HOUSE BILL No. 5823


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:

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

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

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

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

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

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

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

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

(B) FOR EACH COMPANY NEWLY IDENTIFIED IN SUBDIVISION (A), NOT LATER THAN 60 DAYS AFTER THE COMPANY IS NEWLY IDENTIFIED, THE
FIDUCIARY SHALL SEND A WRITTEN NOTICE INFORMING THE COMPANY OF ITS
SCRUTINIZED COMPANY STATUS AND THAT IT MAY BECOME SUBJECT TO
DIVESTMENT BY THE FIDUCIARY. THE NOTICE SHALL OFFER THE COMPANY THE
OPPORTUNITY TO CLARIFY ITS BOYCOTT ACTIVITIES AND SHALL ENCOURAGE
THE COMPANY, WITHIN 90 DAYS, TO EITHER CEASE ITS SCRUTINIZED
BUSINESS OPERATIONS THROUGH SUBSTANTIAL ACTION OR CONVERT THOSE
OPERATIONS TO INACTIVE BUSINESS OPERATIONS TO AVOID QUALIFYING FOR
DIVESTMENT BY THE FIDUCIARY.

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

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

(i) AT LEAST 50% OF THE ASSETS MUST BE REMOVED FROM THE
FIDUCIARY'S ASSETS UNDER MANAGEMENT WITHIN 9 MONTHS AFTER THE
COMPANY'S MOST RECENT APPEARANCE ON THE SCRUTINIZED COMPANIES LIST.

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

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

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

(5) THE FIDUCIARY SHALL PROVIDE A PUBLICLY AVAILABLE REPORT TO THE LEGISLATURE THAT INCLUDES THE SCRUTINIZED COMPANIES LIST WITHIN 30 DAYS AFTER THE LIST IS CREATED. ANNually thereafter, the FIDUCIARY SHALL PROVIDE A PUBLICLY AVAILABLE REPORT TO THE LEGISLATURE THAT INCLUDES ALL OF THE FOLLOWING:

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

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

(C) ALL PROHIBITED INVESTMENTS UNDER THIS SECTION.

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

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

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

(8) AS USED IN THIS SECTION:

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

(B) "BOYCOTT" MEANS TO BLACKLIST, DIVEST FROM, OR OTHERWISE
REFUSE TO DEAL WITH A PERSON BASED ON RACE, COLOR, RELIGION, GENDER, OR NATIONAL ORIGIN. BOYCOTT DOES NOT INCLUDE 1 OR MORE OF THE FOLLOWING:

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

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

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

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

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

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

(F) "FIDUCIARY" MEANS THE MICHIGAN LEGISLATIVE RETIREMENT
SYSTEM BOARD OF TRUSTEES FOR THE TIER 1 PLAN FOR THE MICHIGAN
LEGISLATIVE RETIREMENT SYSTEM CREATED BY THE MICHIGAN LEGISLATIVE
RETIREMENT SYSTEM ACT, 1957 PA 261, MCL 38.1001 TO 38.1080, AND THE
TREASURER OF THIS STATE FOR THE RETIREMENT SYSTEMS CREATED UNDER
ALL OF THE FOLLOWING ACTS:
(i) THE STATE POLICE RETIREMENT ACT OF 1986, 1986 PA 182, MCL
38.1601 TO 38.1648.
(ii) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE JUDGE'S
(iii) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE STATE
EMPLOYEES' RETIREMENT ACT, 1943 PA 240, MCL 38.1 TO 38.69.
(iv) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE PUBLIC
SCHOOL EMPLOYEES RETIREMENT ACT OF 1979, 1980 PA 300, MCL 38.1301
TO 38.1437.
(G) "INACTIVE BUSINESS OPERATIONS" MEANS THE MERE CONTINUED
HOLDING OR RENEWAL OF RIGHTS TO PROPERTY PREVIOUSLY OPERATED FOR
THE PURPOSE OF GENERATING REVENUES BUT NOT PRESENTLY DEPLOYED FOR
SUCH PURPOSE.
(H) "INDIRECT HOLDINGS" IN A COMPANY MEANS ALL SECURITIES OF
THAT COMPANY HELD IN AN ACCOUNT OR FUND, SUCH AS A MUTUAL FUND OR
OTHER COMMINGLED FUND, MANAGED BY 1 OR MORE PERSONS NOT EMPLOYED BY
THE FIDUCIARY, IN WHICH THE FIDUCIARY OWNS SHARES OR INTERESTS
TOGETHER WITH OTHER INVESTORS NOT SUBJECT TO THIS ACT.
(I) "JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN TRADE"
INCLUDES WORLD TRADE ORGANIZATION MEMBERS AND THOSE WITH WHICH THE
UNITED STATES AND THIS STATE HAVE FREE TRADE OR OTHER AGREEMENTS
AIMED AT ENSURING OPEN AND NONDISCRIMINATORY TRADE RELATIONS.
(J) "PERSON" MEANS ANY OF THE FOLLOWING:

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

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

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

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

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