

Sec. 145.11. The members of the public employees retirement board shall be the trustees of the several funds created by sections 145.01 to 145.58 of the Revised Code. The board and other fiduciaries 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 partic-

ipants 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 shall have full power to invest such funds:

(A)(1) In bonds of the United States, this state, or in bonds, notes, debentures, or other obligations the principal and interest of which are guaranteed in full by the United States government or this state or those for which the credit of the United States is pledged for the payment of the principal and interest thereof;

(2) In 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 from time to time.

(B) In bonds, notes, and certificates of indebtedness, and other obligations of the state, or any county, township, municipal corporation, school district, any conservancy district, or sanitary district of the state, or any other legally constituted taxing or bond issuing authority, subdivision, or municipal corporation within the state;

(C) In revenue bonds issued by a taxing subdivision of the state;

(D) In farm loan bonds issued under the "Federal Farm Loan Act of 1916," 39 Stat. 360, 12 U.S.C.A. 641, and amendments thereto;

(E) In 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;

(F) In bonds or other interest-bearing obligations of any other state of the United States which, within twenty years prior to the making of such investment, has not defaulted for more than ninety days in the payment of principal or interest on any of its bonds or other interest-bearing obligations;

(G) In obligations issued by a federal home loan bank created under an act of congress entitled the "Federal Home Loan Bank Act of 1932," 47 Stat. 725, 12 U.S.C.A. 1421, and amendments thereto;

(H) In 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 subchapter IV of the "National Housing Act," 48 Stat. 1246 (1934), 12 U.S.C.A. 1701, and the amendments thereto;

(I) In bonds issued by the home owners' loan corporation created 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;

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(J) In obligations issued by national mortgage associations created under the "National Housing Act," 48 Stat. 1246 (1934), 12 U.S.C.A. 1701, and amendments thereto;

(K) In shares and 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 subchapter IV of the "National Housing Act," 48 Stat. 1246 (1934), 12 U.S.C.A. 1701, and amendments thereto, only to the extent that said evidences of deposits are insured under said act and the amendments thereto;

(L) In shares and certificates or other evidences of deposits issued by a state chartered building and loan association organized under the laws of the state, provided such funds may not be invested in such deposits except in an amount not to

exceed the amount permitted under division (K) of this section, or in the shares and certificates or other evidences of deposits of a member of a deposit guaranty association organized under sections 1151.80 to 1151.92 of the Revised Code;

(M) In savings accounts in a national bank located in the state or a state bank located in and organized under the laws of the state by depositing such funds therein; provided that no deposit shall be made unless the deposits of the depository bank are insured by the federal deposit insurance corporation, created under an act of congress, entitled the "Federal Deposit Insurance Corporation Act of 1933," 48 Stat. 162, 12 U.S.C.A. 264, and amendments thereto, and provided that the deposit of the funds in any such savings accounts in any one bank shall not exceed the sum insured under said act and the amendments thereto;

(N)(1) In 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) In bonds, notes, or other evidences of indebtedness that are secured by first liens 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 loan 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 in section 145.23 of the Revised Code.

(3) In 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;

(4) In 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.

(O) In the following corporate obligations:

(1) In obligations consisting of notes, bonds, debentures, conditional sales contracts, or equipment trust certificates issued under an indenture, which are the direct obligations, or in the case of equipment trust certificates are secured by direct obligations, of a railroad or industrial corporation, or a corporation engaged directly and primarily in the production, trans-

portation, distribution, or sale of electricity or gas, or the operation of telephone or telegraph systems or waterworks, or in some combination of them; provided that the obligor corporation is one which is incorporated under the laws of the United States, or any state thereof, or of the District of Columbia; and that said 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 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 annual fiscal statements had an average pre-tax income plus its average annual fixed charges at least equal to two times its average annual fixed charges for the same period; provided in 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 two times its fixed charges for the same period. As used in this division, "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 includes, in the case of consolidated earnings statements of parent and subsidiary corporations, which shall be used if available, all fixed charges of the subsidiaries.

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(2) In various forms of commercial paper issued by any corporation which is incorporated under the laws of the United States, or any state thereof, or the District of Columbia; banker's acceptances which are eligible for discount at any federal reserve bank; negotiable time certificates of deposit issued by commercial banks and domestic building and loan associations as defined in section 1151.01 of the Revised Code, if such obligations mature within six months from the date of purchase; and repurchase agreements secured by obligations of the United States treasury or federal agencies or by any other money market instruments specified in this section;

(3) In corporate debentures convertible or exchangeable into common stock, provided the corporation meets the requirements of division (Q) of this section.

(P) In real estate located 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 145.23 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; 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 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.

(Q) In common and preferred 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 has had an average annual net income plus its average annual fixed charges 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; however, during neither of the last two years of such period shall the sum of its annual net income and its annual fixed charges be 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. As used in division (Q) of this section, "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.

(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 is not required of the following stocks:

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

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(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 is outstanding, qualifies for investment under division (O)(1) of this section;

(5) That such corporation, having no preferred stock outstanding, has 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 has 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 period has been 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 has acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidations, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or has 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 145.23 of the Revised Code, provided:

(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 (Q)(8) of this section, "value" consists of cash, the par value of unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date, and the cost of all other investments.

(R)(1) In debt or equity interests in either of the following:

(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 ~~who~~ 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 ~~their~~ 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.

