

SENATE BILL NO. 1192

September 28, 2022, Introduced by Senator RUNESTAD and referred to the Committee on Finance.

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
by amending section 13 (MCL 38.1133), as amended by 2018 PA 676.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) This act supersedes any investment authority
2 previously granted to a system under any other law of this state.

3 (2) The assets of a system may be invested, reinvested, held
4 in nominee form, and managed by an investment fiduciary subject to
5 the terms, conditions, and limitations provided in this act. An
6 investment fiduciary of a defined contribution plan may arrange for

1 1 or more investment options to be directed by the participants of
 2 the defined contribution plan. The limitations on the percentage of
 3 total assets for investments provided in this act do not apply to a
 4 defined contribution plan in which a participant directs the
 5 investment of the assets in ~~his or her~~ **the participant's** individual
 6 account, and that participant is not considered an investment
 7 fiduciary under this act.

8 (3) An investment fiduciary shall discharge ~~his or her~~ **the**
 9 **investment fiduciary's** duties solely in the interest of the
 10 participants and the beneficiaries, and shall do all of the
 11 following:

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

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

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

23 (d) ~~Give~~ **Subject to sections 13a, 13c, 13d, 14, and 20k,**
 24 **consider only pecuniary factors in the evaluation of an investment.**
 25 **The investment fiduciary shall also give** appropriate consideration
 26 to those facts and circumstances that the investment fiduciary
 27 knows or should know are relevant to the particular investment or
 28 investment course of action involved, including the role the
 29 investment or investment course of action plays in that portion of

1 the system's investments for which the investment fiduciary has
2 responsibility; and act accordingly. ~~For purposes of this~~
3 ~~subsection, "appropriate~~ **As used in this subdivision:**

4 **(i) "Appropriate** consideration" includes, but is not limited
5 to, a determination by the investment fiduciary that a particular
6 investment or investment course of action is reasonably designed,
7 as part of the investments of the system, to further the purposes
8 of the system, taking into consideration the risk of loss and the
9 opportunity for gain or other return associated with the investment
10 or investment course of action; and consideration of the following
11 factors as they relate to the investment or investment course of
12 action:

13 **(A)** ~~(i)~~—The diversification of the investments of the system.

14 **(B)** ~~(ii)~~—The liquidity and current return of the investments of
15 the system relative to the anticipated cash flow requirements of
16 the system.

17 **(C)** ~~(iii)~~—The projected return of the investments of the system
18 relative to the funding objectives of the system.

19 **(ii) "Pecuniary factor" means a factor that the investment**
20 **fiduciary has determined would have a material effect on the risk**
21 **or return of an investment based on appropriate investment horizons**
22 **consistent with the funding objective of the system. For purposes**
23 **of this subparagraph, "material effect" does not include an effect**
24 **that primarily furthers nonpecuniary, noneconomic, or nonfinancial**
25 **social, political, or ideological objectives.**

26 (e) Give appropriate consideration to investments that would
27 enhance the general welfare of this state and its citizens if those
28 investments offer the safety and rate of return comparable to other
29 investments permitted under this act and available to the

1 investment fiduciary at the time the investment decision is made.

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

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

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

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

17 (i) The name of the system.

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

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

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

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

24 (vi) Except as otherwise provided in this subparagraph, the
25 system's investment performance net of fees on a rolling calendar-
26 year basis for the previous 1-, 3-, 5-, 7-, and 10-year periods.
27 For a system for which the state treasurer is the investment
28 fiduciary, the summary annual report must include the system's
29 investment performance net of fees on a rolling calendar-year and

1 fiscal-year basis for the previous 1-, 3-, 5-, 7-, and 10-year
2 periods.

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

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

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

16 (A) The number of active members.

17 (B) The number of retirees and beneficiaries.

18 (C) The average annual retirement allowance.

19 (D) The total annual retirement allowances being paid.

20 (E) The valuation payroll.

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

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

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

26 (I) The actuarial assumed rate of investment return.

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

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

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

3 (M) The system's actuarial cost method.

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

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

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

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

18 (B) The destination.

19 (C) The dates.

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

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

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

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

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

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

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

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

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

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

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

20 (c) The Michigan state police retirement system created under
21 the state police retirement act of 1986, 1986 PA 182, MCL 38.1601
22 to ~~38.1675~~. **38.1674**.

23 (d) The Michigan public school employees' retirement system
24 created under the public school employees retirement act of 1979,
25 1980 PA 300, MCL 38.1301 to 38.1437.

26 (5) Subject to section 13g, an investment fiduciary may use a
27 portion of the system's income to defray the costs of investing,
28 managing, and protecting the assets of the system; may retain
29 investment and all other goods and services necessary for the

1 conduct of the affairs of the system, including investment
2 advisors, consultants, custodians, accountants, auditors,
3 attorneys, actuaries, investment personnel, administrators, and
4 physicians; and may enter into contracts for and pay reasonable
5 compensation for those services. Subject to an annual appropriation
6 by the legislature, a deduction from the income of a state-
7 administered system resulting from the payment of those costs must
8 be made.

