PUBLIC EMPLOYEE RETIREMENT SYSTEM INVESTMENT ACT

Act 314 of 1965

AN ACT to authorize the investment of assets of public employee retirement systems or plans and the contributions made by employees to retirement systems or plans created and established by the state or any political subdivision; to provide for the payment of certain costs and investment expenses; to authorize investment in variable rate interest loans; to limit employer and plan official liability for certain investment decisions; to define and limit the investments which may be made by an investment fiduciary with the assets of a public employee retirement system; and to prescribe the powers and duties of investment fiduciaries and certain state departments and officers.

History: 1965, Act 314, Imd. Eff. July 22, 1965 ;-- Am. 1980, Act 31, Imd. Eff. Mar. 8, 1980 ;-- Am. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1988, Act 252, Eff. Jan. 1, 1989 ;-- Am. 1988, Act 253, Eff. Jan. 1, 1989 ;-- Am. 1988, Act 343, Imd. Eff. Oct. 19, 1988 ;-- Am. 2014, Act 242, Imd. Eff. June 27, 2014

The People of the State of Michigan enact:

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38.1121-38.1131 Repealed. 1982, Act 55, Imd. Eff. Apr. 6, 1982.

Compiler's Notes: Prior to the repeal of MCL 38.1121 to 38.1131, MCL 38.1125a had expired by its own terms.

38.1132 Short title; meanings of words and phrases.

Sec. 12.

(1) This act shall be known and may be cited as the "public employee retirement system investment act".

(2) For the purposes of this act, the words and phrases defined in sections 12a to 12f have the meanings ascribed to them in those sections.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1988, Act 127, Imd. Eff. May 24, 1988 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996

38.1132a Definitions; A.

Sec. 12a.

"Assets", for the purpose of meeting asset limitations contained in this act, means the total of the cash and investments of a system valued at market.

History: Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

38.1132b Definitions; D to G.

Sec. 12b.

(1) "Defined contribution plan" means a defined contribution plan as defined in section 414(i) in the internal revenue code, 26 USC 414.

(2) "Derivative" means either of the following:

(a) A contract or convertible security that changes in value in concert with a related or underlying security, future, or other instrument or index; or obtains much of its value from price movements in a related or underlying security, future, or other instrument or index; or both.

(b) A contract or security, such as an option, forward, swap, warrant, or a debt instrument with 1 or more options, forwards, swaps, or warrants embedded in it or attached to it, the value of which contract or security is determined in whole or in part by the price of 1 or more underlying instruments or markets.

(3) "Equity interests" means limited partnership interests and other interests in which the liability of the investor is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability of the investor.

(4) "Global security" means any of the following:

(a) A fixed income security issued by a government, a governmental agency, or a public or private company that is traded outside of the United States and may be issued in a currency other than the United States dollar.

(b) An equity position in a company traded on an exchange outside of the United States or a security that may be issued in a currency other than the United States dollar or an unregistered American depository receipt.

(c) An equity or fixed income derivative that derives its value from an investment described in subdivision (a) or (b) or a global security or bond index traded on an exchange outside of the United States.

History: Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

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38.1132c Definitions; I to L.

Sec. 12c.

(1) "Investment fiduciary" means a person other than a participant directing the investment of the assets of his or her individual account in a defined contribution plan who does any of the following:

(a) Exercises any discretionary authority or control in the investment of a system's assets. Investment fiduciary under this subdivision includes the state treasurer and his or her investment personnel for the systems described in section 13(4).

(b) Renders investment advice for a system for a fee or other direct or indirect compensation.

(2) "Invest" or "investment" means the utilization of money in the expectation of future returns in the form of income or capital gain. Investments initially purchased in accordance with this act that subsequently do not qualify for purchase for any reason shall be considered to continue to meet the requirements of this act. Investment includes a guarantee by an investment fiduciary but does not include, as a sole investment, a pledge of the system's assets as collateral to guarantee the repayment of obligations made by a third party to a borrower.

(3) "Investment grade" means graded in the top 4 major grades as determined by 2 national rating services.

(4) "Large sponsored system" means a system created and established by a city that is subject to a plan for adjustment and that meets 1 or more of the following conditions:

(a) The city has a population of more than 600,000.

(b) The system has discharged at least $1,000,000,000.00 of pension liabilities in bankruptcy.

History: Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2014, Act 185, Imd. Eff. June 20, 2014

Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

38.1132d Definitions; N to P.

Sec. 12d.

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

(2) "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, but excluding extraordinary expenses appearing in the regular financial statements of the system.

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

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

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

(b) A person providing services to the system.

(c) The political subdivision sponsoring the system.

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

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

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

(5) "Plan for adjustment" means a plan for the adjustment of debts entered and approved by a federal bankruptcy court for a city that has established a large sponsored system.

(6) "Portfolio company" means an entity in which the investment fiduciary has invested or has considered investing system assets.

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

History: Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2014, Act 545, Imd. Eff. Jan. 15, 2015

Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

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38.1132e Definitions; S.

Sec. 12e.

(1) "Small business" means a corporation, partnership, sole proprietorship, or other entity which does not meet the specific requirements of investments permitted under this act.

(2) "Small business investment company" means an incorporated body or a limited partnership under section 301 of title III of the small business investment act of 1958, Public Law 85-699, 15 U.S.C. 681.

(3) "Soft dollar" means brokerage commissions that are used by the system to purchase goods or services.

(4) "Stock" means capital stock, common stock, preferred stock, American depository receipts, or any other evidence of residual ownership of a corporation.

(5) "System" means a public employee retirement system created and established by this state or any political subdivision of this state.

History: Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

38.1132f Definitions; V.

Sec. 12f.

"Venture capital firm" means a corporation, partnership, proprietorship, or other entity, the principal business of which is or will be the making of investments in small business, either directly or indirectly by investing in entities the principal business of which is or will be the making of investments in small businesses.

History: Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

38.1133 Investment authority; investment fiduciary; investing, reinvesting, holding in nominee form, and managing assets of system; powers and duties; compliance with divestment from terror act; costs; "consumer price index" defined; disclosure of fees or other compensation by investment service provider; "investment service provider" defined; prohibited acts; exceptions; requirements; debt instrument issued by foreign country; out-of-state travel; investment in hazardous waste deep disposal well facility; testimony by representative of office of retirement services in department of technology, management, and budget; executive summary of summary annual report; posting on website; submission to legislature; "state unit" defined.

Sec. 13.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The name of the system.

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

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

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

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

(vi) Except as otherwise provided in this subparagraph, the system's investment performance net of fees on a rolling calendar-year basis for the previous 1-, 3-, 5-, 7-, and 10-

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year periods. For a system for which the state treasurer is the investment fiduciary, the summary annual report must include the system's investment performance net of fees on a rolling calendar-year and fiscal-year basis for the previous 1-, 3-, 5-, 7-, and 10-year periods.

(vii) The system's administrative and investment expenditures pursuant to standards of the Governmental Accounting Standards Board, including, but not limited to, a list of all expenditures made with soft dollars and all expenditures for professional training and education, including travel expenditures, by or on behalf of system board members that are paid by the system, if any.

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

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

(A) The number of active members.

(B) The number of retirees and beneficiaries.

(C) The average annual retirement allowance.

(D) The total annual retirement allowances being paid.

(E) The valuation payroll.

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

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

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

(I) The actuarial assumed rate of investment return.

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

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

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

(M) The system's actuarial cost method.

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

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

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

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

(B) The destination.

(C) The dates.

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

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

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

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

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

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

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

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

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

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

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

(c) The Michigan state police retirement system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

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

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

(6) Subject to this subsection and subsection (13), an investment fiduciary may use a portion of the system's income to defray the costs of professional training and education, including travel costs, of system board members, which professional training and education, including travel, are directly related to the administration, management, and operation of the system. The governing board vested with the general administration, management, and operation of the system or other decision-making body that is responsible for implementation and supervision of the system shall adopt an annual budget for professional training and education, including travel, authorized under this subsection. The budget adopted under this subsection must reflect the number of board members, the size of the system, and the educational objectives of the system. The system's total aggregate cost for professional training and education, including travel costs, authorized under this subsection for a fiscal year must not exceed $150,000.00 or an amount that is equal to the total number of system board members multiplied by $12,000.00, whichever is less. The system's total cost for professional training and education, including travel costs, authorized under this subsection for an individual system board member in a fiscal year must not exceed $30,000.00. Beginning January 1, 2013, the department of treasury shall adjust the dollar amounts in this subsection by an amount determined by the state treasurer at the end of the immediately preceding calendar year to reflect the cumulative annual percentage change in the Consumer Price Index. As used in this subsection, "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor.

