec. 12c. (1) "Investment fiduciary" means a person other than a participant directing the investment of the assets of his or her individual account in a defined contribution plan who does any of the following:

(a) Exercises any discretionary authority or control in the investment of a system's assets. Investment fiduciary under this subdivision includes the state treasurer and his or her investment personnel for the systems described in section 13(4).

(b) Renders investment advice for a system for a fee or other direct or indirect compensation.

(2) "Invest" or "investment" means the utilization of money in the expectation of future returns in the form of income or capital gain. Investments initially purchased in accordance with this act that subsequently do not qualify for purchase for any reason shall be considered to continue to meet the requirements of this act. Investment includes a guarantee by an investment fiduciary but does not include, as a sole investment, a pledge of the system's assets as collateral to guarantee the repayment of obligations made by a third party to a borrower.

(3) "Investment grade" means graded in the top 4 major grades as determined by 2 national rating services.

(4) "Large sponsored system" means a system created and established by a city that is subject to a plan for adjustment and that meets 1 or more of the following conditions:

(a) The city has a population of more than 600,000.

(b) The system has discharged at least \$1,000,000,000.00 of pension liabilities in bankruptcy.

Sec. 13. (1) 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 under 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.

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

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

(i) The name of the system.

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

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

(iv) The system's assets and liabilities and changes in net plan assets on a plan-year basis.

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

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

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

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

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

(A) The number of active members.

(B) The number of retirees and beneficiaries.

(C) The average annual retirement allowance.

(D) The total annual retirement allowances being paid.

- (E) The valuation payroll.
- (F) The employer's computed normal cost of benefits expressed as a percentage of valuation payroll.
- (G) The employer's total contribution rate expressed as a percentage of valuation payroll.
- (H) The weighted average of member contributions, if any.
- (I) The actuarial assumed rate of investment return.
- (J) The actuarial assumed rate of long-term wage inflation.
- (K) The smoothing method utilized to determine the funding value of assets.
- (l) The amortization method and period utilized for funding the system's unfunded actuarial accrued liabilities, if any.
- (M) The system's actuarial cost method.
- (N) Whether system membership is open or closed to specific groups of employees.

(x) In addition to the expenditures reported under subparagraph (vii), for a large sponsored system a travel report listing all travel outside this state in the immediately preceding fiscal year that was funded in whole or in part with public funds. The report must include the total expenses for all out-of-state travel funded during the immediately preceding fiscal year and all of the following information for each travel occurrence:

(A) The name of each person receiving reimbursement for travel outside this state or whose travel costs were paid by the large sponsored system and funded in whole or in part with public funds.

(B) The destination.

(C) The dates.

(D) A brief statement of the reason for the travel.

(E) An itemization of the transportation and related costs, including, but not limited to, the amount for food, lodging, and vehicle rental and listing the names of hotels, restaurants, vehicle rental agencies, and vehicle models.

(j) An investment fiduciary of a large sponsored system shall submit a summary annual report described in subdivision (i) to the financial review commission created under the Michigan financial review commission act.

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

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

(5) Subject to section 13g, 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 goods and services necessary for the conduct of the affairs of the system, including investment advisors, consultants, custodians, accountants, auditors, attorneys, actuaries, investment personnel, administrators, and physicians; and may enter into contracts for and 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) Subject to this subsection and subsection (13), an investment fiduciary may use a portion of the income of the system to defray the costs of professional training and education, including travel costs, of system board members, which professional training and education, including travel, are directly related to the administration, management, and operation of the system. The governing board vested with the general administration, management, and operation of the system or other decision-making body that is responsible for implementation and supervision of the system shall adopt an annual budget for professional training and education, including travel, authorized under this subsection. The budget adopted under this subsection shall reflect the number of board members, the size of the system, and the educational objectives of the system. The system's total aggregate cost for professional training and education, including travel costs, authorized under this subsection for a fiscal year shall not exceed \$150,000.00 or an amount that is equal to the total number of system board members multiplied by \$12,000.00, whichever is less. The system's total cost for professional training and education, including travel costs, authorized under this subsection for an individual system board member in a fiscal year shall not exceed \$30,000.00. Beginning January 1, 2013, the department of treasury shall adjust the dollar amounts in this subsection by an amount determined by the state treasurer at the end of the immediately preceding calendar year to reflect the cumulative annual percentage change in the consumer price index. As used in this subsection, "consumer price index" means the most comprehensive index of consumer prices available for this state from the bureau of labor statistics of the United States department of labor.

