

Act No. 676
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Rep. VerHeulen

ENROLLED HOUSE BILL No. 6481

AN ACT to amend 1965 PA 314, entitled “An act to authorize the investment of assets of public employee retirement systems or plans and the contributions made by employees to 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 limit employer and plan official liability for certain investment decisions; 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,” by amending sections 13, 13c, 13d, and 20m (MCL 38.1133, 38.1133c, 38.1133d, and 38.1140m), section 13 as amended by 2017 PA 203, section 13c as added by 2008 PA 233, section 13d as added by 2008 PA 232, and section 20m as amended by 2014 PA 185.

The People of the State of Michigan enact:

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

(2) The assets of a system may be invested, reinvested, held in nominee form, and managed by an investment fiduciary subject to the terms, conditions, and limitations provided in this act. An investment fiduciary of a defined contribution plan may arrange for 1 or more investment options to be directed by the participants of the defined contribution plan. The limitations on the percentage of total assets for investments provided in this act do not apply to a defined contribution plan in which a participant directs the investment of the assets in his or her individual account, and that participant is not considered an investment fiduciary under this act.

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

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

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

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

(d) Give appropriate consideration to those facts and circumstances that the investment fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the system’s investments for which the investment fiduciary has

responsibility; and act accordingly. For purposes of this subsection, “appropriate consideration” includes, but is not limited to, a determination by the investment fiduciary that a particular investment or investment course of action is reasonably designed, as part of the investments of the system, to further the purposes of the system, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action; and consideration of the following factors as they relate to the investment or investment course of action:

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

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

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

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

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

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

(h) Prepare and maintain written policies regarding ethics and professional training and education, including travel, which policies contain clearly defined accountability and reporting requirements for the system’s investment fiduciaries.

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

(i) The name of the system.

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

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

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

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

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

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

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

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

(A) The number of active members.

(B) The number of retirees and beneficiaries.

(C) The average annual retirement allowance.

(D) The total annual retirement allowances being paid.

(E) The valuation payroll.

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

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

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

(I) The actuarial assumed rate of investment return.

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

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

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

(M) The system’s actuarial cost method.

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

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

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

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

(B) The destination.

(C) The dates.

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

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

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

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

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

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

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

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

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

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

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

(c) The Michigan state police retirement system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

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

(5) Subject to section 13g, an investment fiduciary may use a portion of the system's income to defray the costs of investing, managing, and protecting the assets of the system; may retain investment and all other goods and services necessary for the conduct of the affairs of the system, including investment advisors, consultants, custodians, accountants, auditors, attorneys, actuaries, investment personnel, administrators, and physicians; and may enter into contracts for and pay reasonable compensation for those services. Subject to an annual appropriation by the legislature, a deduction from the income of a state-administered system resulting from the payment of those costs must be made.

(6) Subject to this subsection and subsection (13), an investment fiduciary may use a portion of the system's income to defray the costs of professional training and education, including travel costs, of system board members, which professional training and education, including travel, are directly related to the administration, management, and operation of the system. The governing board vested with the general administration, management, and operation of the system or other decision-making body that is responsible for implementation and supervision of the system shall adopt an annual budget for professional training and education, including travel, authorized under this subsection. The budget adopted under this subsection must reflect the number of board members, the size of the system, and the educational objectives of the system. The system's total aggregate cost for professional training and education, including travel costs, authorized under this subsection for a fiscal year must not exceed \$150,000.00 or an amount that is equal to the total number of system board members multiplied by \$12,000.00, whichever is less. The system's total cost for professional training and education, including travel costs, authorized under this subsection for an individual system board member in a fiscal year must not exceed \$30,000.00. Beginning January 1, 2013, the department of treasury shall adjust the dollar amounts in this subsection by an amount determined by the state treasurer at the end of the immediately preceding calendar year to reflect the cumulative annual percentage change in the Consumer Price Index. As used in this subsection, "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) An investment fiduciary shall not invest in a debt instrument issued by a foreign country that has been designated by the United States Department of State as a state sponsor of terror.

