

**SUBSTITUTE FOR
SENATE BILL NO. 1192**

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending section 13 (MCL 38.1133), as amended by 2018 PA 676.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) This act supersedes any investment authority
2 previously granted to a system under any other law of this state.

3 (2) The assets of a system may be invested, reinvested, held
4 in nominee form, and managed by an investment fiduciary subject to
5 the terms, conditions, and limitations provided in this act. An
6 investment fiduciary of a defined contribution plan may arrange for
7 1 or more investment options to be directed by the participants of
8 the defined contribution plan. The limitations on the percentage of
9 total assets for investments provided in this act do not apply to a

1 defined contribution plan in which a participant directs the
2 investment of the assets in ~~his or her~~ **the participant's** individual
3 account, and that participant is not considered an investment
4 fiduciary under this act.

5 (3) An investment fiduciary shall discharge ~~his or her~~ **the**
6 **investment fiduciary's** duties solely in the **pecuniary** interest of
7 the participants and the beneficiaries, and shall do all of the
8 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 **pecuniary** benefits to participants and participants' beneficiaries,
18 and of defraying reasonable expenses of investing the assets of the
19 system.

20 (d) ~~Give~~ **Subject to sections 14 and 20k, consider only**
21 **pecuniary factors in the evaluation of an investment. The**
22 **investment fiduciary shall also give** appropriate consideration to
23 those facts and circumstances that the investment fiduciary knows
24 or should know are relevant to the particular investment or
25 investment course of action involved, including the role the
26 investment or investment course of action plays in that portion of
27 the system's investments for which the investment fiduciary has
28 responsibility; and act accordingly. ~~For purposes of this~~
29 ~~subsection, "appropriate~~ **As used in this subdivision:**

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

10 **(A) ~~(i)~~**—The diversification of the investments of the system.

11 **(B) ~~(ii)~~**—The liquidity and current return of the investments of
 12 the system relative to the anticipated cash flow requirements of
 13 the system.

14 **(C) ~~(iii)~~**—The projected return of the investments of the system
 15 relative to the funding objectives of the system.

16 **(ii) "Pecuniary factor" means a factor that the investment**
 17 **fiduciary has determined would have a material effect on the risk**
 18 **or return of an investment based on appropriate investment horizons**
 19 **consistent with the funding objective of the system. For purposes**
 20 **of this subparagraph, "material effect" does not include an effect**
 21 **that furthers nonpecuniary, noneconomic, or nonfinancial social,**
 22 **political, or ideological objectives.**

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

28 (f) Prepare and maintain written objectives, policies, and
 29 strategies with clearly defined accountability and responsibility

1 for implementing and executing the system's investments.

2 (g) Monitor the investment of the system's assets with regard
3 to the limitations on those investments under this act. Upon
4 discovery that an investment causes the system to exceed a
5 limitation prescribed in this act, the investment fiduciary shall
6 reallocate assets in a prudent manner to comply with the prescribed
7 limitation.

8 (h) Prepare and maintain written policies regarding ethics and
9 professional training and education, including travel, ~~which~~
10 ~~policies~~ **that** contain clearly defined accountability and reporting
11 requirements for the system's investment fiduciaries.

12 (i) Publish a summary annual report that includes all of the
13 following:

14 (i) The name of the system.

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

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

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

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

21 (vi) Except as otherwise provided in this subparagraph, the
22 system's investment performance net of fees on a rolling calendar-
23 year basis for the previous 1-, 3-, 5-, 7-, and 10-year periods.
24 For a system for which the state treasurer is the investment
25 fiduciary, the summary annual report must include the system's
26 investment performance net of fees on a rolling calendar-year and
27 fiscal-year basis for the previous 1-, 3-, 5-, 7-, and 10-year
28 periods.

29 (vii) The system's administrative and investment expenditures

1 pursuant to standards of the Governmental Accounting Standards
2 Board, including, but not limited to, a list of all expenditures
3 made with soft dollars and all expenditures for professional
4 training and education, including travel expenditures, by or on
5 behalf of system board members that are paid by the system, if any.

6 (viii) The system's itemized budget containing all projected
7 expenditures, including, but not limited to, expenditures for
8 professional training and education, including travel expenditures,
9 by or on behalf of system board members that are paid by the
10 system.

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

13 (A) The number of active members.

14 (B) The number of retirees and beneficiaries.

15 (C) The average annual retirement allowance.

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

17 (E) The valuation payroll.

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

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

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

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

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

25 (K) The smoothing method utilized to determine the funding
26 value of assets.

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

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

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

3 (O) The actuarial assumed rate of health care inflation.

4 (x) In addition to the expenditures reported under
5 subparagraph (vii), for a large sponsored system a travel report
6 listing all travel outside this state in the ~~immediately~~ preceding
7 fiscal year that was funded in whole or in part with public funds.
8 The report must include the total expenses for all out-of-state
9 travel funded during the immediately preceding fiscal year and all
10 of the following information for each travel occurrence:

11 (A) The name of each person receiving reimbursement for travel
12 outside this state or whose travel costs were paid by the large
13 sponsored system and funded in whole or in part with public
14 ~~funds.~~ **money.**

15 (B) The destination.

16 (C) The dates.

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

18 (E) An itemization of the transportation and related costs,
19 including, but not limited to, the amount for food, lodging, and
20 vehicle rental and listing the names of hotels, restaurants,
21 vehicle rental agencies, and vehicle models.

22 (xi) For a state unit, an executive summary of both of the
23 following:

24 (A) The state unit's unfunded actuarial accrued liabilities
25 for retiree health and pension.

26 (B) The information described in subparagraph (v).

27 **(xii) A tabulation of all proxy votes. For each proxy vote, the**
28 **system shall include a vote caption, the system's vote, the**
29 **recommendation of company management, and, if applicable, the proxy**

1 advisor's recommendation.

2 (xiii) A tabulation of all limited partnerships. For each
3 limited partnership, the system shall include the name of the fund,
4 when the investment was made, the amount of capital contributed,
5 any cost or fees associated with the limited partnership, and a
6 measure of the annualized return on capital invested.

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

11 (k) For a state unit, submit the executive summary required
12 under subdivision (i) (xi) to the senate and house of representatives
13 appropriations committees and the senate and house fiscal agencies
14 not less than 30 days after publication.

15 (l) For a system other than a state unit, submit the summary
16 annual report published under subdivision (i) to the department of
17 treasury not less than 30 days after publication.

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

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

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

26 (c) The Michigan state police retirement system created under
27 the state police retirement act of 1986, 1986 PA 182, MCL 38.1601
28 to ~~38.1675~~ **38.1674**.

29 (d) The Michigan public school employees' retirement system

1 created under the public school employees retirement act of 1979,
2 1980 PA 300, MCL 38.1301 to 38.1437.

3 (5) Subject to section 13g, an investment fiduciary may use a
4 portion of the system's income to defray the costs of investing,
5 managing, and protecting the assets of the system; may retain
6 investment and all other goods and services necessary for the
7 conduct of the affairs of the system, including investment
8 advisors, consultants, custodians, accountants, auditors,
9 attorneys, actuaries, investment personnel, administrators, and
10 physicians; and may enter into contracts for and pay reasonable
11 compensation for those services. Subject to an annual appropriation
12 by the legislature, a deduction from the income of a state-
13 administered system resulting from the payment of those costs must
14 be made.

15 (6) Subject to this subsection and subsection (13), an
16 investment fiduciary may use a portion of the system's income to
17 defray the costs of professional training and education, including
18 travel costs, of system board members ~~, which~~ **if the** professional
19 training and education, including travel, are directly related to
20 the administration, management, and operation of the system. The
21 governing board vested with the general administration, management,
22 and operation of the system or other decision-making body that is
23 responsible for implementation and supervision of the system shall
24 adopt an annual budget for professional training and education,
25 including travel, authorized under this subsection. The budget
26 adopted under this subsection must reflect the number of board
27 members, the size of the system, and the educational objectives of
28 the system. The system's total aggregate cost for professional
29 training and education, including travel costs, authorized under

1 this subsection for a fiscal year must not exceed \$150,000.00 or an
2 amount that is equal to the total number of system board members
3 multiplied by \$12,000.00, whichever is less. The system's total
4 cost for professional training and education, including travel
5 costs, authorized under this subsection for an individual system
6 board member in a fiscal year must not exceed \$30,000.00. Beginning
7 January 1, 2013, the department of treasury shall adjust the dollar
8 amounts in this subsection by an amount determined by the state
9 treasurer at the end of the ~~immediately~~ preceding calendar year to
10 reflect the cumulative annual percentage change in the Consumer
11 Price Index. As used in this subsection, "Consumer Price Index"
12 means the most comprehensive index of consumer prices available for
13 this state from the Bureau of Labor Statistics of the United States
14 Department 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
28 management, brokerage, or custody services related to the system's
29 assets. For purposes of this section only, investment service

1 provider does not include a retirement system.

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

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

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

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

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

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

27 (a) Deal with the assets of the system in ~~his or her~~ **the**
 28 **investment fiduciary's** own interest or for ~~his or her~~ **the**
 29 **investment fiduciary's** own account.

1 (b) In ~~his or her~~ **the investment fiduciary's** individual or any
2 other capacity act in any transaction involving the system on
3 behalf of a party whose interests are adverse to the interests of
4 the system or the interest of its participants or participants'
5 beneficiaries.

6 (c) Receive any consideration for ~~his or her~~ **the investment**
7 **fiduciary's** own personal account from any party dealing with the
8 system in connection with a transaction involving the assets of the
9 system.

10 (d) **Adopt a practice of following a recommendation of a proxy**
11 **advisor or other service provider unless the proxy advisor or other**
12 **service provider has a practice of, and in writing commits to,**
13 **following proxy voting guidelines that match the investment**
14 **advisor's obligation to act solely on pecuniary factors, as that**
15 **term is defined in subsection (3).**

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

18 (a) Receiving any benefit to which ~~he or she~~ **the investment**
19 **fiduciary** may be entitled as a participant or participant's
20 beneficiary of the system.

