

SENATE BILL No. 1105

October 2, 2014, Introduced by Senator HOPGOOD and referred to the Committee on Reforms, Restructuring and Reinventing.

A bill to amend 1965 PA 314, entitled "Public employee retirement system investment act," by amending sections 12d and 13 (MCL 38.1132d and 38.1133), section 12d as amended by 2008 PA 425 and section 13 as amended by 2014 PA 185.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12d. (1) "National rating services" means Moody's
2 investors service, inc.; Standard & Poor's ratings group; Fitch
3 investors service inc.; Duff & Phelps credit rating corp.; or any
4 other nationally recognized statistical rating organization as
5 determined by the state treasurer.

6 (2) "Net earnings available for fixed charges" means net
7 income after deducting operating and maintenance expenses, taxes

1 other than federal and state income taxes, depreciation, and
2 depletion, but excluding extraordinary expenses appearing in the
3 regular financial statements of the system.

4 (3) "Obligations" means bonds, notes, collateral trust
5 certificates, convertible bonds, debentures, equipment trust
6 certificates, conditional sales agreements, guaranteed mortgage
7 certificates, pass-through certificates, participation
8 certificates, mortgages, trust deeds, general obligation bonds,
9 revenue bonds, or other similar interest bearing instruments of
10 debt. Obligations may be secured or unsecured and may be publicly
11 offered or privately placed.

12 (4) "Party in interest" means, as it relates to a system, any
13 of the following:

14 (a) An investment fiduciary, counsel, or employee of the
15 system.

16 (b) A person providing services to the system.

17 (c) The political subdivision sponsoring the system.

18 (d) An organization, any of whose members are covered by the
19 system.

20 (e) A spouse, ancestor, lineal descendant, or spouse of a
21 lineal descendant of an individual described in subdivision (a) or
22 (b).

23 (f) An entity controlled by an individual or organization
24 described in subdivisions (a) to (e).

25 (5) **"PLAN FOR ADJUSTMENT" MEANS A PLAN FOR THE ADJUSTMENT OF**
26 **DEBTS ENTERED AND APPROVED BY A FEDERAL BANKRUPTCY COURT FOR A CITY**
27 **THAT HAS ESTABLISHED A LARGE SPONSORED SYSTEM.**

1 (6) ~~(5)~~—"Portfolio company" means an entity in which the
2 investment fiduciary has invested or has considered investing
3 system assets.

4 (7) ~~(6)~~—"Private equity" means an asset class consisting of
5 equity or debt securities in entities that are not publicly traded,
6 ~~which~~**THAT** may include, but are not limited to, investments in
7 leveraged buyouts, venture capital, growth capital, distressed or
8 special situations, mezzanine capital, and secondary investments in
9 equity or debt interests.

10 Sec. 13. (1) This act ~~shall supersede~~**SUPERSEDES** any
11 investment authority previously granted to a system under any other
12 law of this state.

13 (2) The assets of a system may be invested, reinvested, held
14 in nominee form, and managed by an investment fiduciary subject to
15 the terms, conditions, and limitations provided in this act. An
16 investment fiduciary of a defined contribution plan may arrange for
17 1 or more investment options to be directed by the participants of
18 the defined contribution plan. The limitations on the percentage of
19 total assets for investments provided in this act do not apply to a
20 defined contribution plan in which a participant directs the
21 investment of the assets in his or her individual account, and that
22 participant is not considered an investment fiduciary under this
23 act.

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

27 (a) Act with the same care, skill, prudence, and diligence

1 under the circumstances then prevailing that a prudent person
2 acting in a similar capacity and familiar with those matters would
3 use in the conduct of a similar enterprise with similar aims.

4 (b) Act with due regard for the management, reputation, and
5 stability of the issuer and the character of the particular
6 investments being considered.

7 (c) Make investments for the exclusive purposes of providing
8 benefits to participants and participants' beneficiaries, and of
9 defraying reasonable expenses of investing the assets of the
10 system.

11 (d) Give appropriate consideration to those facts and
12 circumstances that the investment fiduciary knows or should know
13 are relevant to the particular investment or investment course of
14 action involved, including the role the investment or investment
15 course of action plays in that portion of the system's investments
16 for which the investment fiduciary has responsibility; and act
17 accordingly. For purposes of this subsection, "appropriate
18 consideration" includes, but is not limited to, a determination by
19 the investment fiduciary that a particular investment or investment
20 course of action is reasonably designed, as part of the investments
21 of the system, to further the purposes of the system, taking into
22 consideration the risk of loss and the opportunity for gain or
23 other return associated with the investment or investment course of
24 action; and consideration of the following factors as they relate
25 to the investment or investment course of action:

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

27 (ii) The liquidity and current return of the investments of the

1 system relative to the anticipated cash flow requirements of the
2 system.