(7) Before any investment services are provided, an investment service provider shall provide the investment fiduciary of the system with a complete written disclosure of all fees or other compensation associated with its relationship with the system. After investment services are provided to the investment fiduciary of the system, an investment service provider shall provide on an annual basis written disclosure of all fees including, but not limited to, commissions, 12b-1 and related fees, compensation paid or to be paid to third parties, and any other compensation paid by the system to the investment fiduciary of the system. As used in this subsection, “investment service provider” means any individual, third-party agent or consultant, or other entity that receives direct or indirect compensation for consulting, investment management, brokerage, or custody services related to the system’s assets. For purposes of this section only, investment service provider does not include a retirement system.

(8) 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.

(9) 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.

(10) 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.

(11) 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 the investment advisers act of 1940, 15 USC 80b-1 to 80b-21, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

(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).

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

(13) A large sponsored system shall not pay the expenses for a person to travel outside this state from funds under its control unless 1 or more of the following conditions apply to the travel:

(a) It is required by legal mandate or court order or for law enforcement purposes.

(b) It is necessary to protect the health or safety of citizens of, or visitors to, this state or to assist other states in similar circumstances.

(c) It is necessary to produce budgetary savings or to increase revenues, including protecting existing federal funds or securing additional federal funds.

(d) It is necessary to secure specialized training for that person that is substantially related to performing the duties of the position and is not available within this state.

Sec. 13e. (1) An investment fiduciary shall not make a payment from the assets of a system to a service provider if the service provider or a covered associate of the service provider has made a contribution to an official of a governmental entity during the immediately preceding 24-calendar-month period, which period does not include any calendar month before March 28, 2013. An investment fiduciary, a service provider, or a covered associate of a service provider shall not do anything indirectly that, if done directly, would violate this subsection. This subsection does not apply under any of the following circumstances:

(a) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed \$350.00 per election.

(b) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was not entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed \$150.00 per election.

(c) The contribution was made to an official of a governmental entity by an individual more than 6 months before he or she became a covered associate of the service provider.

(d) The contribution was made to an official of a governmental entity by a covered associate of the service provider and all of the following requirements are met:

(i) The service provider discovers the contribution that violates this subsection on or before the expiration of 4 months after the contribution was made.

(ii) The contribution that violates this subsection was for \$350.00 or less.

(iii) The covered associate of the service provider obtains the return of the contribution that violates this subsection on or before the expiration of 60 calendar days after the date of the discovery of the contribution under subparagraph (i).

(2) As used in this section:

(a) "Contribution" means a payment made under any of the following circumstances:

(i) For the purpose of influencing an election for federal, state, or local office.

(ii) For a debt incurred in connection with an election for federal, state, or local office.

(iii) For transition or inaugural expenses of a successful candidate for federal, state, or local office.

(iv) To a legal defense fund established by or on behalf of an official of a governmental entity.

(b) "Covered associate of the service provider" means any of the following:

(i) A general partner, managing member, agent, or officer of the service provider or any other individual with a similar status or function for the service provider.

(ii) An employee of the service provider who solicits a governmental entity on behalf of the service provider and any individual employed by the service provider who directly or indirectly supervises that employee.

(iii) A political action committee controlled by the service provider or by any individual described in subparagraph (i) or (ii). As used in this subparagraph, "political action committee" means a political committee or an independent committee as those terms are defined in the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

(c) "Governmental entity" means this state or a political subdivision of this state. Governmental entity includes a system and an agency, authority, or instrumentality of this state or of a political subdivision of this state.

(d) "Official of a governmental entity" means an individual who, at the time of the contribution, was an incumbent, candidate, or successful candidate for an elective office in a governmental entity if the office meets any of the following requirements:

(i) Is directly or indirectly responsible for or can influence the outcome of the hiring of a service provider by a system sponsored by the governmental entity.

(ii) Has the authority to appoint an individual who is directly or indirectly responsible for or can influence the outcome of the hiring of a service provider by a system sponsored by the governmental entity.

(e) "Payment" means a gift, subscription, loan, advance, or deposit of money or anything of value.

(f) "Regulated investment adviser" means an investment adviser or covered associate of an investment adviser that is regulated under the investment advisers act of 1940, 15 USC 80b-1 to 80b-21.

(g) "Service provider" means a person retained to provide services to a system and includes investment advisers, consultants, custodians, accountants, auditors, attorneys, actuaries, administrators, and physicians. Service provider includes an investment service provider as defined in section 13(7). Service provider does not include a regulated investment adviser.

