

HOUSE BILL No. 5022

July 28, 1989, Introduced by Reps. Perry Bullard, DeMars, Honigman, Joe Young, Jr. and Jondahl and referred to the Committee on Judiciary.

A bill to amend sections 13b and 13c of Act No. 314 of the Public Acts of 1965, entitled as amended

"An act to authorize the investment of assets of public employee 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 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,"

section 13b as added by Act No. 253 of the Public Acts of 1988 and section 13c as added by Act No. 252 of the Public Acts of 1988, being sections 38.1133b and 38.1133c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 13b and 13c of Act No. 314 of the
2 Public Acts of 1965, section 13b as added by Act No. 253 of the
3 Public Acts of 1988 and section 13c as added by Act No. 252 of

1 the Public Acts of 1988, being sections 38.1133b and 38.1133c of
2 the Michigan Compiled Laws, are amended to read as follows:

3 Sec. 13b. (1) As used in this section:

4 (a) "Company" means a union or association of persons for
5 carrying on a commercial or industrial enterprise. Company
6 includes, but is not limited to, a partnership, corporation,
7 association, ~~or~~ joint stock company, JOINT VENTURE, OR
8 WHOLLY-OWNED SUBSIDIARY OF ANOTHER COMPANY.

9 (b) "Franchise" means an agreement under which the franchi-
10 see undertakes to conduct a business or sell a product or service
11 in accordance with methods and procedures prescribed by the fran-
12 chisor, and under which the franchisor undertakes to assist the
13 franchisee through advertising, promotion, and other advisory
14 services.

15 (c) Notwithstanding section 12(e), "investment" means utili-
16 zation of money in the expectation of future returns in the form
17 of income or capital gain. Investment does not include the
18 importation or exportation of goods.

19 (D) "INVESTMENT FUND" MEANS A POOLED OR COMMON FUND AVAIL-
20 ABLE FOR INVESTMENT INCLUDING, BUT NOT LIMITED TO, SHARES OR
21 INTEREST IN A REGULATED INVESTMENT COMPANY, MUTUAL FUND, COMMON
22 TRUST FUND, INVESTMENT PARTNERSHIP, REAL ESTATE INVESTMENT TRUST,
23 OR SIMILAR ORGANIZATION IN WHICH FUNDS ARE COMMINGLED AND INVEST-
24 MENT DETERMINATIONS ARE MADE BY PERSONS OTHER THAN THE INVESTMENT
25 FIDUCIARY OF THE RETIREMENT SYSTEM.

26 (E) ~~(d)~~ "Licensing agreement" means a contract with an
27 individual or company for the sale or lease of a license that

1 permits the use of a patent, trademark, or other technology by
2 another individual or company.

3 (F) ~~(e)~~ "Management agreement" means a contract in which
4 an individual or company is chosen or appointed to manage,
5 direct, or administer the affairs of another individual or
6 company.

7 ~~(f) "National corporation of South Africa" means a corpora-~~
8 ~~tion, or a subsidiary or affiliate of a corporation, that is more~~
9 ~~than 50% owned or operated by the government of South Africa.~~

10 (g) "Retirement system" means the Michigan public ~~schools~~
11 SCHOOL employees' retirement system ~~—~~ created by the public
12 school employees retirement act of 1979, Act No. 300 of the
13 Public Acts of 1980, being sections 38.1301 to 38.1407 of the
14 Michigan Compiled Laws, and the state employees' retirement
15 system created by the state employees' retirement act, Act
16 No. 240 of the Public Acts of 1943, being sections 38.1 to 38.47
17 of the Michigan Compiled Laws.

18 (h) "South Africa" includes the Republic of South Africa;
19 any territory under the administration, legal or illegal, of the
20 Republic of South Africa; and Bantustans or homelands to which
21 South African blacks are assigned on the basis of ethnic origin.

22 (I) "SOUTH AFRICAN ENTITY" MEANS ANY OF THE FOLLOWING:

23 (i) A SOUTH AFRICAN NATIONAL.

24 (ii) A COMPANY THAT HAS ITS COMMERCIAL OR CORPORATE DOMICILE
25 IN SOUTH AFRICA.

