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

7152--A

I N S E N A T E

March 17, 2010

Introduced by Sens. KRUGER, C. JOHNSON, ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to establishing the New York state public pension fund security act; and to amend the penal law, in relation to the definition of defrauding the government

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

Section 1. This act shall be known and may be cited as the "New York state public pension fund security act".

S 2. The executive law is amended by adding a new section 41-b to read as follows:

S 41-B. PUBLIC PENSION FUND SECURITY ACT. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

(A) "INVESTMENT MANAGER" MEANS ANY PERSON OR ENTITY, OTHER THAN AN EMPLOYEE OF THE STATE COMPTROLLER, THAT IS RETAINED BY A PUBLIC PENSION FUND TO MANAGE A PORTFOLIO OF ASSETS, DIRECTLY OR THROUGH AN INVESTMENT VEHICLE, INCLUDING SECURITIES, FOR A FEE.

(B) "INTERMEDIARY" MEANS ANY PERSON OR ENTITY HIRED, ENGAGED OR RETAINED BY, OR ACTING ON BEHALF OF AN INVESTMENT MANAGER, OR ON BEHALF OF ANOTHER INTERMEDIARY AS A FINDER, SOLICITOR, MARKETER, CONSULTANT, BROKER OR OTHER INTERMEDIARY TO RAISE MONEY OR OBTAIN AN INVESTMENT COMMITMENT FROM, OR TO OBTAIN ACCESS TO A PUBLIC PENSION FUND, DIRECTLY OR INDIRECTLY, INCLUDING, WITHOUT LIMITATION, THROUGH AN INVESTMENT VEHICLE. WHERE SUCH INTERMEDIARY IS A FINANCIAL INSTITUTION, INTERMEDIARY SHALL MEAN THE DEPARTMENT OR UNIT PERFORMING SUCH SERVICES.

(C) "PUBLIC PENSION FUND" MEANS ANY RETIREMENT PLAN ESTABLISHED OR MAINTAINED FOR ITS CURRENT OR FORMER EMPLOYEES BY THE STATE OF NEW YORK OR POLITICAL SUBDIVISION THEREOF, OR BY AN AGENCY OR INSTRUMENTALITY OF THE FOREGOING.

2. DISCLOSURE OF PAYMENTS. THE COMPTROLLER, IN CONJUNCTION WITH THE SUPERINTENDENT OF INSURANCE AND THE STATE ATTORNEY GENERAL SHALL DEVELOP AND IMPLEMENT A POLICY REQUIRING THE DISCLOSURE OF PAYMENTS TO INVEST-

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

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MENT ADVISORS BY INVESTMENT MANAGERS IN CONNECTION WITH PUBLIC PENSION FUND INVESTMENTS IN OR THROUGH INVESTMENT MANAGERS. THIS POLICY SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING REQUIREMENTS:

(A) DISCLOSURE OF RELATIONSHIPS BETWEEN AN INVESTMENT MANAGER AND AN INTERMEDIARY; AND

(B) A RESUME FOR EACH OFFICER, PARTNER OR PRINCIPAL OF THE INTERMEDIARY DETAILING THE PERSON'S EDUCATION, PROFESSIONAL DESIGNATIONS, REGULATORY LICENSES OR CERTIFICATIONS AND INVESTMENT AND WORK EXPERIENCE; AND

(C) DISCLOSURE OF ANY AND ALL COMPENSATION PROVIDED, OR AGREED TO BE PROVIDED TO THE INTERMEDIARY; AND

(D) A DESCRIPTION OF THE SERVICES TO BE PERFORMED BY THE INTERMEDIARY FOR THE INVESTMENT MANAGER; AND

(E) A STATEMENT WHETHER THE INTERMEDIARY OR ANY OF ITS AFFILIATES ARE REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE FINANCIAL INDUSTRY REGULATORY ASSOCIATION OR ANY SIMILAR REGULATORY AGENCY IN A COUNTRY OTHER THAN THE UNITED STATES, AND THE DETAILS OF THAT REGISTRATION OR EXPLANATION AS TO WHY NO REGISTRATION IS REQUIRED; AND

(F) A SIGNED ATTESTATION THAT THE INTERMEDIARY HAS NOT ENGAGED, HIRED, UTILIZED OR RETAINED A LOBBYIST OR ANY OTHER INDIVIDUAL OR ORGANIZATION FOR THE PURPOSES OF SECURING OR INFLUENCING THE DECISION TO SECURE A PARTICULAR TRANSACTION OR INVESTMENT BY A PUBLIC PENSION FUND, OTHER THAN ANOTHER INTERMEDIARY SUBJECT TO THE PROVISIONS OF THIS SECTION; AND

(G) A SIGNED ATTESTATION THAT NO EMPLOYEE OR SPOUSE OF ANY EMPLOYEE OF ANY INTERMEDIARY HAS MADE ANY POLITICAL CONTRIBUTIONS TO ANY ELECTED STATE OR LOCAL OFFICIAL, EMPLOYEE OF A PUBLIC PENSION FUND, OR FAMILY MEMBER OF ANY ELECTED STATE OR LOCAL OFFICIAL OR EMPLOYEE OF A PUBLIC PENSION FUND DURING THE PRIOR TWENTY-FOUR MONTH PERIOD. FOR PURPOSES OF THIS PARAGRAPH:

(I) FAMILY MEMBER SHALL MEAN ANY PERSON LIVING IN THE SAME HOUSEHOLD, AND ANY PERSON RELATED WITHIN THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY.

(II) OFFICIAL SHALL MEAN A PERSON (INCLUDING ANY ELECTION COMMITTEE FOR SUCH PERSON) WHO WAS AT THE TIME OF THE CONTRIBUTION AN INCUMBENT, CANDIDATE OR SUCCESSFUL CANDIDATE FOR ELECTIVE NEW YORK STATE OR LOCAL OFFICE, IF THE OFFICE: (A) IS DIRECTLY OR INDIRECTLY RESPONSIBLE FOR OR CAN INFLUENCE THE OUTCOME OF THE HIRING OF AN INVESTMENT MANAGER BY THE PUBLIC PENSION FUND; OR (B) HAS AUTHORITY TO APPOINT ANY PERSON WHO IS DIRECTLY OR INDIRECTLY RESPONSIBLE FOR, OR CAN INFLUENCE THE OUTCOME OF, THE HIRING OF AN INVESTMENT MANAGER BY A PUBLIC PENSION FUND.

3. WRITTEN DECLARATION. ALL INTERMEDIARIES GIVEN ACCESS TO THE PUBLIC PENSION FUND UNDER THE PROVISIONS OF THIS SECTION MUST SIGN A WRITTEN DECLARATION THAT THEIR ACTION WILL BE IN CONFORMANCE WITH STATE LAW AND POLICY AS DETERMINED BY THE COMPTROLLER.

4. PROHIBITIONS. A PUBLIC PENSION FUND SHALL NOT ENTER INTO ANY AGREEMENT WITH AN INVESTMENT MANAGER THAT DOES NOT AGREE, IN WRITING, TO COMPLY WITH THE POLICY DESCRIBED IN SUBDIVISION TWO OF THIS SECTION. A PUBLIC PENSION FUND SHALL NOT ENTER INTO ANY AGREEMENT WITH AN INVESTMENT MANAGER THAT ENGAGED AN INTERMEDIARY THAT HAS (OR HAS AN EMPLOYEE OR SPOUSE OF EMPLOYEE THAT HAS) MADE ANY POLITICAL CONTRIBUTION DESCRIBED IN PARAGRAPH (G) OF SUBDIVISION TWO OF THIS SECTION FOR FIVE YEARS FROM THE DATE OF SUCH CONTRIBUTION.

5. THE COMPTROLLER, IN CONJUNCTION WITH THE SUPERINTENDENT OF INSURANCE AND THE STATE ATTORNEY GENERAL MAY PROHIBIT AN INVESTMENT MANAGER WHO VIOLATES THE PROVISIONS OF THIS SECTION FROM CONDUCTING BUSINESS WITH A PUBLIC PENSION FUND OF THE STATE OF NEW YORK FOR FIVE YEARS. THE

COMPTROLLER, IN CONJUNCTION WITH THE SUPERINTENDENT OF INSURANCE AND THE STATE ATTORNEY GENERAL SHALL, BEFORE MAKING A FINAL DETERMINATION TO PROHIBIT AN INVESTMENT MANAGER FROM CONDUCTING BUSINESS WITH A PUBLIC PENSION FUND, NOTIFY THE INVESTMENT MANAGER AND INTERMEDIARY IN WRITING OF THE REASONS FOR SUCH PROHIBITION AND SHALL AFFORD SUCH INVESTMENT MANAGER OR AGENT AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL PRIOR TO MAKING A FINAL DETERMINATION. SUCH NOTIFICATION SHALL BE SERVED PERSONALLY OR BY CERTIFIED MAIL IN ANY MANNER AUTHORIZED BY THE CIVIL PRACTICE LAW AND RULES FOR SERVICE OF A SUMMONS. SUCH PROHIBITION MAY BE REDUCED BY A DECISION OF THE COMPTROLLER, IN CONJUNCTION WITH THE SUPERINTENDENT OF INSURANCE, UPON A SHOWING OF GOOD CAUSE.

S 3. Section 195.20 of the penal law, as amended by chapter 1 of the laws of 2010, is amended to read as follows:

S 195.20 Defrauding the government.

A person is guilty of defrauding the government when, being a public servant or party officer, OR WHILE ACTING AS AN INTERMEDIARY FOR AN INVESTMENT MANAGER THAT IS SEEKING TO BE OR IS RETAINED BY A PUBLIC PENSION FUND, he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises, INCLUDING KNOWINGLY MAKING ANY MATERIALLY FALSE STATEMENT OR OMISSION IN CONNECTION WITH THE PROVISION OF THE STATEMENT REQUIRED UNDER SUBDIVISION TWO OF SECTION FORTY-ONE-B OF THE EXECUTIVE LAW; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; and

(b) so obtains property, services or other resources with a value in excess of one thousand dollars from such state, political subdivision or governmental instrumentality.

Defrauding the government is a class E felony.

S 4. This act shall take effect immediately; provided, however, that the provisions of section 41-b of the executive law, as added by section two of this act, shall apply to investments between a public pension fund and an investment manager entered into on and after such date.