3 (iii) The projected return of the investments of the system
4 relative to the funding objectives of the system.

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

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

13 (g) Monitor the investment of the system's assets with regard
14 to the limitations on those investments under this act. Upon
15 discovery that an investment causes the system to exceed a
16 limitation prescribed in this act, the investment fiduciary shall
17 reallocate assets in a prudent manner ~~in order~~ to comply with the
18 prescribed limitation.

19 (h) Prepare and maintain written policies regarding ethics and
20 professional training and education, including travel, which
21 policies contain clearly defined accountability and reporting
22 requirements for the system's investment fiduciaries.

23 (i) Publish a summary annual report that includes all of the
24 following:

25 (i) The name of the system.

26 (ii) The names of the system's investment fiduciaries.

27 (iii) The names of the system's service providers.

1 (iv) The system's assets and liabilities and changes in net
2 plan assets on a plan-year basis.

3 (v) The system's funded ratio based upon the ratio of
4 valuation assets to actuarial accrued liabilities on a plan-year
5 basis.

6 (vi) Except as otherwise provided in this subparagraph, the
7 system's investment performance net of fees on a rolling calendar-
8 year basis for the previous 1-, 3-, 5-, 7-, and 10-year periods.
9 For a system for which the state treasurer is the investment
10 fiduciary, the summary annual report ~~shall~~**MUST** include the
11 system's investment performance net of fees on a rolling calendar-
12 year and fiscal-year basis for the previous 1-, 3-, 5-, 7-, and 10-
13 year periods.

14 (vii) The system's administrative and investment expenditures
15 pursuant to standards of the governmental accounting standards
16 board, including, but not limited to, a list of all expenditures
17 made with soft dollars and all expenditures for professional
18 training and education, including travel expenditures, by or on
19 behalf of system board members that are paid by the system, if any.

20 (viii) The system's itemized budget containing all projected
21 expenditures, including, but not limited to, expenditures for
22 professional training and education, including travel expenditures,
23 by or on behalf of system board members that are paid by the
24 system.

25 (ix) The following information as provided in the system's most
26 recent annual actuarial valuation report:

27 (A) The number of active members.

1 (B) The number of retirees and beneficiaries.

2 (C) The average annual retirement allowance.

3 (D) The total annual retirement allowances being paid.

4 (E) The valuation payroll.

5 (F) The employer's computed normal cost of benefits expressed
6 as a percentage of valuation payroll.

7 (G) The employer's total contribution rate expressed as a
8 percentage of valuation payroll.

9 (H) The weighted average of member contributions, if any.

10 (I) The actuarial assumed rate of investment return.

11 (J) The actuarial assumed rate of long-term wage inflation.

12 (K) The smoothing method utilized to determine the funding
13 value of assets.

14 (L) The amortization method and period utilized for funding the
15 system's unfunded actuarial accrued liabilities, if any.

16 (M) The system's actuarial cost method.

17 (N) Whether system membership is open or closed to specific
18 groups of employees.

19 (x) In addition to the expenditures reported under
20 subparagraph (vii), for a large sponsored system a travel report
21 listing all travel outside this state in the immediately preceding
22 fiscal year that was funded in whole or in part with public funds.
23 The report must include the total expenses for all out-of-state
24 travel funded during the immediately preceding fiscal year and all
25 of the following information for each travel occurrence:

26 (A) The name of each person receiving reimbursement for travel
27 outside this state or whose travel costs were paid by the large

1 sponsored system and funded in whole or in part with public funds.

2 (B) The destination.

3 (C) The dates.

4 (D) A brief statement of the reason for the travel.

5 (E) An itemization of the transportation and related costs,
6 including, but not limited to, the amount for food, lodging, and
7 vehicle rental and listing the names of hotels, restaurants,
8 vehicle rental agencies, and vehicle models.

9 (j) An investment fiduciary of a large sponsored system shall
10 submit a summary annual report described in subdivision (i) to the
11 financial review commission created under the Michigan financial
12 review commission act, **2014 PA 181, MCL 141.1631 TO 141.1643**.

