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STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Senators Jansen, Proos, Meekhof, Moolenaar, Hood, Warren, Nofs, Pappageorge, Rocca, Gregory, Marleau, Brandenburg and Kowall

ENROLLED SENATE BILL No. 797

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 12b, 12c, 13, 14, 15, 17, 19, 19a, 20c, 20d, 20h, 20k, and 20m (MCL 38.1132b, 38.1132c, 38.1133, 38.1134, 38.1135, 38.1137, 38.1139, 38.1139a, 38.1140c, 38.1140d, 38.1140h, 38.1140k, and 38.1140m), sections 12b, 12c, 14, 17, and 20c as amended by 2000 PA 307, section 13 as amended by 2009 PA 84, section 15 as amended and section 20k as added by 1996 PA 485, sections 19 and 20d as amended and section 19a as added by 2008 PA 425, section 20h as amended by 2002 PA 728, and section 20m as amended by 2007 PA 22, and by adding sections 13e, 13f, and 21.

The People of the State of Michigan enact:

Sec. 12b. (1) “Defined contribution plan” means a defined contribution plan as defined in section 414(i) in the internal revenue code, 26 USC 414.

(2) “Derivative” means either of the following:

(a) A contract or convertible security that changes in value in concert with a related or underlying security, future, or other instrument or index; or obtains much of its value from price movements in a related or underlying security, future, or other instrument or index; or both.

(b) A contract or security, such as an option, forward, swap, warrant, or a debt instrument with 1 or more options, forwards, swaps, or warrants embedded in it or attached to it, the value of which contract or security is determined in whole or in part by the price of 1 or more underlying instruments or markets.

(3) “Equity interests” means limited partnership interests and other interests in which the liability of the investor is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability of the investor.

(4) “Global security” means any of the following:

(a) A fixed income security issued by a government, a governmental agency, or a public or private company that is traded outside of the United States and may be issued in a currency other than the United States dollar.

(b) An equity position in a company traded on an exchange outside of the United States or a security that may be issued in a currency other than the United States dollar or an unregistered American depository receipt.

(c) An equity or fixed income derivative that derives its value from an investment described in subdivision (a) or (b) or a global security or bond index traded on an exchange outside of the United States.

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.

Sec. 13. (1) The provisions of 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 pursuant to 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.

(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) 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, 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. 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.

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 the effective date of this section. 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.

Sec. 13f. (1) An investment fiduciary or a service provider who is convicted of or who enters a nolo contendere plea accepted by a court for a felony or misdemeanor arising out of his or her service to a system is considered to have breached the public trust and shall reimburse the system for all costs, including legal defense fees, that were paid by the system. The system shall use reasonable efforts to collect any fees and costs recoverable under this subsection.

(2) As used in this section, "service provider" means that term as defined in section 13e.

Sec. 14. (1) An investment fiduciary shall not invest more than 70% of a system's assets in stock or the type of global security described in section 12b(4)(b). An investment fiduciary shall not invest in more than 5% of the outstanding stock of any 1 corporation, or invest more than 5% of a system's assets in the stock of any 1 corporation, unless otherwise provided in this act.

(2) An investment fiduciary may invest in stock or global securities under subsection (1) if it meets 1 of the following requirements:

(a) Is registered on a national securities exchange regulated under title I of the securities exchange act of 1934, 15 USC 78a to 78pp, or on an industry-recognized exchange outside the United States.

(b) Is on the national association of securities dealers automated quotation system or a successor to this system or is on an industry-recognized system outside the United States.

(c) Is issued pursuant to rule 144a under the securities act of 1933, 17 CFR 230.144a.

(3) Notwithstanding subsection (2), an investment fiduciary may designate an American depository receipt or the type of global security described in section 12b(4)(b) that satisfies the requirements of subsection (2) as an investment qualified under this section or as an investment in global securities qualified under section 20k.

Sec. 15. An investment fiduciary may invest in investment companies registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64. The management company of the investment company shall have been in operation for at least 5 years and shall have assets under management of more than \$500,000,000.00. An investment company may be established as a limited partnership, corporation, limited liability company, trust, or other organizational entity for which the liability of an investor does not exceed the amount of the investment under the laws of the United States or the applicable laws of the state, district, territory, or foreign country under which the investment company was established. An investment in an investment company shall be considered an investment in the underlying assets for all purposes under this act.