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(7) Before any investment services are provided, an investment service provider shall provide the investment fiduciary of the system with a complete written disclosure of all fees or other compensation associated with its relationship with the system. After investment services are provided to the investment fiduciary of the system, an investment service provider shall provide on an annual basis written disclosure of all fees including, but not limited to, commissions, 12b-1 and related fees, compensation paid or to be paid to third parties, and any other compensation paid by the system to the investment fiduciary of the system. As used in this subsection, "investment service provider" means any individual, third-party agent or consultant, or other entity that receives direct or indirect compensation for consulting, investment management, brokerage, or custody services related to the system's assets. For purposes of this section only, investment service provider does not include a retirement system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) Subject to section 13g, an investment fiduciary of a large sponsored system that invests or has invested in a hazardous waste deep disposal well facility regulated under part 111 or 121 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11153 and 324.12101 to 324.12117, is subject to all of the following:

(a) The investment fiduciary shall not make an additional 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.

(b) The investment fiduciary shall sell, redeem, divest, or withdraw all investments in the hazardous waste deep disposal well facility within 180 days after any of the following circumstances occur:

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

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

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

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

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

(15) For a state unit, a representative of the office of retirement services in the department of technology, management, and budget shall appear before the senate and house of representatives appropriations committees on request of the committee chair to testify about the system's summary annual report required under subsection (3).

(16) The department of treasury shall post on its website an executive summary of each summary annual report submitted to the department of treasury under subsection (3)(l). The executive summary must include the applicable system's unfunded actuarial accrued liability

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for pension. The department of treasury shall submit each executive summary required under this subsection to the senate and the house of representatives appropriations committees and the senate and house fiscal agencies not less than 30 days after posting.

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

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2008, Act 273, Imd. Eff. Sept. 29, 2008 ;-- Am. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2009, Act 84, Imd. Eff. Aug. 31, 2009 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2014, Act 185, Imd. Eff. June 20, 2014 ;-- Am. 2014, Act 545, Imd. Eff. Jan. 15, 2015 ;-- Am. 2016, Act 145, Imd. Eff. June 7, 2016 ;-- Am. 2016, Act 530, Eff. Mar. 29, 2017 ;-- Am. 2017, Act 203, Imd. Eff. Dec. 20, 2017 ;-- Am. 2018, Act 676, Imd. Eff. Dec. 28, 2018

Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

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38.1133a "MacBride principles" defined; duties of investment fiduciary; effect of unlawful principle.

Sec. 13a.

(1) As used in this section, "MacBride principles" means those requirements for companies doing business in Northern Ireland designed to do all of the following:

(a) Increase the representation of individuals from underrepresented religious groups in the work force including managerial, supervisory, administrative, clerical, and technical jobs.

(b) Provide adequate security for the protection of minority employees both at the workplace and while traveling to and from the workplace.

(c) Ban provocative religious or political emblems from the workplace.

(d) Publicly advertise all employment openings and make special recruitment efforts to attract applicants from underrepresented religious groups.

(e) Provide that layoff, recall, and termination procedures shall not in practice favor particular religious groupings.

(f) Abolish job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

(g) Develop training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.

(h) Establish procedures to assess, identify, and actively recruit minority employees with potential for further advancement.

(i) Appoint senior management staff members to oversee the efforts to comply with these principles and the implementation of timetables to achieve these principles.

(2) With respect to investments qualified under section 14 or 20k, the investment fiduciary shall use all capital stock, common stock, preferred stock, American depository receipts, or any other evidence of residual ownership of a corporation in which it has investments to support either of the following:

(a) Shareholder resolutions and initiatives proposing the adoption of the MacBride principles for companies doing business in Northern Ireland.

(b) Shareholder resolutions and initiatives proposing to recognize efforts to end employment discrimination contained in any agreement between the government of the Republic of Ireland and the government of the United Kingdom, signed on November 15, 1985, which agreement is commonly referred to as the Anglo-Irish agreement.

(3) If a provision of the MacBride principles is found to be in violation of the law of the United Kingdom by a court in the United States or the United Kingdom, then the duties of the investment fiduciary prescribed by this section shall not apply to the extent that a shareholder resolution or initiative includes the provision that has been found unlawful.

History: Add. 1988, Act 343, Imd. Eff. Oct. 19, 1988 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000

38.1133b Repealed. 1993, Act 214, Imd. Eff. Oct. 27, 1993.

Compiler's Notes: The repealed section pertained to encouragement or condonation of legally required discrimination; extension of deadlines for divestment of assets; developing and maintaining register of certain companies; and providing register to boards of retirement systems.

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38.1133c Definitions; effort by fiduciary to identify scrutinized companies; assembly into scrutinized companies list; update and availability of list; procedures; report; effectiveness of section; exemption of fiduciary from conflicting statutory or common law obligations; liability; affirmative exclusion from federal sanctions; severability.

Sec. 13c.

(1) As used in this section:

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Sudan, 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.

(c) "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.

(d) "Complicit" means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(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 38.1675.

(ii) The Tier 1 retirement plan available under the judge's retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

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

(iv) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(g) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the national congress party or any successor government formed on or after October 13, 2006 and does not include the regional government of southern Sudan.

(h) "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.

(i) "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 the provisions of this act.

(j) "Marginalized populations of Sudan" includes, but is not limited to, all of the following:

(i) The portion of the population in the Darfur region that has been genocidally victimized.

(ii) The portion of the population of southern Sudan victimized by Sudan's north-south civil war.

(iii) The Beja, Rashidiya, and other similarly underserved groups of eastern Sudan.

(iv) The Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions.

(v) The Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(k) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(l) "Mineral extraction activities" includes exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(m) "Oil-related activities" includes, but is not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(n) "Power production activities" means any business operation that involves a project commissioned by the national electricity corporation of Sudan or other similar government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

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(o) "Scrutinized company" means any company, except a social development company and a company described in subsection (10) that is not complicit in the Darfur genocide, that meets the criteria in subparagraph (i), (ii), or (iii):

(i) The company has business operations that involve contracts with or provision of supplies or services to 1 or more of the following:

(A) The government of Sudan.

(B) Companies in which the government of Sudan has any direct or indirect equity share.

(C) Government of Sudan-commissioned consortia or projects.

(D) Companies involved in government of Sudan-commissioned consortia or projects and that have 1 or more of the following:

(I) More than 10% of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities, less than 75% of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government, and the company has failed to take substantial action.

(II) More than 10% of the company's revenues or assets linked to Sudan involve power production activities, less than 75% of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan, and the company has failed to take substantial action.

(ii) The company is complicit in the Darfur genocide.

(iii) The company supplies military equipment within Sudan, unless the fiduciary finds that the military equipment will not be used to facilitate offensive military actions in Sudan or the fiduciary finds that the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict.

(p) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

(q) "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, undertaking significant humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity and evaluated and certified by an independent third party to be substantial in relationship to the company's Sudan business operations and of benefit to 1 or more marginalized populations of Sudan, or through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(2) 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 such holdings in the future. The efforts shall include 1 or more of the following:

(a) Reviewing and relying, as appropriate in the fiduciary's judgment, on publicly available information regarding companies with business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

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(b) Contacting asset managers contracted by the fiduciary that invest in companies with business operations in Sudan.

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

(3) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in subsection (2), the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(4) 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 (2). The fiduciary shall make the scrutinized companies list freely available to the fiduciaries of other public retirement systems located in this state if making the list available does not violate any agreements with third parties or reveal proprietary information of a third party.

(5) 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 in which the fiduciary oversees pursuant to its responsibilities as defined in subsection (1)(f).

(b) For each company identified in subdivision (a) with only inactive business operations, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations and further encourage the company to engage in substantial humanitarian operations in the country. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, 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 Sudan-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and this section shall cease to apply to it unless it resumes scrutinized business operations. If, within 90 days following the fiduciary's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to this section.

(e) If, after 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), the company continues to have scrutinized active business operations, and only while the company continues to have scrutinized active business operations, 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 shall 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 shall be removed from the fiduciary's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

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(f) Except as provided in subdivisions (g) and (h), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) No company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibition pursuant to subdivisions (e) and (f).

(h) Subdivisions (e) and (f) shall 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 that is not in the fiduciary's portfolio as of July 17, 2018, the fiduciary shall perform due diligence to prevent investment in any private equity fund where the offering memorandum or prospectus identifies the purpose of the private equity fund as investing in scrutinized companies with active business operations in Sudan. 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 July 17, 2018 creates a similar publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this section, the fiduciary shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

(6) The fiduciary shall file 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 file a publicly available report to the legislature and send a copy of that report to the United States presidential special envoy to Sudan 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 (5)(h).

(7) This section is effective until the first occurrence of any of the following:

(a) The United States Congress or the President of the United States declares that the Darfur genocide has been halted for at least 12 months.

(b) The United States revokes all sanctions imposed against the government of Sudan.

(c) The Congress or President of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons.

(d) The Congress or President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

(8) With respect to actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, the fiduciary shall be 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.

(9) The fiduciary, members of an investment advisory committee, and any person with decision-making authority with regard to investments of the fiduciary shall not be held liable for any action undertaken for the purpose of complying with or executing the mandates required under this section.

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(10) Scrutinized company does not include a company that the federal government has affirmatively excluded from federal sanctions for business the scrutinized company conducts relating to Sudan, or that has consistently obtained applicable licenses or approvals to conduct transactions with Sudan. If the fiduciary becomes aware at any time that a company that has not been affirmatively excluded from federal sanctions for business it conducts relating to Sudan and has not received from the United States government applicable licenses or approvals to conduct transactions with Sudan, that company is immediately subject to subsection (5).

(11) If any provision, section, subsection, sentence, clause, phrase, or word of this legislation or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

History: Add. 2008, Act 233, Imd. Eff. July 17, 2008 ;-- Am. 2018, Act 676, Imd. Eff. Dec. 28, 2018
Compiler's Notes: Former MCL 38.1133c, which pertained to encouragement or condonation of legally required discrimination; extension of deadlines for divestment of assets; developing and maintaining register of certain companies; and providing register to boards of retirement systems was repealed by Act 214 of 1993, Imd. Eff. Oct. 27, 1993.For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

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38.1133d Definitions; scrutinized companies; identification by fiduciaries; assembling scrutinized companies list; update by fiduciary; procedure; report; effectiveness of section; conditions; liability of fiduciary; scrutinized company affirmatively excluded from federal sanctions; effect; severability.

Sec. 13d.

(1) As used in this section:

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Iran, 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.

(c) "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.

(d) "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.

(e) "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 38.1675.

(ii) The Tier 1 retirement plan available under the judge's retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

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

(iv) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(f) "Government of Iran" means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(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 the provisions of this act.

(i) "Iran" means the Islamic republic of Iran.

(j) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles.

(k) "Mineral extraction activities" includes exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(l) "Oil-related activities" includes, but is not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(m) "Petroleum resources" means petroleum or natural gas.

(n) "Power production activities" means any business operation that involves a project commissioned by the government of Iran whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(o) "Scrutinized company" means any company not described in subsection (10) that has business operations that involve contracts with or provision of supplies or services to the government of Iran; companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran; or companies involved in consortiums and projects commissioned by the government of Iran and 1 or more of the following:

(i) More than 10% of the company's total revenues or assets are linked to Iran, and involve oil-related activities or mineral-extraction activities, and the company has failed to take substantial action.

(ii) The company has, with actual knowledge, on or after August 5, 1996, made an investment of $20,000,000.00 or more, or any combination of investments of at least

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$10,000,000.00 each, which in the aggregate equals or exceeds $20,000,000.00 in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources.

(p) "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.

(2) 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 such 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 with business operations in Iran, 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 with business operations in Iran.

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in Iran.

(d) Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions against companies conducting business or investing in countries that are designated state sponsors of terror.

(3) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in subsection (2), the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(4) 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 (2). The fiduciary shall make the scrutinized companies list freely available to the fiduciaries of other public retirement systems located in this state if making the list available does not violate any agreements with third parties or reveal proprietary information of a third party.

(5) 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 in which the fiduciary oversees pursuant to its responsibilities as described in subsection (1)(e).

(b) For each company identified in subdivision (a) with only inactive business operations, not later than 60 days after the identification of the company, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in Iran until it is able to avoid scrutinized business operations. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, 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 Iran-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations through substantial action or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), that company announces a plan of substantial action, the company shall be

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removed from the scrutinized companies list and this section shall cease to apply to it unless it fails to implement its plan of substantial action within the designated time frame. If, within 90 days following the fiduciary's first engagement, the company converts its active business operations to inactive business operations, the company shall be subject to this section.

(e) If, after 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), the company continues to have active business operations, and only while the company continues to have active business operations, 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 shall 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 shall be removed from the fiduciary's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(f) Except as provided in subdivisions (g) and (h), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) No company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran shall be subject to divestment or investment prohibition pursuant to subdivisions (e) and (f).

(h) Subdivisions (e) and (f) shall 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 as of July 17, 2008, the fiduciary shall perform due diligence to prevent investment in any private equity fund or publicly traded fund where the offering memorandum or prospectus identifies a purpose of the private equity fund or publicly traded fund as investing in scrutinized companies with active business operations in Iran. 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 July 17, 2008 creates a similar publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this section, the fiduciary shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

(6) The fiduciary shall file 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 file 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 (5)(h).

(7) This section is no longer effective upon the occurrence of 1 or more of the following:

(a) The Congress or President of the United States affirmatively and unambiguously states, through legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism.

(b) The United States revokes all sanctions imposed against the government of Iran.

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(c) The Congress or President of the United States affirmatively and unambiguously states, through legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section interferes with the conduct of United States foreign policy.

(8) With respect to actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, the fiduciary shall be 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.

(9) The fiduciary, members of an investment advisory committee, and any person with decision-making authority with regard to investments of the fiduciary shall not be held liable for any action undertaken for the purpose of complying with or executing the mandates required under this section.

(10) Scrutinized company does not include a company that the federal government has affirmatively excluded from federal sanctions for business the scrutinized company conducts relating to Iran, or that has consistently obtained applicable licenses or approvals to conduct transactions with Iran. If the fiduciary becomes aware at any time that a company that has not been affirmatively excluded from federal sanctions for business it conducts relating to Iran and has not received from the United States government applicable licenses or approvals to conduct transactions with Iran, that company is immediately subject to subsection (5).

(11) If any provision, section, subsection, sentence, clause, phrase, or word of this legislation or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

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History: Add. 2008, Act 232, Imd. Eff. July 17, 2008 ;-- Am. 2018, Act 676, Imd. Eff. Dec. 28, 2018
Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

38.1133e Prohibited conduct by investment fiduciary, service provider, or covered associate of service provider; exceptions; definitions; official of governmental entity.

Sec. 13e.

(1) An investment fiduciary shall not make a payment from the assets of a system to a service provider if the service provider or a covered associate of the service provider has made a contribution to an official of a governmental entity during the immediately preceding 24-calendar-month period, which period does not include any calendar month before March 28, 2013. An investment fiduciary, a service provider, or a covered associate of a service provider shall not do anything indirectly that, if done directly, would violate this subsection. This subsection does not apply under any of the following circumstances:

(a) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed $350.00 per election.

(b) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was not entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed $150.00 per election.

(c) The contribution was made to an official of a governmental entity by an individual more than 6 months before he or she became a covered associate of the service provider.

(d) The contribution was made to an official of a governmental entity by a covered associate of the service provider and all of the following requirements are met:

(i) The service provider discovers the contribution that violates this subsection on or before the expiration of 4 months after the contribution was made.

(ii) The contribution that violates this subsection was for $350.00 or less.

(iii) The covered associate of the service provider obtains the return of the contribution that violates this subsection on or before the expiration of 60 calendar days after the date of the discovery of the contribution under subparagraph (i).

(2) As used in this section:

(a) "Contribution" means a payment made under any of the following circumstances:

(i) For the purpose of influencing an election for federal, state, or local office.

(ii) For a debt incurred in connection with an election for federal, state, or local office.

(iii) For transition or inaugural expenses of a successful candidate for federal, state, or local office.

(iv) To a legal defense fund established by or on behalf of an official of a governmental entity.

(b) "Covered associate of the service provider" means any of the following:

(i) A general partner, managing member, agent, or officer of the service provider or any other individual with a similar status or function for the service provider.

(ii) An employee of the service provider who solicits a governmental entity on behalf of the service provider and any individual employed by the service provider who directly or indirectly supervises that employee.

(iii) A political action committee controlled by the service provider or by any individual described in subparagraph (i) or (ii). As used in this subparagraph, "political action committee" means a political committee or an independent committee as those terms are defined in the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

(c) "Governmental entity" means this state or a political subdivision of this state. Governmental entity includes a system and an agency, authority, or instrumentality of this state or of a political subdivision of this state.

(d) "Official of a governmental entity" means an individual who, at the time of the contribution, was an incumbent, candidate, or successful candidate for an elective office in a governmental entity if the office meets any of the following requirements:

(i) Is directly or indirectly responsible for or can influence the outcome of the hiring of a service provider by a system sponsored by the governmental entity.

(ii) Has the authority to appoint an individual who is directly or indirectly responsible for or can influence the outcome of the hiring of a service provider by a system sponsored by the governmental entity.

(e) "Payment" means a gift, subscription, loan, advance, or deposit of money or anything of value.

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(f) "Regulated investment adviser" means an investment adviser or covered associate of an investment adviser that is regulated under the investment advisers act of 1940, 15 USC 80b-1 to 80b-21.

(g) "Service provider" means a person retained to provide services to a system and includes investment advisers, consultants, custodians, accountants, auditors, attorneys, actuaries, administrators, and physicians. Service provider includes an investment service provider as defined in section 13(7). Service provider does not include a regulated investment adviser.

(3) For purposes of subsection (2)(d), an official of a governmental entity does not include an individual involved solely in the selection of a member of an investment committee described in section 13g.

History: Add. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2014, Act 185, Imd. Eff. June 20, 2014

38.1133f Breach of public trust by investment fiduciary or service provider; "service provider" defined.

Sec. 13f.

(1) An investment fiduciary or a service provider who is convicted of or who enters a nolo contendere plea accepted by a court for a felony or misdemeanor arising out of his or her service to a system is considered to have breached the public trust and shall reimburse the system for all costs, including legal defense fees, that were paid by the system. The system shall use reasonable efforts to collect any fees and costs recoverable under this subsection.

(2) As used in this section, "service provider" means that term as defined in section 13e.

History: Add. 2012, Act 347, Eff. Mar. 28, 2013

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38.1133g Investment committee; establishment by large sponsored system; duties; recommendation; definitions.

Sec. 13g.

(1) Subject to a plan for adjustment, each large sponsored system shall establish an investment committee.

(2) The investment committee shall recommend to the governing board of the large sponsored system investment management decisions, including, but not limited to, all of the following:

(a) The development of investment goals and objectives, investment assumptions, and performance measurement standards consistent with the needs of the large sponsored system.

(b) The selection, monitoring, evaluation, and removal of custodians, investment managers, or any investment service providers.

(c) Asset allocation.

(d) Subject to a plan for adjustment, all calculations, actuarial assumptions, or assessments used by an actuary, including, but not limited to, those underlying the restoration of pension benefits, funding levels, and amortization of the restoration of pension benefits, and those underlying the determination of annual funding levels and amortization of annual funding levels, and recommended contributions to the large sponsored system in accordance with applicable law.

(e) Performing or ordering asset liability valuation studies for the qualified system not less frequently than every 2 years.

(f) Review and approval, before final issuance of all annual audits and actuarial and financial reports before finalization.

(g) Interpretation of the large sponsored system's governing documents, applicable laws, plans of adjustment approved by United States bankruptcy courts, and other financial determinations affecting the large sponsored system's funding or benefit levels.

(h) Based on annual actuarial valuation reports and any other projections or reports, as applicable from an actuary or other professional advisors, the determination of the extent of restoration of pension benefits all in conformance with a plan for adjustment.

(3) The investment committee shall do all of the following:

(a) Select, set compensation for and terms of employment of, and evaluate the qualified system's chief financial officer.

(b) Notwithstanding section 20h(6), approve a qualified system's summary annual report created under section 13 before the summary annual report is made public.

(4) The investment committee shall submit its recommendation under subsection (2) to the board. The board shall have not more than 45 days from the date of the submission, or 10 business days if the committee determines in good faith that emergency action is required, to approve or disapprove the recommendation. If the board does not act within 45 days or 10 days, as applicable, the recommendation is considered approved by the board and the chief financial officer shall implement the recommendation.

(5) If the board disapproves the investment committee's recommendation within 45 days or 10 days, as applicable, the decision shall be implemented under the plan for adjustment.

(6) As used in this section:

(a) "Board" means the governing board of a large sponsored system.

(b) "Chief financial officer" means the chief financial officer of a qualified system.

(c) "Investment committee" or "committee" means an investment committee established under subsection (1).

(d) "Plan for adjustment" means a plan for the adjustment of debts entered and approved by a federal bankruptcy court for a city that has established a large sponsored system.

History: Add. 2014, Act 185, Imd. Eff. June 20, 2014

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38.1134 Investment in stock or global security.

Sec. 14.

(1) An investment fiduciary shall not invest more than 70% of a system's assets in stock or the type of global security described in section 12b(4)(b). An investment fiduciary shall not invest in more than 5% of the outstanding stock of any 1 corporation, or invest more than 5% of a system's assets in the stock of any 1 corporation, unless otherwise provided in this act.

(2) An investment fiduciary may invest in stock or global securities under subsection (1) if it meets 1 of the following requirements:

(a) Is registered on a national securities exchange regulated under title I of the securities exchange act of 1934, 15 USC 78a to 78pp, or on an industry-recognized exchange outside the United States.

(b) Is on the national association of securities dealers automated quotation system or a successor to this system or is on an industry-recognized system outside the United States.

(c) Is issued pursuant to rule 144a under the securities act of 1933, 17 CFR 230.144a.

(3) Notwithstanding subsection (2), an investment fiduciary may designate an American depository receipt or the type of global security described in section 12b(4)(b) that satisfies the

requirements of subsection (2) as an investment qualified under this section or as an investment in global securities qualified under section 20k.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

38.1135 Investment in investment companies.

Sec. 15.

An investment fiduciary may invest in investment companies registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64. The management company of the investment company shall have been in operation for at least 5 years and shall have assets under management of more than $500,000,000.00. An investment company may be established as a limited partnership, corporation, limited liability company, trust, or other organizational entity for which the liability of an investor does not exceed the amount of the investment under the laws of the United States or the applicable laws of the state, district, territory, or foreign country under which the investment company was established. An investment in an investment company shall be considered an investment in the underlying assets for all purposes under this act.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

38.1136 Investment in annuity investment contracts or participations in separate accounts of life insurance company; investment in general account of life insurer; requirements.

Sec. 16.

(1) An investment fiduciary may invest in annuity investment contracts or participations in separate real estate, mortgage, bond, stock, or other special investment accounts of a life insurance company authorized to do business in this state. An investment in such a separate account shall be considered an investment in stock under section 14 only to the extent that the separate account's assets include stock, and then only for the purpose of determining the 70% maximum investment limit under section 14. An investment in such a separate account shall also be considered an investment in real or personal property under section 19(1), but only to the extent that the separate account's assets include real or personal property, and then only for the purpose of determining the 5% maximum investment limit under section 19(1).

(2) An investment fiduciary may invest in the general account of a life insurer authorized to do business in this state under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, but the total amount of assets of any 1 system invested in any 1 insurer shall not exceed 50% of the capital and surplus of the insurer.

(3) A life insurance company under this section shall have been in operation for at least 5 years and have assets under management of more than $500,000,000.00. The insurance company shall have a claims-paying ability rating no less than single A according to A.M. Best & company or AA- according to Duff & Phelps credit rating corp., and an overall company financial strength rating no less than Aa3 according to Moody's investors service, inc. or AA- according to Standard & Poor's ratings group.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000

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38.1137 Other authorized investments; prohibited investments.

Sec. 17.

(1) An investment fiduciary may invest in any of the following:

(a) Obligations issued, assumed, or guaranteed by a solvent entity created or existing under the laws of the United States or of any state, district, or territory of the United States, which are not in default as to principal or interest, including, but not limited to, the following:

(i) Obligations secured by the mortgage of real property or the pledge of adequate collateral if, during any 3, including 1 of the last 2, of the 5 fiscal years immediately preceding the time of investment, the net earnings of the issuing, assuming, or guaranteeing entity available for fixed charges, as determined in accordance with standard accounting practice, shall have been not less than the total of its fixed charges for the year on an overall basis, nor less than 1-1/2 times its fixed charges for the year on a priority basis after excluding interest requirements on obligations subordinate to the issue as to security.

(ii) Equipment trust certificates of railroad companies organized under the laws of any state of the United States or of Canada or any of its provinces, payable within 20 years from their date of issue, in annual or semiannual installments, beginning not later than the fifth year after the date of issue, which certificates are a first lien on the specific equipment pledged as security for the payment of the certificates, and which certificates are either the direct obligations of the railroad companies or are guaranteed by the railroad companies, or are executed by trustees holding title to the equipment.

(iii) Obligations other than those described in subparagraphs (i) and (ii) and in section 12c(3). The aggregate investments made under this subparagraph shall not exceed 15% of the system's total assets.

(b) Obligations secured by a security interest in real or personal property and a lease obligation given by a solvent entity whose obligations would be qualified investments under the provisions of this act, if the investment does not exceed 100% of the appraised value of the property subject to the lease, and if all of the following requirements are met:

(i) The lease has an unexpired term equal to or exceeding the remaining term of the investment.

(ii) The lease is noncancelable unless the lessee first pays the sum of all unpaid rents due or to become due during the remaining lease term.

(iii) The lease provides for net rental payments equal to or exceeding the periodic payments on the investment.

(iv) The lease provides that the net rental payments are to be made without abatement or offset during the full term of the lease.

(v) The lease and the lease payments are assigned to the system, an agent of the system, or an independent trustee.

(c) Obligations issued, assumed, or guaranteed by the United States, its agencies, or United States government-sponsored enterprises.

(d) Obligations of a possession, territory, or public instrumentality of the United States, or of any state, city, county, township, village, school district, authority, or any other governmental unit having the power to levy taxes, or in obligations of other similar political units of the United States. These investments shall be of investment grade. These investments shall not be permitted if in the 3 preceding years the governmental unit has failed to pay its debt or any part of its debt or the interest on the debt. The aggregate investments made under this subdivision shall not exceed 5% of the system's total assets.

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(e) Banker's acceptances, commercial accounts, certificates of deposit, or depository receipts issued by a bank, trust company, savings and loan association, or a credit union.

(f) Commercial paper rated at the time of purchase within the 2 highest classifications established by not less than 2 national rating services, and which matures within 270 days after the date of issue.

(g) Repurchase agreements for the purchase of securities issued by the United States government or its agencies and executed by a bank or trust company or by members of the association of primary dealers or other recognized dealers in United States government securities.

(h) Reverse repurchase agreements for the sale of securities issued by the United States government or its agencies and executed with a bank or trust company or with members of the association of primary dealers or other recognized dealers in United States government securities.

(i) Any investment otherwise permitted by this section in which the interest rate varies from time to time. Notwithstanding a provision of any other act to the contrary, a loan shall not be considered to be in violation of the usury statutes of this state by virtue of the fact that the loan is made on a variable interest rate basis.

(j) Obligations secured by any of the obligations described in subdivision (a) or (c).

(k) Dollar denominated obligations issued in the United States by foreign governments, supranationals, banks, or corporations. These investments shall be of investment grade.

(2) Except as otherwise provided in this act and except for obligations described in subsection (1)(c), an investment fiduciary shall not do any of the following:

(a) Invest in more than 5% of the outstanding obligations of any 1 issuer.

(b) Invest more than 5% of a system's assets in the obligations of any 1 issuer.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

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38.1138 Investment in real estate or mortgages on certain leased real property.

Sec. 18.

An investment fiduciary may invest in real estate or mortgages on real property leased or to be leased to the United States government, or to a state, territory, agency, authority, or public instrumentality of the United States, if the investment does not exceed 100% of the appraised value of the property subject to the mortgage and if all of the following requirements are met:

(a) The lease has an unexpired term exclusive of optional renewal terms equal to or greater than the remaining term of the investment.

(b) The lease provides for net rental payments equal to or greater than the periodic payments on the investment.

(c) The lease and the lease payments are assigned to the system.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982

38.1139 Investment in real estate investment trust or real or personal property.

Sec. 19.

(1) An investment fiduciary may invest up to 10% of a system's assets in publicly or privately issued real estate investment trusts or in real or personal property otherwise qualified pursuant to section 15, 16, or 20c.

(2) In addition to investments authorized under subsection (1), an investment fiduciary of a system having assets of more than $100,000,000.00 may do any of the following:

(a) Invest in, buy, sell, hold, improve, lease, or acquire by foreclosure or an agreement in lieu of foreclosure, real or personal property or an interest in real or personal property.

(b) Develop, maintain, operate, or lease the real or personal property referred to in subdivision (a).

(c) Form or invest in 1 or more limited partnerships, corporations, limited liability companies, trusts, or other organizational entities for which liability of an investor cannot exceed the amount of the investment under the laws of the United States or of any state, district, or territory of the United States or foreign country. The limited partnership, corporation, limited liability company, trust, or other organizational entity may invest in, buy, sell, hold, develop, improve, lease, or operate real or personal property, or originate a mortgage or invest in an annuity separate account that invests in real or personal property to hold title to, improve, lease, manage, develop, maintain, or operate real or personal property whether currently held or acquired after December 27, 1996. An entity formed under this subdivision has the right to exercise all powers granted to the entity by the laws of the jurisdiction of formation, including, but not limited to, the power to borrow money in order to provide additional capital to benefit and increase the overall return on the investment held by the entity.

(d) Invest in investments otherwise qualified pursuant to subsection (1).

(3) Except as otherwise provided in this section, the aggregate investments made under subsection (2) shall not exceed 10% of the assets of the system. The purchase price of an investment made under this section shall not exceed the appraised value of the real or personal property.

(4) If the investment fiduciary of a system is the state treasurer, investments described in subsection (1) or (2) may exceed 10% of the assets of the system.

(5) An investment qualified under this section in which the underlying asset is an interest in real or personal property constitutes an investment under this section for the purpose of meeting the asset limitations contained in this act. This subsection applies even though the investment may be qualified elsewhere in this act. Notwithstanding this subsection, an investment fiduciary may designate a real estate investment trust which satisfies the requirements of section 14(2) as an investment qualified under this section or as an investment in stock under section 14.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

38.1139a State treasurer as investment fiduciary; investments in private equity; limitation; investment fiduciary not state treasurer; limitation.

Sec. 19a.

(1) If the investment fiduciary is the state treasurer, investments in private equity shall not be more than 30% of the system's total assets. If the investment fiduciary is not the state treasurer and the system has assets of $1,000,000,000.00 or more, investments in private

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equity shall not be more than 10% of the system's total assets. An investment fiduciary described in this subsection may invest not more than an additional 5% of the system's assets in Michigan private equity only.

(2) An investment fiduciary of a system that has assets of $250,000,000.00 or more but less than $1,000,000,000.00 shall not invest more than 5% of the system's assets in Michigan private equity. An investment fiduciary may otherwise invest in private equity under section 20d.

History: Add. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

38.1139b Deduction from employee compensation by public employer; automatic enrollment of employee; notice; investment alternatives; liability; definitions.

Sec. 19b.

(1) A public employer may deduct from the compensation of an employee an amount for contribution to an individual account for the employee's benefit in a plan maintained under section 125, 401(k), 403(b), 408, 408A, or 457 of the internal revenue code of 1986, 26 USC 125, 401, 403, 408, 408A, and 457. A public employer may provide for automatic enrollment of an employee in a plan described in this subsection.

(2) Except as otherwise provided in this subsection, the public employer shall give written notice to a participating employee of any automatic enrollment at least 14 days before the initial deduction is made. The public employer shall include in the notice a description of the benefit the contribution provides and the right of the participating employee to cancel the contribution by instruction to the employer, including the procedure for giving the instruction. This subsection does not apply to a public employer for the purposes of a participating employee's participation in a plan established under section 1 of 1976 PA 306, MCL 38.1151, that provides for automatic contributions as provided under the internal revenue code of 1986.

(3) A public employer or plan official may provide investment alternatives for participating employees, including 1 or more default investment alternatives, for any contributions made to a plan described in subsection (1). A public employer or plan official is not liable for the actual decisions made by the employee with regard to the investment of any contribution under the plan or for the decisions made by the public employer or plan official on behalf of a participating employee with regard to the default investment of any contributions made for that employee to the plan if all of the following requirements are met:

(a) The plan allows the participating employee at least quarterly opportunities to select investments for any contributions made for that employee between investment alternatives available under the plan.

(b) For any type of default investment of any contributions for an employee, the default investment is comparable to the types of investment alternatives identified by the United States department of labor as qualified default investment alternatives.

(c) The participating employee is given notice of the default investment decisions that will be made in the absence of participating employee direction.

(d) The participating employee is given a description of all the investment alternatives available for the participating employee.

(e) The participating employee is given notice at least annually of all of the following:

(i) The actual default investments made by the public employer on behalf of the participating employee.

(ii) The right of a participating employee to cancel his or her continued participation in the plan.

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(4) This section does not alter any existing responsibility of a public employer or other plan official for the selection of investment alternatives available for participating employees.

(5) As used in this section:

(a) "Automatic enrollment" means a plan provision under which the employee will have a specified contribution made to a plan described in subsection (1) equal to a compensation reduction that will be made for the employee unless the employee affirmatively elects no compensation reduction contributions or a compensation reduction contribution in another amount.

(b) "Public employer" means this state or an agency of this state, a city, county, village, township, school district, or intermediate school district, or an institution of higher education.

History: Add. 2014, Act 242, Imd. Eff. June 27, 2014

38.1140 Investment in secured loans; real property not considered encumbered; investment in part of obligation or participation interest in loan or group of loans; investment in real estate loan; investment in loan or loans or certificate of participation secured by loan or loans made on single family residential property; investment in certificates representing interest in mortgages or group of mortgages; limitations and restrictions; investment in second mortgage; investment with variable interest rate.

Sec. 20.

(1) An investment fiduciary may invest in loans secured by any of the following:

(a) First liens upon improved or income bearing real property, including but not limited to improved agricultural land, and improved business, industrial, and residential properties.

(b) First mortgages or deeds of trust on leasehold estates having an unexpired term equivalent to the term of the mortgage, inclusive of the term or terms that may be provided by enforceable options of renewal.

(c) First mortgages on unimproved real property, at least 60% of which real property is under contract of sale and that contract or contracts are pledged as additional collateral.

(2) Investments made in loans described in subsection (1) shall not exceed 80% of the appraised value of the real property at the time of the loan and shall not have a term longer than 35 years, except under the following conditions:

(a) A loan on improved land with permanent buildings used for agriculture shall be repayable by annual or more frequent installment payments sufficient to amortize 40% or more of the principal of the loan within a period of not more than 10 years.

(b) A loan on single family residential property shall be repayable by installment payments sufficient to amortize the entire principal of the loan within a period of not more than 30 years.

(3) Real property shall not be considered to be encumbered within the meaning of this section if the real property is subject to lease in whole or in part and under the terms of the lease rents or profits are reserved to the owner.

(4) An investment fiduciary may invest in a part of an obligation or a participation interest in a loan or a group of loans if the investment of each participant is not less than $50,000.00 at the time of investment, and if the entire indebtedness of which participation is a part would qualify under the provisions of this section.

(5) An investment fiduciary shall not invest in a real estate loan unless the investment fiduciary has reviewed a written appraisal of the real estate securing the loan.

(6) An investment fiduciary may invest in a loan or loans or certificates of participation secured by a loan or loans made on single family residential property in an amount not to exceed 95% of the appraised value, at the time of the loan, of the real estate offered as

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security, if the loan is secured by a mortgage, deed of trust, or other instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within a period of not more than 30 years, and the loan is insured by a private mortgage insurer licensed to do business in this state and approved by the federal home loan mortgage corporation and the federal national mortgage association.

(7) An investment fiduciary may invest in certificates representing an interest in a mortgage or group of mortgages if the certificates are insured or guaranteed by a private mortgage insurance company or the United States government or an agency or instrumentality of the United States government.

(8) The limitations and restrictions of subsections (1) to (7) shall not apply to loans that are made pursuant to the servicemen's readjustment act of 1944, chapter 268, 58 Stat. 284, insured under the provisions of the national housing act, chapter 847, 48 Stat. 1246, by the federal housing administration, nor to real estate loans which are guaranteed as to principal by the United States government or an agency or an instrumentality of the United States government.

(9) Notwithstanding subsection (1), an investment fiduciary may invest in a second mortgage if all of the following requirements are met:

(a) The total of the balance owing on the first mortgage and the amount of the second mortgage do not exceed 80% of the appraised value of the real property at the time of the second mortgage.

(b) The second mortgage does not have a term longer than 30 years.

(c) The investment fiduciary has the absolute right to pay the underlying first mortgage in part or in full at any time.

(d) The investment fiduciary assumes no liability for payment of the underlying first mortgage.

(10) An investment fiduciary may invest in any investment otherwise permitted by this section in which the interest rate varies from time to time. A loan shall not be considered to be in violation of the usury statutes of this state by virtue of the fact that the loan is made on a variable interest rate basis.

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History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996

38.1140a Investment in debt, warrant, or equity interest in small business, small business investment company, or venture capital firm; creation of small business investment companies or venture capital firms to invest in small businesses; limitation.

Sec. 20a.

(1) Except as provided in subsection (2), an investment fiduciary of a system having assets of more than $250,000,000.00 may invest not more than 2% of a system's assets in a debt, warrant, or equity interest in a small business having more than 1/2 of the small business's assets or employees within this state, or in a debt, warrant, or equity interest in a small business investment company or venture capital firm having its principal office or more than 1/2 of its assets within this state, or the system may create, own, hold, buy, sell, operate, manage, and direct 1 or more small business investment companies or venture capital firms designed to invest in small businesses having more than 1/2 of their assets or employees within this state. An investment fiduciary may also join with a group composed of other public employee retirement systems, pension systems subject to the employee retirement income security act of 1974, Public Law 93-406, 88 Stat. 829, financial institutions, corporations, or governmental agencies or instrumentalities to accomplish the purposes of this section. An investment in stock under this section shall be considered an investment in stock under section

14 only for the purpose of determining the 70% maximum investment limitation contained in section 14.

(2) If the investment fiduciary of a system is the state treasurer, investments described in subsection (1) may exceed 2% of the assets of the system, but shall not exceed 5% of the assets of the system.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000

Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

38.1140b Deposits by investment fiduciary.

Sec. 20b.

An investment fiduciary may make interest bearing deposits with the treasurer of the political subdivision sponsoring the system or with the state treasurer, either of whom may then manage and invest the deposits in a collective investment fund, common trust fund, or pooled fund that is established and maintained for investment of those assets by the treasurer of the political subdivision sponsoring the system or by the state treasurer in accordance with this act.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996

Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

38.1140c Financial institution, trust company, or management company retained as investment fiduciary; investment of system assets in collective investment fund, common trust fund, or pooled fund established and maintained by financial institution or management company; "financial institution" defined.

Sec. 20c.

(1) A financial institution, a trust company, a management company qualified under section 15, or any affiliate of a person described in this section if that affiliate qualifies as an investment fiduciary under section 13(11), retained to act as an investment fiduciary may invest the assets of a system in any collective investment fund, common trust fund, or pooled fund that is established and maintained for investment of those assets under federal or state statutes or rules or regulations or an applicable foreign law. The investment fiduciary of the collective investment fund, common trust fund, or pooled fund shall be a financial institution, a trust company, a management company qualified under section 13(11)(a), or an affiliate of 1 of these entities if that affiliate qualifies as an investment fiduciary under section 13(11)(a). The collective investment fund, common trust fund, or pooled fund may be established as a limited partnership, corporation, limited liability company, trust, or other organizational entity for which liability of any investor does not exceed the amount of the investment under the laws of the United States or the laws of the state, district, territory, or foreign country that applied to the organization of the collective investment fund, common trust fund, or pooled fund. A pool in which the state treasurer has administrative or investment authority and the

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investment pools of the municipal employees retirement system and retirement board created under the municipal employees retirement act of 1984, 1984 PA 427, MCL 38.1501 to 38.1555, are not pooled funds for purposes of this section. An investment in a collective investment fund, common trust fund, or pooled fund is considered an investment in the underlying assets of that fund for all purposes under this act.

(2) As used in this section, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 1997, Act 42, Imd. Eff. June 30, 1997 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

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38.1140d Investments not qualified under act.

Sec. 20d.

(1) An investment fiduciary of a system having assets of less than $250,000,000.00 may invest not more than 15% of the system's assets in investments not otherwise qualified under this act, except as qualified in section 19a, whether the investments are similar or dissimilar to those specified in this act.

(2) An investment fiduciary of a system having assets of $250,000,000.00 or more but less than $1,000,000,000.00 may invest not more than 20% of the system's assets in investments described in subsection (1).

(3) An investment fiduciary of a system having assets of $1,000,000,000.00 or more may invest not more than 25% of the system's assets in investments described in subsection (1).

(4) An investment fiduciary of a system who is the state treasurer may invest not more than 30% of the system's assets in investments described in subsection (1).

(5) If an investment described in subsection (1) is subsequently determined to be permitted under another section of this act, then the investment shall no longer be included under this section.

(6) This section shall not be used to exceed a percentage of total assets limitation for an investment provided in any other section of this act.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

38.1140e Loan of securities by investment fiduciary.

Sec. 20e.

(1) An investment fiduciary may loan bonds, stocks, or other securities if at the time the loan is executed, at least 102% of the full market value of the security loaned is secured by collateral of cash to be invested in 1 or more of the following:

(a) Securities graded in the top 4 major grades as determined by at least 1 national rating service, but not graded below the top 4 grades as determined by any of the national rating services, or determined by the investment fiduciary to be of comparable quality in the case of unrated securities.

(b) Repurchase agreements collateralized by securities graded in the top 4 major grades as determined by at least 1 national rating service, but not graded below the top 4 grades as determined by any of the national rating services, or determined by the investment fiduciary to be of comparable quality in the case of unrated securities.

(c) Irrevocable bank letters of credit.

(d) Securities issued or guaranteed by the United States government or an agency of the United States government.

(2) At all times during the term of a loan under subsection (1), the collateral shall be equal to not less than 100% of the full market value of the security loaned.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000

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38.1140f Transferring and holding securities.

Sec. 20f.

An investment fiduciary may use 1 or more nominees to facilitate transfer of a system's securities and may hold the securities in safekeeping with the federal reserve system, a clearing corporation, or a custodian bank which is a member of the federal reserve system.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982

38.1140g Investment in securities exempt from taxes.

Sec. 20g.

Notwithstanding any other provision of this act, investment in securities wholly or partially exempt from income or other taxes levied by the United States shall be made only at taxable-equivalent yields or returns available in the marketplace on otherwise comparable securities at the time the investment decision is made.

History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982

38.1140h Applicable law; retention of financial records; "financial records" defined; disclosure of certain information; actuarial valuation; supplemental actuarial analysis; "proposed pension benefit change" defined; availability and publication of summary annual report.

Sec. 20h.

(1) In addition to the provisions of this act, a system is subject to the applicable accounting, auditing, and reporting requirements contained in the following acts and parts of acts:

(a) 1919 PA 71, MCL 21.41 to 21.55.

(b) The uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(c) Section 91 of the executive organization act of 1965, 1965 PA 380, MCL 16.191.

(2) A system shall retain its financial records for a minimum period of 6 years from the date of the creation of the record unless state or federal law requires a longer retention period. As used in this subsection, "financial records" includes, but is not limited to, records pertaining to expenditures for professional training and education, including travel expenditures, by or on behalf of system board members that are paid by the system.

(3) Except as otherwise provided in this subsection, information regarding the calculation of actual or estimated retirement benefits for members of the system is exempt from disclosure by the system or the political subdivision sponsoring the system pursuant to section 13(1)(d) of the freedom of information act, 1976 PA 442, MCL 15.243. Upon a majority vote of the governing body of the political subdivision sponsoring the system, the system shall provide the designated representative of the political subdivision with a reasonable opportunity to inspect, copy, or receive copies of all information regarding the calculation of actual or estimated retirement benefits for members of the system. The system may require that information provided by the system under this subsection be provided only on a promise of confidentiality by the political subdivision sponsoring the system. A system may make reasonable rules to ensure the confidentiality of records exempt from disclosure under applicable state and federal law. The system may charge a fee under this subsection in accordance with section 4 of the freedom of information act, 1976 PA 442, MCL 15.234. All fees and expenses incurred by the political subdivision sponsoring the system that are related to this subsection must be borne by the political subdivision and must not be deducted from or offset against the political subdivision's required pension contributions to the system.

(4) Except as otherwise provided in this subsection, a system shall have an annual actuarial valuation with assets valued on a market-related basis. The actuarial present value of total projected benefits must include all pension benefits to be provided by the system to members or beneficiaries under the terms of the system and any additional statutory or contractual agreements to provide pension benefits through the system that are in force at the actuarial valuation date, including, but not limited to, service credits purchased by members, deferred retirement option plans, early retirement programs, and postretirement adjustment programs. A system that has assets of less than $20,000,000.00 is only required to have an actuarial valuation as required under this subsection done every other year.

(5) A system shall provide a supplemental actuarial analysis before adoption of pension benefit changes. System assets must not be used for any actuarial expenses related to the supplemental actuarial analysis under this subsection. The supplemental actuarial analysis must be provided by the system's actuary and must include an analysis of the long-term costs associated with any proposed pension benefit change. The supplemental actuarial analysis must be provided to the board of the particular system and to the decision-making body that will approve the proposed pension benefit change at least 7 days before the proposed pension benefit change is adopted. For purposes of this subsection, "proposed pension benefit change" means a proposal to increase the amount of pension benefits received by persons entitled to pension benefits under the system. Proposed pension benefit change does not include a proposed change to a health care plan or health benefits.

(6) The system shall make the summary annual report created under section 13 available to the plan participants and beneficiaries and the citizens of the political subdivision sponsoring the system. If the system has a website, the system shall publish the summary annual report on the website. If the system does not have a website, the political subdivision sponsoring the system shall publish the summary annual report on a website that the political subdivision has created or may create.

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History: Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2002, Act 728, Imd. Eff. Dec. 30, 2002 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2016, Act 530, Eff. Mar. 29, 2017 ;-- Am. 2017, Act 203, Imd. Eff. Dec. 20, 2017

38.1140i Repealed. 2000, Act 307, Imd. Eff. Oct. 16, 2000.

Compiler's Notes: The repealed section pertained to guaranteed repayment of loans.

38.1140j Investment in derivatives.

Sec. 20j.

(1) Subject to qualification elsewhere in this act, an investment fiduciary may invest in any of the following:

(a) A derivative that hedges positions of a nonderivative component of a portfolio that clearly reduces a defined risk.

(b) A derivative that replicates the risk/return profile of an asset or asset class, provided the asset or asset class is permitted in other sections of this act.

(c) A derivative that rebalances the country or asset class exposure of a portfolio.

(d) A derivative in which the investment fiduciary has examined the price, yield, and duration characteristics in all market environments both at the time of investment and on an ongoing basis.

(e) A commingled or pooled investment fund that uses derivatives, if the fund's use of derivatives is consistent with the guidelines outlined in this section.

(f) Over-the-counter derivatives if, in the case of an over-the-counter security, a minimum of 2 competing bids or offers are obtained. All counter party risk in over-the-counter derivative transactions shall be examined at the time of investment and on an ongoing basis.

(2) The aggregate market value of the underlying security, future, or other instrument or index made under this section shall not exceed 15% of the assets of the system. For purposes of the asset limitation in this section only, "derivatives" does not include:

(a) Asset backed pools, mortgage backed pools, or collateralized mortgage obligations that are otherwise qualified under this act and are no more exposed to prepayment risk or interest rate risk than the underlying collateral including planned amortization classes and sequential-pay collateralized mortgage obligations.

(b) Convertible bonds, convertible preferred stock, rights or warrants to purchase stock or bonds or notes or partnership interests, floating rate notes, zero coupon securities, stripped principal securities, or stripped interest securities, which items are otherwise qualified under this act.

(c) Exchange-listed derivatives trading on a daily basis and settling in cash daily or having a limited and fully defined risk profile at an identified, fixed cost, including futures contracts and purchased options.

(d) Currency forwards trading on a daily basis and settling in cash daily or having a limited and fully defined risk profile at an identified, fixed cost.

(3) Notwithstanding any other provision of this act to the contrary, an investment fiduciary shall not invest in derivatives for the purpose of leveraging a portfolio or shorting securities as a sole investment.

History: Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

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38.1140k Investment in global securities; prohibited conduct.

Sec. 20k.

(1) Notwithstanding a percentage of total assets limitation for an investment provided in any other section of this act, an investment fiduciary who is the state treasurer or the investment fiduciary of a system that has assets of $2,000,000,000.00 or more may invest not more than 30% of a system's assets in global securities. An investment fiduciary of a system that has assets of less than $2,000,000,000.00 and who is not the state treasurer may invest not more than 20% of a system's assets in global securities. Except as otherwise provided in this act, an investment fiduciary shall not do any of the following:

(a) Invest in more than 5% of the outstanding global securities of any 1 issuer.

(b) Invest more than 5% of a system's assets in the global securities of any 1 issuer.

(2) Investments in global securities under this section shall be made only by investment fiduciaries described in section 13(11) who have demonstrated expertise in investments of that type.

History: Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013
Compiler's Notes: For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

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38.1140l Financial or proprietary information.

Sec. 20l

(1) A record or portion of a record, material, or other data received, prepared, used, or retained by an investment fiduciary in connection with the investment of assets of a system that relates to financial or proprietary information pertaining to a portfolio company in real estate or alternative investments in which the investment fiduciary has invested or has considered an investment that is considered by the portfolio company and acknowledged by the investment fiduciary as confidential; or that relates to financial or proprietary information whether prepared by or for the investment fiduciary regarding loans and assets directly owned by the investment fiduciary and acknowledged by the investment fiduciary as confidential is not subject to the disclosure requirements of the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) A document to which the investment fiduciary is a party evidencing an investment is not considered financial or proprietary information that may be exempt from disclosure pursuant to subsection (1).

(3) As used in this section, "financial or proprietary information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause the portfolio company or the investment fiduciary significant competitive harm. Financial or proprietary information includes but is not limited to financial performance data and projections, financial statements, list of coinvestors and their level of investment, product and market data, rent rolls, and leases.

History: Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

38.1140m Employer contribution.

Sec. 20m.

(1) The governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of any system shall confirm in the annual actuarial valuation required under section 20h and the summary annual report required under section 13 that each system under this act provides for the payment of the required employer contribution as provided in this section and shall confirm in the summary annual report that the system has received the required employer contribution for the year covered in the summary annual report. The required employer contribution is the actuarially determined contribution amount. An annual required employer contribution in a system under this act shall consist of a current service cost payment and a payment of at least the annual accrued amortized interest on any unfunded actuarial liability and the payment of the annual accrued amortized portion of the unfunded principal liability. For fiscal years that begin before January 1, 2006, the required employer contribution shall not be determined using an amortization period greater than 40 years. Except as otherwise provided in this section, for fiscal years that begin after December 31, 2005, the required employer contribution shall not be determined using an amortization period greater than 30 years. For the Tier 1 retirement plan under the state employees' retirement system, created under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69; the Michigan public school employees' retirement created under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437; and the Michigan state police retirement system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675, only, for the fiscal year beginning October 1, 2006, the contribution for the unfunded actuarial accrued liability shall be equal to the product of the assumed real rate of investment return times the unfunded actuarial accrued liability. In a plan year, any current service cost payment may be offset by a credit for amortization of accrued assets, if any, in excess of actuarial accrued liability. A required employer contribution for a system administered under this act shall allocate the actuarial present value of future plan benefits between the current service costs to be paid in the future and the actuarial accrued liability. The governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of a system shall act upon the recommendation of an actuary and the board and the actuary shall take into account the standards of practice of the actuarial standards board of the American academy of actuaries in making the determination of the required employer contribution.

(2) Subsection (1) applies to a large sponsored system except as otherwise provided in a plan for adjustment. As used in this subsection, "plan for adjustment" means that term as defined in section 13g.

History: Add. 2002, Act 728, Imd. Eff. Dec. 30, 2002 ;-- Am. 2007, Act 22, Imd. Eff. June 26, 2007 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2014, Act 185, Imd. Eff. June 20, 2014 ;-- Am. 2018, Act 676, Imd. Eff. Dec. 28, 2018

38.1141 Removal of member of board or body.

Sec. 21.

(1) Subject to this section, the governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of a system may remove a member of the board or body as provided in subsection (2) by any of the following:

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(a) A unanimous vote of all of the members of the board or body, other than the member who is the subject of the vote for removal.

(b) An order of a circuit court with jurisdiction entered in an appropriate action authorized by a majority vote of the members of the board or body.

(c) The process for the removal of a member of the board or body that is contained in the system's plan provisions if that process is less restrictive than either process provided for in subdivision (a) or (b).

(2) The governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of a system shall give notice and hold a hearing on the removal of a member of that board or body for any of the following reasons:

(a) For an elected member of the board or body, upon receipt of a petition requesting the removal of the member, which petition is signed by 2/3 of the individuals eligible to vote in the election of the member of the board or body.

(b) The member is legally incapacitated from executing his or her duties as a member of the board or body and neglects to perform those duties.

(c) The member has committed a material breach of the system provisions or system policies or procedures and the removal of the member is in the interests of the system or the interest of its participants or participants' beneficiaries.

(d) The member is convicted of a violation of law and the removal of the member is in the interests of the system or the interest of its participants or participants' beneficiaries.

(3) Upon the removal of a member of a board or body under this section before expiration of the member's term, a new successor member shall fill the vacancy as follows:

(a) For an elected member of the board or body, by election in the same manner as the removed member for the remainder of that term of office.

(b) For an appointed member of the board or body, by appointment by the appointing authority of the removed member for the remainder of that term of office.

(c) For an ex officio member serving by virtue of his or her office, by appointment by the governing body of the political subdivision sponsoring the system until the time that a new individual is elected or appointed to the office from which the removed member served as a member.

(4) An individual who is removed from office as a member of a board or body under this section may appeal the removal to the circuit court with jurisdiction if the removal is by the board or body or, if the removal is by the circuit court, to the appropriate court with jurisdiction. A successor member of a board or body may be elected or appointed during the pendency of an appeal of a removed member under this subsection until the appeal is withdrawn or there is a final judgment in the matter.

(5) If, upon an appeal under subsection (4), the court finds that the petition for removal of the member was filed in bad faith and that removal is contrary to the interests of the system or the interest of its participants or participants' beneficiaries, the court may order that the individuals seeking the removal of the member pay all or a portion of the costs of the proceedings, including reasonable attorney fees.

History: Add. 2012, Act 347, Eff. Mar. 28, 2013

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