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

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

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

21 (c) The Michigan state police retirement system created under
22 the state police retirement act of 1986, 1986 PA 182, MCL 38.1601
23 to 38.1648.

24 (d) The Michigan public school employees' retirement system
25 created under the public school employees retirement act of 1979,
26 1980 PA 300, MCL 38.1301 to 38.1437.

27 (5) Subject to section 13g, an investment fiduciary may use a

1 portion of the income of the system to defray the costs of
2 investing, managing, and protecting the assets of the system; may
3 retain investment and all other goods and services necessary for
4 the conduct of the affairs of the system, including investment
5 advisors, consultants, custodians, accountants, auditors,
6 attorneys, actuaries, investment personnel, administrators, and
7 physicians; and may enter into contracts for and pay reasonable
8 compensation for those services. Subject to an annual appropriation
9 by the legislature, a deduction from the income of a state-
10 administered system resulting from the payment of those costs ~~shall~~
11 **MUST** be made.

12 (6) Subject to this subsection and subsection (13), an
13 investment fiduciary may use a portion of the income of the system
14 to defray the costs of professional training and education,
15 including travel costs, of system board members, which professional
16 training and education, including travel, are directly related to
17 the administration, management, and operation of the system. The
18 governing board vested with the general administration, management,
19 and operation of the system or other decision-making body that is
20 responsible for implementation and supervision of the system shall
21 adopt an annual budget for professional training and education,
22 including travel, authorized under this subsection. The budget
23 adopted under this subsection ~~shall~~**MUST** reflect the number of
24 board members, the size of the system, and the educational
25 objectives of the system. The system's total aggregate cost for
26 professional training and education, including travel costs,
27 authorized under this subsection for a fiscal year ~~shall~~**MUST** not

1 exceed \$150,000.00 or an amount that is equal to the total number
2 of system board members multiplied by \$12,000.00, whichever is
3 less. The system's total cost for professional training and
4 education, including travel costs, authorized under this subsection
5 for an individual system board member in a fiscal year ~~shall~~**MUST**
6 not exceed \$30,000.00. Beginning January 1, 2013, the department of
7 treasury shall adjust the dollar amounts in this subsection by an
8 amount determined by the state treasurer at the end of the
9 immediately preceding calendar year to reflect the cumulative
10 annual percentage change in the consumer price index. As used in
11 this subsection, "consumer price index" means the most
12 comprehensive index of consumer prices available for this state
13 from the bureau of labor statistics of the United States department
14 of labor.

15 (7) Before any investment services are provided, an investment
16 service provider shall provide the investment fiduciary of the
17 system with a complete written disclosure of all fees or other
18 compensation associated with its relationship with the system.
19 After investment services are provided to the investment fiduciary
20 of the system, an investment service provider shall provide on an
21 annual basis written disclosure of all fees including, but not
22 limited to, commissions, 12b-1 and related fees, compensation paid
23 or to be paid to third parties, and any other compensation paid by
24 the system to the investment fiduciary of the system. As used in
25 this subsection, "investment service provider" means any
26 individual, third-party agent or consultant, or other entity that
27 receives direct or indirect compensation for consulting, investment

1 management, brokerage, or custody services related to the system's
2 assets. For purposes of this section only, investment service
3 provider does not include a retirement system.

4 (8) The system ~~shall~~**MUST** be a separate and distinct trust
5 fund and the assets of the system ~~shall~~**MUST** be for the exclusive
6 benefit of the participants and their beneficiaries and of
7 defraying reasonable expenses of investing the assets of the
8 system. With respect to a system, an investment fiduciary shall not
9 cause the system to engage in a transaction if he or she knows or
10 should know that the transaction is any of the following, either
11 directly or indirectly:

12 (a) A sale or exchange or a leasing of any property from the
13 system to a party in interest for less than the fair market value,
14 or from a party in interest to the system for more than the fair
15 market value.

16 (b) A lending of money or other extension of credit from the
17 system to a party in interest without the receipt of adequate
18 security and a reasonable rate of interest, or from a party in
19 interest to the system with the provision of excessive security or
20 at an unreasonably high rate of interest.

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

24 (d) The furnishing of goods, services, or facilities from the
25 system to a party in interest for less than adequate consideration,
26 or from a party in interest to the system for more than adequate
27 consideration.

1 (9) With respect to a system subject to this act, an
2 investment fiduciary shall not do any of the following:

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

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

9 (c) Receive any consideration for his or her own personal
10 account from any party dealing with the system in connection with a
11 transaction involving the assets of the system.

12 (10) This section does not prohibit an investment fiduciary
13 from doing any of the following:

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

16 (b) Receiving any reimbursement of expenses properly and
17 actually incurred in the performance of his or her duties for the
18 system.

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

22 (d) Receiving agreed upon compensation for services from the
23 system.

24 (11) Except for an employee of a system, this state, or the
25 political subdivision sponsoring a system, when acting in the
26 capacity as an investment fiduciary, an investment fiduciary who is
27 qualified under section 12c(1)(b) shall meet 1 of the following

1 requirements:

2 (a) Be a registered investment adviser under the investment
3 advisers act of 1940, 15 USC 80b-1 to 80b-21, or the uniform
4 securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

5 (b) Be a bank as defined under the investment advisers act of
6 1940, 15 USC 80b-1 to 80b-21.

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

8 (12) An investment fiduciary shall not invest in a debt
9 instrument issued by a foreign country that has been designated by
10 the United States department of state as a state sponsor of terror.

11 (13) A large sponsored system shall not pay the expenses for a
12 person to travel outside this state from funds under its control
13 unless 1 or more of the following conditions apply to the travel:

14 (a) It is required by legal mandate or court order or for law
15 enforcement purposes.

16 (b) It is necessary to protect the health or safety of
17 citizens of, or visitors to, this state or to assist other states
18 in similar circumstances.

19 (c) It is necessary to produce budgetary savings or to
20 increase revenues, including protecting existing federal funds or
21 securing additional federal funds.

22 (d) It is necessary to secure specialized training for that
23 person that is substantially related to performing the duties of
24 the position and is not available within this state.

25 **(14) SUBJECT TO SECTION 13G, AN INVESTMENT FIDUCIARY OF A**
26 **LARGE SPONSORED SYSTEM THAT INVESTS OR HAS INVESTED IN A HAZARDOUS**
27 **WASTE DEEP DISPOSAL WELL FACILITY REGULATED UNDER PART 111 OR 121**

Senate Bill No. 1105 as amended November 13, 2014

1 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994 PA
2 451, MCL 324.11101 TO 324.11153 AND 324.12101 TO 324.12117, IS
3 SUBJECT TO ALL OF THE FOLLOWING:

4 (A) THE INVESTMENT FIDUCIARY SHALL NOT MAKE <<AN>> ADDITIONAL
5 <<INVESTMENT>> IN THE HAZARDOUS WASTE DEEP DISPOSAL WELL FACILITY
<<UNLESS THE INVESTMENT IS SOLELY TO PREPARE THE PROPERTY ON WHICH
THE HAZARDOUS WASTE DEEP DISPOSAL WELL FACILITY IS LOCATED FOR SALE
FOR PURPOSES OTHER THAN OPERATION AS A HAZARDOUS WASTE DEEP DISPOSAL
WELL FACILITY OR SIMILAR HAZARDOUS FACILITY>>.

6 (B) THE INVESTMENT FIDUCIARY SHALL SELL, REDEEM, DIVEST, OR
7 WITHDRAW ALL INVESTMENTS IN THE HAZARDOUS WASTE DEEP DISPOSAL WELL
8 FACILITY <<WITHIN 180 DAYS AFTER>> ANY OF THE FOLLOWING CIRCUMSTANCES
OCCUR:

9 (i) THE OPERATOR OF THE HAZARDOUS WASTE DEEP DISPOSAL WELL
10 FACILITY FILES FOR BANKRUPTCY.

11 (ii) THE SALE, TRANSFER, PURCHASE, OR ACQUISITION OF A
12 CONTROLLING INTEREST IN THE OPERATOR OF THE HAZARDOUS WASTE DEEP
13 DISPOSAL WELL FACILITY.

14 (iii) AN ENVIRONMENTAL PROTECTION AGENCY ACTION FOR A VIOLATION
15 AT THE HAZARDOUS WASTE DEEP DISPOSAL WELL FACILITY.

16 (iv) AN ENVIRONMENTAL PROTECTION AGENCY REVOCATION OF THE
17 OPERATOR'S LICENSE.

18 (v) AN ENVIRONMENTAL PROTECTION AGENCY OR DEPARTMENT OF
19 ENVIRONMENTAL QUALITY ORDER TO TERMINATE OPERATIONS AT THE
20 HAZARDOUS WASTE DEEP DISPOSAL WELL FACILITY.