(3) For purposes of subsection (2)(d), an official of a governmental entity does not include an individual involved solely in the selection of a member of an investment committee described in section 13g.

Sec. 13g. (1) Subject to a plan for adjustment, each large sponsored system shall establish an investment committee.

(2) The investment committee shall recommend to the governing board of the large sponsored system investment management decisions, including, but not limited to, all of the following:

(a) The development of investment goals and objectives, investment assumptions, and performance measurement standards consistent with the needs of the large sponsored system.

(b) The selection, monitoring, evaluation, and removal of custodians, investment managers, or any investment service providers.

(c) Asset allocation.

(d) Subject to a plan for adjustment, all calculations, actuarial assumptions, or assessments used by an actuary, including, but not limited to, those underlying the restoration of pension benefits, funding levels, and amortization of the restoration of pension benefits, and those underlying the determination of annual funding levels and amortization of annual funding levels, and recommended contributions to the large sponsored system in accordance with applicable law.

(e) Performing or ordering asset liability valuation studies for the qualified system not less frequently than every 2 years.

(f) Review and approval, before final issuance of all annual audits and actuarial and financial reports before finalization.

(g) Interpretation of the large sponsored system's governing documents, applicable laws, plans of adjustment approved by United States bankruptcy courts, and other financial determinations affecting the large sponsored system's funding or benefit levels.

(h) Based on annual actuarial valuation reports and any other projections or reports, as applicable from an actuary or other professional advisors, the determination of the extent of restoration of pension benefits all in conformance with a plan for adjustment.

(3) The investment committee shall do all of the following:

(a) Select, set compensation for and terms of employment of, and evaluate the qualified system's chief financial officer.

(b) Notwithstanding section 20h(6), approve a qualified system's summary annual report created under section 13 before the summary annual report is made public.

(4) The investment committee shall submit its recommendation under subsection (2) to the board. The board shall have not more than 45 days from the date of the submission, or 10 business days if the committee determines in good faith that emergency action is required, to approve or disapprove the recommendation. If the board does not act within 45 days or 10 days, as applicable, the recommendation is considered approved by the board and the chief financial officer shall implement the recommendation.

(5) If the board disapproves the investment committee's recommendation within 45 days or 10 days, as applicable, the decision shall be implemented under the plan for adjustment.

(6) As used in this section:

(a) "Board" means the governing board of a large sponsored system.

(b) "Chief financial officer" means the chief financial officer of a qualified system.

(c) "Investment committee" or "committee" means an investment committee established under subsection (1).

(d) "Plan for adjustment" means a plan for the adjustment of debts entered and approved by a federal bankruptcy court for a city that has established a large sponsored system.

Sec. 20m. (1) The governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of any system shall confirm in the annual actuarial valuation required under section 20h and the summary annual report required under section 13 that each system under this act provides for the payment of the required employer contribution as provided in this section and shall confirm in the summary annual report that the system has received the required employer contribution for the year covered in the summary annual report. The required employer contribution is the actuarially determined contribution amount. An annual required employer contribution in a system under this act shall consist of a current service cost payment and a payment of at least the annual accrued amortized interest on any unfunded actuarial liability and the payment of the annual accrued amortized portion of the unfunded principal liability. For fiscal years that begin before January 1, 2006, the required employer contribution shall not be determined using an amortization period greater than 40 years. Except as otherwise provided in this section, for fiscal years that begin after December 31, 2005, the required employer contribution shall not be determined using an amortization period greater than 30 years. For the Tier 1 retirement plan under the state employees' retirement system, created under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69; the Michigan public school employees' retirement created under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437; and the Michigan state police retirement

system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648, only, for the fiscal year beginning October 1, 2006, the contribution for the unfunded actuarial accrued liability shall be equal to the product of the assumed real rate of investment return times the unfunded actuarial accrued liability. In a plan year, any current service cost payment may be offset by a credit for amortization of accrued assets, if any, in excess of actuarial accrued liability. A required employer contribution for a system administered under this act shall allocate the actuarial present value of future plan benefits between the current service costs to be paid in the future and the actuarial accrued liability. The governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of a system shall act upon the recommendation of an actuary and the board and the actuary shall take into account the standards of practice of the actuarial standards board of the American academy of actuaries in making the determination of the required employer contribution.

(2) Subsection (1) applies to a large sponsored system except as otherwise provided in a plan for adjustment. As used in this subsection, "plan for adjustment" means that term as defined in section 13g.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor