

HOUSE BILL No. 4859

July 12, 2017, Introduced by Rep. Albert and referred to the Committee on Financial Liability Reform.

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending section 19 (MCL 38.1139), as amended by 2012 PA 347.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 19. (1) An investment fiduciary may invest up to 10% of a
2 system's assets in publicly or privately issued real estate
3 investment trusts or in real or personal property otherwise
4 qualified ~~pursuant to~~ **UNDER** section 15, 16, or 20c.

5 (2) In addition to investments authorized under subsection
6 (1), an investment fiduciary of a system having assets of more than
7 \$100,000,000.00 may do any of the following:

8 (a) Invest in, buy, sell, hold, improve, lease, or acquire by
9 foreclosure or an agreement in lieu of foreclosure, real or
10 personal property or an interest in real or personal property.

1 (b) Develop, maintain, operate, or lease the real or personal
2 property referred to in subdivision (a).

3 (c) ~~Form~~ **SUBJECT TO SUBSECTION (5), FORM** or invest in 1 or
4 more limited partnerships, corporations, limited liability
5 companies, trusts, or other organizational entities for which
6 liability of an investor cannot exceed the amount of the investment
7 under the laws of the United States or of any state, district, or
8 territory of the United States or foreign country. The limited
9 partnership, corporation, limited liability company, trust, or
10 other organizational entity may invest in, buy, sell, hold,
11 develop, improve, lease, or operate real or personal property, or
12 originate a mortgage or invest in an annuity separate account that
13 invests in real or personal property to hold title to, improve,
14 lease, manage, develop, maintain, or operate real or personal
15 property whether currently held or acquired after December 27,
16 1996. An entity formed under this subdivision ~~has the right to~~ **MAY**
17 exercise all powers granted to the entity by the laws of the
18 jurisdiction of formation, including, but not limited to, the power
19 to borrow money ~~in order to~~ provide additional capital to benefit
20 and increase the overall return on the investment held by the
21 entity.

22 (d) Invest in investments otherwise qualified ~~pursuant to~~
23 **UNDER** subsection (1).

24 (3) Except as otherwise provided in this section, the
25 aggregate investments made under subsection (2) ~~shall~~ **MUST** not
26 exceed 10% of the assets of the system. The purchase price of an
27 investment made under this section ~~shall~~ **MUST** not exceed the

1 appraised value of the real or personal property.

2 (4) If the investment fiduciary of a system is the state
3 treasurer, investments described in subsection (1) or (2) may
4 exceed 10% of the assets of the system.

5 (5) IF THE INVESTMENT FIDUCIARY OF A SYSTEM IS THE STATE
6 TREASURER, BOTH OF THE FOLLOWING APPLY:

7 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (B), THE
8 INVESTMENT FIDUCIARY SHALL NOT FORM OR INVEST IN A LIMITED
9 PARTNERSHIP UNLESS THE PARTNERSHIP AGREEMENT OR AN ANCILLARY
10 DOCUMENT TO THE PARTNERSHIP AGREEMENT, SUCH AS A SIDE LETTER,
11 PROVIDES THAT IF THE GENERAL PARTNER OF THE LIMITED PARTNERSHIP IS
12 REMOVED FOR FRAUD, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR ANY
13 MATERIAL BREACH OF THE PARTNERSHIP AGREEMENT, THE CARRIED INTEREST
14 ATTRIBUTED TO THE SYSTEM'S INVESTMENT IN THE LIMITED PARTNERSHIP
15 MUST BE FORFEITED TO THE SYSTEM.

16 (B) IF A PARTNERSHIP AGREEMENT OR AN ANCILLARY DOCUMENT TO THE
17 PARTNERSHIP AGREEMENT DOES NOT INCLUDE A FORFEITURE PROVISION
18 DESCRIBED IN SUBDIVISION (A), THE INVESTMENT FIDUCIARY MAY FORM OR
19 INVEST IN THE PARTNERSHIP IF THE INVESTMENT FIDUCIARY DETERMINES
20 THAT THE RISK OF THE GENERAL PARTNER BEING REMOVED FOR A REASON
21 DESCRIBED IN SUBDIVISION (A) IS SUFFICIENTLY MITIGATED. FOR
22 PURPOSES OF THIS SUBDIVISION ONLY, THE INVESTMENT FIDUCIARY DOES
23 NOT INCLUDE THE STATE TREASURER'S INVESTMENT PERSONNEL.

24 (6) ~~(5)~~—An investment qualified under this section in which
25 the underlying asset is an interest in real or personal property
26 ~~constitutes~~—IS an investment under this section for the purpose of
27 meeting the asset limitations ~~contained~~—INCLUDED in this act. This

1 subsection applies even though the investment may be qualified
2 elsewhere in this act. Notwithstanding this subsection, an
3 investment fiduciary may designate a real estate investment trust
4 ~~which~~**THAT** satisfies the requirements of section 14(2) as an
5 investment qualified under this section or as an investment in
6 stock under section 14.

7 Enacting section 1. This amendatory act takes effect 90 days
8 after the date it is enacted into law.