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

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

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

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

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

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

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

(b) The investment fiduciary shall sell, redeem, divest, or withdraw all investments in the hazardous waste deep disposal well facility within 180 days after any of the following circumstances occur:

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

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

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

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

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

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

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

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

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

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(d) "Complicit" means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur; including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(e) "Direct holdings" in a company means all securities of that company held directly by the fiduciary or in an account or fund in which the fiduciary owns all shares or interests.

(f) "Fiduciary" means the Michigan legislative retirement system board of trustees for the Tier 1 plan for the Michigan legislative retirement system created by the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, and the treasurer of this state for the retirement systems created under all of the following acts:

(i) The state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

(ii) The Tier 1 retirement plan available under the judge's retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

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

(iv) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(g) “Government of Sudan” means the government in Khartoum, Sudan, which is led by the national congress party or any successor government formed on or after October 13, 2006 and does not include the regional government of southern Sudan.

(h) “Inactive business operations” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(i) “Indirect holdings” in a company means all securities of that company held in an account or fund, such as a mutual fund or other commingled fund, managed by 1 or more persons not employed by the fiduciary, in which the fiduciary owns shares or interests together with other investors not subject to the provisions of this act.

(j) “Marginalized populations of Sudan” includes, but is not limited to, all of the following:

(i) The portion of the population in the Darfur region that has been genocidally victimized.

(ii) The portion of the population of southern Sudan victimized by Sudan’s north-south civil war.

(iii) The Beja, Rashidiya, and other similarly underserved groups of eastern Sudan.

(iv) The Nubian and other similarly underserved groups in Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions.

(v) The Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(k) “Military equipment” means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(l) “Mineral extraction activities” includes exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(m) “Oil-related activities” includes, but is not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(n) “Power production activities” means any business operation that involves a project commissioned by the national electricity corporation of Sudan or other similar government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(o) “Scrutinized company” means any company, except a social development company and a company described in subsection (10) that is not complicit in the Darfur genocide, that meets the criteria in subparagraph (i), (ii), or (iii):

(i) The company has business operations that involve contracts with or provision of supplies or services to 1 or more of the following:

(A) The government of Sudan.

(B) Companies in which the government of Sudan has any direct or indirect equity share.

(C) Government of Sudan-commissioned consortia or projects.

(D) Companies involved in government of Sudan-commissioned consortia or projects and that have 1 or more of the following:

(I) More than 10% of the company’s revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities, less than 75% of the company’s revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government, and the company has failed to take substantial action.

(II) More than 10% of the company’s revenues or assets linked to Sudan involve power production activities, less than 75% of the company’s power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan, and the company has failed to take substantial action.

(ii) The company is complicit in the Darfur genocide.

(iii) The company supplies military equipment within Sudan, unless the fiduciary finds that the military equipment will not be used to facilitate offensive military actions in Sudan or the fiduciary finds that the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict.

(p) “Social development company” means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational

opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

(q) “Substantial action” means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any new business operations, undertaking significant humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity and evaluated and certified by an independent third party to be substantial in relationship to the company’s Sudan business operations and of benefit to 1 or more marginalized populations of Sudan, or through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(2) Within 90 days after the effective date of the amendatory act that added this section, the fiduciary shall make its best efforts to identify all scrutinized companies in which the fiduciary has direct or indirect holdings or could possibly have such holdings in the future. The efforts shall include 1 or more of the following:

(a) Reviewing and relying, as appropriate in the fiduciary’s judgment, on publicly available information regarding companies with business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(b) Contacting asset managers contracted by the fiduciary that invest in companies with business operations in Sudan.

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

(3) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in subsection (2), the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(4) The fiduciary shall update the scrutinized companies list on a quarterly basis based on evolving information from, among other sources, those sources listed in subsection (2). The fiduciary shall make the scrutinized companies list freely available to the fiduciaries of other public retirement systems located in this state if making the list available does not violate any agreements with third parties or reveal proprietary information of a third party.

(5) The fiduciary shall adhere to the following procedure for companies on the scrutinized companies list:

(a) The fiduciary shall immediately determine the companies on the scrutinized companies list in which the fiduciary oversees pursuant to its responsibilities as defined in subsection (1)(f).

(b) For each company identified in subdivision (a) with only inactive business operations, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations and further encourage the company to engage in substantial humanitarian operations in the country. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, the fiduciary shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the fiduciary. The notice shall offer the company the opportunity to clarify its Sudan-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary’s first engagement with a company pursuant to subdivision (c), that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and this section shall cease to apply to it unless it resumes scrutinized business operations. If, within 90 days following the fiduciary’s first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to this section.

(e) If, after 90 days following the fiduciary’s first engagement with a company pursuant to subdivision (c), the company continues to have scrutinized active business operations, and only while the company continues to have scrutinized active business operations, the fiduciary shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(i) At least 50% of the assets shall be removed from the fiduciary’s assets under management within 9 months after the company’s most recent appearance on the scrutinized companies list.

(ii) 100% of the assets shall be removed from the fiduciary’s assets under management within 15 months after the company’s most recent appearance on the scrutinized companies list.

(f) Except as provided in subdivisions (g) and (h), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) No company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibition pursuant to subdivisions (e) and (f).

(h) Subdivisions (e) and (f) shall not apply to indirect holdings in actively managed investment funds. For purposes of this section, actively managed investment funds include private equity funds and publicly traded funds. Before the fiduciary invests in a new private equity fund that is not in the fiduciary's portfolio as of July 17, 2018, the fiduciary shall perform due diligence to prevent investment in any private equity fund where the offering memorandum or prospectus identifies the purpose of the private equity fund as investing in scrutinized companies with active business operations in Sudan. The fiduciary is not required to identify holdings in private equity funds or submit engagement letters to those funds. If the manager of a publicly traded, actively managed fund that is in the fiduciary's portfolio on July 17, 2018 creates a similar publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this section, the fiduciary shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

(6) The fiduciary shall file a publicly available report to the legislature that includes the scrutinized companies list within 30 days after the list is created. Annually thereafter, the fiduciary shall file a publicly available report to the legislature and send a copy of that report to the United States presidential special envoy to Sudan that includes all of the following:

- (a) A summary of correspondence with companies engaged by the fiduciary under this section.
- (b) All investments sold, redeemed, divested, or withdrawn in compliance with this section.
- (c) All prohibited investments under this section.
- (d) Any progress made under subsection (5)(h).

(7) This section is effective until the first occurrence of any of the following:

(a) The United States Congress or the President of the United States declares that the Darfur genocide has been halted for at least 12 months.

(b) The United States revokes all sanctions imposed against the government of Sudan.

(c) The Congress or President of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons.

(d) The Congress or President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

(8) With respect to actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, the fiduciary shall be exempt from any conflicting statutory or common law obligations, including any obligations in respect to choice of asset managers, investment funds, or investments for the fiduciary's securities portfolios.

(9) The fiduciary, members of an investment advisory committee, and any person with decision-making authority with regard to investments of the fiduciary shall not be held liable for any action undertaken for the purpose of complying with or executing the mandates required under this section.

(10) Scrutinized company does not include a company that the federal government has affirmatively excluded from federal sanctions for business the scrutinized company conducts relating to Sudan, or that has consistently obtained applicable licenses or approvals to conduct transactions with Sudan. If the fiduciary becomes aware at any time that a company that has not been affirmatively excluded from federal sanctions for business it conducts relating to Sudan and has not received from the United States government applicable licenses or approvals to conduct transactions with Sudan, that company is immediately subject to subsection (5).

(11) If any provision, section, subsection, sentence, clause, phrase, or word of this legislation or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

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

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Iran, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(d) "Direct holdings" in a company means all securities of that company held directly by the fiduciary or in an account or fund in which the fiduciary owns all shares or interests.

