

SENATE BILL No. 738

February 2, 2016, Introduced by Senator BOOHER and referred to the Committee on Appropriations.

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending section 13 (MCL 38.1133), as amended by 2014 PA 545.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) This act supersedes any investment authority
2 previously granted to a system under any other law of this state.

3 (2) The assets of a system may be invested, reinvested, held
4 in nominee form, and managed by an investment fiduciary subject to
5 the terms, conditions, and limitations provided in this act. An
6 investment fiduciary of a defined contribution plan may arrange for
7 1 or more investment options to be directed by the participants of
8 the defined contribution plan. The limitations on the percentage of
9 total assets for investments provided in this act do not apply to a
10 defined contribution plan in which a participant directs the
11 investment of the assets in his or her individual account, and that

1 participant is not considered an investment fiduciary under this
2 act.

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

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

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

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

17 (d) Give appropriate consideration to those facts and
18 circumstances that the investment fiduciary knows or should know
19 are relevant to the particular investment or investment course of
20 action involved, including the role the investment or investment
21 course of action plays in that portion of the system's investments
22 for which the investment fiduciary has responsibility; and act
23 accordingly. For purposes of this subsection, "appropriate
24 consideration" includes, but is not limited to, a determination by
25 the investment fiduciary that a particular investment or investment
26 course of action is reasonably designed, as part of the investments
27 of the system, to further the purposes of the system, taking into

1 consideration the risk of loss and the opportunity for gain or
2 other return associated with the investment or investment course of
3 action; and consideration of the following factors as they relate
4 to the investment or investment course of action:

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

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

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

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

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

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

25 (h) Prepare and maintain written policies regarding ethics and
26 professional training and education, including travel, which
27 policies contain clearly defined accountability and reporting

1 requirements for the system's investment fiduciaries.

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

4 (i) The name of the system.

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

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

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

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

12 (vi) Except as otherwise provided in this subparagraph, the
13 system's investment performance net of fees on a rolling calendar-
14 year basis for the previous 1-, 3-, 5-, 7-, and 10-year periods.

15 For a system for which the state treasurer is the investment
16 fiduciary, the summary annual report must include the system's
17 investment performance net of fees on a rolling calendar-year and
18 fiscal-year basis for the previous 1-, 3-, 5-, 7-, and 10-year
19 periods.

20 (vii) The system's administrative and investment expenditures
21 pursuant to standards of the ~~governmental accounting standards~~
22 ~~board~~, **GOVERNMENTAL ACCOUNTING STANDARDS BOARD**, including, but not
23 limited to, a list of all expenditures made with soft dollars and
24 all expenditures for professional training and education, including
25 travel expenditures, by or on behalf of system board members that
26 are paid by the system, if any.

27 (viii) The system's itemized budget containing all projected

1 expenditures, including, but not limited to, expenditures for
2 professional training and education, including travel expenditures,
3 by or on behalf of system board members that are paid by the
4 system.

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

7 (A) The number of active members.

8 (B) The number of retirees and beneficiaries.

9 (C) The average annual retirement allowance.

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

11 (E) The valuation payroll.

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

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

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

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

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

19 (K) The smoothing method utilized to determine the funding
20 value of assets.

21 (L) ~~(L)~~—The amortization method and period utilized for
22 funding the system's unfunded actuarial accrued liabilities, if
23 any.

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

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

27 (x) In addition to the expenditures reported under

1 subparagraph (vii), for a large sponsored system a travel report
2 listing all travel outside this state in the immediately preceding
3 fiscal year that was funded in whole or in part with public funds.
4 The report must include the total expenses for all out-of-state
5 travel funded during the immediately preceding fiscal year and all
6 of the following information for each travel occurrence:

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

10 (B) The destination.

11 (C) The dates.

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

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

17 (xi) FOR A STATE UNIT, AN EXECUTIVE SUMMARY OF BOTH OF THE
18 FOLLOWING:

19 (A) THE STATE UNIT'S UNFUNDED ACTUARIAL ACCRUED LIABILITIES
20 FOR RETIREE HEALTH AND PENSION.

21 (B) THE INFORMATION DESCRIBED IN SUBPARAGRAPH (v).

22 (j) An investment fiduciary of a large sponsored system shall
23 submit a summary annual report described in subdivision (i) to the
24 financial review commission created under the Michigan financial
25 review commission act, 2014 PA 181, MCL 141.1631 to 141.1643.

26 (K) FOR A STATE UNIT, SUBMIT THE EXECUTIVE SUMMARY REQUIRED
27 UNDER SUBDIVISION (I) (xi) TO THE SENATE AND HOUSE OF

1 REPRESENTATIVES APPROPRIATIONS COMMITTEES AND THE SENATE AND HOUSE
2 FISCAL AGENCIES NOT LESS THAN 30 DAYS AFTER PUBLICATION.

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

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

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

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

14 (d) The Michigan public school employees' retirement system
15 created under the public school employees retirement act of 1979,
16 1980 PA 300, MCL 38.1301 to 38.1437.

17 (5) Subject to section 13g, an investment fiduciary may use a
18 portion of the **SYSTEM'S** income ~~of the system~~ to defray the costs of
19 investing, managing, and protecting the assets of the system; may
20 retain investment and all other goods and services necessary for
21 the conduct of the affairs of the system, including investment
22 advisors, consultants, custodians, accountants, auditors,
23 attorneys, actuaries, investment personnel, administrators, and
24 physicians; and may enter into contracts for and pay reasonable
25 compensation for those services. Subject to an annual appropriation
26 by the legislature, a deduction from the income of a state-
27 administered system resulting from the payment of those costs must

1 be made.

2 (6) Subject to this subsection and subsection (13), an
3 investment fiduciary may use a portion of the ~~income of the system~~
4 **SYSTEM'S INCOME** to defray the costs of professional training and
5 education, including travel costs, of system board members, which
6 professional training and education, including travel, are directly
7 related to the administration, management, and operation of the
8 system. The governing board vested with the general administration,
9 management, and operation of the system or other decision-making
10 body that is responsible for implementation and supervision of the
11 system shall adopt an annual budget for professional training and
12 education, including travel, authorized under this subsection. The
13 budget adopted under this subsection must reflect the number of
14 board members, the size of the system, and the educational
15 objectives of the system. The system's total aggregate cost for
16 professional training and education, including travel costs,
17 authorized under this subsection for a fiscal year must not exceed
18 \$150,000.00 or an amount that is equal to the total number of
19 system board members multiplied by \$12,000.00, whichever is less.
20 The system's total cost for professional training and education,
21 including travel costs, authorized under this subsection for an
22 individual system board member in a fiscal year must not exceed
23 \$30,000.00. Beginning January 1, 2013, the department of treasury
24 shall adjust the dollar amounts in this subsection by an amount
25 determined by the state treasurer at the end of the immediately
26 preceding calendar year to reflect the cumulative annual percentage
27 change in the consumer price index. As used in this subsection,

1 "consumer price index" means the most comprehensive index of
2 consumer prices available for this state from the ~~bureau of labor~~
3 ~~statistics~~**BUREAU OF LABOR STATISTICS** of the United States
4 ~~department of labor~~**DEPARTMENT OF LABOR**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (a) Be a registered investment adviser under the investment
19 advisers act of 1940, 15 USC 80b-1 to 80b-21, or the uniform
20 securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

21 (b) Be a bank as defined under the investment advisers act of
22 1940, 15 USC 80b-1 to 80b-21.

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

24 (12) An investment fiduciary shall not invest in a debt
25 instrument issued by a foreign country that has been designated by
26 the United States ~~department of state~~ **DEPARTMENT OF STATE** as a
27 state sponsor of terror.

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

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

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

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

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

15 (14) Subject to section 13g, an investment fiduciary of a
16 large sponsored system that invests or has invested in a hazardous
17 waste deep disposal well facility regulated under part 111 or 121
18 of the natural resources and environmental protection act, 1994 PA
19 451, MCL 324.11101 to 324.11153 and 324.12101 to 324.12117, is
20 subject to all of the following:

21 (a) The investment fiduciary shall not make an additional
22 investment in the hazardous waste deep disposal well facility
23 unless the investment is solely to prepare the property on which
24 the hazardous waste deep disposal well facility is located for sale
25 for purposes other than operation as a hazardous waste deep
26 disposal well facility or similar hazardous facility.

27 (b) The investment fiduciary shall sell, redeem, divest, or

1 withdraw all investments in the hazardous waste deep disposal well
2 facility within 180 days after any of the following circumstances
3 occur:

4 (i) The operator of the hazardous waste deep disposal well
5 facility files for bankruptcy.

6 (ii) The sale, transfer, purchase, or acquisition of a
7 controlling interest in the operator of the hazardous waste deep
8 disposal well facility.

9 (iii) An ~~environmental protection agency~~ **ENVIRONMENTAL**
10 **PROTECTION AGENCY** action for a violation at the hazardous waste
11 deep disposal well facility.

12 (iv) An ~~environmental protection agency~~ **ENVIRONMENTAL**
13 **PROTECTION AGENCY** revocation of the operator's license.

14 (v) An ~~environmental protection agency~~ **ENVIRONMENTAL**
15 **PROTECTION AGENCY** or department of environmental quality order to
16 terminate operations at the hazardous waste deep disposal well
17 facility.

18 (15) FOR A STATE UNIT, A REPRESENTATIVE OF THE OFFICE OF
19 RETIREMENT SERVICES IN THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT,
20 AND BUDGET SHALL APPEAR BEFORE THE SENATE AND HOUSE OF
21 REPRESENTATIVES APPROPRIATIONS COMMITTEES ON REQUEST OF THE
22 COMMITTEE CHAIR TO TESTIFY ABOUT THE SYSTEM'S SUMMARY ANNUAL REPORT
23 REQUIRED UNDER SUBSECTION (3).

24 (16) AS USED IN THIS SECTION, "STATE UNIT" MEANS A SYSTEM
25 ESTABLISHED UNDER THE STATE EMPLOYEES' RETIREMENT ACT, 1943 PA 240,
26 MCL 38.1 TO 38.69, THE PUBLIC SCHOOL EMPLOYEES RETIREMENT ACT OF
27 1979, 1980 PA 300, MCL 38.1301 TO 38.1437, THE JUDGES RETIREMENT

1 ACT OF 1992, 1992 PA 234, MCL 38.2101 TO 38.2670, AND THE STATE
2 POLICE RETIREMENT ACT OF 1986, 1986 PA 182, MCL 38.1601 TO 38.1648.