21 (b) Receiving any reimbursement of expenses properly and
22 actually incurred in the performance of his or her duties for the
23 system.

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

27 (d) Receiving agreed upon compensation for services from the
28 system.

29 (11) Except for an employee of a system, this state, or the

1 political subdivision sponsoring a system, when acting in the
2 capacity as an investment fiduciary, an investment fiduciary who is
3 qualified under section 12c(1)(b) shall meet 1 of the following
4 requirements:

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

8 (b) Be a bank as defined under the investment advisers act of
9 1940, 15 USC 80b-1 to 80b-21.

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

11 (12) An investment fiduciary shall not invest in a debt
12 instrument issued by a foreign country that has been designated by
13 the United States Department of State as a state sponsor of terror.

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

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

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

22 (c) It is necessary to produce budgetary savings or to
23 increase revenues, including protecting existing federal funds or
24 securing additional federal funds.

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

28 (14) Subject to section 13g, an investment fiduciary of a
29 large sponsored system that invests or has invested in a hazardous

1 waste deep disposal well facility regulated under part 111 or 121
2 of the natural resources and environmental protection act, 1994 PA
3 451, MCL 324.11101 to 324.11153 and 324.12101 to 324.12117, is
4 subject to all of the following:

5 (a) The investment fiduciary shall not make an additional
6 investment in the hazardous waste deep disposal well facility
7 unless the investment is solely to prepare the property on which
8 the hazardous waste deep disposal well facility is located for sale
9 for purposes other than operation as a hazardous waste deep
10 disposal well facility or similar hazardous facility.

11 (b) The investment fiduciary shall sell, redeem, divest, or
12 withdraw all investments in the hazardous waste deep disposal well
13 facility ~~within~~ **not later than** 180 days after any of the following
14 circumstances occur:

15 (i) The operator of the hazardous waste deep disposal well
16 facility files for bankruptcy.

17 (ii) The sale, transfer, purchase, or acquisition of a
18 controlling interest in the operator of the hazardous waste deep
19 disposal well facility.

20 (iii) An Environmental Protection Agency action for a violation
21 at the hazardous waste deep disposal well facility.

22 (iv) An Environmental Protection Agency revocation of the
23 operator's license.

24 (v) An Environmental Protection Agency or department of
25 environmental quality order to terminate operations at the
26 hazardous waste deep disposal well facility.

27 (15) For a state unit, a representative of the office of
28 retirement services in the department of technology, management,
29 and budget shall appear before the senate and house of

1 representatives appropriations committees on request of the
2 committee chair to testify about the system's summary annual report
3 required under subsection (3).

4 (16) The department of treasury shall post on its website an
5 executive summary of each summary annual report submitted to the
6 department of treasury under subsection (3) (l). The executive
7 summary must include the applicable system's unfunded actuarial
8 accrued liability for pension. The department of treasury shall
9 submit each executive summary required under this subsection to the
10 senate and the house of representatives appropriations committees
11 and the senate and house fiscal agencies not less than 30 days
12 after posting.

13 (17) For purposes of subsection (3), an investment fiduciary
14 is considered to have taken an action, or considered a factor, with
15 a purpose to further social, political, or ideological objectives
16 based on evidence indicating the purpose, including, but not
17 limited to, any fiduciary commitment to further, through portfolio
18 company engagement, board or shareholder votes. As used in this
19 subsection, "fiduciary commitment" means evidence of an investment
20 fiduciary's purpose in managing assets as an investment fiduciary,
21 including, but not limited to, any of the following in an
22 investment fiduciary's capacity as a fiduciary:

23 (a) Advertising, statements, explanations, reports, letters to
24 clients, communications with portfolio companies, statements of
25 principles, or commitments.

26 (b) Participation in, affiliation with, or status as a
27 signatory to any coalition, initiative, joint statement of
28 principles, or agreement.

29 (18) The governing body of the governmental unit sponsoring

1 the system shall not grant proxy voting authority to a person that
2 is not part of the governing unit unless the person has a practice
3 of, and in writing commits to, following guidelines that match the
4 governmental unit's obligation to act solely on pecuniary factors,
5 as that term is defined in subsection (3).

6 (19) A proxy vote must be posted on a system's website not
7 less than 1 calendar month before the vote is submitted.

8 (20) Except as otherwise provided by law, all meetings of
9 fiduciaries must be open to the public. Each meeting must be
10 publicly broadcast in audio and video at the time it is conducted
11 and archived on the website of the system for future public access
12 and use.

13 (21) ~~(17)~~As used in this section, "state unit" means a system
14 established under the state employees' retirement act, 1943 PA 240,
15 MCL 38.1 to 38.69, the public school employees retirement act of
16 1979, 1980 PA 300, MCL 38.1301 to 38.1437, the judges retirement
17 act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and the state
18 police retirement act of 1986, 1986 PA 182, MCL 38.1601 to
19 ~~38.1675-38.1674.~~