26 (iii) THE GOVERNMENT OF SOUTH AFRICA.

1 (2) Notwithstanding any other provision of this act, an
2 investment fiduciary for a retirement system shall not encourage
3 or condone legally required discrimination against an individual
4 on the basis of race or color by doing either of the following:

5 (a) Making a new investment of retirement system assets in
6 stocks, securities, or other obligations, EXCEPT COMMERCIAL PAPER
7 DESCRIBED IN SECTION 17(F), of a ~~national corporation of South~~
8 ~~Africa or of a United States~~ company OR INVESTMENT FUND listed
9 in the register described in subsection (4).

10 (b) Except as provided in subsection (3), failing to divest
11 retirement system assets in stocks, securities, or other
12 obligations, EXCEPT COMMERCIAL PAPER DESCRIBED IN SECTION 17(F),
13 of a ~~national corporation of South Africa or of a United States~~
14 company OR INVESTMENT FUND listed in the register described in
15 subsection (4), as follows:

16 (i) Not less than 40% of the retirement system assets shall
17 be divested not later than ~~2 years after the effective date of~~
18 ~~the amendatory act that added this section~~ JANUARY 1, 1991.

19 (ii) Not less than 60% of the retirement system assets shall
20 be divested not later than ~~3 years after the effective date of~~
21 ~~the amendatory act that added this section~~ JANUARY 1, 1992.

22 (iii) Not less than 80% of the retirement system assets
23 shall be divested not later than ~~4 years after the effective~~
24 ~~date of the amendatory act that added this section~~ JANUARY 1,
25 1993.

26 (iv) Not less than 100% of the retirement system assets
27 shall be divested not later than ~~5 years after the effective~~

1 ~~date of the amendatory act that added this section~~ JANUARY 1,
2 1994.

3 (v) IF, AFTER JANUARY 1, 1994, A COMPANY QUALIFIES TO BE
4 LISTED IN THE REGISTER DESCRIBED IN SUBSECTION (4), THE INVEST-
5 MENT FIDUCIARY FOR A RETIREMENT SYSTEM SHALL DIVEST ANY RETIRE-
6 MENT SYSTEM ASSETS HELD IN THAT COMPANY NOT LATER THAN 12 MONTHS
7 AFTER THE COMPANY BECOMES QUALIFIED TO BE LISTED IN THE REGISTER.

8 (3) If the state treasurer determines that divestment would
9 jeopardize the fiscal integrity of a retirement system, the state
10 treasurer may extend for not more than 1 year the deadlines under
11 subsection (2)(b) for divestment of the assets of that retirement
12 system.

13 (4) The state treasurer, USING HIS OR HER BEST EFFORTS, AND
14 CONSULTING WITH AVAILABLE INFORMATION CLEARINGHOUSES, shall
15 develop and maintain a register of ~~United States~~ companies AND
16 INVESTMENT FUNDS that have 1 or more of the following:

17 (a) An investment in South Africa.

18 (b) A franchise with an individual or company located in
19 South Africa.

20 (c) A licensing agreement with an individual or company
21 located in South Africa.

22 (d) A management agreement with an individual or company
23 located in South Africa.

24 (E) MORE THAN 5% OF THE COMMON STOCK BENEFICIALLY OWNED OR
25 CONTROLLED BY A SOUTH AFRICAN ENTITY.

26 (5) The state treasurer shall provide the register described
27 in subsection (4) to each board of a retirement system. The

1 register shall be provided at least annually and whenever a
2 change is made in the register. The state treasurer shall also
3 notify a board of a RETIREMENT system of those investments that
4 the retirement system has in ~~a~~ EACH company OR INVESTMENT FUND
5 included in the register.

6 (6) Not less than 90 days before the register is provided to
7 the boards of retirement systems as required by subsection (5),
8 the state treasurer shall provide the chief executive officer of
9 each ~~United States~~ company AND THE ADMINISTRATOR OF EACH
10 INVESTMENT FUND that is placed on the register and the legisla-
11 ture with all of the following information:

12 (a) Notice that the company OR INVESTMENT FUND is being
13 placed on the register.