(e) "Fiduciary" means the Michigan legislative retirement system board of trustees for the Tier 1 plan for the Michigan legislative retirement system created by the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, and the treasurer of this state for the retirement systems created under all of the following acts:

(i) The state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

(ii) The Tier 1 retirement plan available under the judge's retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

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

(iv) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(f) "Government of Iran" means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(g) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(h) "Indirect holdings" in a company means all securities of that company held in an account or fund, such as a mutual fund or other commingled fund, managed by 1 or more persons not employed by the fiduciary, in which the fiduciary owns shares or interests together with other investors not subject to the provisions of this act.

(i) "Iran" means the Islamic republic of Iran.

(j) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles.

(k) "Mineral extraction activities" includes exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(l) "Oil-related activities" includes, but is not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(m) "Petroleum resources" means petroleum or natural gas.

(n) "Power production activities" means any business operation that involves a project commissioned by the government of Iran whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(o) "Scrutinized company" means any company not described in subsection (10) that has business operations that involve contracts with or provision of supplies or services to the government of Iran; companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran; or companies involved in consortiums and projects commissioned by the government of Iran and 1 or more of the following:

(i) More than 10% of the company's total revenues or assets are linked to Iran, and involve oil-related activities or mineral-extraction activities, and the company has failed to take substantial action.

(ii) The company has, with actual knowledge, on or after August 5, 1996, made an investment of \$20,000,000.00 or more, or any combination of investments of at least \$10,000,000.00 each, which in the aggregate equals or exceeds \$20,000,000.00 in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources.

(p) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any new business operations.

(2) Within 90 days after the effective date of the amendatory act that added this section, the fiduciary shall make its best efforts to identify all scrutinized companies in which the fiduciary has direct or indirect holdings or could possibly have such holdings in the future. The efforts may include 1 or more of the following:

(a) Reviewing and relying, as appropriate in the fiduciary's judgment, on publicly available information regarding companies with business operations in Iran, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(b) Contacting asset managers contracted by the fiduciary that invest in companies with business operations in Iran.

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in Iran.

(d) Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions against companies conducting business or investing in countries that are designated state sponsors of terror.

(3) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in subsection (2), the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(4) The fiduciary shall update the scrutinized companies list on a quarterly basis based on evolving information from, among other sources, those sources listed in subsection (2). The fiduciary shall make the scrutinized companies list freely available to the fiduciaries of other public retirement systems located in this state if making the list available does not violate any agreements with third parties or reveal proprietary information of a third party.

(5) The fiduciary shall adhere to the following procedure for companies on the scrutinized companies list:

(a) The fiduciary shall immediately determine the companies on the scrutinized companies list in which the fiduciary oversees pursuant to its responsibilities as described in subsection (1)(e).

(b) For each company identified in subdivision (a) with only inactive business operations, not later than 60 days after the identification of the company, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in Iran until it is able to avoid scrutinized business operations. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, not later than 60 days after the company is newly identified, the fiduciary shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the fiduciary. The notice shall offer the company the opportunity to clarify its Iran-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations through substantial action or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), that company announces a plan of substantial action, the company shall be removed from the scrutinized companies list and this section shall cease to apply to it unless it fails to implement its plan of substantial action within the designated time frame. If, within 90 days following the fiduciary's first engagement, the company converts its active business operations to inactive business operations, the company shall be subject to this section.

(e) If, after 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), the company continues to have active business operations, and only while the company continues to have active business operations, the fiduciary shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(i) At least 50% of the assets shall be removed from the fiduciary's assets under management within 9 months after the company's most recent appearance on the scrutinized companies list.

(ii) 100% of the assets shall be removed from the fiduciary's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(f) Except as provided in subdivisions (g) and (h), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) No company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran shall be subject to divestment or investment prohibition pursuant to subdivisions (e) and (f).

(h) Subdivisions (e) and (f) shall not apply to indirect holdings in actively managed investment funds. For purposes of this section, actively managed investment funds include private equity funds and publicly traded funds. Before the fiduciary invests in a new private equity fund or publicly traded fund that is not in the fiduciary's portfolio as of July 17, 2008, the fiduciary shall perform due diligence to prevent investment in any private equity fund or publicly traded fund where the offering memorandum or prospectus identifies a purpose of the private equity fund or publicly traded fund as investing in scrutinized companies with active business operations in Iran. The fiduciary is not required to identify holdings in private equity funds or submit engagement letters to those funds. If the manager of a publicly traded, actively managed fund that is in the fiduciary's portfolio on July 17, 2008 creates a similar publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this section, the fiduciary shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

(6) The fiduciary shall file a publicly available report to the legislature that includes the scrutinized companies list within 30 days after the list is created. Annually thereafter, the fiduciary shall file a publicly available report to the legislature that includes all of the following:

(a) A summary of correspondence with companies engaged by the fiduciary under this section.

(b) All investments sold, redeemed, divested, or withdrawn in compliance with this section.

(c) All prohibited investments under this section.

(d) Any progress made under subsection (5)(h).

(7) This section is no longer effective upon the occurrence of 1 or more of the following:

(a) The Congress or President of the United States affirmatively and unambiguously states, through legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism.

(b) The United States revokes all sanctions imposed against the government of Iran.

(c) The Congress or President of the United States affirmatively and unambiguously states, through legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section interferes with the conduct of United States foreign policy.

(8) With respect to actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, the fiduciary shall be exempt from any conflicting statutory or common law obligations, including any obligations in respect to choice of asset managers, investment funds, or investments for the fiduciary's securities portfolios.

(9) The fiduciary, members of an investment advisory committee, and any person with decision-making authority with regard to investments of the fiduciary shall not be held liable for any action undertaken for the purpose of complying with or executing the mandates required under this section.

(10) Scrutinized company does not include a company that the federal government has affirmatively excluded from federal sanctions for business the scrutinized company conducts relating to Iran, or that has consistently obtained applicable licenses or approvals to conduct transactions with Iran. If the fiduciary becomes aware at any time that a company that has not been affirmatively excluded from federal sanctions for business it conducts relating to Iran and has not received from the United States government applicable licenses or approvals to conduct transactions with Iran, that company is immediately subject to subsection (5).

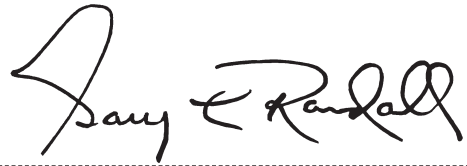
(11) If any provision, section, subsection, sentence, clause, phrase, or word of this legislation or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

Sec. 20m. (1) The governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of any system shall confirm in the annual actuarial valuation required under section 20h and the summary annual report required under section 13 that each system under this act provides for the payment of the required employer contribution as provided in this section and shall confirm in the summary annual report that the system has received the required employer contribution for the year covered in the summary annual report. The required employer contribution is the actuarially determined contribution amount. An annual required employer contribution in a system under this act shall consist of a current service cost payment and a payment of at least the annual accrued amortized interest on any unfunded actuarial liability and the payment of the annual accrued amortized portion of the unfunded principal liability. For fiscal years that begin before January 1, 2006, the required employer contribution shall not be determined using an amortization period greater than 40 years. Except as otherwise provided in this section, for fiscal years that begin after December 31, 2005, the required employer contribution shall not be determined using an amortization period greater than 30 years. For the Tier 1 retirement plan under the state employees' retirement system, created under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69; the Michigan public school employees' retirement created under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437; and the Michigan state police retirement system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675, only, for the fiscal year beginning October 1, 2006, the contribution for the unfunded actuarial accrued liability shall be equal to the product of the assumed real rate of investment return times the unfunded actuarial accrued liability. In a plan year, any current service cost payment may be offset by a credit for amortization of accrued assets, if any, in excess of actuarial accrued liability. A required employer contribution for a system administered under this act shall allocate the actuarial present value of future plan benefits between the current service costs to be paid in the future and the actuarial accrued liability. The governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of a system shall act upon the recommendation of an actuary and the board and the actuary shall take into account the standards of practice of the actuarial standards board of the American academy of actuaries in making the determination of the required employer contribution.

(2) Subsection (1) applies to a large sponsored system except as otherwise provided in a plan for adjustment. As used in this subsection, "plan for adjustment" means that term as defined in section 13g.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 6475 of the 99th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor