

HOUSE BILL No. 5012

July 10, 2007, Introduced by Rep. Clemente and referred to the Committee on Commerce.

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending section 13 (MCL 38.1133), as amended by 2000 PA 307.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) An investment fiduciary may use a portion of the income of
2 the system to defray the costs of investing, managing, and
3 protecting the assets of the system; may retain investment and all
4 other services necessary for the conduct of the affairs of the
5 system; and may pay reasonable compensation for those services.
6 Subject to an annual appropriation by the legislature, a deduction
7 from the income of a state administered system resulting from the
8 payment of those costs shall be made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (a) Be a registered investment adviser under either the
7 investment advisers act of 1940, ~~title II of chapter 686, 54 Stat.~~
8 ~~847, 15 U.S.C.~~ **USC 80b-1 to 80b-21**, ~~or the uniform securities act,~~
9 1964 PA 265, MCL 451.501 to 451.818, **OR THE UNIFORM SECURITIES ACT**
10 **(2002), MCL 451.2101 TO 451.2703.**

11 (b) Be a bank as defined under the investment advisers act of
12 1940, **15 USC 80B-1 TO 80B-21.**

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

14 (9) An investment fiduciary shall not invest in a debt
15 instrument issued by a foreign country that has been identified by
16 the United States state department as engaging in or sponsoring
17 terrorism.

18 (10) A system shall annually publish and make available to the
19 plan participants and beneficiaries a list of all expenses paid by
20 soft dollars.

21 Enacting section 1. This amendatory act does not take effect
22 unless Senate Bill No. ____ or House Bill No. 5008(request no.
23 00420'07) of the 94th Legislature is enacted into law.