14 (b) The reason why the company OR INVESTMENT FUND is being
15 placed on the register.

16 (c) The current value of system assets invested in the com-
17 pany OR INVESTMENT FUND.

18 (d) Any other information that the state treasurer considers
19 necessary or appropriate.

20 (7) The state treasurer shall annually report to the legis-
21 lature on divestment under this section. The report shall
22 include, but is not limited to, all of the following
23 information:

24 (a) The progress of systems in implementing the divestment
25 of assets required by this section.

26 (b) The register described in subsection (4).

1 (c) The reason companies AND INVESTMENT FUNDS have been
2 added to the register.

3 (d) The names of companies AND INVESTMENT FUNDS that the
4 state treasurer is considering adding to the register.

5 (e) The amount of retirement system assets invested in com-
6 panies AND INVESTMENT FUNDS included in the register.

7 (f) The financial cost to the state of divestment under this
8 section.

9 (g) Any other information that the state treasurer considers
10 necessary or appropriate.

11 (8) The investment fiduciary of each retirement system shall
12 report annually to the governor and the legislature any gains or
13 losses in the value of the investment portfolio of the retirement
14 system and in the portfolio's investment performance attributable
15 to the implementation of subsection (2). THE INVESTMENT FIDU-
16 CIARY SHALL REPORT ANNUALLY TO THE LEGISLATURE AS TO THE METHOD
17 UTILIZED TO ESTIMATE THE GAINS AND LOSSES, THE RATIONALE FOR THE
18 METHOD UTILIZED, THE DATA OR SOURCES OF DATA UTILIZED, AND SUCH
19 OTHER INFORMATION AS IS NECESSARY TO SUPPORT THE VALIDITY OF AND
20 PROVIDE AN UNDERSTANDING OF THE METHOD UTILIZED BY THE FIDUCIARY
21 TO CALCULATE THE GAINS AND LOSSES. THE METHOD UTILIZED SHALL BE
22 AS CONSISTENT AS POSSIBLE FROM YEAR TO YEAR.

23 (9) If there is any gain in the value of the investment
24 portfolio of the retirement system or the portfolio's investment
25 performance that is attributable to the implementation of
26 subsection (2), then those gains shall be recorded annually and
27 shall be used to compensate for any losses or diminution in value

1 attributable to the implementation of subsection (2) in
2 subsequent years.

3 (10) IF THERE IS ANY DIMINUTION IN THE VALUE OF THE INVEST-
4 MENT PORTFOLIO OF THE RETIREMENT SYSTEM OR THE PORTFOLIO'S
5 INVESTMENT PERFORMANCE THAT IS ATTRIBUTABLE TO THE IMPLEMENTATION
6 OF SUBSECTION (2), THEN THE LEGISLATURE SHALL PROVIDE ADDITIONAL
7 APPROPRIATIONS FROM STATE FUNDS FOR THE RETIREMENT SYSTEM AND THE
8 PAYMENT OF BENEFITS UNDER THE RETIREMENT SYSTEM AS NECESSARY IN
9 ORDER TO PLACE THE RETIREMENT SYSTEM AND THE SYSTEM'S BENEFICIA-
10 RIES IN AS GOOD A POSITION AS THEY WOULD HAVE BEEN HAD
11 SUBSECTION (2) NOT BEEN IN EFFECT, AFTER THE DIMINUTION IN VALUE
12 OR INVESTMENT PERFORMANCE IS FIRST REDUCED BY PREVIOUS YEAR GAINS
13 AS PROVIDED IN SUBSECTION (9).

14 (11) ~~(10)~~ This section shall only apply until the state
15 treasurer determines and notifies the investment fiduciaries of
16 the retirement systems that both of the following conditions of
17 fact exist:

18 (a) Full citizenship and equal political rights concerning
19 all matters of national policy have been granted and are in
20 effect for all South African people, regardless of race.

21 (b) Legal restrictions on the freedom of all South African
22 people to live, travel, and work anywhere in their country have
23 been removed and no longer exist.

24 ~~(11) This section does not alter or diminish the existing~~
25 ~~fiduciary or statutory obligations and other terms, conditions,~~
26 ~~and limitations on the investment of retirement system assets for~~

1 ~~the exclusive interest and benefit of participants and~~
2 ~~beneficiaries of the retirement systems.~~

3 Sec. 13c. (1) As used in this section:

4 (a) "Company" means a union or association of persons for
5 carrying on a commercial or industrial enterprise. Company
6 includes, but is not limited to, a partnership, corporation,
7 association, ~~or~~ joint stock company, JOINT VENTURE, OR
8 WHOLLY-OWNED SUBSIDIARY OF ANOTHER COMPANY.

9 (b) "Franchise" means an agreement under which the franchi-
10 see undertakes to conduct a business or sell a product or service
11 in accordance with methods and procedures prescribed by the fran-
12 chisor, and under which the franchisor undertakes to assist the
13 franchisee through advertising, promotion, and other advisory
14 services.

15 (c) Notwithstanding section 12(e), "investment" means utili-
16 zation of money in the expectation of future returns in the form
17 of income or capital gain. Investment does not include the
18 importation or exportation of goods.

19 (D) "INVESTMENT FUND" MEANS A POOLED OR COMMON FUND AVAIL-
20 ABLE FOR INVESTMENT INCLUDING, BUT NOT LIMITED TO, SHARES OR
21 INTEREST IN A REGULATED INVESTMENT COMPANY, MUTUAL FUND, COMMON
22 TRUST FUND, INVESTMENT PARTNERSHIP, REAL ESTATE INVESTMENT TRUST,
23 OR SIMILAR ORGANIZATION IN WHICH FUNDS ARE COMMINGLED AND INVEST-
24 MENT DETERMINATIONS ARE MADE BY PERSONS OTHER THAN THE INVESTMENT
25 FIDUCIARY OF THE RETIREMENT SYSTEM.

26 (E) ~~(d)~~ "Licensing agreement" means a contract with an
27 individual or company for the sale or lease of a license that

1 permits the use of a patent, trademark, or other technology by
2 another individual or company.

3 (F) ~~(e)~~ "Management agreement" means a contract in which
4 an individual or company is chosen or appointed to manage,
5 direct, or administer the affairs of another individual or
6 company.

7 ~~(f) "National corporation of South Africa" means a corpora-~~
8 ~~tion, or a subsidiary or affiliate of a corporation, that is more~~
9 ~~than 50% owned or operated by the government of South Africa.~~

10 (g) "Retirement system" means the Michigan legislative
11 retirement system created by the Michigan legislative retirement
12 system act, Act No. 261 of the Public Acts of 1957, being sec-
13 tions 38.1001 to 38.1060 of the Michigan Compiled Laws, a fire
14 and police department pension and retirement system created under
15 Act No. 345 of the Public Acts of 1937, being sections 38.551 to
16 38.562 of the Michigan Compiled Laws, the state of Michigan
17 judges' retirement system created by the judges' retirement act,
18 Act No. 198 of the Public Acts of 1951, being sections 38.801 to
19 38.831 of the Michigan Compiled Laws, the state of Michigan pro-
20 bate judges retirement system created by the probate judges
21 retirement act, Act No. 165 of the Public Acts of 1954, being
22 sections 38.901 to 38.933 of the Michigan Compiled Laws, and the
23 Michigan state police retirement system created by the state
24 police retirement act of 1986, Act No. 182 of the Public Acts of
25 1986, being sections 38.1601 to 38.1648 of the Michigan Compiled
26 Laws.

1 (h) "South Africa" includes the Republic of South Africa;
2 any territory under the administration, legal or illegal, of the
3 Republic of South Africa; and Bantustans or homelands to which
4 South African blacks are assigned on the basis of ethnic origin.

5 (I) "SOUTH AFRICAN ENTITY" MEANS ANY OF THE FOLLOWING:

6 (i) A SOUTH AFRICAN NATIONAL.

7 (ii) A COMPANY THAT HAS ITS COMMERCIAL OR CORPORATE DOMICILE
8 IN SOUTH AFRICA.

9 (iii) THE GOVERNMENT OF SOUTH AFRICA.

10 (2) Notwithstanding any other provision of this act, an
11 investment fiduciary for a retirement system shall not encourage
12 or condone legally required discrimination against an individual
13 on the basis of race or color by doing either of the following:

14 (a) Making a new investment of retirement system assets in
15 stocks, securities, or other obligations, EXCEPT COMMERCIAL PAPER
16 DESCRIBED IN SECTION 17(F), of a ~~national corporation of South~~
17 ~~Africa or of a United States~~ company OR INVESTMENT FUND listed
18 in the register described in subsection (4).

19 (b) Except as provided in subsection (3), failing to divest
20 retirement system assets in stocks, securities, or other
21 obligations, EXCEPT COMMERCIAL PAPER DESCRIBED IN SECTION 17(F),
22 of a ~~national corporation of South Africa or of a United States~~
23 company OR INVESTMENT FUND listed in the register described in
24 subsection (4), as follows:

25 (i) Not less than 40% of the retirement system assets shall
26 be divested not later than ~~2 years after the effective date of~~
27 ~~the amendatory act that added this section~~ JANUARY 1, 1991.

1 (ii) Not less than 60% of the retirement system assets shall
2 be divested not later than ~~3 years after the effective date of~~
3 ~~the amendatory act that added this section~~ JANUARY 1, 1992.

4 (iii) Not less than 80% of the retirement system assets
5 shall be divested not later than ~~4 years after the effective~~
6 ~~date of the amendatory act that added this section~~ JANUARY 1,
7 1993.

8 (iv) Not less than 100% of the retirement system assets
9 shall be divested not later than ~~5 years after the effective~~
10 ~~date of the amendatory act that added this section~~ JANUARY 1,
11 1994.

12 (v) IF, AFTER JANUARY 1, 1994, A COMPANY QUALIFIES TO BE
13 LISTED IN THE REGISTER DESCRIBED IN SUBSECTION (4), THE INVEST-
14 MENT FIDUCIARY FOR A RETIREMENT SYSTEM SHALL DIVEST ANY RETIRE-
15 MENT SYSTEM ASSETS HELD IN THAT COMPANY NOT LATER THAN 12 MONTHS
16 AFTER THE COMPANY BECOMES QUALIFIED TO BE LISTED IN THE REGISTER.

17 (3) If the state treasurer determines that divestment would
18 jeopardize the fiscal integrity of a retirement system, the state
19 treasurer may extend for not more than 1 year the deadlines under
20 subsection (2)(b) for divestment of the assets of that retirement
21 system.

22 (4) The state treasurer, USING HIS OR HER BEST EFFORTS, AND
23 CONSULTING WITH AVAILABLE INFORMATION CLEARINGHOUSES, shall
24 develop and maintain a register of ~~United States~~ companies AND
25 INVESTMENT FUNDS that have 1 or more of the following:

26 (a) An investment in South Africa.

1 (b) A franchise with an individual or company located in
2 South Africa.

3 (c) A licensing agreement with an individual or company
4 located in South Africa.

5 (d) A management agreement with an individual or company
6 located in South Africa.

7 (E) MORE THAN 5% OF THE COMMON STOCK BENEFICIALLY OWNED OR
8 CONTROLLED BY A SOUTH AFRICAN ENTITY.

9 (5) The state treasurer shall provide the register described
10 in subsection (4) to each board of a retirement system. The reg-
11 ister shall be provided at least annually and whenever a change
12 is made in the register. The state treasurer shall also notify a
13 board of a RETIREMENT system of those investments that the
14 retirement system has in ~~a~~ EACH company OR INVESTMENT FUND
15 included in the register.

16 (6) Not less than 90 days before the register is provided to
17 the boards of retirement systems as required by subsection (5),
18 the state treasurer shall provide the chief executive officer of
19 each ~~United States~~ company AND THE ADMINISTRATOR OF EACH
20 INVESTMENT FUND that is placed on the register and the legisla-
21 ture with all of the following information:

22 (a) Notice that the company OR INVESTMENT FUND is being
23 placed on the register.

24 (b) The reason why the company OR INVESTMENT FUND is being
25 placed on the register.

26 (c) The current value of system assets invested in the
27 company OR INVESTMENT FUND.

1 (d) Any other information that the state treasurer considers
2 necessary or appropriate.

3 (7) The state treasurer shall annually report to the legis-
4 lature on divestment under this section. The report shall
5 include, but is not limited to, all of the following
6 information:

7 (a) The progress of systems in implementing the divestment
8 of assets required by this section.

9 (b) The register described in subsection (4).

10 (c) The reason companies AND INVESTMENT FUNDS have been
11 added to the register.

12 (d) The names of companies AND INVESTMENT FUNDS that the
13 state treasurer is considering adding to the register.

14 (e) The amount of retirement system assets invested in com-
15 panies AND INVESTMENT FUND included in the register.

16 (f) The financial cost to the state of divestment under this
17 section.

18 (g) Any other information that the state treasurer considers
19 necessary or appropriate.

20 (8) The investment fiduciary of each retirement system shall
21 report annually to the governor and the legislature any gains or
22 losses in the value of the investment portfolio of the retirement
23 system and in the portfolio's investment performance attributable
24 to the implementation of subsection (2). THE INVESTMENT FIDU-
25 CIARY SHALL REPORT ANNUALLY TO THE LEGISLATURE AS TO THE METHOD
26 UTILIZED TO ESTIMATE THE GAINS AND LOSSES, THE RATIONALE FOR THE
27 METHOD UTILIZED, THE DATA OR SOURCES OF DATA UTILIZED, AND SUCH

1 OTHER INFORMATION AS IS NECESSARY TO SUPPORT THE VALIDITY OF AND
2 PROVIDE AN UNDERSTANDING OF THE METHOD UTILIZED BY THE FIDUCIARY
3 TO CALCULATE THE GAINS AND LOSSES. THE METHOD UTILIZED SHALL BE
4 AS CONSISTENT AS POSSIBLE FROM YEAR TO YEAR.

5 (9) If there is any gain in the value of the investment
6 portfolio of the retirement system or the portfolio's investment
7 performance that is attributable to the implementation of
8 subsection (2), then those gains shall be recorded annually and
9 shall be used to compensate for any losses or diminution in value
10 attributable to the implementation of subsection (2) in subse-
11 quent years.

12 (10) IF THERE IS ANY DIMINUTION IN THE VALUE OF THE INVEST-
13 MENT PORTFOLIO OF THE RETIREMENT SYSTEM OR THE PORTFOLIO'S
14 INVESTMENT PERFORMANCE THAT IS ATTRIBUTABLE TO THE IMPLEMENTATION
15 OF SUBSECTION (2), THEN THE LEGISLATURE SHALL PROVIDE ADDITIONAL
16 APPROPRIATIONS FROM STATE FUNDS FOR THE RETIREMENT SYSTEM AND THE
17 PAYMENT OF BENEFITS UNDER THE RETIREMENT SYSTEM AS NECESSARY IN
18 ORDER TO PLACE THE RETIREMENT SYSTEM AND THE SYSTEM'S BENEFICIA-
19 RIES IN AS GOOD A POSITION AS THEY WOULD HAVE BEEN HAD
20 SUBSECTION (2) NOT BEEN IN EFFECT, AFTER THE DIMINUTION IN VALUE
21 OR INVESTMENT PERFORMANCE IS FIRST REDUCED BY PREVIOUS YEAR GAINS
22 AS PROVIDED IN SUBSECTION (9).

23 (11) ~~(10)~~ This section shall only apply until the state
24 treasurer determines and notifies the investment fiduciaries of
25 the retirement systems that both of the following conditions of
26 fact exist:

1 (a) Full citizenship and equal political rights concerning
2 all matters of national policy have been granted and are in
3 effect for all South African people, regardless of race.

4 (b) Legal restrictions on the freedom of all South African
5 people to live, travel, and work anywhere in their country have
6 been removed and no longer exist.

7 ~~(11) This section does not alter or diminish the existing~~
8 ~~fiduciary or statutory obligations and other terms, conditions,~~
9 ~~and limitations on the investment of retirement system assets for~~
10 ~~the exclusive interest and benefit of participants and beneficia-~~
11 ~~ries of the retirement systems.~~