

Sec. 3309.15. The members of the school employees retirement board shall be the trustees of the several funds created by section 3309.60 of the Revised Code. The board and other fidu-

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ciaries shall discharge their duties with respect to such funds solely in the interest of the participants and beneficiaries; for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the system; with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and by diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. In exercising its fiduciary responsibility with respect to the investment of such funds, it shall be the intent of the board to give consideration to investments that enhance the general welfare of the state and its citizens where such investments offer quality return and safety comparable to other investments currently available to the board. In fulfilling this intent, equal consideration shall also be given to investments otherwise qualifying under this section which involve minority owned and controlled firms and firms owned and controlled by women either alone or in joint venture with other firms. The board shall adopt in regular meeting, policies, objectives or criteria for the operation of the investment program. In adopting policies and criteria for the selection of agents with whom the board may contract for the administration of the fund, the board shall give equal consideration to minority owned and controlled firms and firms owned and controlled by women and ventures involving minority owned and controlled firms and firms owned and controlled by women which otherwise meet the criteria established by the board. Amendments and additions to the policy shall be adopted in regular meeting. The board shall publish its policies under this provision no less than annually and shall make copies available to interested parties. The board may invest such funds in any bonds, notes, certificates of indebtedness, mortgage notes, real estate, stocks, shares, debentures, or other obligations, or securities described below:

(A) The following obligations of the federal government, and related agencies:

(1) Bonds, notes, or other obligations of or guaranteed by the United States, or those for which the credit of the United States is pledged for the payment of the principal and interest thereof;

(2) Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency presently or in the future established by act of congress, and as amended or supplemented from time to time;

(3) Obligations of local housing agencies which obligations are secured either by a requisition agreement or by an annual ~~contributions contract by and between the local housing agency~~ and the public housing administration, as authorized under the provisions of the act of congress of September 1, 1937, known as the "United States Housing Act of 1937," 50 Stat. 888, 42 U.S.C.A. 1401, as amended by the act of congress of July 15, 1949, known as the "Housing Act of 1949," 63 Stat. 413, and as amended or supplemented from time to time;

(4) Loans to veterans guaranteed in whole or in part by the United States government pursuant to Title III of the act of congress known as the "Servicemen's Readjustment Act of 1944," 58 Stat. 284, 38 U.S.C.A. 693, and as amended or supplemented from time to time, provided such guaranteed loans are liens upon real estate.

(B) The following state, county, and municipal obligations:

(1) Bonds, notes, certificates of indebtedness, or other obligations issued, assumed, or guaranteed by this state, any authority, board of trustees, commission, or other agency of this state, any county, city, village, or other municipal corporation, any township, school district, conservancy district, sanitary district, or other legally constituted taxing or bond issuing authority, political subdivision, or public corporation organized under the laws of this state, whether such bonds, notes, certificates of indebtedness, or other obligations are secured by the general taxing powers, by pledge of or lien upon a designated tax or taxes, levy or levies, impost or imposts, excise or excises, singly or in combination, by pledge of or lien upon the revenues derived from a publicly owned facility or facilities for the use or services of which charges are or are to be made, or by other means authorized under the laws of this state;

(2) Bonds, notes, or other obligations issued, assumed, or guaranteed by any other state, territory, or insular possession of the United States, or by any legally constituted authority, commission, or other agency of such state, territory, or insular possession, provided such bonds, notes, or other obligations are secured by the general credit and taxing powers or by pledge of or lien upon a designated tax or taxes, levy or levies, impost or imposts, excise or excises, singly or in combination, which must be imposed and collected under the laws of such state, territory, or insular possession while bonds secured thereby are outstanding, provided that, within ten years prior to the purchase of such investment, there has been no default in the payment of principal or interest, continuing more than ninety days, on any of the bonds, notes, or any other obligations of such state, territory, or insular possession or of any legally constituted author-

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ity, commission, or other agency of such state, territory, or insular possession, which obligations are secured in like manner;

(3) Bonds, notes, or other obligations issued, assumed, or guaranteed by any municipal unit of any other state, territory, or insular possession of the United States, provided:

(a) Such municipal unit has a population as shown by the last preceding federal census of not less than twenty-five thousand.

(b) The municipal unit has pledged its faith and credit for the payment of the principal and interest of such bonds, notes, or other obligations.

(c) The municipal unit has the power to levy taxes on the taxable real property therein for the payment of both principal and interest of such bonds, notes, or other obligations without limitations of rate or amount.

(d) The municipal unit has not within the ten years prior to the making of the investment defaulted in payment of principal or interest of any debt evidenced by its bonds, notes, or other obligations for more than ninety days.

(e) The municipal unit has outstanding at the time of purchase at least one million dollars principal amount of debt secured by its faith and credit.

As used in division (B)(3) of this section, "municipal unit" means any county, village, or other municipal corporation, township, school district, water district, sanitary or sewer district, or other political subdivision of a state, territory, or insular possession.

(4) Revenue bonds of a unit, provided:

(a) The unit had outstanding at the time of the investment one million dollars principal amount of debt secured by the revenues pledged to secure such revenue bonds.

(b) The enabling legislation contains provisions or covenants requiring the unit issuing such revenue bonds to fix, maintain, and collect charges for the services furnished by the utility adequate to provide revenues sufficient to meet all proper and reasonable costs of operating and maintaining the utility and to meet principal and interest requirements of such revenue bonds.

(c) The unit has not within the ten years prior to the making of the investment defaulted in payment of principal or interest of any debt secured by the revenues pledged to secure such revenue bonds.

(5) As used in division (B)(4) of this section:

(a) "Unit" means any other state, territory, or insular possession of the United States or any city, county, or other politi-

cal subdivision thereof, any authority, department, district or commission, or any agency or instrumentality of any of the foregoing, or any agency or instrumentality of the federal government, or a commission or other public body created by an act of congress and pursuant to a compact between two or more states.

(b) "Utility" means any waterworks system, gas system, electric light system, sewer or sewerage disposal system, bridge, tunnel, turnpike, or other highway, or any combination of two or more of the foregoing. "System" means a supply or a generating system, or a transmission or a distribution system, or both such supply and generating system and such transmission or distribution system, and all appurtenances thereof.

(c) "Revenue bonds" means any bonds or other interest-bearing obligations of a unit, the principal and interest of which are by their terms payable from the revenues derived from a utility owned or operated by the unit which issued such bonds or other obligations, or by an agency or instrumentality thereof, whether or not said bonds are secured by a mortgage or a trust indenture.

(d) "Enabling legislation" means any act of congress or of the legislature of any state, territory, or insular possession, any ordinance or resolution of the unit authorizing or providing for the issuance of revenue bonds, or any mortgage, trust indenture, trust agreement, or other instrument executed as security for revenue bonds, singly or in combination.

The obligations described in divisions (B)(1), (2), (3), and (4) of this section shall be rated at the time of purchase within the three highest classifications established by at least two standard rating services, or, if not rated, shall be certified in writing by one or more such services to be of investment quality equivalent to, or higher than, the quality of bonds rated in the third highest investment classification.

(C) The following Canadian obligations, which shall not exceed fifteen per cent of the total value of all funds described in section 3309.60 of the Revised Code:

(1) Bonds, debentures, notes, or other obligations issued, guaranteed, or assumed as to both principal and interest by the government of the Dominion of Canada or by any province of Canada or by any city of Canada which has a population, as determined by the latest official census, of not less than one hundred fifty thousand inhabitants, provided:

(a) That the faith and credit of the issuer, guarantor, or assumer of such bonds, debentures, notes, or other obligations is pledged for the payment of principal and interest thereof, and that the principal and interest thereof shall be payable in

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United States funds, either unconditionally or at the option of the holder;

(b) That any such city has power to levy taxes on the taxable real property therein without limitation of rate or amount, or to collect other revenues for the payment of both principal and interest of such bonds, debentures, notes, or other obligations;

(c) That the issuer, guarantor, or assumer of such bonds, debentures, notes, or other obligations has not within ten years prior to the making of the investment defaulted in payment of principal or interest of any debt evidenced by its bonds, debentures, notes, or other obligations for more than ninety days;

(d) That such bonds, debentures, notes, or other obligations are rated at the time of purchase within the three highest classifications established by at least two standard rating services, or, if not rated, are certified in writing by one or more such services to be of investment quality equivalent to, or higher than, the quality of bonds rated in the third highest investment classification.

(D) Preferred and common stocks issued or guaranteed by a corporation created or existing under the laws of the United States or any state, district, or territory thereof, provided:

(1) That for a period of five fiscal years for which the necessary statistical data are available next preceding the date of investment, such corporation as disclosed by its published fiscal annual statements had an average annual net income plus its average annual fixed charges (as herein used, "fixed charges" means interest on funded or unfunded debt, contingent interest charges, amortization of debt discount, and expense and rentals for leased property and, in the case of consolidated earnings statements of parent and subsidiary corporations, includes all fixed charges and preferred dividend or distribution requirement, if any, of the subsidiaries) at least equal to one and one-half times the sum of its average annual dividend or distribution requirement for preferred stock and its average annual fixed charges for the same period; provided, during neither of the last two years of such period shall the sum of its annual net income and its annual fixed charges have been less than one and one-half times the sum of its dividend or distribution requirements for preferred stock and its fixed charges for the same period;

(2) That such corporation has no arrears of dividends or distributions on its preferred stock;

(3) That such common stock is registered on a national securities exchange as provided in the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C.A. 77b, or, if traded only in

the over-the-counter market, at least ten member firms of the national association of securities dealers make markets in the stock. Registration shall not be required of the following stocks:

(a) The common stock of a bank which is a member of the federal deposit insurance corporation, or a bank holding company, and has capital funds, represented by capital, surplus, and undivided profits, of at least twenty million dollars;

(b) The common stock of a life insurance company, or an insurance holding company, which has capital funds, represented by capital, special surplus funds, and unassigned surplus, of at least fifty million dollars;

(c) The common stock of a fire or casualty insurance company, or a combination thereof, which has capital funds represented by capital, net surplus, and voluntary reserves, of at least fifty million dollars;

(4) That the preferred stock of such corporation, if any be outstanding, qualifies for investment under this division;

(5) That such corporation, having no preferred stock outstanding, had earnings for the five fiscal years next preceding the date of investment of at least twice the interest on all mortgages, bonds, debentures, and funded debts, if any, after deduction of the proper charges for replacements, depreciation, and obsolescence;

(6) That such corporation paid a cash dividend or distribution on its common stock in at least three years of the five-year period next preceding the date of investment and the aggregate net earnings available for dividends or distributions on the common stock of such corporation for the whole of such five-year period were at least equal to the amount of such dividends or distributions paid;

(7) That in applying the earnings test under this division to any issuing, assuming, or guaranteeing corporation, where such corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, net income, fixed charges, and preferred dividends or distributions of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

(8) That the total value of common and preferred stocks does not exceed thirty-five per cent of the total value of all funds described in section 3309.60 of the Revised Code, provided:

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interests; provided that liability is limited to the amount of the investment. ~~Unimproved real property acquired shall be subject to a development plan.~~

Real property purchased under this division may be improved by the board. Expenditures for improvements may include, but are not limited to, expenditures for demolition of existing structures, grading and landscaping, construction of new structures, modification of existing structures, fixtures, equipment, and related personal property. The board may manage the real property or may contract for management responsibilities with firms having expertise in the management of similar real property.

Real property purchased or improved under this division:

- (1) Shall be geographically dispersed;
- (2) May be leased to corporations, partnerships, or sole proprietorships with or without purchase option provisions, and lease payments may, but need not, include all or part of the purchase and improvement costs;
- (3) May be mortgaged to facilitate activities authorized in this division.

(H) Obligations issued, assumed, or guaranteed by the international bank for reconstruction and development, the Asian development bank ~~or~~, the inter-American development bank, THE AFRICAN DEVELOPMENT BANK, OR OTHER SIMILAR DEVELOPMENT BANK IN WHICH THE PRESIDENT, AS AUTHORIZED BY CONGRESS AND ON BEHALF OF THE UNITED STATES, HAS ACCEPTED MEMBERSHIP.

(I)(1) Bonds and notes backed by pools of first liens on fee simple estates in land in this state that are improved by one- to four-family residential structures;

(2) Bonds, notes, or other evidences of indebtedness which are secured by first mortgages upon improved commercial real property, upon condition that:

(a) No mortgage loan on any one property shall, at the time of investment by the board, exceed ninety per cent of the value of the real property securing the same, unless that portion of the loan exceeding ninety per cent is insured or unless the mortgage is a participating or convertible mortgage;

(b) The aggregate investment in mortgage loans on commercial property that are not insured by the federal housing commissioner shall not exceed ten per cent of the total value of all funds described under section 3309.60 of the Revised Code;

(3) Pass-through securities backed by pools of first liens on fee simple estates in land in this state that are improved by one- to four-family residential structures;

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(4) ~~Pass-through securities backed by pools of first liens upon improved commercial real property, provided no mortgage loan on any one property at the time of investment by the board, shall exceed ninety per cent of the value of the real property securing the loan unless that portion of the loan exceeding ninety per cent is insured.~~

(J)(1) Debt or equity interests in either:

(a) Any corporation, partnership, proprietorship, or other entity not otherwise meeting the investment requirements of this section, provided more than one-half of its assets are within this state or more than one-half of its employees are employed within this state or its principal office is located within this state, and provided liability is limited to the amount of the investment;

(b) Venture capital firms having an office within this state, provided that, as a condition of the board making an investment in a venture capital firm, the firm must agree to use its best efforts to make investments, in an aggregate amount at least equal to the investment to be made by the board in that venture capital firm, in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state.

(2) Investments made under division (J) of this section shall not exceed in the aggregate five per cent of the total value of all funds described in section 3309.60 of the Revised Code.

(3) As used in division (J) of this section:

(a) "Venture capital firms" means any corporation, partnership, proprietorship, or other entity, the principal business of which is or will be the making of investments in small businesses.

(b) "Small businesses" means any corporation, partnership, proprietorship, or other entity that either does not have more than four hundred employees, or would qualify as a small business for the purpose of receiving financial assistance from small business investment companies licensed under the "Small Business Investment Act of 1958," 72 Stat. 689, 15 U.S.C.A. 661, as amended, and rules of the small business administration.

(c) "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment but shall not mean general partnership interests or other interests involving general liability.

"Total value" as used in this section consists of cash, the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date, and the cost price of all other investments.

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All such bonds, notes, certificates, stock, or other obligations purchased by said board under this section and section 3309.154 of the Revised Code shall be delivered to the treasurer of state, who is hereby designated as custodian thereof, or to his authorized agent, and he shall collect interest, dividends, and distributions on them as the same become due and payable, and also the principal thereof, and place the same when so collected into the retirement funds. Such securities may be deposited by the treasurer of state for safekeeping with an authorized agent, selected by the treasurer of state, who is a qualified trustee under section 135.18 of the Revised Code. The treasurer of state shall honor and pay for such investments upon delivery of same to him, or to his authorized agent, pursuant to receipt of a resolution authorizing such purchase adopted or approved by the retirement board. The retirement board may sell any investments held by it as trustee upon adoption or approval of a resolution authorizing such sale, and the treasurer of state shall deliver such investments to the purchaser upon receipt of payment by him or his authorized agent, or in accordance with accepted investment procedure, and the amount received shall be placed into the retirement funds.

No investment shall be made under this section and sections 3309.151 and 3309.154 of the Revised Code without prior approval by the school employees retirement board.

Any statement of financial position distributed by the board shall include the market value, as of the statement date, of all investments held by the board under this section and section 3309.154 of the Revised Code.

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(a) Not more than one and one-half per cent of the total value of such funds is invested in the common stock of a single corporation.

(b) The total number of common shares in a single corporation does not exceed ten per cent of the issued and outstanding common stock of such corporation.

(c) As used in division (D)(8) of this section, value consists of cash, the par value or unpaid balance, of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date, and the cost price of all other investments.

(E)(1) Notes, bonds, debentures, conditional sales contracts, equipment trust certificates, or other fixed obligations in any form, of any corporation which is incorporated under the laws of the United States, or any state thereof, or of the District of Columbia, provided that:

(a) The obligations are rated at the time of purchase within the three highest classifications established by at least two standard rating services selected from a list of the standard rating services which shall be prescribed by the superintendent of banks or, for a period of five years for which the necessary statistical data are available next preceding the date of investment, such corporation as disclosed by its published fiscal annual statements had an average annual pre-tax income plus its average annual fixed charges (as herein used, "fixed charges" means interest on funded or unfunded debt, contingent interest charges, amortization of debt discount, and expense and one-third of rentals for leased property and, in the case of consolidated earnings statements of parent and subsidiary corporations, which shall be used if available, includes all fixed charges of the subsidiaries) at least equal to two times its average annual fixed charges for the same period;

(b) During neither of the last two years of such period was the sum of its annual net income and its annual fixed charges less than one and one-half times its fixed charges for the same period;

(2) Corporate debentures convertible or exchangeable into common stock, provided the corporation meets the requirements of division (D) of this section.

(F) The following insured shares, certificates, savings accounts, and notes secured by mortgages on real estate:

(1) Shares, certificates, or other evidences of deposits issued by a state chartered building and loan association organized under the laws of the state, which association has obtained insurance of accounts as provided in sub-chapter IV of the "National Housing Act," 48 Stat. 1246 (1934), 12 U.S.C.A. 1701, and amendments thereto, or as may be provided by law

after September 16, 1957, only to the extent that said evidence of deposits are insured under said act and the amendments thereto;

(2) Shares and certificates or other evidences of deposits issued by a federal savings and loan association organized and incorporated under an act of congress entitled the "Home Owners' Loan Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461, and amendments thereto, to the extent and only to the extent that said shares or certificates or other evidences of deposits are insured under sub-chapter IV of the "National Housing Act," 48 Stat. 1246 (1934), 12 U.S.C.A. 1701, and the amendments thereto;

(3) Shares and certificates or other evidences of deposits issued by a state chartered building and loan association organized under the laws of the state and which is a member of a deposit guaranty association organized under sections 1151.81 to 1151.86 of the Revised Code;

(4) Savings accounts in a national bank located in this state or a state bank located in and organized under the laws of this state if the deposits of the depository bank are insured by the federal deposit insurance corporation, created under the provisions of an act of congress of the United States, entitled "Federal Deposit Insurance Corporation Act of 1933," 48 Stat. 162, 12 U.S.C.A. 264, and amendments thereto;

(5) Notes secured by mortgages and insured by the federal housing commissioner, or his successor or assigns, or in debentures issued by such commissioner, which are guaranteed as to principal and interest by the federal housing administration, an agency of the United States government.

(G) Real estate within the United States, provided that the aggregate of all investments made under this division shall not exceed twenty-five per cent of the total value of all funds described in section 3309.60 of the Revised Code, except that no investment in real estate made under authority granted elsewhere in this section shall be counted toward this limitation.

The board may invest under this division in any interest in real property, including, but not limited to, improved or unimproved real property, suitable, or adaptable without excessive cost, for more than one use, and whether or not income-producing; ~~mortgages~~ MORTGAGES; deeds of trust; notes secured by real property; leaseholds; leases; ground leases; air rights; limited partnerships; real property interests owned, developed, or managed by joint ventures or limited partnerships; variable notes secured by real property; participations, created by any person regularly engaged in the business of making, or acting as a broker of, mortgage loans, in notes secured by real property; interests in collective investment funds; and condominium

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