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(2) Investments made under division (R) of this section shall not exceed in the aggregate five per cent of the total value of all funds described in section 145.23 of the Revised Code.

(3) As used in division (R) 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 when the investment is made, 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 does not mean general partnership interests or other interests involving general liability.

(S) In the following Canadian obligations, which shall not exceed fifteen per cent of the total value of all funds described in section 145.23 of the Revised Code:

Bonds, debentures, notes or other obligations issued, guaranteed, or assumed as to both principal and interest by the government of the Dominion of Canada, by any province of Canada, or by any city of Canada which has a population of not less than one hundred fifty thousand, if all of the following apply:

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

(2) Any such city, if the issuer, guarantor, or assumer is a city, has power to levy taxes on the taxable real property therein or to collect other revenues for the payment of both principal and interest of such bonds, debentures, notes, or other obligations without limitation of rate or amount;

(3) 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;

(4) Such bonds, debentures, notes, or other obligations are rated at the time of purchase within the three highest classifica-

tions established by at least two standard rating services, or if not rated, are certified in writing by two 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.

(T) In obligations issued, assumed, or guaranteed by the international bank for reconstruction and development, the Asian development bank or the inter-American development bank.

All investments shall be purchased at current market prices and the instruments of title of such investments shall be placed in the hands of the treasurer of state, who is hereby designated as custodian thereof, or in the hands of his authorized agent. Securities so purchased 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. He shall collect such principal, dividends, distributions, and interest thereon as the same become due and payable and place the same when so collected into the retirement funds.

The treasurer of state shall honor and pay all vouchers drawn on the retirement funds for payment of such investments upon delivery to him or his authorized agent, of the instruments of title of such investments when there is attached to such vouchers a certified copy of such resolution of the retirement board authorizing the purchase of such investments. The retirement board may sell any of its investments upon like resolution, and the proceeds thereof shall be paid by the purchaser to the treasurer of state upon delivery to him of the instruments of title of such investments by the treasurer of state or his authorized agent. For the purpose of facilitating the purchase of common stock, commercial paper, or such other investments as may require payment prior to delivery of final evidence of ownership, the treasurer of state shall be authorized, for the purpose of making payment, to accept a confirmation of purchase or trust receipt, pending delivery of certificates, notes, or other evidence of ownership, pursuant to receipt of a resolution authorizing such purchase adopted or approved by the retirement board.

No investment shall be made under this section without prior approval by the public 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.

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SECTION 3. That Section 3 of Am. S.B. 124 of the 115th General Assembly be amended to read as follows:

"Sec. 3. Notwithstanding sections 145.11, 742.11, 1107.17, 1151.34, 3307.15, 3309.15, 3907.14, 3925.08, and 5505.06 of the Revised Code, no powers granted in ~~this act~~ AM. S. B. 124 OF THE 115TH GENERAL ASSEMBLY, AS AMENDED BY AM. H. B. 699 OF THE 115TH GENERAL ASSEMBLY, to invest in venture capital firms or small businesses may be exercised except during the period from February 15, 1984, through February 14 DECEMBER 31, 1986. FOUR MONTHS PRIOR TO DECEMBER 31, 1986, THE RETIREMENT SYSTEMS, INSTITUTIONS, AND COMPANIES GRANTED POWER UNDER AM. S.B. 124 OF THE 115TH GENERAL ASSEMBLY, AS AMENDED BY AM. H.B. 699 OF THE 115TH GENERAL ASSEMBLY, SHALL EACH SUBMIT A REPORT TO THE CHAIRPERSON OF THE STANDING COMMITTEE OF EACH HOUSE OF THE GENERAL ASSEMBLY WHICH NORMALLY CONSIDERS ECONOMIC DEVELOPMENT LEGISLATION. THE REPORTS SHALL CONTAIN INFORMATION TO ASSIST SUCH STANDING COMMITTEES TO EVALUATE THE EFFORTS MADE BY THE ENTITIES GRANTED SUCH POWERS TO INVEST IN VENTURE CAPITAL FIRMS TO ENSURE THAT THESE VENTURE CAPITAL FIRMS HAVE USED THEIR BEST EFFORTS TO MAKE INVESTMENTS AS PRESCRIBED BY AM. S.B. 124 OF THE 115TH GENERAL ASSEMBLY, AS AMENDED BY AM. H.B. 699 OF THE 115TH GENERAL ASSEMBLY. Nothing in this section shall be construed to limit the power to retain any investments made during such period OR THE POWER TO RENEW, EXTEND, OR FULFILL ANY AGREEMENTS MADE DURING SUCH PERIOD THAT COMMIT THE INVESTMENTS OF FURTHER FUNDS, PROVIDED THAT NO SUCH COMMITMENT MAY BE HONORED IN AN AMOUNT IN EXCESS OF AMOUNTS AUTHORIZED TO BE INVESTED DURING SUCH PERIOD NOR SHALL ANY INVESTMENTS EXCEED THE TOTAL AMOUNTS OF SUCH COMMITMENTS MADE PRIOR TO THE EXPIRATION OF SUCH PERIOD. The Legislative Service Commission shall, provided the limitation of this section is not eliminated or extended by legislation enacted by December 30,

1986, submit within a reasonable time to the Chairmen of the committees that normally consider economic development legislation a bill that would amend such sections to return them to their language in effect immediately prior to the effective date of this act."

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