

# HOUSE BILL No. 4223

February 9, 2011, Introduced by Rep. Jackson and referred to the Committee on Oversight, Reform, and Ethics.

A bill to amend 1965 PA 314, entitled  
"Public employee retirement system investment act,"  
by amending section 13 (MCL 38.1133), as amended by 2009 PA 84, and  
by adding section 13e.

## 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  
9 the defined contribution plan. The limitations on the percentage of

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

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

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

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

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

20 (d) Give appropriate consideration to those facts and  
21 circumstances that the investment fiduciary knows or should know  
22 are relevant to the particular investment or investment course of  
23 action involved, including the role the investment or investment  
24 course of action plays in that portion of the system's investments  
25 for which the investment fiduciary has responsibility; and act  
26 accordingly. For purposes of this subsection, "appropriate  
27 consideration" includes, but is not limited to, a determination by

1 the investment fiduciary that a particular investment or investment  
2 course of action is reasonably designed, as part of the investments  
3 of the system, to further the purposes of the system, taking into  
4 consideration the risk of loss and the opportunity for gain or  
5 other return associated with the investment or investment course of  
6 action; and consideration of the following factors as they relate  
7 to the investment or investment course of action:

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

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

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

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

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

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

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

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

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

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

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

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

22           (6) The system shall be a separate and distinct trust fund and  
23 the assets of the system shall be for the exclusive benefit of the  
24 participants and their beneficiaries and of defraying reasonable  
25 expenses of investing the assets of the system. With respect to a  
26 system, an investment fiduciary shall not cause the system to  
27 engage in a transaction if he or she knows or should know that the

1 transaction is any of the following, either directly or indirectly:

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

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

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

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

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

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

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

26 (c) Receive any consideration for his or her own personal  
27 account from any party dealing with the system in connection with a

1 transaction involving the assets of the system.

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

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

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

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

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

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

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

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

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

27 (10) An investment fiduciary shall not invest in a debt

1 instrument issued by a foreign country that has been identified by  
2 the United States state department as engaging in or sponsoring  
3 terrorism.

4 (11) SUBJECT TO THE PROVISIONS OF THIS SECTION BUT  
5 NOTWITHSTANDING ANYTHING THAT MAY BE TO THE CONTRARY IN THE  
6 REMAINDER OF THE ACT, AN INVESTMENT FIDUCIARY SHALL USE BEST  
7 EFFORTS TO INVEST AT LEAST 5% OF THE INVESTMENTS IN MICHIGAN  
8 BUSINESSES IF THE INVESTMENT FIDUCIARY IS A FIDUCIARY OF ANY OF THE  
9 FOLLOWING SYSTEMS:

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

12 (B) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE JUDGES  
13 RETIREMENT ACT OF 1992, 1992 PA 234, MCL 38.2101 TO 38.2670.

14 (C) THE STATE POLICE RETIREMENT SYSTEM CREATED UNDER THE STATE  
15 POLICE RETIREMENT ACT OF 1986, 1986 PA 182, MCL 38.1601 TO 38.1648.

16 (D) THE TIER 1 RETIREMENT PLAN CREATED UNDER THE PUBLIC SCHOOL  
17 EMPLOYEES RETIREMENT ACT OF 1979, 1980 PA 300, MCL 38.1301 TO  
18 38.1437.

19 (E) THE TIER 1 RETIREMENT PLAN CREATED UNDER THE MICHIGAN  
20 LEGISLATIVE RETIREMENT SYSTEM ACT, 1957 PA 261, MCL 38.1001 TO  
21 38.1080.

22 (12) THE INVESTMENT FIDUCIARY SHALL SELECT A FIRM OR FIRMS  
23 THAT HAVE A PHYSICAL PRESENCE IN MICHIGAN TO MANAGE INVESTMENTS  
24 REQUIRED UNDER SUBSECTION (11). IN SELECTING A FIRM OR FIRMS THAT  
25 HAVE A PHYSICAL PRESENCE IN MICHIGAN TO MANAGE ALL OR A PORTION OF  
26 THE INVESTMENTS, THE INVESTMENT FIDUCIARY SHALL ISSUE A REQUEST FOR  
27 PROPOSAL AND UTILIZE COMPETITIVE BIDDING.

1           (13) TO THE EXTENT FEASIBLE, AT LEAST 1/2 OF THE INVESTMENTS  
2   IN MICHIGAN BUSINESSES UNDER THIS ACT SHALL BE IN SPECIFIC  
3   INVESTMENT IN A MICHIGAN BUSINESS WITH A PHYSICAL PRESENCE IN A  
4   CITY OF PROMISE.

5           (14) THE FIDUCIARY SHALL USE HIS OR HER BEST EFFORTS TO ASSURE  
6   THAT THE PERCENTAGE OF INVESTMENTS IDENTIFIED IN SUBSECTION (11) IS  
7   OBTAINED NOT LATER THAN JANUARY 1, 2016. THE FIDUCIARY SHALL REPORT  
8   TO THE LEGISLATURE ON A SEMIANNUAL BASIS ON THE STATUS AND NATURE  
9   OF THE INVESTMENTS REQUIRED UNDER SUBSECTION (11). THE REPORT SHALL  
10  INCLUDE ALL OF THE FOLLOWING:

11           (A) THE TYPES OF BUSINESS CHOSEN FOR INVESTMENT.

12           (B) THE STATUS OF INVESTMENTS.

13           (C) THE NAMES OF APPLICANTS WHO WERE DENIED.

14           (D) THE REASONS FOR DENIAL OF THE APPLICATIONS.

15           (E) ISSUES RELATED TO INVESTMENTS UNDER SUBSECTION (13).

16           (15) ~~(11)~~—A system shall annually publish and make available  
17  to the plan participants and beneficiaries a list of all expenses  
18  paid by soft dollars.

19           (16) AS USED IN THIS SECTION, "MICHIGAN BUSINESS" MEANS A  
20  BUSINESS WITH A STATED COMMITMENT TO BEGIN OPERATIONS, EXPAND, OR  
21  CONTINUE IN THIS STATE. THE FORM OF INVESTMENT SHALL INCLUDE, BUT  
22  NOT BE LIMITED TO, ANY FORM OF INVESTMENT AUTHORIZED UNDER THIS  
23  ACT, VENTURE CAPITAL FIRMS LOCATED IN THIS STATE, PRIVATE EQUITY,  
24  MEZZANINE, AND OTHER INVESTMENTS, NOTWITHSTANDING LIMITATIONS THAT  
25  MAY BE IMPOSED IN OTHER SECTIONS OF THIS ACT.

26           SEC. 13E. A SYSTEM THAT UTILIZES AN INVESTMENT FIDUCIARY THAT  
27  RENDERS INVESTMENT ADVICE SHALL, TO THE EXTENT FEASIBLE, ESTABLISH



1 STANDARDS AND PROCEDURES TO ENSURE THE CONSIDERATION OF QUALIFIED  
2 FIDUCIARIES THAT ARE EMERGING FUND MANAGERS OR EMERGING BROKER-  
3 DEALERS. THE STANDARDS AND PROCEDURES UTILIZED BY EACH INVESTMENT  
4 FIDUCIARY FOR REVIEW AND EVALUATION OF CONTRACT PROPOSALS SHALL  
5 INCLUDE A COMPONENT THAT GIVES CONSIDERATION TO WHETHER THE  
6 APPLICANT IS AN EMERGING FUND MANAGER OR EMERGING BROKER-DEALER.  
7 THE SYSTEM SHALL REPORT ON THE METHODS AND RESULTS OF THE REQUIRED  
8 STANDARDS AND PROCEDURES ENSURING THE CONSIDERATION OF EMERGING  
9 FUND MANAGERS AND EMERGING BROKER-DEALERS. THE REPORT MAY BE  
10 PROVIDED BY INCLUSION OF INFORMATION ON THE METHODS AND RESULTS OF  
11 THE STANDARDS AND PROCEDURES ENSURING THE CONSIDERATION OF EMERGING  
12 FUND MANAGERS AND EMERGING BROKER-DEALERS IN THE ANNUAL FINANCIAL  
13 REPORT REQUIRED UNDER THE UNIFORM BUDGETING AND ACCOUNTING ACT,  
14 1968 PA 2, MCL 141.421 TO 141.440A, OR IN THE SUMMARY ANNUAL REPORT  
15 AS PROVIDED UNDER SECTION 20H(2) OR, IF THE SYSTEM IS A STATE  
16 SYSTEM, IN THE ANNUAL FINANCIAL REPORT REQUIRED UNDER SECTION 4A OF  
17 1919 PA 71, MCL 21.44A. THE REPORT MAY INCLUDE DATA DISAGGREGATED  
18 BY FUND SIZE OR CAPITALIZATION.