S T A T E O F N E W Y O R K

7971

2009-2010 Regular Sessions

I N A S S E M B L Y

April 30, 2009

Introduced by M. of A. ABBATE, McENENY, COLTON -- (at request of the State Comptroller) -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to increasing the portion of public pension fund assets that may be invested according to the prudent investor standards (Part A); to amend the retirement and social security law, in relation to increasing the portion of public pension fund assets that may be invested in global equity securities (Part B); to amend the retirement and social security law, in relation to investments by public pension funds (Part C); to amend the retirement and social security law, in relation to making technical corrections relating to the mortgage advisory committee (Part D); and to amend the retirement and social security law, in relation to credit enhancement programs (Part E)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act enacts into law major components of legislation which relate to investments by public pension funds. Each component is wholly contained within a Part identified as Parts A through E. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

S 2. Short title. This act shall be known and may be cited as the "New York state comptroller's asset protection and investment accountability act of 2009".

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

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PART A

Section 1. Paragraph (a) of subdivision 9 of section 177 of the retirement and social security law, as amended by chapter 22 of the laws of 2006, is amended to read as follows:

(a) the investments by a fund made pursuant to this subdivision shall not at any time exceed [twenty-five] THIRTY-FIVE per centum of the assets of such fund;

S 2. This act shall take effect immediately.

PART B

Section 1. Subdivision 8 of section 177 of the retirement and social security law, as amended by chapter 594 of the laws of 1993, is amended to read as follows:

8. The trustees of a fund shall have the power to invest the moneys thereof in foreign equity securities provided that (a) any such equity security is registered on a national securities exchange, as provided in an act of congress of the United States, entitled the "Securities Exchange Act of 1934", approved June sixth, nineteen hundred thirty-four, as amended, or otherwise registered pursuant to said act and, if such equity security is so otherwise registered, price quotations therefor are furnished through a nationwide automated quotation system approved by the National Association of Securities Dealers, Inc. or is registered on a foreign exchange organized and regulated pursuant to the laws of the jurisdiction of such exchange and (b) the corporation has averaged at least one billion dollars in annual sales for the three consecutive years preceding the year in which the investment is made or has market capitalization of at least one billion dollars at the time the investment is made. Investments in such foreign equities shall be included together with a fund's investments in other equity securities for purposes of the percentage limitations set forth in the foregoing subdivisions of this section, and not more than [ten] TWENTY per centum of the assets of any fund shall be invested in the aggregate in such foreign equities.

S 2. This act shall take effect immediately.

PART C

Section 1. Paragraph (e) of subdivision 6 of section 177 of the retirement and social security law, as amended by chapter 560 of the laws of 1997, is amended and a new paragraph (f) is added to read as follows:

(e) Such real property, other than property to be used primarily for agricultural, horticultural, ranch, mining, recreational, amusement or club purposes, as may be acquired, as an investment for the production of income, INCLUDING CAPITAL APPRECIATION, or as may be acquired to be improved or developed for such investment purpose pursuant to an existing program therefor, subject to the following limitations: (1) the cost of each parcel of real property so acquired under the authority of this subdivision, including the estimated cost to the fund of the improvement or development thereof, when added to the value of all other real property then held by it pursuant to this subdivision, shall not exceed [five] TEN per cent of its assets, and (2) the cost of each parcel of real property acquired under the authority of this subdivision, includ-

ing the estimated cost to the fund of the improvement or development thereof, shall not exceed two per cent of the fund's assets.

(F) NOTWITHSTANDING ANY OTHER PROVISION OF LAW CONTAINED IN THIS ARTICLE, FOR THE PURPOSES OF THIS SUBDIVISION, AN INVESTMENT IN AN ENTITY, OTHER THAN AN ENTITY DESCRIBED IN SUBDIVISION TWO OF THIS SECTION, THAT INVESTS OR PROPOSES TO INVEST, DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE OTHER ENTITIES, AT LEAST A MAJORITY OF ITS ASSETS IN: (1) ANY INTEREST IN REAL PROPERTY OF ANY KIND OR CHARACTER AS AN INVESTMENT FOR THE PRODUCTION OF INCOME, INCLUDING CAPITAL APPRECIATION, OR (2) DEBT INSTRUMENTS, OTHER THAN DEBT INSTRUMENTS DESCRIBED IN SUBDIVISION ONE-A OF THIS SECTION, SECURED BY ANY INTEREST IN REAL ESTATE SHALL BE CONSIDERED AN INVESTMENT IN REAL ESTATE PURSUANT TO THIS SUBDIVISION, AND SHALL BE SUBJECT TO EACH OF THE LIMITATIONS SET FORTH IN THIS SUBDIVISION.

S 2. This act shall take effect immediately.

PART D

Section 1. The first closing paragraph of section 423 of the retirement and social security law, as added by chapter 770 of the laws of 1970, is amended to read as follows:

The comptroller shall appoint a separate [mortgage] REAL ESTATE advisory committee, with the advice and consent of the investment advisory committee, to review proposed [mortgage and] real estate AND MORTGAGE investments by the common retirement fund. In making investments, as authorized by law, the comptroller shall be guided by policies established by each committee from time to time; and, in the event the [mortgage] REAL ESTATE advisory committee disapproves a proposed [mortgage or] real estate OR MORTGAGE investment, such INVESTMENT shall not be made. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INDIVIDUALS APPOINTED TO THE REAL ESTATE ADVISORY COMMITTEE SHALL BE ELIGIBLE FOR DEFENSE AND INDEMNIFICATION IN ACCORDANCE WITH SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW.

S 2. This act shall take effect immediately and shall apply to all claims, actions and proceedings pending on or commenced on or after such effective date.

PART E

Section 1. The retirement and social security law is amended by adding a new section 177-e to read as follows:

S 177-E. CREDIT ENHANCEMENT PROGRAMS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE TRUSTEES OF ANY FUND MAY, SUBJECT TO AND CONSISTENT WITH THEIR FIDUCIARY DUTIES, ESTABLISH CREDIT ENHANCEMENT PROGRAMS TO ASSIST ENTITIES OF STATE AND LOCAL GOVERNMENT AND OTHER ISSUERS OF MUNICIPAL AND PUBLIC DEBT TO SECURE MORE FAVORABLE FINANCING TERMS THROUGH A VARIETY OF TYPES OF CREDIT ENHANCEMENT, INCLUDING, BUT NOT LIMITED TO, ENHANCEMENT OF THE CREDIT OF BONDS, NOTES, AND OTHER INDEBTEDNESS THROUGH:

(A) PROVIDING LETTERS OF CREDIT, STAND BY BOND PURCHASE AGREEMENTS AND SIMILAR LIQUIDITY FACILITIES; AND

(B) INVESTMENT IN EXISTING OR NEW MONOLINE INSURERS THAT ENHANCE SUCH TYPES OF DEBT.

2. ANY CREDIT ENHANCEMENT PROGRAM ESTABLISHED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 503(B) OF THE INTERNAL REVENUE CODE.

3. NO CREDIT ENHANCEMENT PROGRAM ESTABLISHED BY A FUND PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL BE DEEMED TO PROVIDE FINANCIAL GUARANTY INSURANCE AS DEFINED IN PARAGRAPH ONE OF SUBSECTION (A) OF SECTION SIX THOUSAND NINE HUNDRED ONE OF THE INSURANCE LAW.

4. ANY CREDIT ENHANCEMENT PROGRAM ESTABLISHED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL ONLY ENHANCE OBLIGATIONS THAT A FUND WOULD BE AUTHORIZED TO PURCHASE DIRECTLY, PROVIDED, HOWEVER, THAT THE PERCENTAGE LIMITATIONS CONTAINED IN PARAGRAPH (B) OF SUBDIVISION ONE-A OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THIS ARTICLE SHALL NOT APPLY TO INVESTMENTS MADE PURSUANT TO THIS SECTION AND THE PERCENTAGE LIMITATIONS CONTAINED IN PARAGRAPH (A) OF SUBDIVISION NINE OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THIS ARTICLE SHALL APPLY TO INVESTMENTS ENHANCING OBLIGATIONS THAT WOULD ONLY BE ELIGIBLE FOR PURCHASE PURSUANT TO SUBDIVISION NINE OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THIS ARTICLE.

5. THE AGGREGATE OUTSTANDING BALANCE OF OBLIGATIONS ENHANCED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL NOT EXCEED TEN PERCENT OF THE ASSETS OF A FUND; AND THE AGGREGATE OUTSTANDING BALANCE OF OBLIGATIONS ENHANCED FOR A SINGLE ISSUER SHALL NOT EXCEED TWO PERCENT OF THE ASSETS OF A FUND.

6. THE AGGREGATE OF ALL INVESTMENTS PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION SHALL NOT EXCEED FIVE PERCENT OF THE ASSETS OF A FUND, AND THE MAXIMUM LIABILITY OF A FUND AS A RESULT OF ITS INVESTMENT IN ANY MONOLINE INSURER SHALL NOT EXCEED THE DOLLAR AMOUNT OF SUCH INVESTMENT.

S 2. This act shall take effect immediately.

S 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgement shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 4. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through E of this act shall be as specifically set forth in the last section of such Parts.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill amends the Retirement and Social Security Law to increase the limit on non-legal list investments for the eight (8) public retirement systems of New York State. It would replace the current 25% limit with a 35% limit. It would also increase the amount of investment which may be made in foreign equities. The current 10% limit would be replaced with a 20% limit.

If this bill is enacted, insofar as this bill affects the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System, we assume that there would be small investment changes as a result of enactment. Any increases or decreases in investment earnings will result in decreases or increases, respectively, in employer contributions. Annual changes in assets will be shared by all employers and will be spread over the future working lifetimes of active members.

This estimate, dated March 17, 2009, and intended for use only during the 2009 Legislative Session, is Fiscal Note Number 2009-186 prepared by

the Actuary for the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.