

# HOUSE BILL No. 5823

September 7, 2016, Introduced by Reps. Wittenberg, Schor, Moss, Callton, Glenn, Kesto, Afendoulis, Pscholka, Pagan, Greimel, Geiss, LaVoy, Faris, Brinks, Hovey-Wright and Yanez and referred to the Committee on Government Operations.

A bill to amend 1965 PA 314, entitled  
"Public employee retirement system investment act,"  
(MCL 38.1132 to 38.1141) by adding section 13h.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 13H. (1) WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THE  
2        AMENDATORY ACT THAT ADDED THIS SECTION, THE FIDUCIARY SHALL MAKE  
3        ITS BEST EFFORTS TO IDENTIFY ALL SCRUTINIZED COMPANIES IN WHICH THE  
4        FIDUCIARY HAS DIRECT OR INDIRECT HOLDINGS OR COULD POSSIBLY HAVE  
5        DIRECT OR INDIRECT HOLDINGS IN THE FUTURE. THE EFFORTS MAY INCLUDE  
6        1 OR MORE OF THE FOLLOWING:

7        (A) REVIEWING AND RELYING, AS APPROPRIATE IN THE FIDUCIARY'S  
8        JUDGMENT, ON PUBLICLY AVAILABLE INFORMATION REGARDING COMPANIES  
9        THAT BOYCOTT A PERSON BASED IN OR DOING BUSINESS WITH A  
10       JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN TRADE, INCLUDING  
11       INFORMATION PROVIDED BY NONPROFIT ORGANIZATIONS, RESEARCH FIRMS,

1 INTERNATIONAL ORGANIZATIONS, AND GOVERNMENT ENTITIES.

2 (B) CONTACTING ASSET MANAGERS CONTRACTED BY THE FIDUCIARY THAT  
3 INVEST IN COMPANIES THAT BOYCOTT A PERSON BASED IN OR DOING  
4 BUSINESS WITH A JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN  
5 TRADE.

6 (C) CONTACTING OTHER INSTITUTIONAL INVESTORS THAT HAVE  
7 DIVESTED FROM OR ENGAGED WITH COMPANIES THAT BOYCOTT A PERSON BASED  
8 IN OR DOING BUSINESS WITH A JURISDICTION WITH WHICH THIS STATE CAN  
9 ENJOY OPEN TRADE.

10 (2) AT THE END OF THE 90-DAY PERIOD DESCRIBED IN SUBSECTION  
11 (1) OR BY THE FIRST MEETING OF THE FIDUCIARY FOLLOWING THE 90-DAY  
12 PERIOD DESCRIBED IN SUBSECTION (1), THE FIDUCIARY SHALL ASSEMBLE  
13 ALL SCRUTINIZED COMPANIES IDENTIFIED INTO A SCRUTINIZED COMPANIES  
14 LIST.

15 (3) THE FIDUCIARY SHALL UPDATE THE SCRUTINIZED COMPANIES LIST  
16 ON A QUARTERLY BASIS BASED ON EVOLVING INFORMATION FROM, AMONG  
17 OTHER SOURCES, THOSE SOURCES LISTED IN SUBSECTION (1). THE  
18 FIDUCIARY SHALL MAKE THE SCRUTINIZED COMPANIES LIST FREELY  
19 AVAILABLE TO THE FIDUCIARIES OF OTHER SYSTEMS IF MAKING THE LIST  
20 AVAILABLE DOES NOT VIOLATE ANY AGREEMENTS WITH THIRD PARTIES OR  
21 REVEAL PROPRIETARY INFORMATION OF A THIRD PARTY.

22 (4) THE FIDUCIARY SHALL ADHERE TO THE FOLLOWING PROCEDURE FOR  
23 COMPANIES ON THE SCRUTINIZED COMPANIES LIST:

24 (A) THE FIDUCIARY SHALL IMMEDIATELY DETERMINE THE COMPANIES ON  
25 THE SCRUTINIZED COMPANIES LIST.

26 (B) FOR EACH COMPANY NEWLY IDENTIFIED IN SUBDIVISION (A), NOT  
27 LATER THAN 60 DAYS AFTER THE COMPANY IS NEWLY IDENTIFIED, THE

1 FIDUCIARY SHALL SEND A WRITTEN NOTICE INFORMING THE COMPANY OF ITS  
2 SCRUTINIZED COMPANY STATUS AND THAT IT MAY BECOME SUBJECT TO  
3 DIVESTMENT BY THE FIDUCIARY. THE NOTICE SHALL OFFER THE COMPANY THE  
4 OPPORTUNITY TO CLARIFY ITS BOYCOTT ACTIVITIES AND SHALL ENCOURAGE  
5 THE COMPANY, WITHIN 90 DAYS, TO EITHER CEASE ITS SCRUTINIZED  
6 BUSINESS OPERATIONS THROUGH SUBSTANTIAL ACTION OR CONVERT THOSE  
7 OPERATIONS TO INACTIVE BUSINESS OPERATIONS TO AVOID QUALIFYING FOR  
8 DIVESTMENT BY THE FIDUCIARY.

9 (C) IF, WITHIN 90 DAYS AFTER THE FIDUCIARY'S FIRST ENGAGEMENT  
10 WITH A COMPANY UNDER SUBDIVISION (B), THAT COMPANY ANNOUNCES A PLAN  
11 OF SUBSTANTIAL ACTION, THE COMPANY MUST BE REMOVED FROM THE  
12 SCRUTINIZED COMPANIES LIST AND THIS SECTION CEASES TO APPLY TO IT  
13 UNLESS IT FAILS TO IMPLEMENT ITS PLAN OF SUBSTANTIAL ACTION WITHIN  
14 THE DESIGNATED TIME FRAME. IF, WITHIN 90 DAYS AFTER THE FIDUCIARY'S  
15 FIRST ENGAGEMENT, THE COMPANY CONVERTS ITS ACTIVE BUSINESS  
16 OPERATIONS TO INACTIVE BUSINESS OPERATIONS, THE COMPANY IS NOT  
17 SUBJECT TO THIS SECTION.

18 (D) IF, AFTER 90 DAYS FOLLOWING THE FIDUCIARY'S FIRST  
19 ENGAGEMENT WITH A COMPANY UNDER SUBDIVISION (B), THE COMPANY  
20 CONTINUES TO BOYCOTT A PERSON BASED IN OR DOING BUSINESS WITH A  
21 JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN TRADE, AND ONLY  
22 WHILE THE COMPANY CONTINUES TO BOYCOTT A PERSON BASED IN OR DOING  
23 BUSINESS WITH A JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN  
24 TRADE, THE FIDUCIARY SHALL SELL, REDEEM, DIVEST, OR WITHDRAW ALL  
25 PUBLICLY TRADED SECURITIES OF THE COMPANY, ACCORDING TO THE  
26 FOLLOWING SCHEDULE:

27 (i) AT LEAST 50% OF THE ASSETS MUST BE REMOVED FROM THE

1 FIDUCIARY'S ASSETS UNDER MANAGEMENT WITHIN 9 MONTHS AFTER THE  
2 COMPANY'S MOST RECENT APPEARANCE ON THE SCRUTINIZED COMPANIES LIST.

3 (ii) 100% OF THE ASSETS MUST BE REMOVED FROM THE FIDUCIARY'S  
4 ASSETS UNDER MANAGEMENT WITHIN 15 MONTHS AFTER THE COMPANY'S MOST  
5 RECENT APPEARANCE ON THE SCRUTINIZED COMPANIES LIST.

6 (E) EXCEPT AS PROVIDED IN SUBDIVISION (F), THE FIDUCIARY SHALL  
7 NOT ACQUIRE SECURITIES OF COMPANIES ON THE SCRUTINIZED COMPANIES  
8 LIST.

9 (F) SUBDIVISIONS (D) AND (E) DO NOT APPLY TO INDIRECT HOLDINGS  
10 IN ACTIVELY MANAGED INVESTMENT FUNDS. FOR PURPOSES OF THIS SECTION,  
11 ACTIVELY MANAGED INVESTMENT FUNDS INCLUDE PRIVATE EQUITY FUNDS AND  
12 PUBLICLY TRADED FUNDS. BEFORE THE FIDUCIARY INVESTS IN A NEW  
13 PRIVATE EQUITY FUND OR PUBLICLY TRADED FUND THAT IS NOT IN THE  
14 FIDUCIARY'S PORTFOLIO ON THE EFFECTIVE DATE OF THE AMENDATORY ACT  
15 THAT ADDED THIS SECTION, THE FIDUCIARY SHALL PERFORM DUE DILIGENCE  
16 TO PREVENT INVESTMENT IN ANY PRIVATE EQUITY FUND OR PUBLICLY TRADED  
17 FUND FOR WHICH THE OFFERING MEMORANDUM OR PROSPECTUS IDENTIFIES A  
18 PURPOSE OF THE PRIVATE EQUITY FUND OR PUBLICLY TRADED FUND AS  
19 INVESTING IN SCRUTINIZED COMPANIES. THE FIDUCIARY IS NOT REQUIRED  
20 TO IDENTIFY HOLDINGS IN PRIVATE EQUITY FUNDS OR SUBMIT ENGAGEMENT  
21 LETTERS TO THOSE FUNDS. IF THE MANAGER OF A PUBLICLY TRADED,  
22 ACTIVELY MANAGED FUND THAT IS IN THE FIDUCIARY'S PORTFOLIO ON THE  
23 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION  
24 CREATES A SIMILAR PUBLICLY TRADED, ACTIVELY MANAGED FUND WITH  
25 INDIRECT HOLDINGS DEVOID OF IDENTIFIED SCRUTINIZED COMPANIES, THE  
26 FIDUCIARY SHALL REPLACE ALL APPLICABLE INVESTMENTS WITH INVESTMENTS  
27 IN THE SIMILAR FUND IN AN EXPEDITED TIME FRAME CONSISTENT WITH

1 PRUDENT INVESTMENT STANDARDS.

2 (5) THE FIDUCIARY SHALL PROVIDE A PUBLICLY AVAILABLE REPORT TO  
3 THE LEGISLATURE THAT INCLUDES THE SCRUTINIZED COMPANIES LIST WITHIN  
4 30 DAYS AFTER THE LIST IS CREATED. ANNUALLY THEREAFTER, THE  
5 FIDUCIARY SHALL PROVIDE A PUBLICLY AVAILABLE REPORT TO THE  
6 LEGISLATURE THAT INCLUDES ALL OF THE FOLLOWING:

7 (A) A SUMMARY OF CORRESPONDENCE WITH COMPANIES ENGAGED BY THE  
8 FIDUCIARY UNDER THIS SECTION.

9 (B) ALL INVESTMENTS SOLD, REDEEMED, DIVESTED, OR WITHDRAWN IN  
10 COMPLIANCE WITH THIS SECTION.

11 (C) ALL PROHIBITED INVESTMENTS UNDER THIS SECTION.

12 (D) ANY PROGRESS MADE UNDER SUBSECTION (4) (F) .

13 (6) WITH RESPECT TO ACTIONS TAKEN IN COMPLIANCE WITH THIS  
14 SECTION, INCLUDING ALL GOOD FAITH DETERMINATIONS REGARDING  
15 COMPANIES AS REQUIRED BY THIS SECTION, THE FIDUCIARY IS EXEMPT FROM  
16 ANY CONFLICTING STATUTORY OR COMMON LAW OBLIGATIONS, INCLUDING ANY  
17 OBLIGATIONS IN RESPECT TO CHOICE OF ASSET MANAGERS, INVESTMENT  
18 FUNDS, OR INVESTMENTS FOR THE FIDUCIARY'S SECURITIES PORTFOLIOS.

19 (7) THE FIDUCIARY, MEMBERS OF AN INVESTMENT ADVISORY  
20 COMMITTEE, AND ANY PERSON WITH DECISION-MAKING AUTHORITY WITH  
21 REGARD TO INVESTMENTS OF THE FIDUCIARY ARE NOT LIABLE FOR ANY  
22 ACTION UNDERTAKEN FOR THE PURPOSE OF COMPLYING WITH OR EXECUTING  
23 THE MANDATES REQUIRED UNDER THIS SECTION.

24 (8) AS USED IN THIS SECTION:

25 (A) "ACTIVE BUSINESS OPERATIONS" MEANS ALL BUSINESS OPERATIONS  
26 THAT ARE NOT INACTIVE BUSINESS OPERATIONS.

27 (B) "BOYCOTT" MEANS TO BLACKLIST, DIVEST FROM, OR OTHERWISE

1 REFUSE TO DEAL WITH A PERSON BASED ON RACE, COLOR, RELIGION,  
2 GENDER, OR NATIONAL ORIGIN. BOYCOTT DOES NOT INCLUDE 1 OR MORE OF  
3 THE FOLLOWING:

4 (i) A DECISION BASED ON BUSINESS OR ECONOMIC REASONS, OR THE  
5 SPECIFIC CONDUCT OF A TARGETED PERSON.

6 (ii) A BOYCOTT AGAINST A PUBLIC ENTITY OF A FOREIGN STATE WHEN  
7 THE BOYCOTT IS APPLIED IN A NONDISCRIMINATORY MANNER.

8 (iii) CONDUCT NECESSARY TO COMPLY WITH APPLICABLE LAW IN THE  
9 PERSON'S HOME JURISDICTION.

10 (C) "BUSINESS OPERATIONS" MEANS ENGAGING IN COMMERCE IN ANY  
11 FORM WITH A COMPANY THAT BOYCOTTS A PERSON BASED IN OR DOING  
12 BUSINESS WITH A JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN  
13 TRADE, INCLUDING BY ACQUIRING, DEVELOPING, MAINTAINING, OWNING,  
14 SELLING, POSSESSING, LEASING, OR OPERATING EQUIPMENT, FACILITIES,  
15 PERSONNEL, PRODUCTS, SERVICES, PERSONAL PROPERTY, REAL PROPERTY, OR  
16 ANY OTHER APPARATUS OF BUSINESS OR COMMERCE.

17 (D) "COMPANY" MEANS ANY SOLE PROPRIETORSHIP, ORGANIZATION,  
18 ASSOCIATION, CORPORATION, PARTNERSHIP, JOINT VENTURE, LIMITED  
19 PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY  
20 COMPANY, OR OTHER ENTITY OR BUSINESS ASSOCIATION, INCLUDING ALL  
21 WHOLLY OWNED SUBSIDIARIES, MAJORITY-OWNED SUBSIDIARIES, PARENT  
22 COMPANIES, OR AFFILIATES OF SUCH ENTITIES OR BUSINESS ASSOCIATIONS,  
23 THAT EXISTS FOR PROFIT-MAKING PURPOSES.

24 (E) "DIRECT HOLDINGS" IN A COMPANY MEANS ALL SECURITIES OF  
25 THAT COMPANY HELD DIRECTLY BY THE FIDUCIARY OR IN AN ACCOUNT OR  
26 FUND IN WHICH THE FIDUCIARY OWNS ALL SHARES OR INTERESTS.

27 (F) "FIDUCIARY" MEANS THE MICHIGAN LEGISLATIVE RETIREMENT

1 SYSTEM BOARD OF TRUSTEES FOR THE TIER 1 PLAN FOR THE MICHIGAN  
2 LEGISLATIVE RETIREMENT SYSTEM CREATED BY THE MICHIGAN LEGISLATIVE  
3 RETIREMENT SYSTEM ACT, 1957 PA 261, MCL 38.1001 TO 38.1080, AND THE  
4 TREASURER OF THIS STATE FOR THE RETIREMENT SYSTEMS CREATED UNDER  
5 ALL OF THE FOLLOWING ACTS:

6 (i) THE STATE POLICE RETIREMENT ACT OF 1986, 1986 PA 182, MCL  
7 38.1601 TO 38.1648.

8 (ii) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE JUDGE'S  
9 RETIREMENT ACT OF 1992, 1992 PA 234, MCL 38.2101 TO 38.2670.

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

12 (iv) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE PUBLIC  
13 SCHOOL EMPLOYEES RETIREMENT ACT OF 1979, 1980 PA 300, MCL 38.1301  
14 TO 38.1437.

15 (G) "INACTIVE BUSINESS OPERATIONS" MEANS THE MERE CONTINUED  
16 HOLDING OR RENEWAL OF RIGHTS TO PROPERTY PREVIOUSLY OPERATED FOR  
17 THE PURPOSE OF GENERATING REVENUES BUT NOT PRESENTLY DEPLOYED FOR  
18 SUCH PURPOSE.

19 (H) "INDIRECT HOLDINGS" IN A COMPANY MEANS ALL SECURITIES OF  
20 THAT COMPANY HELD IN AN ACCOUNT OR FUND, SUCH AS A MUTUAL FUND OR  
21 OTHER COMMINGLED FUND, MANAGED BY 1 OR MORE PERSONS NOT EMPLOYED BY  
22 THE FIDUCIARY, IN WHICH THE FIDUCIARY OWNS SHARES OR INTERESTS  
23 TOGETHER WITH OTHER INVESTORS NOT SUBJECT TO THIS ACT.

24 (I) "JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN TRADE"  
25 INCLUDES WORLD TRADE ORGANIZATION MEMBERS AND THOSE WITH WHICH THE  
26 UNITED STATES AND THIS STATE HAVE FREE TRADE OR OTHER AGREEMENTS  
27 AIMED AT ENSURING OPEN AND NONDISCRIMINATORY TRADE RELATIONS.

1 (J) "PERSON" MEANS ANY OF THE FOLLOWING:

2 (i) AN INDIVIDUAL, CORPORATION, COMPANY, LIMITED LIABILITY  
3 COMPANY, BUSINESS ASSOCIATION, PARTNERSHIP, SOCIETY, TRUST, OR ANY  
4 OTHER NONGOVERNMENTAL ENTITY, ORGANIZATION, OR GROUP.

5 (ii) ANY GOVERNMENTAL ENTITY OR AGENCY OF A GOVERNMENT.

6 (iii) ANY SUCCESSOR, SUBUNIT, PARENT COMPANY, OR SUBSIDIARY  
7 OF, OR COMPANY UNDER COMMON OWNERSHIP OR CONTROL WITH, ANY ENTITY  
8 DESCRIBED IN SUBPARAGRAPH (i) OR (ii) .

9 (K) "SCRUTINIZED COMPANY" MEANS A COMPANY THAT BOYCOTTS A  
10 PERSON BASED IN OR DOING BUSINESS WITH A JURISDICTION WITH WHICH  
11 THIS STATE CAN ENJOY OPEN TRADE.

12 (L) "SUBSTANTIAL ACTION" MEANS ADOPTING, PUBLICIZING, AND  
13 IMPLEMENTING A FORMAL PLAN TO CEASE SCRUTINIZED BUSINESS OPERATIONS  
14 WITHIN 1 YEAR AND TO REFRAIN FROM ANY NEW BUSINESS OPERATIONS.