

STATE OF NEW YORK

3712--A

2017-2018 Regular Sessions

IN ASSEMBLY

January 30, 2017

Introduced by M. of A. ORTIZ, MOSLEY, FAHY, SIMON, THIELE, GOTTFRIED, SEAWRIGHT, O'DONNELL, STECK, ENGLEBRIGHT, HARRIS, CARROLL, GLICK, COLTON, BLAKE, NIOU, JAFFEE, RIVERA, DAVILA, RODRIGUEZ, ZEBROWSKI, BARRON -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Governmental Employees -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to limitations on investments of public pension funds

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "fossil
2 fuel divestment act".
3 § 2. Section 423 of the retirement and social security law, as amended
4 by chapter 770 of the laws of 1970, is amended to read as follows:
5 § 423. Investments. [~~a~~] 1. On and after April first, nineteen
6 hundred sixty-seven, the comptroller shall invest the available monies
7 of the common retirement fund in any investments and securities author-
8 ized by law for each retirement system and shall hold such investments
9 in his name as trustee of such fund, notwithstanding any other provision
10 of this chapter. Participating interests in such investments shall be
11 credited to each retirement system in the manner and at the time speci-
12 fied in [~~paragraph~~] subdivision two of section four hundred twenty-two
13 of this article.
14 [~~b~~] 2. (a) To assist in the management of the monies of the common
15 retirement fund, the comptroller shall appoint an investment advisory
16 committee consisting of not less than seven members who shall serve for
17 his term of office. A vacancy occurring from any cause other than expi-
18 ration of term shall be filled by the comptroller for the remainder of
19 the term. Each member of the committee shall be experienced in the field

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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1 of investments and shall have served, or shall be serving, as a senior
2 officer or member of the board of an insurance company, banking corpo-
3 ration or other financial or investment organization authorized to do
4 business in the state of New York. The committee shall advise the comp-
5 troller on investment policies relating to the monies of the common
6 retirement fund and shall review, from time to time, the investment
7 portfolio of the fund and make such recommendations as may be deemed
8 necessary.

9 (b) The comptroller shall appoint a separate mortgage advisory commit-
10 tee, with the advice and consent of the investment advisory committee,
11 to review proposed mortgage and real estate investments by the common
12 retirement fund. In making investments, as authorized by law, the comp-
13 troller shall be guided by policies established by each committee from
14 time to time; and, in the event the mortgage advisory committee disap-
15 proves a proposed mortgage or real estate investment, such shall not be
16 made.

17 (c) No officer or employee of any state department or agency shall be
18 eligible for membership on either committee. Each committee shall
19 convene periodically on call of the comptroller, or on call of the
20 chairman. The members of each committee shall be entitled to reimburse-
21 ment for their actual and necessary expenses but shall receive no
22 compensation for their services.

23 3. (a) Notwithstanding any provision of law to the contrary, the comp-
24 troller shall not have the power to invest the available monies of the
25 common retirement fund in any stocks, debt or other securities of any
26 corporation or company, or any subsidiary, affiliate or parent of any
27 corporation or company, among the two hundred largest publicly traded
28 fossil fuel companies, as established by carbon content in the compa-
29 nies' proven oil, gas and coal reserves. The comptroller shall, in
30 accordance with sound investment criteria and consistent with his or her
31 fiduciary obligations, divest any such stocks or other securities wheth-
32 er they are owned directly or held through separate accounts or any
33 commingled funds. Divestment pursuant to this subdivision must be
34 completed within five years of the effective date of this subdivision,
35 with the exception of companies engaged in the mining, extraction or
36 production of coal, divestment from which must be completed no later
37 than one year after the effective date of this subdivision.

38 (b) The comptroller shall be permitted to cease divesting from compa-
39 nies under paragraph (a) of this subdivision, reinvest in companies from
40 which it divested under paragraph (a) of this subdivision, or continue
41 to invest in companies from which it has not yet divested upon clear and
42 convincing evidence showing that as a direct result of such divestment,
43 the total and aggregate value of all assets under management by, or on
44 behalf of, the common retirement fund becomes or shall become: (i) equal
45 to or less than ninety-nine and one-half percent; or (ii) one hundred
46 percent less fifty basis points of the hypothetical value of all assets
47 under management by, or on behalf of, the common retirement fund assum-
48 ing no divestment from any company had occurred under said paragraph (a)
49 of this subdivision. Cessation of divestment, reinvestment or any
50 subsequent ongoing investment authorized by this section shall be
51 strictly limited to the minimum steps necessary to avoid the contingency
52 set forth in the preceding sentence. For any cessation of divestment,
53 and in advance of such cessation, authorized by this subdivision, the
54 comptroller shall provide a written report to the attorney general, the
55 senate standing committee on civil service and pensions, and the assem-
56 bly standing committee on governmental employees, updated semi-annually

1 thereafter as applicable, setting forth the reasons and justification,
2 supported by clear and convincing evidence, for its decisions to cease
3 divestment, to reinvest or to remain invested in fossil fuel companies.

4 (c) Within sixty days of the effective date of this subdivision, the
5 comptroller shall facilitate the identification of fossil fuel companies
6 from which the common retirement fund is required to divest under para-
7 graph (a) of this subdivision, and file a copy of this list with the
8 attorney general, the senate standing committee on civil service and
9 pensions, and the assembly standing committee on governmental employees.
10 Annually thereafter, the public fund shall file a report with the attor-
11 ney general, the senate standing committee on civil service and
12 pensions, and the assembly standing committee on governmental employees
13 that includes: (i) all investments sold, redeemed, divested or withdrawn
14 in compliance with paragraph (a) of this subdivision; and (ii) all
15 prohibited investments from which the common retirement fund has not yet
16 divested under paragraph (a) of this subdivision.

17 § 3. This act shall take effect immediately.