

HOUSE BILL No. 4695

March 25, 2009, Introduced by Rep. Clemente and referred to the Committee on Commerce.

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending section 13 (MCL 38.1133), as amended by 2008 PA 425.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) The provisions of this act shall supersede any
2 investment authority previously granted to a system under any other
3 law of this state.

4 (2) The assets of a system may be invested, reinvested, held
5 in nominee form, and managed by an investment fiduciary subject to
6 the terms, conditions, and limitations provided in this act. An
7 investment fiduciary of a defined contribution plan may arrange for
8 1 or more investment options to be directed by the participants of

1 the defined contribution plan. The limitations on the percentage of
2 total assets for investments provided in this act do not apply to a
3 defined contribution plan in which a participant directs the
4 investment of the assets in his or her individual account, and that
5 participant is not considered an investment fiduciary under this
6 act.

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

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

14 (b) Act with due regard for the management, reputation, and
15 stability of the issuer and the character of the particular
16 investments being considered.

17 (c) Make investments for the exclusive purposes of providing
18 benefits to participants and participants' beneficiaries, and of
19 defraying reasonable expenses of investing the assets of the
20 system.

21 (d) Give appropriate consideration to those facts and
22 circumstances that the investment fiduciary knows or should know
23 are relevant to the particular investment or investment course of
24 action involved, including the role the investment or investment
25 course of action plays in that portion of the system's investments
26 for which the investment fiduciary has responsibility; and act
27 accordingly. For purposes of this subsection, "appropriate

1 consideration" includes, but is not limited to, a determination by
2 the investment fiduciary that a particular investment or investment
3 course of action is reasonably designed, as part of the investments
4 of the system, to further the purposes of the system, taking into
5 consideration the risk of loss and the opportunity for gain or
6 other return associated with the investment or investment course of
7 action; and consideration of the following factors as they relate
8 to the investment or investment course of action:

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

10 (ii) The liquidity and current return of the investments of the
11 system relative to the anticipated cash flow requirements of the
12 system.

13 (iii) The projected return of the investments of the system
14 relative to the funding objectives of the system.

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

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

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

1 prescribed limitation.

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

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

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

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

12 (d) The public school employees retirement system created
13 under the public school employees retirement act of 1979, 1980 PA
14 300, MCL 38.1301 to 38.1408.

15 (5) An investment fiduciary may use a portion of the income of
16 the system to defray the costs of investing, managing, and
17 protecting the assets of the system; may retain investment and all
18 other services necessary for the conduct of the affairs of the
19 system; and may pay reasonable compensation for those services.
20 Subject to an annual appropriation by the legislature, a deduction
21 from the income of a state administered system resulting from the
22 payment of those costs shall be made.

23 (6) The system shall be a separate and distinct trust fund and
24 the assets of the system shall be for the exclusive benefit of the
25 participants and their beneficiaries and of defraying reasonable
26 expenses of investing the assets of the system. With respect to a
27 system, an investment fiduciary shall not cause the system to

1 engage in a transaction if he or she knows or should know that the
2 transaction is any of the following, either directly or indirectly:

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

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

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

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

19 (7) With respect to a system subject to this act, an
20 investment fiduciary shall not do any of the following:

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

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

27 (c) Receive any consideration for his or her own personal

1 account from any party dealing with the system in connection with a
2 transaction involving the assets of the system.

3 (8) This section does not prohibit an investment fiduciary
4 from doing any of the following:

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

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

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

13 (d) Receiving agreed upon compensation for services from the
14 system.

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

20 (a) Be a registered investment adviser under either the
21 investment advisers act of 1940, 15 USC 80b-1 to 80b-21, ~~or~~ the
22 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE**
23 **UNIFORM SECURITIES ACT (2002), 2008 PA 551, MCL 451.2101 TO**
24 **451.2703.**

25 (b) Be a bank as defined under the investment advisers act of
26 1940, 15 USC 80b-1 to 80b-21.

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

1 (10) An investment fiduciary shall not invest in a debt
2 instrument issued by a foreign country that has been identified by
3 the United States state department as engaging in or sponsoring
4 terrorism.

5 (11) A system shall annually publish and make available to the
6 plan participants and beneficiaries a list of all expenses paid by
7 soft dollars.