Sec. 17. (1) An investment fiduciary may invest in any of the following:

(a) Obligations issued, assumed, or guaranteed by a solvent entity created or existing under the laws of the United States or of any state, district, or territory of the United States, which are not in default as to principal or interest, including, but not limited to, the following:

(i) Obligations secured by the mortgage of real property or the pledge of adequate collateral if, during any 3, including 1 of the last 2, of the 5 fiscal years immediately preceding the time of investment, the net earnings of the issuing, assuming, or guaranteeing entity available for fixed charges, as determined in accordance with standard accounting practice, shall have been not less than the total of its fixed charges for the year on an overall basis, nor less than 1-1/2 times its fixed charges for the year on a priority basis after excluding interest requirements on obligations subordinate to the issue as to security.

(ii) Equipment trust certificates of railroad companies organized under the laws of any state of the United States or of Canada or any of its provinces, payable within 20 years from their date of issue, in annual or semiannual installments, beginning not later than the fifth year after the date of issue, which certificates are a first lien on the specific equipment pledged as security for the payment of the certificates, and which certificates are either the direct obligations of the railroad companies or are guaranteed by the railroad companies, or are executed by trustees holding title to the equipment.

(iii) Obligations other than those described in subparagraphs (i) and (ii) and in section 12c(3). The aggregate investments made under this subparagraph shall not exceed 15% of the system's total assets.

(b) Obligations secured by a security interest in real or personal property and a lease obligation given by a solvent entity whose obligations would be qualified investments under the provisions of this act, if the investment does not exceed 100% of the appraised value of the property subject to the lease, and if all of the following requirements are met:

(i) The lease has an unexpired term equal to or exceeding the remaining term of the investment.

(ii) The lease is noncancelable unless the lessee first pays the sum of all unpaid rents due or to become due during the remaining lease term.

(iii) The lease provides for net rental payments equal to or exceeding the periodic payments on the investment.

(iv) The lease provides that the net rental payments are to be made without abatement or offset during the full term of the lease.

(v) The lease and the lease payments are assigned to the system, an agent of the system, or an independent trustee.

(c) Obligations issued, assumed, or guaranteed by the United States, its agencies, or United States government-sponsored enterprises.

(d) Obligations of a possession, territory, or public instrumentality of the United States, or of any state, city, county, township, village, school district, authority, or any other governmental unit having the power to levy taxes, or in obligations of other similar political units of the United States. These investments shall be of investment grade. These investments shall not be permitted if in the 3 preceding years the governmental unit has failed to pay its debt or any part of its debt or the interest on the debt. The aggregate investments made under this subdivision shall not exceed 5% of the system's total assets.

(e) Banker's acceptances, commercial accounts, certificates of deposit, or depository receipts issued by a bank, trust company, savings and loan association, or a credit union.

(f) Commercial paper rated at the time of purchase within the 2 highest classifications established by not less than 2 national rating services, and which matures within 270 days after the date of issue.

(g) Repurchase agreements for the purchase of securities issued by the United States government or its agencies and executed by a bank or trust company or by members of the association of primary dealers or other recognized dealers in United States government securities.

(h) Reverse repurchase agreements for the sale of securities issued by the United States government or its agencies and executed with a bank or trust company or with members of the association of primary dealers or other recognized dealers in United States government securities.

(i) Any investment otherwise permitted by this section in which the interest rate varies from time to time. Notwithstanding a provision of any other act to the contrary, a loan shall not be considered to be in violation of the usury statutes of this state by virtue of the fact that the loan is made on a variable interest rate basis.

(j) Obligations secured by any of the obligations described in subdivision (a) or (c).

(k) Dollar denominated obligations issued in the United States by foreign governments, supranationals, banks, or corporations. These investments shall be of investment grade.

(2) Except as otherwise provided in this act and except for obligations described in subsection (1)(c), an investment fiduciary shall not do any of the following:

(a) Invest in more than 5% of the outstanding obligations of any 1 issuer.

(b) Invest more than 5% of a system's assets in the obligations of any 1 issuer.

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

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

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

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

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

(d) Invest in investments otherwise qualified pursuant to subsection (1).

(3) Except as otherwise provided in this section, the aggregate investments made under subsection (2) shall not exceed 10% of the assets of the system. The purchase price of an investment made under this section shall not exceed the appraised value of the real or personal property.

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

(5) An investment qualified under this section in which the underlying asset is an interest in real or personal property constitutes an investment under this section for the purpose of meeting the asset limitations contained in this act. This subsection applies even though the investment may be qualified elsewhere in this act. Notwithstanding this subsection, an investment fiduciary may designate a real estate investment trust which satisfies the requirements of section 14(2) as an investment qualified under this section or as an investment in stock under section 14.

