

SUBSTITUTE FOR
HOUSE BILL NO. 4338

A bill to amend 1980 PA 300, entitled
"The public school employees retirement act of 1979,"
by amending sections 125, 127, and 131a (MCL 38.1425, 38.1427, and
38.1431a), sections 125 and 127 as added by 2010 PA 75 and section
131a as added by 2012 PA 300.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 125. (1) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**
2 **SECTION, THE** department shall administer Tier 2 and ~~shall be~~ **IS** the
3 fiduciary and trustee of Tier 2. The department may appoint an
4 advisory board to assist the department in carrying out its duties
5 as fiduciary and trustee. The department and the state treasurer
6 shall comply with Executive Reorganization Order No. 1999-5, MCL
7 38.2721, in the administration of Tier 2.

8 (2) The department shall determine the provisions and
9 procedures of Tier 2 and the plan document in conformity with this

1 act and the internal revenue code.

2 (3) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 131A, THE**
3 department has the exclusive authority and responsibility to employ
4 or contract with personnel and for services that the department
5 determines necessary for the proper administration of and
6 investment of assets of Tier 2, including, but not limited to,
7 managerial, professional, legal, clerical, technical, and
8 administrative personnel or services.

9 (4) Each employer ~~shall be deemed~~ **IS CONSIDERED** to have
10 adopted and shall comply with the provisions and procedures of Tier
11 2 and the plan document.

12 (5) **BEGINNING JULY 1, 2016, THE DEPARTMENT SHALL ADMINISTER**
13 **TIER 2 THROUGH A THIRD PARTY ADMINISTRATOR. THE THIRD PARTY**
14 **ADMINISTRATOR MUST NOT BE AFFILIATED WITH AN ENTITY THAT PROVIDES**
15 **INVESTMENT SERVICES TO THE RETIREMENT SYSTEM, A REPORTING UNIT, OR**
16 **A QUALIFIED PARTICIPANT. SUBJECT TO THIS SUBSECTION, THE DEPARTMENT**
17 **SHALL SELECT A THIRD PARTY ADMINISTRATOR BASED ON A COMPETITIVE**
18 **PROPOSAL PROCESS ESTABLISHED BY THE RETIREMENT SYSTEM. THE REQUEST**
19 **FOR PROPOSAL MUST REQUIRE THE RESPONDING ENTITY TO DISCLOSE ANY**
20 **CONFLICT OF INTEREST, CRIMINAL CONVICTIONS, INVESTIGATIONS BY THE**
21 **INTERNAL REVENUE SERVICE, THE SECURITIES AND EXCHANGE COMMISSION,**
22 **OR ANY OTHER FEDERAL OR STATE TAXING OR SECURITIES REGULATORY BODY,**
23 **OR COURT, AND PERTINENT LITIGATION REGARDING THE CONDUCT OF THE**
24 **ENTITY. THE REQUEST FOR PROPOSAL MUST ALSO REQUIRE THE RESPONDING**
25 **ENTITY TO CERTIFY THAT IT HAS THE EXPERIENCE AND DEMONSTRATED**
26 **ABILITY TO COMPLY WITH THE OPERATIONAL GUIDELINES FOR THE**
27 **ADMINISTRATION OF TIER 2.**

1 (6) THE THIRD PARTY ADMINISTRATOR SELECTED UNDER SUBSECTION
2 (5) SHALL DO ALL OF THE FOLLOWING FOR TIER 2:

3 (A) PROVIDE ADMINISTRATION, ENROLLMENT, AND RECORD KEEPING.

4 (B) COORDINATE CUSTOMER EDUCATION WITH ALL TIER 2 INVESTMENT
5 VENDORS. AS USED IN THIS SUBDIVISION, "INVESTMENT VENDOR" MEANS
6 THAT TERM AS DEFINED IN SECTION 127.

7 (C) CONFORM TO THE PAYROLL AND INFORMATION SHARING PROCESSES
8 ESTABLISHED BY THE DEPARTMENT FOR PROPER ADMINISTRATION OF ALL TIER
9 2 CONTRACTS AND ACCOUNT PLANS.

10 Sec. 127. ~~Each~~SUBJECT TO SECTION 131A, EACH qualified
11 participant, former qualified participant, and refund beneficiary
12 shall direct the investment of the individual's accumulated
13 employer and employee contributions and earnings to 1 or more
14 investment choices within available categories of investment
15 provided by the department. The limitations on the percentage of
16 total assets for investments provided in the public employee
17 retirement system investment act, 1965 PA 314, MCL 38.1132 to
18 ~~38.1140m~~, 38.1141, do not apply to Tier 2.

19 Sec. 131a. (1) Tier 2 accounts are subject to the following
20 terms and conditions:

21 (a) On or before January 1, 2013, the retirement system shall
22 design an automatic enrollment feature that provides that unless a
23 qualified participant who makes contributions under this act elects
24 to contribute a lesser amount, the qualified participant shall
25 contribute the amount required to qualify for all eligible matching
26 contributions under this act. The retirement system shall implement
27 this automatic enrollment feature on or after January 1, 2013, as

1 determined by the retirement system.

2 (b) Employer matching contributions do not have to be made to
3 the same plan or account to which the elective employee
4 contributions were contributed as the basis for the matching
5 contributions.

6 (c) Elective employee contributions ~~shall~~**MUST** not be used as
7 the basis for more than an equivalent amount of employer matching
8 contributions or, ~~in the case of~~**FOR** matching contributions under
9 section 131(2) and (6), 50% of the employer matching contributions.

10 (d) The retirement system shall design and implement a method
11 to determine the proper allocation of employer matching
12 contributions based on elective employee contributions as provided
13 in this section.

14 **(E) THE DEPARTMENT SHALL DESIGNATE NOT FEWER THAN 3 BUT NOT**
15 **MORE THAN 8 INVESTMENT VENDORS THAT ARE ELIGIBLE TO PROVIDE**
16 **INVESTMENT OPTIONS FOR QUALIFIED PARTICIPANTS. AT A MINIMUM, THE**
17 **REQUEST FOR PROPOSAL MUST REQUIRE A RESPONDING ENTITY TO DISCLOSE**
18 **ANY CONFLICT OF INTEREST, DISCLOSE ANY CRIMINAL CONVICTIONS,**
19 **DISCLOSE ANY INVESTIGATIONS BY THE INTERNAL REVENUE SERVICE, THE**
20 **SECURITIES AND EXCHANGE COMMISSION, OR ANY OTHER FEDERAL OR STATE**
21 **TAXING OR SECURITIES REGULATORY BODY, OR COURT, OR PERTINENT**
22 **LITIGATION REGARDING THE CONDUCT OF THE PERSON OR ENTITY. THE**
23 **DEPARTMENT SHALL ISSUE A REQUEST FOR A PROPOSAL UNDER THIS**
24 **SUBDIVISION AT LEAST ONCE EVERY 5 YEARS. AN INVESTMENT VENDOR MAY**
25 **INCLUDE, BUT IS NOT LIMITED TO, AN INSURANCE COMPANY, INVESTMENT**
26 **ADVISER, OR BROKER-DEALER. THE DEPARTMENT SHALL NOT DESIGNATE AN**
27 **ENTITY AS AN INVESTMENT VENDOR UNLESS THE ENTITY MEETS ALL OF THE**

1 FOLLOWING REQUIREMENTS:

2 (i) THE ENTITY OFFERS A VARIETY OF INVESTMENT OPTIONS,
3 INCLUDING, BUT NOT LIMITED TO, MUTUAL FUNDS, INDEX FUNDS, TARGET
4 DATE FUNDS, GUARANTEED ACCOUNTS, AND OTHER OPTIONS.

5 (ii) THE ENTITY IS NOT SUBJECT TO DISQUALIFICATION UNDER 17
6 CFR 230.262.

7 (iii) THE ENTITY MEETS THE DISCLOSURE REQUIREMENTS OF COVERED
8 SERVICE PROVIDER AS DESCRIBED IN 29 CFR 2550.404A-5 AND 29 CFR
9 2550.408-2.

10 (iv) THE ENTITY PROVIDES TO ITS CUSTOMERS AUTHORIZED
11 INVESTMENT ADVISERS THAT PROVIDE INVESTMENT ADVICE.

12 (F) IN REVIEWING A RESPONDING ENTITY'S PROPOSAL UNDER
13 SUBDIVISION (E), THE DEPARTMENT SHALL CONSIDER ALL OF THE
14 FOLLOWING:

15 (i) THE EXPERIENCE OF THE ENTITY IN PROVIDING SERVICES TO
16 SIMILAR TYPES OF RETIREMENT PLANS.

17 (ii) THE QUALITY OF THE INVESTMENT OPTIONS THAT WOULD BE
18 OFFERED TO QUALIFIED PARTICIPANTS.

19 (iii) THE SUITABILITY OF THE INVESTMENT OPTIONS TO THE NEEDS
20 AND INTERESTS OF QUALIFIED PARTICIPANTS.

21 (iv) THE CAPABILITY AND THE COMMITMENT OF THE ENTITY TO
22 PERFORM IN A MANNER THAT IS IN THE BEST INTERESTS OF QUALIFIED
23 PARTICIPANTS.

24 (v) THE FEES AND EXPENSES ASSOCIATED WITH PROPOSED INVESTMENT
25 OPTIONS.

26 (G) IN-PLAN TRANSFERS OF ACCOUNT BALANCES ARE PERMISSIBLE
27 ACROSS TIER 2 CONTRACTS OR ACCOUNT PLANS, WHETHER THE TIER 2

1 CONTRACT OR ACCOUNT PLAN IS THE DEFAULT INVESTMENT VENDOR OR AN
2 ALTERNATE INVESTMENT VENDOR.

3 (2) A REPORTING UNIT MAY SELECT 1 OR MORE ALTERNATE INVESTMENT
4 VENDORS FROM THE LIST PUBLISHED UNDER SUBSECTION (7) TO PROVIDE
5 INVESTMENT OPTIONS FOR THE REPORTING UNIT'S EMPLOYEES WHO ARE
6 QUALIFIED PARTICIPANTS. THE REPORTING UNIT SHALL NOTIFY THE THIRD
7 PARTY ADMINISTRATOR SELECTED UNDER SECTION 125 OF AN ALTERNATE
8 INVESTMENT VENDOR SELECTED UNDER THIS SUBSECTION. THE THIRD PARTY
9 ADMINISTRATOR SHALL ASSIGN THE SELECTED ALTERNATE INVESTMENT VENDOR
10 AND AUTHORIZED INVESTMENT ADVISER TO THE REPORTING UNIT.

11 (3) IF A REPORTING UNIT SELECTS AN ALTERNATE INVESTMENT VENDOR
12 UNDER SUBSECTION (2), THE ALTERNATE INVESTMENT VENDOR SHALL
13 DESIGNATE AT LEAST 1 AUTHORIZED INVESTMENT ADVISER TO PROVIDE AT
14 LEAST 1 HOUR OF FINANCIAL LITERACY EDUCATION AND CUSTOMER SERVICE
15 AT THE REPORTING UNIT PER SCHOOL YEAR. IF A REPORTING UNIT DOES NOT
16 SELECT AN ALTERNATE INVESTMENT VENDOR UNDER SUBSECTION (2), THE
17 DEFAULT INVESTMENT VENDOR SHALL DESIGNATE AT LEAST 1 AUTHORIZED
18 INVESTMENT ADVISER TO PROVIDE AT LEAST 1 HOUR OF FINANCIAL LITERACY
19 EDUCATION AND CUSTOMER SERVICE AT THE REPORTING UNIT PER SCHOOL
20 YEAR.

21 (4) THE DEPARTMENT SHALL NOT COLLECT EMPLOYER OR EMPLOYEE
22 CONTRIBUTIONS RELATED TO TIER 2 FROM A REPORTING UNIT THAT SELECTS
23 AN ALTERNATE INVESTMENT VENDOR UNDER SUBSECTION (2) UNLESS
24 AUTHORIZED TO DO SO BY THE REPORTING UNIT. THIS STATE AND THE
25 REPORTING UNIT DO NOT HAVE A DUTY TO MONITOR THE ALTERNATE
26 INVESTMENT VENDOR'S PERFORMANCE.

27 (5) THE DEPARTMENT SHALL DESIGNATE A DEFAULT INVESTMENT

1 VENDOR. THE DEFAULT INVESTMENT VENDOR SHALL PROVIDE INVESTMENT
2 OPTIONS FOR QUALIFIED PARTICIPANTS OF REPORTING UNITS THAT HAVE NOT
3 SELECTED AN ALTERNATE INVESTMENT VENDOR UNDER SUBSECTION (2).

4 (6) AN ALTERNATE INVESTMENT VENDOR SHALL REGISTER WITH THE
5 THIRD PARTY ADMINISTRATOR SELECTED UNDER SECTION 125 IN A MANNER AS
6 DETERMINED BY THE THIRD PARTY ADMINISTRATOR. THE ALTERNATE
7 INVESTMENT VENDOR SHALL PROVIDE THE THIRD PARTY ADMINISTRATOR WITH
8 THE NAMES OF THE ALTERNATE INVESTMENT VENDOR'S AUTHORIZED
9 INVESTMENT ADVISERS. THE ALTERNATE INVESTMENT VENDOR SHALL NOTIFY
10 THE THIRD PARTY ADMINISTRATOR IF AN INVESTMENT ADVISER PROVIDED TO
11 THE THIRD PARTY ADMINISTRATOR UNDER THIS SUBSECTION IS NO LONGER AN
12 AUTHORIZED INVESTMENT ADVISER OF THE ALTERNATE INVESTMENT VENDOR.

13 (7) FOR EACH REPORTING UNIT, THE THIRD PARTY ADMINISTRATOR
14 SHALL PUBLISH ON THE THIRD PARTY ADMINISTRATOR'S WEBSITE A LIST OF
15 EACH ALTERNATE INVESTMENT VENDOR AND AUTHORIZED INVESTMENT ADVISER
16 REGISTERED AS DESCRIBED IN SUBSECTION (6) THAT IS AVAILABLE WITHIN
17 THAT REPORTING UNIT.

18 (8) THE THIRD PARTY ADMINISTRATOR SHALL SUBMIT AN ANNUAL
19 REPORT TO THE OFFICE OF RETIREMENT SERVICES IN THE DEPARTMENT. THE
20 REPORT MUST INCLUDE ALL OF THE FOLLOWING:

21 (A) EACH ALTERNATE INVESTMENT VENDOR AND AUTHORIZED INVESTMENT
22 ADVISER REGISTERED AS DESCRIBED IN SUBSECTION (6).

23 (B) FOR EACH REPORTING UNIT THAT MAKES A SELECTION UNDER
24 SUBSECTION (2), THE ALTERNATE INVESTMENT VENDOR AND AUTHORIZED
25 INVESTMENT ADVISER ASSIGNED TO THE REPORTING UNIT BY THE THIRD
26 PARTY ADMINISTRATOR.

27 (9) AS USED IN THIS SECTION:

1 (A) "ALTERNATE INVESTMENT VENDOR" MEANS AN INVESTMENT VENDOR
2 SELECTED BY A REPORTING UNIT UNDER SUBSECTION (2).

3 (B) "AUTHORIZED INVESTMENT ADVISER" MEANS AN INVESTMENT
4 ADVISER WHO IS AUTHORIZED BY AN INVESTMENT VENDOR TO PROVIDE
5 INVESTMENT ADVICE TO THE INVESTMENT VENDOR'S CUSTOMERS.

6 (C) "BROKER-DEALER" MEANS THAT TERM AS DEFINED IN SECTION 102
7 OF THE UNIFORM SECURITIES ACT (2002), 2008 PA 551, MCL 451.2102.

8 (D) "INVESTMENT ADVICE" INCLUDES THE RENDERING OF INVESTMENT
9 ADVICE AS DESCRIBED IN 29 CFR 2510.3-21(C)(1).

10 (E) "INVESTMENT ADVISER" MEANS THAT TERM AS DEFINED IN SECTION
11 102A OF THE UNIFORM SECURITIES ACT (2002), 2008 PA 551, MCL
12 451.2102A.

13 (F) "INVESTMENT VENDOR" MEANS AN ENTITY, OTHER THAN THE THIRD
14 PARTY ADMINISTRATOR SELECTED UNDER SECTION 125, DESIGNATED BY THE
15 DEPARTMENT UNDER SUBSECTION (1)(E) TO PROVIDE INVESTMENT OPTIONS
16 FOR QUALIFIED PARTICIPANTS.