9 (6) Subject to this subsection and subsection (13), an
10 investment fiduciary may use a portion of the system's income to
11 defray the costs of professional training and education, including
12 travel costs, of system board members ~~, which~~ **if the** professional
13 training and education, including travel, are directly related to
14 the administration, management, and operation of the system. The
15 governing board vested with the general administration, management,
16 and operation of the system or other decision-making body that is
17 responsible for implementation and supervision of the system shall
18 adopt an annual budget for professional training and education,
19 including travel, authorized under this subsection. The budget
20 adopted under this subsection must reflect the number of board
21 members, the size of the system, and the educational objectives of
22 the system. The system's total aggregate cost for professional
23 training and education, including travel costs, authorized under
24 this subsection for a fiscal year must not exceed \$150,000.00 or an
25 amount that is equal to the total number of system board members
26 multiplied by \$12,000.00, whichever is less. The system's total
27 cost for professional training and education, including travel
28 costs, authorized under this subsection for an individual system
29 board member in a fiscal year must not exceed \$30,000.00. Beginning

1 January 1, 2013, the department of treasury shall adjust the dollar
2 amounts in this subsection by an amount determined by the state
3 treasurer at the end of the ~~immediately~~ preceding calendar year to
4 reflect the cumulative annual percentage change in the Consumer
5 Price Index. As used in this subsection, "Consumer Price Index"
6 means the most comprehensive index of consumer prices available for
7 this state from the Bureau of Labor Statistics of the United States
8 Department of Labor.

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

25 (8) The system must be a separate and distinct trust fund and
26 the assets of the system must be for the exclusive benefit of the
27 participants and their beneficiaries and of defraying reasonable
28 expenses of investing the assets of the system. With respect to a
29 system, an investment fiduciary shall not cause the system to

1 engage in a transaction if he or she knows or should know that the
2 transaction is any of the following, either directly or indirectly:

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

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

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

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

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

21 (a) Deal with the assets of the system in ~~his or her~~ **the**
22 **investment fiduciary's** own interest or for ~~his or her~~ **the**
23 **investment fiduciary's** own account.

24 (b) In ~~his or her~~ **the investment fiduciary's** individual or any
25 other capacity act in any transaction involving the system on
26 behalf of a party whose interests are adverse to the interests of
27 the system or the interest of its participants or participants'
28 beneficiaries.

29 (c) Receive any consideration for ~~his or her~~ **the investment**

1 **fiduciary's** own personal account from any party dealing with the
2 system in connection with a transaction involving the assets of the
3 system.

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

6 (a) Receiving any benefit to which ~~he or she~~ **the investment**
7 **fiduciary** may be entitled as a participant or participant's
8 beneficiary of the system.

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

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

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

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

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

25 (b) Be a bank as defined under the investment advisers act of
26 1940, 15 USC 80b-1 to 80b-21.

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

28 (12) An investment fiduciary shall not invest in a debt
29 instrument issued by a foreign country that has been designated by

1 the United States Department of State as a state sponsor of terror.

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

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

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

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

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

16 (14) Subject to section 13g, an investment fiduciary of a
17 large sponsored system that invests or has invested in a hazardous
18 waste deep disposal well facility regulated under part 111 or 121
19 of the natural resources and environmental protection act, 1994 PA
20 451, MCL 324.11101 to 324.11153 and 324.12101 to 324.12117, is
21 subject to all of the following:

22 (a) The investment fiduciary shall not make an additional
23 investment in the hazardous waste deep disposal well facility
24 unless the investment is solely to prepare the property on which
25 the hazardous waste deep disposal well facility is located for sale
26 for purposes other than operation as a hazardous waste deep
27 disposal well facility or similar hazardous facility.

28 (b) The investment fiduciary shall sell, redeem, divest, or
29 withdraw all investments in the hazardous waste deep disposal well

1 facility ~~within~~ **not later than** 180 days after any of the following
2 circumstances occur:

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

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

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

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

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

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

21 (16) The department of treasury shall post on its website an
22 executive summary of each summary annual report submitted to the
23 department of treasury under subsection (3) (l). The executive
24 summary must include the applicable system's unfunded actuarial
25 accrued liability for pension. The department of treasury shall
26 submit each executive summary required under this subsection to the
27 senate and the house of representatives appropriations committees
28 and the senate and house fiscal agencies not less than 30 days
29 after posting.

1 (17) As used in this section, "state unit" means a system
2 established under the state employees' retirement act, 1943 PA 240,
3 MCL 38.1 to 38.69, the public school employees retirement act of
4 1979, 1980 PA 300, MCL 38.1301 to 38.1437, the judges retirement
5 act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and the state
6 police retirement act of 1986, 1986 PA 182, MCL 38.1601 to
7 ~~38.1675-38.1674.~~