

# HOUSE BILL No. 4497

March 22, 1989, Introduced by Reps. Fitzgerald, Hillegonds, Runco, Randall, Bender, Hoffman, Strand, Emmons, London, Law, Ouwinga, Hoekman, Miller, Krause, Willis Bullard and Bankes and referred to the Committee on Senior Citizens and Retirement.

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.

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

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

18 (d) "Licensing agreement" means a contract with an individ-  
19 ual or company for the sale or lease of a license that permits  
20 the use of a patent, trademark, or other technology by another  
21 individual or company.

22 (e) "Management agreement" means a contract in which an  
23 individual or company is chosen or appointed to manage, direct,  
24 or administer the affairs of another individual or company.

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

1 (g) "Retirement system" means the Michigan public ~~schools~~  
2 SCHOOL employees' retirement system ~~—~~ created by the public  
3 school employees retirement act of 1979, Act No. 300 of the  
4 Public Acts of 1980, being sections 38.1301 to 38.1407 of the  
5 Michigan Compiled Laws, and the state employees' retirement  
6 system created by the state employees' retirement act, Act  
7 No. 240 of the Public Acts of 1943, being sections 38.1 to 38.47  
8 of the Michigan Compiled Laws.

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

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

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

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

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

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

7 (iii) Not less than 80% of the retirement system assets  
8 shall be divested not later than ~~4 years after the effective~~  
9 ~~date of the amendatory act that added this section~~ JANUARY 1,  
10 1993.

11 (iv) Not less than 100% of the retirement system assets  
12 shall be divested not later than ~~5 years after the effective~~  
13 ~~date of the amendatory act that added this section~~ JANUARY 1,  
14 1994.

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

20 (4) The state treasurer shall develop and maintain a regis-  
21 ter of United States companies that have 1 or more of the  
22 following:

23 (a) An investment in South Africa.

24 (b) A franchise with an individual or company located in  
25 South Africa.

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

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

3 (5) The state treasurer shall provide the register described  
4 in subsection (4) to each board of a retirement system. The reg-  
5 ister shall be provided at least annually and whenever a change  
6 is made in the register. The state treasurer shall also notify a  
7 board of a system of those investments that the retirement system  
8 has in a company included in the register.

9 (6) Not less than 90 days before the register is provided to  
10 the boards of retirement systems as required by subsection (5),  
11 the state treasurer shall provide the chief executive officer of  
12 each United States company that is placed on the register and the  
13 legislature with all of the following information:

14 (a) Notice that the company is being placed on the  
15 register.

16 (b) The reason why the company is being placed on the  
17 register.

18 (c) The current value of system assets invested in the  
19 company.

20 (d) Any other information that the state treasurer considers  
21 necessary or appropriate.

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

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

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

2 (c) The reason companies have been added to the register.

3 (d) The names of companies that the state treasurer is con-  
4 sidering adding to the register.

5 (e) The amount of retirement system assets invested in com-  
6 panies 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).

16 (9) If there is any gain in the value of the investment  
17 portfolio of the retirement system or the portfolio's investment  
18 performance that is attributable to the implementation of  
19 subsection (2), then those gains shall be recorded annually and  
20 shall be used to compensate for any losses or diminution in value  
21 attributable to the implementation of subsection (2) in subse-  
22 quent years.

23 (10) IF THERE IS ANY DIMINUTION IN THE VALUE OF THE INVEST-  
24 MENT PORTFOLIO OF THE RETIREMENT SYSTEM OR THE PORTFOLIO'S  
25 INVESTMENT PERFORMANCE THAT IS ATTRIBUTABLE TO THE IMPLEMENTATION  
26 OF SUBSECTION (2), THEN THE LEGISLATURE SHALL PROVIDE ADDITIONAL  
27 APPROPRIATIONS FROM STATE FUNDS FOR THE RETIREMENT SYSTEM AND THE

1 PAYMENT OF BENEFITS UNDER THE RETIREMENT SYSTEM AS NECESSARY IN  
2 ORDER TO PLACE THE RETIREMENT SYSTEM AND THE SYSTEM'S BENEFICIA-  
3 RIES IN AS GOOD A POSITION AS THEY WOULD HAVE BEEN HAD SUBSECTION  
4 (2) NOT BEEN IN EFFECT, AFTER THE DIMINUTION IN VALUE OR INVEST-  
5 MENT PERFORMANCE IS FIRST REDUCED BY PREVIOUS YEAR GAINS AS PRO-  
6 VIDED IN SUBSECTION (9).

7 (11) ~~(10)~~ This section shall only apply until the state  
8 treasurer determines and notifies the investment fiduciaries of  
9 the retirement systems that both of the following conditions of  
10 fact exist:

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

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

17 (12) ~~(11)~~ This section does not alter or diminish the  
18 existing fiduciary or statutory obligations and other terms, con-  
19 ditions, and limitations on the investment of retirement system  
20 assets for the exclusive interest and benefit of participants and  
21 beneficiaries of the retirement systems.

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

23 (a) "Company" means a union or association of persons for  
24 carrying on a commercial or industrial enterprise. Company  
25 includes, but is not limited to, a partnership, corporation,  
26 association, or joint stock company.

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2 franchisee undertakes to conduct a business or sell a product or  
3 service in accordance with methods and procedures prescribed by  
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5 assist the franchisee through advertising, promotion, and other  
6 advisory services.

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15 (e) "Management agreement" means a contract in which an  
16 individual or company is chosen or appointed to manage, direct,  
17 or administer the affairs of another individual or company.

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

21 (g) "Retirement system" means the Michigan legislative  
22 retirement system created by the Michigan legislative retirement  
23 system act, Act No. 261 of the Public Acts of 1957, being sec-  
24 tions 38.1001 to 38.1060 of the Michigan Compiled Laws, a fire  
25 and police department pension and retirement system created under  
26 Act No. 345 of the Public Acts of 1937, being sections 38.551 to  
27 38.562 of the Michigan Compiled Laws, the state of Michigan



1 judges' retirement system created by the judges' retirement act,  
2 Act No. 198 of the Public Acts of 1951, being sections 38.801 to  
3 38.831 of the Michigan Compiled Laws, the state of Michigan pro-  
4 bate judges retirement system created by the probate judges  
5 retirement act, Act No. 165 of the Public Acts of 1954, being  
6 sections 38.901 to 38.933 of the Michigan Compiled Laws, and the  
7 Michigan state police retirement system created by the state  
8 police retirement act of 1986, Act No. 182 of the Public Acts of  
9 1986, being sections 38.1601 to 38.1648 of the Michigan Compiled  
10 Laws.

11 (h) "South Africa" includes the Republic of South Africa;  
12 any territory under the administration, legal or illegal, of the  
13 Republic of South Africa; and Bantustans or homelands to which  
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23 beneficiaries of the retirement systems.