Sec. 19a. (1) If the investment fiduciary is the state treasurer, investments in private equity shall not be more than 30% of the system's total assets. If the investment fiduciary is not the state treasurer and the system has assets of \$1,000,000,000.00 or more, investments in private equity shall not be more than 10% of the system's total assets. An investment fiduciary described in this subsection may invest not more than an additional 5% of the system's assets in Michigan private equity only.

(2) An investment fiduciary of a system that has assets of \$250,000,000.00 or more but less than \$1,000,000,000.00 shall not invest more than 5% of the system's assets in Michigan private equity. An investment fiduciary may otherwise invest in private equity under section 20d.

Sec. 20c. (1) A financial institution, a trust company, a management company qualified under section 15, or any affiliate of a person described in this section if that affiliate qualifies as an investment fiduciary under section 13(11), retained to act as an investment fiduciary may invest the assets of a system in any collective investment fund, common trust fund, or pooled fund that is established and maintained for investment of those assets under federal or state statutes or rules or regulations or an applicable foreign law. The investment fiduciary of the collective investment fund, common trust fund, or pooled fund shall be a financial institution, a trust company, a management company qualified under section 13(11)(a), or an affiliate of 1 of these entities if that affiliate qualifies as an investment fiduciary under section 13(11)(a). The collective investment fund, common trust fund, or pooled fund may be established as a limited partnership, corporation, limited liability company, trust, or other organizational entity for which liability of any investor does not exceed the amount of the investment under the laws of the United States or the laws of the state, district, territory, or foreign country that applied to the organization of the collective investment fund, common trust fund, or pooled fund. A pool in which the state treasurer has administrative or investment authority and the investment pools of the municipal employees retirement system and retirement board created under the municipal employees retirement act of 1984, 1984 PA 427, MCL 38.1501 to 38.1555, are not pooled funds for purposes of this section. An investment in a collective investment fund, common trust fund, or pooled fund is considered an investment in the underlying assets of that fund for all purposes under this act.

(2) As used in this section, “financial institution” means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

Sec. 20d. (1) An investment fiduciary of a system having assets of less than \$250,000,000.00 may invest not more than 15% of the system’s assets in investments not otherwise qualified under this act, except as qualified in section 19a, whether the investments are similar or dissimilar to those specified in this act.

(2) An investment fiduciary of a system having assets of \$250,000,000.00 or more but less than \$1,000,000,000.00 may invest not more than 20% of the system’s assets in investments described in subsection (1).

(3) An investment fiduciary of a system having assets of \$1,000,000,000.00 or more may invest not more than 25% of the system’s assets in investments described in subsection (1).

(4) An investment fiduciary of a system who is the state treasurer may invest not more than 30% of the system’s assets in investments described in subsection (1).

(5) If an investment described in subsection (1) is subsequently determined to be permitted under another section of this act, then the investment shall no longer be included under this section.

(6) This section shall not be used to exceed a percentage of total assets limitation for an investment provided in any other section of this act.

Sec. 20h. (1) In addition to the provisions of this act, a system is subject to the applicable accounting, auditing, and reporting requirements contained in the following acts and parts of acts:

(a) 1919 PA 71, MCL 21.41 to 21.55.

(b) The uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(c) Section 91 of the executive organization act of 1965, 1965 PA 380, MCL 16.191.

(2) A system shall retain its financial records for a minimum period of 6 years from the date of the creation of the record unless state or federal law requires a longer retention period. As used in this subsection, “financial records” includes, but is not limited to, records pertaining to expenditures for professional training and education, including travel expenditures, by or on behalf of system board members that are paid by the system.

(3) Except as otherwise provided in this subsection, information regarding the calculation of actual or estimated retirement benefits for members of the system is exempt from disclosure by the system or the political subdivision sponsoring the system pursuant to section 13(1)(d) of the freedom of information act, 1976 PA 442, MCL 15.243. Upon a majority vote of the governing body of the political subdivision sponsoring the system, the system shall provide the designated representative of the political subdivision with a reasonable opportunity to inspect, copy, or receive copies of all information regarding the calculation of actual or estimated retirement benefits for members of the system. The system may require that information provided by the system under this subsection be provided only upon a promise of confidentiality by the political subdivision sponsoring the system. A system may make reasonable rules to ensure the confidentiality of records exempt from disclosure under applicable state and federal law. The system may charge a fee under this subsection in accordance with section 4 of the freedom of information act, 1976 PA 442, MCL 15.234. All fees and expenses incurred by the political subdivision sponsoring the system that are related to this subsection shall be borne by the political subdivision and shall not be deducted from or offset against the political subdivision’s required pension contributions to the system.

(4) Except as otherwise provided in this subsection, a system shall have an annual actuarial valuation with assets valued on a market-related basis. The actuarial present value of total projected benefits shall include all pension benefits to be provided by the system to members or beneficiaries pursuant to the terms of the system and any additional statutory or contractual agreements to provide pension benefits through the system that are in force at the actuarial valuation date, including, but not limited to, service credits purchased by members, deferred retirement option plans, early retirement programs, and postretirement adjustment programs. A system that has assets of less than \$20,000,000.00 is only required to have an actuarial valuation as required under this subsection done every other year.

(5) A system shall provide a supplemental actuarial analysis before adoption of pension benefit changes. System assets shall not be used for any actuarial expenses related to the supplemental actuarial analysis under this subsection. The supplemental actuarial analysis shall be provided by the system's actuary and shall include an analysis of the long-term costs associated with any proposed pension benefit change. The supplemental actuarial analysis shall be provided to the board of the particular system and to the decision-making body that will approve the proposed pension benefit change at least 7 days before the proposed pension benefit change is adopted. For purposes of this subsection, "proposed pension benefit change" means a proposal to change the amount of pension benefits received by persons entitled to pension benefits under the system. Proposed pension benefit change does not include a proposed change to a health care plan or health benefits.

(6) The system shall make the summary annual report created under section 13 available to the plan participants and beneficiaries and the citizens of the political subdivision sponsoring the system. If the system has a website, the system shall publish the summary annual report on the website. If the system does not have a website, the political subdivision sponsoring the system shall publish the summary annual report on a website that the political subdivision has created or may create.

Sec. 20k. (1) Notwithstanding a percentage of total assets limitation for an investment provided in any other section of this act, an investment fiduciary who is the state treasurer or the investment fiduciary of a system that has assets of \$2,000,000,000.00 or more may invest not more than 30% of a system's assets in global securities. An investment fiduciary of a system that has assets of less than \$2,000,000,000.00 and who is not the state treasurer may invest not more than 20% of a system's assets in global securities. Except as otherwise provided in this act, an investment fiduciary shall not do any of the following:

- (a) Invest in more than 5% of the outstanding global securities of any 1 issuer.
- (b) Invest more than 5% of a system's assets in the global securities of any 1 issuer.

(2) Investments in global securities under this section shall be made only by investment fiduciaries described in section 13(11) who have demonstrated expertise in investments of that type.

Sec. 20m. 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.

Sec. 21. (1) Subject to this section, 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 may remove a member of the board or body as provided in subsection (2) by any of the following:

(a) A unanimous vote of all of the members of the board or body, other than the member who is the subject of the vote for removal.

(b) An order of a circuit court with jurisdiction entered in an appropriate action authorized by a majority vote of the members of the board or body.

(c) The process for the removal of a member of the board or body that is contained in the system's plan provisions if that process is less restrictive than either process provided for in subdivision (a) or (b).

(2) 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 give notice and hold a hearing on the removal of a member of that board or body for any of the following reasons:

(a) For an elected member of the board or body, upon receipt of a petition requesting the removal of the member, which petition is signed by 2/3 of the individuals eligible to vote in the election of the member of the board or body.

(b) The member is legally incapacitated from executing his or her duties as a member of the board or body and neglects to perform those duties.

(c) The member has committed a material breach of the system provisions or system policies or procedures and the removal of the member is in the interests of the system or the interest of its participants or participants' beneficiaries.

(d) The member is convicted of a violation of law and the removal of the member is in the interests of the system or the interest of its participants or participants' beneficiaries.

(3) Upon the removal of a member of a board or body under this section before expiration of the member's term, a new successor member shall fill the vacancy as follows:

(a) For an elected member of the board or body, by election in the same manner as the removed member for the remainder of that term of office.

(b) For an appointed member of the board or body, by appointment by the appointing authority of the removed member for the remainder of that term of office.

(c) For an ex officio member serving by virtue of his or her office, by appointment by the governing body of the political subdivision sponsoring the system until the time that a new individual is elected or appointed to the office from which the removed member served as a member.

(4) An individual who is removed from office as a member of a board or body under this section may appeal the removal to the circuit court with jurisdiction if the removal is by the board or body or, if the removal is by the circuit court, to the appropriate court with jurisdiction. A successor member of a board or body may be elected or appointed during the pendency of an appeal of a removed member under this subsection until the appeal is withdrawn or there is a final judgment in the matter.

(5) If, upon an appeal under subsection (4), the court finds that the petition for removal of the member was filed in bad faith and that removal is contrary to the interests of the system or the interest of its participants or participants' beneficiaries, the court may order that the individuals seeking the removal of the member pay all or a portion of the costs of the proceedings, including reasonable attorney fees.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor