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

3164--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. MONTESANO, FINCH, STEVENSON -- Multi-Sponsored by -- M. of A. CROUCH, GOODELL, KATZ, McLAUGHLIN -- 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, the state finance law and the public officers law, in relation to establishing the employee retirement system board of trustees to operate the New York state and local employees' retirement system and the New York state and local police and fire retirement system, and regulating investment firms doing business with the common retirement fund

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

Section 1. Section 2 of the retirement and social security law is amended by adding a new subdivision 8-a to read as follows:

8-A. "EMPLOYEE RETIREMENT SYSTEM BOARD" OR "BOARD." THE ENTITY ESTABLISHED PURSUANT TO SECTION TEN-A OF THIS ARTICLE.

S 2. The retirement and social security law is amended by adding a new section 10-a to read as follows:

S 10-A. THE EMPLOYEE RETIREMENT SYSTEM BOARD. 1. THERE IS HEREBY ESTABLISHED THE EMPLOYEE RETIREMENT SYSTEM BOARD, WHICH SHALL CONSIST OF FIVE MEMBERS TO BE APPOINTED BY A DESIGNATING COMMISSION PURSUANT TO SECTION SEVENTY-THREE-C OF THE PUBLIC OFFICERS LAW.

2. EACH MEMBER OF THE BOARD SHALL HAVE EXPERIENCE IN THE FIELD OF SECURITIES INVESTMENT, PENSION ADMINISTRATION, PENSION LAW OR GOVERNMENTAL FINANCE, SHALL SERVE FIVE YEAR TERMS AND MAY BE REAPPOINTED TO THE BOARD; PROVIDED, HOWEVER, THAT OF THE MEMBERS INITIALLY APPOINTED TO THE BOARD, ONE SHALL SERVE FOR ONE YEAR, ONE SHALL SERVE FOR TWO YEARS, ONE SHALL SERVE FOR THREE YEARS, ONE SHALL SERVE FOR FOUR YEARS AND ONE SHALL SERVE FOR FIVE YEARS, AS DESIGNATED BY THE COMMISSION. MEMBERS OF

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

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THE BOARD SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES AS BOARD MEMBERS, BUT SHALL BE ENTITLED TO REIMBURSEMENT FOR THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR FUNCTIONS. VACANCIES TO THE BOARD SHALL BE FILLED WITHIN SIXTY DAYS OF THEIR OCCURRENCE IN THE SAME MANNER AS ORIGINAL APPOINTMENTS.

3. THE MEMBERS OF THE BOARD SHALL BE SUBJECT TO SECTIONS SEVENTY-THREE AND SEVENTY-FOUR OF THE PUBLIC OFFICERS LAW.

4. BOARD MEMBERS SHALL PARTICIPATE IN TRAINING, DEVELOPED AND ADMINISTERED BY THE DEPARTMENT OF AUDIT AND CONTROL, IN CONSULTATION WITH THE SUPERINTENDENT OF INSURANCE AND THE ATTORNEY GENERAL, REGARDING LEGAL, FIDUCIARY, FINANCIAL AND ETHICAL RESPONSIBILITIES WITHIN ONE YEAR OF APPOINTMENT TO THE BOARD.

5. A MAJORITY OF THE MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM, AND ALL ACTIONS OF THE BOARD SHALL REQUIRE APPROVAL OF A MAJORITY OF THE TOTAL MEMBERS OF THE BOARD.

6. THE BOARD MAY EMPLOY AN EXECUTIVE DIRECTOR, AND TWO ADDITIONAL EMPLOYEES AS IT MAY REQUIRE. THE BOARD SHALL ESTABLISH COMPENSATION THAT IS REASONABLE AND CUSTOMARY FOR SUCH POSITIONS.

7. THE BOARD MAY, IN CONSULTATION WITH THE SUPERINTENDENT OF INSURANCE, PROMULGATE RULES AND REGULATIONS ON THE GOVERNANCE OF THE RETIREMENT SYSTEM, AND SUCH OTHER RULES AND REGULATIONS AS IT MAY DEEM APPROPRIATE.

S 3. Subdivisions b and c and the opening paragraph of subdivision g of section 13 of the retirement and social security law, subdivision b as amended by chapter 369 of the laws of 1964, are amended to read as follows:

b. The [comptroller] MEMBERS OF THE EMPLOYEE RETIREMENT SYSTEM BOARD shall be trustee of the several funds of the retirement system AND THE COMPTROLLER SHALL BE CUSTODIAN OF SUCH FUNDS. Such funds shall be invested by the comptroller AS AUTHORIZED BY THE EMPLOYEE RETIREMENT SYSTEM BOARD, in securities in which he OR SHE is authorized by law to invest the funds of the state, except that he OR SHE may invest in obligations consisting of notes, bonds, debentures, or equipment trust certificates issued under an indenture, which are the direct obligations of, 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, transportation, distribution, or sale of electricity or gas, or the operation of telephone or telegraph systems or waterworks, or in some combination of them; provided 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 said obligations shall be rated at the time of purchase within the three highest classifications established by at least two standard rating services. The maximum amount that the comptroller AS AUTHORIZED BY THE BOARD may invest in such obligations shall not exceed thirty per centum of the assets of the New York state employees' retirement system's funds; and provided further that not more than two and one half per centum of the assets of the New York state employees' retirement system's funds shall be invested in the obligations of any one corporation of the highest classification and subsidiary or subsidiaries thereof, that not more than two per centum of the assets of the New York state employees' retirement system's funds shall be invested in the obligations of any one corporation of the second highest classification and subsidiary or subsidiaries thereof, that not more than one and one half per centum of the assets of the New York state employees' retirement system's funds shall be invested in the obli-

gations of any one corporation of the third highest classification and subsidiary or subsidiaries thereof. He OR SHE shall, however, be subject to all terms, conditions, limitations and restrictions imposed by this article and by law upon the making of such investments. The comptroller AS AUTHORIZED BY THE BOARD shall have full power:

1. To hold, purchase, sell, assign, transfer or dispose of any of the securities or investments, in which any of the funds of the retirement system shall be invested, including the proceeds of such investments and any monies belonging to such funds, and

2. In his OR HER name as [trustee] CUSTODIAN, to foreclose mortgages upon default or to take title to real property in such proceedings in lieu thereof and to lease and sell real property so acquired.

c. The comptroller AS AUTHORIZED BY THE BOARD annually shall credit to each of the funds of the retirement system regular interest on the mean amount therein for the preceding year.

Neither the comptroller nor THE MEMBERS OF THE BOARD OR any person employed on the work of the retirement system shall:

S 4. The retirement and social security law is amended by adding a new article 3-C to read as follows:

ARTICLE 3-C

TRANSPARENCY, ACCOUNTABILITY AND PROHIBITIONS IN THE STATE RETIREMENT SYSTEM

SECTION 159-A. PROHIBITION ON PLACEMENT AGENTS.

S 159-A. PROHIBITION ON PLACEMENT AGENTS. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "CONFLICT OF INTEREST" SHALL MEAN A CIRCUMSTANCE UNDER WHICH AN INDIVIDUAL OR ENTITY HAS AN INTEREST THAT HE, SHE OR IT IS AWARE MAY IMPAIR HIS, HER OR ITS IMPARTIAL OR OBJECTIVE JUDGMENT.

(B) "CONSULTANT" SHALL MEAN ANY PERSON (OTHER THAN AN EMPLOYEE OF THE BOARD OR THE COMPTROLLER) OR ENTITY RETAINED BY THE FUND TO PROVIDE TECHNICAL OR PROFESSIONAL SERVICES TO THE FUND RELATING TO INVESTMENTS BY THE FUND, INCLUDING OUTSIDE INVESTMENT COUNSEL AND LITIGATION COUNSEL, CUSTODIANS, ADMINISTRATORS, BROKER-DEALERS, AND PERSONS OR ENTITIES THAT IDENTIFY INVESTMENT OBJECTIVES AND RISKS, ASSIST IN THE SELECTION OF MONEY MANAGERS, SECURITIES, OR OTHER INVESTMENTS, OR MONITOR INVESTMENT PERFORMANCE.

(C) "FAMILY MEMBER" SHALL MEAN ANY PERSON RELATED BY BLOOD, MARRIAGE, ADOPTION, OR OPERATION OF LAW WHO RESIDES IN THE SAME HOUSEHOLD, AND ANY PERSON RELATED TO SUCH PERSON WITHIN THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY.

(D) "FUND" SHALL MEAN THE NEW YORK STATE COMMON RETIREMENT FUND.

(E) "EMPLOYEE RETIREMENT SYSTEM BOARD" OR "BOARD" SHALL MEAN THE ENTITY ESTABLISHED PURSUANT TO SECTION TEN-A OF THIS CHAPTER.

(F) "INVESTMENT MANAGER" SHALL MEAN ANY PERSON (OTHER THAN AN EMPLOYEE OF THE DEPARTMENT OF AUDIT AND CONTROL) OR ENTITY ENGAGED BY THE FUND IN THE MANAGEMENT OF PART OR ALL OF AN INVESTMENT PORTFOLIO OF THE FUND. "MANAGEMENT" SHALL INCLUDE, BUT IS NOT LIMITED TO, ANALYSIS OF PORTFOLIO HOLDINGS, AND THE PURCHASE, SALE, AND LENDING THEREOF.

(G) "INVESTMENT POLICY STATEMENT" SHALL MEAN A WRITTEN DOCUMENT THAT, CONSISTENT WITH LAW, SETS FORTH A FRAMEWORK FOR THE INVESTMENT PROGRAM OF THE FUND.

(H) "PLACEMENT AGENT" SHALL MEAN ANY PERSON OR ENTITY THAT IS DIRECTLY OR INDIRECTLY ENGAGED AND COMPENSATED BY AN INVESTMENT MANAGER TO PROMOTE INVESTMENTS TO OR SOLICIT INVESTMENTS BY THE FUND, WHETHER COMPENSATED ON A FLAT FEE, A CONTINGENT FEE, OR ANY OTHER BASIS, AND SHALL INCLUDE A REGISTERED LOBBYIST. REGULAR EMPLOYEES OF AN INVESTMENT

MANAGER ARE EXCLUDED FROM THIS DEFINITION UNLESS THEY ARE EMPLOYED PRINCIPALLY FOR THE PURPOSE OF SECURING OR INFLUENCING THE DECISION TO SECURE A PARTICULAR TRANSACTION OR INVESTMENT BY THE FUND. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "EMPLOYEE" SHALL INCLUDE ANY PERSON WHO WOULD QUALIFY AS AN EMPLOYEE UNDER THE FEDERAL INTERNAL REVENUE CODE OF 1986, AS AMENDED.

(I) "RETIREMENT SYSTEM" SHALL MEAN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM AND THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM.

(J) "THIRD PARTY ADMINISTRATOR" SHALL MEAN ANY PERSON OR ENTITY THAT CONTRACTUALLY PROVIDES ADMINISTRATIVE SERVICES TO THE RETIREMENT SYSTEM, INCLUDING RECEIVING AND RECORDING EMPLOYER AND EMPLOYEE CONTRIBUTIONS, MAINTAINING ELIGIBILITY ROSTERS, VERIFYING ELIGIBILITY FOR BENEFITS, PAYING BENEFITS OR MAINTAINING ANY OTHER RETIREMENT SYSTEM RECORDS. "ADMINISTRATIVE SERVICES" SHALL NOT INCLUDE SERVICES PROVIDED TO THE FUND RELATING TO FUND INVESTMENTS.

2. IN ORDER TO PRESERVE THE INDEPENDENCE AND INTEGRITY OF THE FUND, TO PRECLUDE POTENTIAL CONFLICTS OF INTEREST, AND TO ASSIST THE BOARD IN FULFILLING ITS DUTIES AS A FIDUCIARY TO THE FUND:

(A) THE BOARD SHALL NOT ENGAGE, HIRE, INVEST WITH OR COMMIT TO AN OUTSIDE INVESTMENT MANAGER, EITHER DIRECTLY OR INDIRECTLY, WHO IS USING THE SERVICES OF A PLACEMENT AGENT TO ASSIST THE INVESTMENT MANAGER IN OBTAINING INVESTMENTS BY THE FUND; AND

(B) AN INVESTMENT MANAGER MAY NOT USE THE SERVICES OF A PLACEMENT AGENT TO ASSIST THE INVESTMENT MANAGER IN OBTAINING INVESTMENTS BY THE FUND OR OTHERWISE DOING BUSINESS THEREWITH.

3. AN INVESTMENT MANAGER SHALL DISCLOSE AND CERTIFY ON AT LEAST A SEMI-ANNUAL BASIS, AND MORE FREQUENTLY AS DETERMINED BY THE BOARD:

(A) THE NAME, TITLE AND DESCRIPTION OF RESPONSIBILITIES OF EACH EMPLOYEE OF THE INVESTMENT MANAGER WHOSE PROFESSIONAL DUTIES INCLUDE CONTACT WITH THE RETIREMENT SYSTEM, INCLUDING THE RETIREMENT SYSTEM'S EMPLOYEES, ADVISORS, CONSULTANTS AND THIRD-PARTY ADMINISTRATORS;

(B) WHETHER AN EMPLOYEE OF THE INVESTMENT MANAGER, WHOSE PROFESSIONAL DUTIES INCLUDE CONTACT WITH THE RETIREMENT SYSTEM, IS A CURRENT OR FORMER RETIREMENT SYSTEM EMPLOYEE, ADVISOR, CONSULTANT, OR THIRD-PARTY ADMINISTRATOR;

(C) WHETHER ANY EMPLOYEE OF THE INVESTMENT MANAGER, WHOSE PROFESSIONAL DUTIES INCLUDE CONTACT WITH THE RETIREMENT SYSTEM, HAS REGISTERED AS A LOBBYIST WITH ANY STATE OR THE FEDERAL GOVERNMENT IN THE PAST TWO YEARS; AND

(D) THE NAMES AND ADDRESSES OF ALL THIRD PARTIES THAT THE INVESTMENT MANAGER COMPENSATED IN CONNECTION WITH INVESTMENTS IN THE RETIREMENT SYSTEM, INCLUDING ANY FEES, COMMISSIONS OR RETAINERS, AND THE AMOUNTS OF SUCH COMPENSATION.

4. AN INVESTMENT MANAGER SHALL PROMPTLY DISCLOSE TO THE BOARD, IN WRITING, ANY APPARENT, POTENTIAL OR ACTUAL CONFLICT OF INTEREST BETWEEN THE INVESTMENT MANAGER, INCLUDING THE INVESTMENT MANAGER'S EMPLOYEES AND ANY FAMILY MEMBERS OF THE INVESTMENT MANAGER AND ITS EMPLOYEES, AND THE RETIREMENT SYSTEM, INCLUDING THE RETIREMENT SYSTEM'S EMPLOYEES, CONSULTANTS, THIRD-PARTY ADMINISTRATORS AND ANY FAMILY MEMBERS OF THE EMPLOYEES, CONSULTANTS, AND THIRD-PARTY ADMINISTRATORS. THE INVESTMENT MANAGER SHALL NOT PROVIDE ANY SERVICES CONCERNING ANY MATTERS AFFECTED BY SUCH CONFLICT OF INTEREST UNLESS THE RETIREMENT SYSTEM EXPRESSLY WAIVES SUCH PROHIBITION OR UNTIL THE CONFLICT OF INTEREST IS OTHERWISE CURED.

5. AN INVESTMENT MANAGER SHALL PUBLISH ALL DISCLOSURES AND CERTIFICATIONS REQUIRED BY THIS SECTION ON THE INVESTMENT MANAGER'S WEBSITE.

6. THE ATTORNEY GENERAL MAY ENFORCE THE PROVISIONS OF THIS SECTION, AND MAY SEEK AN INJUNCTION, ON NOTICE OF FIVE DAYS, ENJOINING A PERSON OR ENTITY FROM CONTINUING TO ENGAGE IN ANY CONDUCT IN VIOLATION OF THIS SECTION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT ANY RIGHT OR REMEDY OTHERWISE AVAILABLE UNDER LAW TO ANY PERSON, OR ENTITY, INCLUDING THE ATTORNEY GENERAL.

7. THE BOARD SHALL:

(A) FILE WITH THE SUPERINTENDENT OF INSURANCE AN ANNUAL STATEMENT AS PRESCRIBED BY SECTION THREE HUNDRED SEVEN OF THE INSURANCE LAW, INCLUDING THE RETIREMENT SYSTEM'S FINANCIAL STATEMENT, TOGETHER WITH AN OPINION OF AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT ON THE FINANCIAL STATEMENT;

(B) DISCLOSE ON THE OFFICE OF STATE COMPTROLLER'S WEBSITE, ON AT LEAST AN ANNUAL BASIS, ALL FEES PAID BY THE FUND TO INVESTMENT MANAGERS, CONSULTANTS, AND THIRD-PARTY ADMINISTRATORS;

(C) DISCLOSE ON THE OFFICE OF STATE COMPTROLLER'S WEBSITE THE FUND'S INVESTMENT POLICIES AND PROCEDURES; AND

(D) REQUIRE FIDUCIARY AND CONFLICT OF INTEREST REVIEWS OF THE FUND EVERY THREE YEARS BY A QUALIFIED UNAFFILIATED PERSON.

8. FOR PURPOSES OF THIS SECTION, ANY INVESTMENT MADE BY THE FUND PURSUANT TO SUBDIVISION SEVEN OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THIS CHAPTER SHALL BE DEEMED TO BE THE INVESTMENT OF THE FUND IN SUCH INVESTMENT ENTITY, RATHER THAN IN THE ASSET OF SUCH INVESTMENT ENTITY.

9. ANY PERSON OR ENTITY THAT HAS A REASONABLE BASIS TO BELIEVE THAT ANY OTHER PERSON OR ENTITY HAS VIOLATED THIS SECTION SHALL REPORT TO THE BOARD AND THE ATTORNEY GENERAL EVIDENCE OF THE VIOLATION.

10. ANY VIOLATION OF THIS SECTION OR REGULATIONS PROMULGATED THEREUNDER SHALL BE A MISDEMEANOR, PUNISHABLE BY A FINE NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS OR BY IMPRISONMENT NOT TO EXCEED SIX MONTHS OR BY BOTH SUCH FINE AND IMPRISONMENT. ANY SECOND OR SUBSEQUENT VIOLATION SHALL BE A FELONY PUNISHABLE BY A FINE NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS OR BY IMPRISONMENT FOR A CLASS E FELONY OR BY BOTH SUCH FINE AND IMPRISONMENT.

S 5. Section 302 of the retirement and social security law is amended by adding a new subdivision 8-a to read as follows:

8-A. "EMPLOYEE RETIREMENT SYSTEM BOARD" OR "BOARD." THE ENTITY ESTABLISHED PURSUANT TO SECTION TEN-A OF THIS CHAPTER.

S 6. Subdivision g of section 311 of the retirement and social security law, as added by chapter 1000 of the laws of 1966, is amended to read as follows:

g. The comptroller shall, IN CONSULTATION WITH THE EMPLOYEE RETIREMENT SYSTEM BOARD, adopt and amend pursuant to this article only such rules and regulations as he OR SHE determines to be for the best interest of the retirement system and its members.

S 7. Subdivisions b and c and the opening paragraph of subdivision g of section 313 of the retirement and social security law, as added by chapter 1000 of the laws of 1966, are amended to read as follows:

b. The [comptroller] MEMBERS OF THE EMPLOYEE RETIREMENT SYSTEM BOARD shall be trustee of the several funds of the policemen's and firemen's retirement system AND THE COMPTROLLER SHALL BE CUSTODIAN OF SUCH FUNDS. Such funds shall be invested by the comptroller AS AUTHORIZED BY THE BOARD, in securities in which he OR SHE is authorized by law to invest the funds of the state, except that he OR SHE may invest in obligations consisting of notes, bonds, debentures or equipment trust certificates issued under an indenture, which are the direct obligations of, or in the case of equipment trust certificates are secured by direct obli-

gations of, a railroad or industrial corporation, or a corporation engaged directly and primarily in the production, transportation, distribution, or sale of electricity, or gas, or the operation of telephone or telegraph systems or waterworks, or in some combination of them; provided 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 said obligations shall be rated at the time of purchase within the three highest classifications established by at least two standard rating services. The maximum amount that the comptroller AS AUTHORIZED BY THE BOARD may invest in such obligations shall not exceed thirty per centum of the assets of the New York state policemen's and firemen's retirement system's funds; and provided further that not more than two and one-half per centum of the assets of the New York state policemen's and firemen's retirement system's funds shall be invested in the obligations of any one corporation of the highest classification and subsidiary or subsidiaries thereof, that not more than two per centum of the assets of the New York state policemen's and firemen's retirement system's funds shall be invested in the obligations of any one corporation of the second highest classification and subsidiary or subsidiaries thereof, that not more than one and one-half per centum of the assets of the New York state policemen's and firemen's retirement system's funds shall be invested in the obligations of any one corporation of the third highest classification and subsidiary or subsidiaries thereof. He OR SHE shall, however, be subject to all terms, conditions, limitations and restrictions imposed by this article and by law upon the making of such investments. The comptroller AS AUTHORIZED BY THE BOARD shall have full power:

1. To hold, purchase, sell, assign, transfer or dispose of any of the securities or investments, in which any of the funds of the policemen's and firemen's retirement system shall be invested, including the proceeds of such investments and any monies belonging to such funds, and

2. In his OR HER name as [trustee] CUSTODIAN, to foreclose mortgages upon default or to take title to real property in such proceedings in lieu thereof and to lease and sell real property so acquired.

c. The comptroller AS AUTHORIZED BY THE BOARD annually shall credit to each of the funds of the policemen's and firemen's retirement system regular interest on the mean amount therein for the preceding year.

Neither the comptroller nor THE MEMBER OF THE BOARD OR any person employed on the work of the policemen's and firemen's retirement system shall:

S 8. Section 421 of the retirement and social security law, as added by chapter 306 of the laws of 1967, is amended to read as follows:

S 421. Definitions. As used or referred to in this article, unless a different meaning clearly appears from the context. 1. The term "employees' retirement system" shall mean the New York state [employees] EMPLOYEES' retirement system.

2. The term "policemen's and firemen's retirement system" shall mean the New York state [policemen's and firemen's] AND LOCAL POLICE AND FIRE retirement system.

3. The term "each retirement [sytsem] SYSTEM" shall mean each of the foregoing defined systems.

4. [The term "comptroller" shall mean the state comptroller.

5.] The term "actuary" shall mean the actuary of the employees' retirement system acting jointly with the actuary of the policemen's and firemen's retirement system.

5. "EMPLOYEE RETIREMENT SYSTEM BOARD" OR "BOARD" SHALL MEAN THE ENTITY ESTABLISHED PURSUANT TO SECTION TEN-A OF THIS CHAPTER.

S 9. Section 422 of the retirement and social security law, as added by chapter 306 of the laws of 1967, is amended to read as follows:

S 422. Establishment of a common retirement fund. 1. There is hereby established a fund, in the custody of the comptroller, to be known as the common retirement fund. Notwithstanding any other provision of this chapter, all of the assets and income of the employees' retirement system and of the policemen's and firemen's retirement system shall be held by the comptroller as [trustee] CUSTODIAN of such fund, except as such assets and income may be allocated or distributed to the funds of each retirement system by the comptroller.

2. The fund shall consist initially of the total assets of the employees' retirement system as of March thirty-first, nineteen hundred sixty-seven, as such assets are defined in subdivision a of section two hundred ninety-three of this chapter. After the annual valuation of the assets and liabilities of the employees' retirement system and the determination relating to assets and liabilities required by subdivision b of section two hundred ninety-three of this chapter, the comptroller shall credit to each retirement system a participating interest in the assets of such fund in the proportion and percentage that the assets of each retirement system bear to the total assets of the common retirement fund. [On March thirty-first, nineteen hundred sixty-eight, and at the close of each succeeding fiscal year, the] THE comptroller shall credit each retirement system with a participating interest in such fund in the proportion and percentage that the interest attributable to each retirement system bears to the total assets of such fund, after considering contributions, earnings, disbursements and expenses attributable to each system.

S 10. Section 423 of the retirement and social security law, as amended by chapter 770 of the laws of 1970, is amended to read as follows:

S 423. Investments. a. [On and after April first, nineteen hundred sixty-seven, the] THE comptroller, AS AUTHORIZED BY THE BOARD shall invest the available monies of the common retirement fund in any investments and securities authorized by law for each retirement system and shall hold such investments in his OR HER name as [trustee] CUSTODIAN of such fund, notwithstanding any other provision of this chapter. Participating interests in such investments shall be credited to each retirement system in the manner and at the time specified in [paragraph] SUBDIVISION two of section four hundred twenty-two of this article.

b. To assist in the management of the monies of the common retirement fund, the comptroller shall appoint an investment advisory committee consisting of not less than seven members who shall serve for [his] THE COMPTROLLER'S term of office. A vacancy occurring from any cause other than expiration of term shall be filled by the comptroller for the remainder of the term. Each member of the committee shall be experienced in the field of investments and shall have served, or shall be serving, as a senior officer or member of the board of an insurance company, banking corporation or other financial or investment organization authorized to do business in the state of New York. The committee shall advise the comptroller, AS WELL AS THE EXECUTIVE DIRECTOR OF THE BOARD on investment policies relating to the monies of the common retirement fund and shall review, from time to time, the investment portfolio of the fund and make such recommendations as may be deemed necessary.

The comptroller shall appoint a separate mortgage advisory committee, with the advice and consent of the investment advisory committee, to review proposed mortgage and real estate 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 advisory committee disapproves a proposed mortgage or real estate investment, such shall not be made.

No officer or employee of any state department or agency shall be eligible for membership on either committee. Each committee shall convene periodically on call of the comptroller, or on call of the [chairman] CHAIR OF THE COMMITTEE. The members of each committee shall be entitled to reimbursement for their actual and necessary expenses but shall receive no compensation for their services.

S 11. Sections 423-a and 423-b of the retirement and social security law, section 423-a as added by chapter 112 of the laws of 1986 and section 423-b as added by chapter 624 of the laws of 1999, are amended to read as follows:

S 423-a. Northern Ireland related investments. 1. Notwithstanding any other provision of law, on and after January first, nineteen hundred eighty-seven, any moneys or assets of the common retirement fund which shall remain or be invested in the stocks, securities or other obligations of any institution or company doing business in or with Northern Ireland or with agencies or instrumentalities thereof, shall be invested subject to the provisions of subdivision three of this section.

2. On or before the first day of January of each year, the comptroller AS AUTHORIZED BY THE BOARD shall determine the existence of affirmative action taken by institutions or companies doing business in Northern Ireland to eliminate ethnic or religious discrimination based on actions taken for:

(a) Increasing the representation of individuals from underrepresented religious groups in the workforce including managerial, supervisory, administrative, clerical and technical jobs.

(b) Providing adequate security for the protection of minority employees both at the workplace and while travelling to and from work.

(c) The banning of provocative religious or political emblems from the workplace.

(d) Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups.

(e) Providing that layoff, recall, and termination procedures should not in practice favor particular religious groupings.

(f) The abolition of job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

(g) The development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.

(h) The establishment of procedures to assess, identify, and actively recruit minority employees with potential for further advancement.

(i) The appointment of senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

3. Consistent with sound investment policy, the comptroller AS AUTHORIZED BY THE BOARD shall invest the assets of the common retirement fund

in such a manner that the investments in institutions doing business in or with Northern Ireland shall reflect the advances made by such institutions in eliminating discrimination as established pursuant to subdivision two of this section.

S 423-b. New York state venture capital program. The comptroller AS AUTHORIZED BY THE BOARD is hereby authorized to establish within the common retirement fund a New York state venture capital program for the purpose of investing in qualified businesses as defined in paragraph [six] SEVEN of subdivision (a) of section eleven of the tax law. The comptroller [is authorized to] AS AUTHORIZED BY THE BOARD MAY invest up to two hundred fifty million dollars of assets of the common retirement fund to carry out the purposes of this section. The comptroller AS AUTHORIZED BY THE BOARD may make investments pursuant to this section in partnerships, corporations, trusts or limited liability companies organized on a for-profit basis that enter into agreements to invest the moneys of the New York state venture capital program in qualified businesses. The comptroller AS AUTHORIZED BY THE BOARD shall make such investments consistent with the provisions of paragraph (b) of subdivision nine of section one hundred seventy-seven of this chapter. The comptroller may establish procedures necessary to insure that investments of moneys of the New York state venture capital program are, for each investment in a qualified business, equitably matched by investments made by other sources. The comptroller shall, to the maximum extent practicable, insure that the geographic distribution of investments in the program is in proportion to the state population.

S 12. Section 425 of the retirement and social security law, as added by chapter 306 of the laws of 1967, is amended to read as follows:

S 425. Separability of retirement systems. No provision of this article shall be construed as an impairment of the separability of or of the corporate powers and privileges of the employees' retirement system or the policemen's and firemen's retirement system. The comptroller AS AUTHORIZED BY THE BOARD shall establish or continue separate funds and accounts for each retirement system, consistent with the common retirement fund herein provided for, as may be required to carry out the separate purposes and privileges of each retirement system.

S 13. The retirement and social security law is amended by adding a new article 26 to read as follows:

ARTICLE 26

INVESTMENT FIRMS

SECTION 1330. LEGISLATIVE INTENT.
1331. DEFINITIONS.
1332. BAN ON INVESTMENT FIRM BUSINESS.
1333. PROHIBITION ON SOLICITING AND COORDINATING CONTRIBUTIONS.
1334. CIRCUMVENTION OF RULE.
1335. REQUIRED DISCLOSURE TO COMMISSION ON PUBLIC INTEGRITY.
1336. VOLUNTARY DISCLOSURE TO COMMISSION ON PUBLIC INTEGRITY.
1337. PROHIBITION OF CERTAIN EMPLOYMENT.
1338. PROHIBITION OF CERTAIN FINANCIAL RELATIONSHIPS.
1339. INTERNAL PROCEDURES.
1340. PROHIBITION OF CERTAIN CONTACTS.
1341. GIFTS.
1342. MANDATORY REPORTING.
1343. ATTORNEY GENERAL ACTION.
1344. CRIMINAL SANCTIONS.

S 1330. LEGISLATIVE INTENT. THE PURPOSE AND INTENT OF THIS ARTICLE IS TO ENSURE THAT THE HIGH STANDARDS AND INTEGRITY OF INVESTMENT FIRMS ARE

MAINTAINED TO PREVENT FRAUDULENT AND MANIPULATIVE ACTS AND PRACTICES, TO PROMOTE JUST AND EQUITABLE PRINCIPLES, TO PERFECT A FREE AND OPEN MARKET AND TO PROTECT THE COMMON RETIREMENT FUND AND THE PUBLIC INTEREST BY:

1. PROHIBITING INVESTMENT FIRMS FROM ENGAGING IN BUSINESS WITH THE COMMON RETIREMENT FUND IF CERTAIN POLITICAL CONTRIBUTIONS HAVE BEEN MADE TO OFFICIALS THAT OVERSEE THE FUND; AND

2. REQUIRING INVESTMENT FIRMS TO DISCLOSE CERTAIN POLITICAL CONTRIBUTIONS, AS WELL AS OTHER INFORMATION, TO ALLOW PUBLIC SCRUTINY OF POLITICAL CONTRIBUTIONS BY THOSE IN THE BUSINESS.

S 1331. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "COMMON RETIREMENT FUND" SHALL MEAN ALL OF THE ASSETS AND INCOME OF THE EMPLOYEES' RETIREMENT SYSTEM AND OF THE POLICE AND FIRE RETIREMENT SYSTEM.

2. "ISSUER" SHALL MEAN THE COMPTROLLER OR HIS OR HER DESIGNEE IN RELATION TO THE ISSUANCE OF FUNDS FOR INVESTMENT FROM THE COMMON RETIREMENT FUND.

3. "INVESTMENT FIRM" SHALL MEAN ANY PERSON OR ENTITY THAT ACCEPTS AN INVESTMENT FROM OR PROVIDES INVESTMENT MANAGEMENT SERVICES TO THE RETIREMENT SYSTEM IN CONNECTION WITH THE MANAGEMENT OR INVESTMENT OF A RETIREMENT SYSTEM'S TRUST FUND OR ASSETS. INVESTMENT FIRM INCLUDES ANY SUBSIDIARY OR AFFILIATE OVER WHICH THE INVESTMENT FIRM EXERCISES EXCLUSIVE CONTROL.

4. "OFFICIAL" SHALL MEAN ANY PERSON, INCLUDING THE PERSON'S ELECTION COMMITTEE, WHO WAS, AT THE TIME OF A CONTRIBUTION, AN INCUMBENT, CANDIDATE OR SUCCESSFUL CANDIDATE FOR AN ELECTIVE OFFICE OF A GOVERNMENT ENTITY, IF THE OFFICE IS DIRECTLY RESPONSIBLE FOR, OR CAN DIRECTLY INFLUENCE THE OUTCOME OF, THE RETIREMENT SYSTEM'S INVESTMENT WITH OR ENGAGEMENT OF THE INVESTMENT FIRM.

S 1332. BAN ON INVESTMENT FIRM BUSINESS. NO INVESTMENT FIRM SHALL ENGAGE IN BUSINESS WITH THE COMMON RETIREMENT FUND WITHIN TWO YEARS AFTER ANY CONTRIBUTION TO AN OFFICIAL OF THE COMMON RETIREMENT FUND MADE BY:

1. THE INVESTMENT FIRM;

2. ANY FINANCE PROFESSIONAL ASSOCIATED WITH SUCH INVESTMENT FIRM; OR

3. ANY POLITICAL ACTION COMMITTEE CONTROLLED BY THE INVESTMENT FIRM;

PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT PROHIBIT THE INVESTMENT FIRM FROM ENGAGING IN BUSINESS WITH THE COMMON RETIREMENT FUND IF THE ONLY CONTRIBUTIONS MADE BY THE FOREGOING PERSONS AND ENTITIES TO OFFICIALS OF SUCH ISSUER WITHIN THE PREVIOUS TWO YEARS WERE MADE BY PERSONS TO OFFICIALS OF SUCH ISSUER FOR WHOM THE PERSONS WERE ENTITLED TO VOTE AND WHICH CONTRIBUTIONS, IN TOTAL, WERE NOT IN EXCESS OF THREE HUNDRED DOLLARS BY ANY INVESTMENT FIRM TO EACH OFFICIAL, PER ELECTION.

S 1333. PROHIBITION ON SOLICITING AND COORDINATING CONTRIBUTIONS. NO INVESTMENT FIRM SHALL SOLICIT ANY PERSON, INCLUDING BUT NOT LIMITED TO, ANY AFFILIATED ENTITY OF THE INVESTMENT FIRM OR POLITICAL ACTION COMMITTEE, TO:

1. MAKE OR COORDINATE ANY CONTRIBUTION, TO AN OFFICIAL OF THE COMMON RETIREMENT FUND WITH WHICH THE INVESTMENT FIRM IS ENGAGING OR IS SEEKING TO ENGAGE IN BUSINESS WITH; OR

2. MAKE OR COORDINATE ANY PAYMENT TO A POLITICAL PARTY OF A STATE OR LOCALITY WHERE THE INVESTMENT FIRM IS ENGAGING OR IS SEEKING TO ENGAGE IN BUSINESS WITH THE COMMON RETIREMENT FUND.

S 1334. CIRCUMVENTION OF RULE. NO INVESTMENT FIRM, OR ANY PROFESSIONAL THAT CONDUCTS BUSINESS WITH THE COMMON RETIREMENT FUND SHALL, DIRECTLY OR INDIRECTLY, THROUGH OR BY ANY OTHER PERSON, RELATIVE OR MEANS, DO ANY

ACT THAT SHALL RESULT IN A VIOLATION OF SECTION THIRTEEN HUNDRED THIRTY-TWO OR THIRTEEN HUNDRED THIRTY-THREE OF THIS ARTICLE.

S 1335. REQUIRED DISCLOSURE TO COMMISSION ON PUBLIC INTEGRITY. 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS SECTION, EACH INVESTMENT FIRM SHALL, BY JANUARY THIRTY-FIRST, APRIL THIRTIETH, JULY THIRTY-FIRST AND OCTOBER THIRTY-FIRST OF EACH YEAR, REPORT TO THE COMMISSION ON PUBLIC INTEGRITY, IN A FORMAT REQUIRED BY THE COMMISSION, THE FOLLOWING INFORMATION:

(A) FOR CONTRIBUTIONS TO OFFICIALS OF THE COMMON RETIREMENT FUND (OTHER THAN A CONTRIBUTION MADE BY AN INVESTMENT FIRM TO AN OFFICIAL OF AN ISSUER FOR WHOM SUCH INVESTMENT FIRM IS ENTITLED TO VOTE IF ALL CONTRIBUTIONS BY SUCH INVESTMENT FIRM TO SUCH OFFICIAL, IN TOTAL, DO NOT EXCEED THREE HUNDRED DOLLARS PER ELECTION) AND PAYMENTS TO POLITICAL PARTIES OF A STATE OR POLITICAL SUBDIVISION (OTHER THAN A PAYMENT MADE BY AN INVESTMENT FIRM TO A POLITICAL PARTY OF A STATE OR A POLITICAL SUBDIVISION IN WHICH SUCH INVESTMENT FIRM IS ENTITLED TO VOTE IF ALL PAYMENTS BY SUCH INVESTMENT FIRM TO SUCH POLITICAL PARTY, IN TOTAL, DO NOT EXCEED THREE HUNDRED DOLLARS PER YEAR) MADE BY THE PERSONS AND ENTITIES DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH:

(I) THE NAME AND TITLE (INCLUDING ANY CITY, COUNTY, STATE OR POLITICAL SUBDIVISION) OF EACH OFFICIAL AND POLITICAL PARTY RECEIVING CONTRIBUTIONS OR PAYMENTS DURING SUCH CALENDAR QUARTER;

(II) THE CONTRIBUTION OR PAYMENT AMOUNT MADE AND THE CONTRIBUTOR CATEGORY OF EACH OF THE FOLLOWING PERSONS AND ENTITIES MAKING SUCH CONTRIBUTIONS OR PAYMENTS DURING SUCH CALENDAR QUARTER:

(A) ANY INVESTMENT FIRM OR FINANCE PROFESSIONAL ASSOCIATED WITH SUCH INVESTMENT FIRM; AND

(B) EACH POLITICAL ACTION COMMITTEE CONTROLLED BY THE INVESTMENT FIRM OR ANY FINANCE PROFESSIONAL ASSOCIATED WITH SUCH INVESTMENT FIRM;

(B) A LIST OF STATE OFFICIALS WITH WHICH THE INVESTMENT FIRM HAS ENGAGED IN BUSINESS DURING SUCH CALENDAR QUARTER, ALONG WITH THE TYPE OF BUSINESS;

(C) WHETHER ANY CONTRIBUTION LISTED IN THIS SUBDIVISION IS THE SUBJECT OF AN AUTOMATIC EXEMPTION, AND THE DATE OF SUCH AUTOMATIC EXEMPTION; AND

(D) SUCH OTHER INFORMATION REQUIRED BY THE COMMISSION ON PUBLIC INTEGRITY.

2. NO INVESTMENT FIRM SHALL BE REQUIRED TO MAKE A DISCLOSURE PURSUANT TO THIS SECTION TO THE COMMISSION ON PUBLIC INTEGRITY FOR ANY CALENDAR QUARTER IN WHICH:

(A) SUCH INVESTMENT FIRM HAS NO INFORMATION TO DISCLOSE FOR SUCH CALENDAR QUARTER; OR

(B) SUCH INVESTMENT FIRM HAS NOT ENGAGED IN BUSINESS WITH THE COMMON RETIREMENT FUND, BUT ONLY IF SUCH INVESTMENT FIRM DID NOT ENGAGE IN BUSINESS WITH THE COMMON RETIREMENT FUND DURING THE SEVEN CONSECUTIVE CALENDAR QUARTERS IMMEDIATELY PRECEDING SUCH CALENDAR QUARTER.

3. THE COMMISSION ON PUBLIC INTEGRITY SHALL MAKE PUBLIC A COPY OF THE DISCLOSURES RECEIVED FROM ANY INVESTMENT FIRM.

4. IF AN INVESTMENT FIRM ENGAGES IN BUSINESS DURING ANY CALENDAR QUARTER AFTER NOT HAVING REPORTED THE INFORMATION DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION FOR ONE OR MORE CONTRIBUTIONS OR PAYMENTS MADE DURING THE TWO-YEAR PERIOD PRECEDING SUCH CALENDAR QUARTER SOLELY AS A RESULT OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, THEN SUCH INVESTMENT FIRM SHALL INCLUDE IN THE INFORMATION FOR SUCH CALENDAR QUARTER ALL SUCH INFORMATION (INCLUDING YEAR AND CALENDAR QUARTER OF SUCH CONTRIBUTIONS OR PAYMENTS) NOT SO REPORTED DURING SUCH TWO-YEAR PERIOD.

5. AN INVESTMENT FIRM THAT SUBMITS INFORMATION TO THE COMMISSION ON PUBLIC INTEGRITY SHALL:

(A) SEND TWO COPIES OF SUCH DISCLOSURE TO THE COMMISSION ON PUBLIC INTEGRITY BY CERTIFIED OR REGISTERED MAIL, OR SOME OTHER EQUALLY PROMPT MEANS THAT PROVIDES A RECORD OF SENDING; OR

(B) SUBMIT AN ELECTRONIC VERSION OF SUCH DISCLOSURE TO THE COMMISSION ON PUBLIC INTEGRITY IN SUCH FORMAT AND MANNER SPECIFIED IN REGULATIONS PROMULGATED BY THE COMMISSION ON PUBLIC INTEGRITY.

S 1336. VOLUNTARY DISCLOSURE TO COMMISSION ON PUBLIC INTEGRITY. THE COMMISSION ON PUBLIC INTEGRITY SHALL ACCEPT ADDITIONAL DISCLOSURES RELATED TO CONTRIBUTIONS MADE TO OFFICIALS OF ISSUERS AND PAYMENTS TO POLITICAL PARTIES AND POLITICAL SUBDIVISIONS VOLUNTARILY SUBMITTED BY AN INVESTMENT FIRM PROVIDED THAT SUCH DISCLOSURES ARE SUBMITTED IN ACCORDANCE WITH SECTION THIRTEEN HUNDRED THIRTY-FIVE OF THIS ARTICLE.

S 1337. PROHIBITION OF CERTAIN EMPLOYMENT. NO INVESTMENT FIRM SHALL EMPLOY OR COMPENSATE IN ANY MANNER A BOARD MEMBER, OFFICIAL, RETIREMENT FUND OFFICIAL, EMPLOYEE OR FIDUCIARY OF THE COMMON RETIREMENT FUND FOR TWO YEARS AFTER THE TERMINATION OF SUCH PERSON'S RELATIONSHIP WITH THE COMMON RETIREMENT FUND UNLESS SUCH PERSON SHALL NOT HAVE CONTACT WITH, OR PROVIDE SERVICES TO, THE COMMON RETIREMENT FUND.

S 1338. PROHIBITION OF CERTAIN FINANCIAL RELATIONSHIPS. NO INVESTMENT FIRM OR RELATED PARTY SHALL HAVE A DIRECT OR INDIRECT FINANCIAL, COMMERCIAL OR BUSINESS RELATIONSHIP WITH AN OFFICIAL OR ISSUER OF PENSION FUNDS, UNLESS THE BOARD CONSENTS AFTER FULL DISCLOSURE BY THE INVESTMENT FIRM OR RELATED PARTY.

S 1339. INTERNAL PROCEDURES. AN INVESTMENT FIRM SHALL ADOPT INTERNAL PROCEDURES TO MONITOR AND ENSURE ITS COMPLIANCE WITH THIS ARTICLE, AND SHALL PROVIDE TO THE BOARD AND THE ATTORNEY GENERAL A COPY OF THESE PROCEDURES, INCLUDING ANY UPDATES THERETO.

S 1340. PROHIBITION OF CERTAIN CONTACTS. UPON THE COMMON RETIREMENT FUND'S RELEASE OF ANY REQUEST FOR PROPOSAL, INVITATION FOR BID, OR COMPARABLE PROCUREMENT VEHICLE FOR ANY INVESTMENT SERVICES, THERE SHALL BE NO COMMUNICATION BETWEEN ANY BOARD MEMBER, OFFICIAL, RETIREMENT FUND OFFICIAL, EMPLOYEE OR FIDUCIARY OF THE COMMON RETIREMENT FUND CONCERNING THE PROCUREMENT PROCESS UNTIL THE PROCESS IS COMPLETE, PROVIDED, HOWEVER, THAT A REQUEST FOR TECHNICAL CLARIFICATION REGARDING THE PROCUREMENT PROCESS ITSELF SHALL BE PERMISSIBLE, AND AN INVESTMENT FIRM SHALL DIRECT SUCH REQUEST TO THE PERSON DESIGNATED BY THE COMMON RETIREMENT FUND. NOTHING HEREIN SHALL PROHIBIT AN INVESTMENT FIRM FROM COMPLYING WITH A REQUEST FOR INFORMATION FROM THE COMMON RETIREMENT FUND DURING THE PROCUREMENT PROCESS.

S 1341. GIFTS. AN INVESTMENT FIRM SHALL NOT GIVE OR OFFER TO GIVE ANY GIFT TO ANY BOARD MEMBER, OFFICIAL, RETIREMENT FUND OFFICIAL, EMPLOYEE OR FIDUCIARY OF THE COMMON RETIREMENT FUND OTHER THAN AN ARTICLE OF MERCHANDISE NOT EXCEEDING FIFTEEN DOLLARS IN VALUE, WHICH SHALL HAVE CONSPICUOUSLY STAMPED OR PRINTED THEREON THE ADVERTISEMENT OF THE INVESTMENT FIRM. FOR THE PURPOSE OF THIS SECTION, A GIFT SHALL INCLUDE, BUT IS NOT LIMITED TO, MONEY, LOANS, LODGING, MEALS, REFRESHMENTS, VACATIONS, PRIZES, DISCOUNTS, AND ENTERTAINMENT.

S 1342. MANDATORY REPORTING. ANY PERSON OR ENTITY THAT HAS A REASONABLE BASIS TO BELIEVE THAT ANY OTHER PERSON OR ENTITY HAS VIOLATED THIS ARTICLE SHALL REPORT TO THE BOARD AND THE ATTORNEY GENERAL EVIDENCE OF THE VIOLATION.

S 1343. ATTORNEY GENERAL ACTION. THE ATTORNEY GENERAL MAY ENFORCE THE PROVISIONS OF THIS ARTICLE AND MAY SEEK AN INJUNCTION, ON NOTICE OF FIVE DAYS, ENJOINING A PERSON OR ENTITY FROM CONTINUING TO ENGAGE IN ANY

CONDUCT IN VIOLATION OF THIS ARTICLE. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT ANY RIGHT OR REMEDY OTHERWISE AVAILABLE UNDER LAW TO ANY PERSON OR ENTITY, INCLUDING THE ATTORNEY GENERAL.

S 1344. CRIMINAL SANCTIONS. ANY VIOLATION OF THIS ARTICLE OR REGULATIONS PROMULGATED THEREUNDER SHALL BE A MISDEMEANOR, PUNISHABLE BY A FINE NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS OR BY IMPRISONMENT NOT TO EXCEED SIX MONTHS OR BY BOTH SUCH FINE AND IMPRISONMENT. ANY SECOND OR SUBSEQUENT VIOLATION SHALL BE A FELONY PUNISHABLE BY A FINE NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS OR BY IMPRISONMENT FOR A CLASS E FELONY OR BY BOTH SUCH FINE AND IMPRISONMENT.

S 14. The opening paragraph and the second undesignated paragraph of section 98 of the state finance law are amended to read as follows:

The comptroller, AS AUTHORIZED BY THE EMPLOYEE RETIREMENT SYSTEM BOARD OF TRUSTEES ESTABLISHED PURSUANT TO SECTION TEN-A OF THE RETIREMENT AND SOCIAL SECURITY LAW, shall invest and keep invested all moneys belonging to any and all funds which the comptroller OR SUCH BOARD now is or hereafter shall be authorized to invest, in any of the following securities:

The comptroller, AS AUTHORIZED BY THE EMPLOYEE RETIREMENT SYSTEM BOARD, whenever he, SHE OR IT deems it for the best interest of any of such funds, may dispose of any of the securities therein or investments therefor, in making other investments authorized by law, and he, SHE OR IT may exchange any such securities for those held in any other of such funds, and the comptroller OR SUCH BOARD may take such action as may be necessary to obtain the benefits of the insurance provided for in the national housing act, and may draw his, HER OR ITS warrant upon the treasurer for the amount required for such investments and exchanges.

S 15. The public officers law is amended by adding a new section 73-c to read as follows:

S 73-C. DESIGNATING COMMISSION FOR THE EMPLOYEE RETIREMENT SYSTEM BOARD. 1. DEFINITIONS. FOR THE PURPOSE OF THIS CHAPTER, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "DESIGNATING COMMISSION" MEANS THE DESIGNATING COMMISSION FOR THE EMPLOYEE RETIREMENT SYSTEM BOARD.

B. "DESIGNATING MEMBERS" MEANS THE MEMBERS OF THE DESIGNATING COMMISSION FOR THE EMPLOYEE RETIREMENT SYSTEM BOARD.

C. "COMMISSIONER" MEANS A MEMBER OF THE STATE GOVERNMENT ETHICS COMMISSION.

D. "CANDIDATE" MEANS ANY INDIVIDUAL UNDER CONSIDERATION BY THE DESIGNATING COMMISSION FOR THE POSITION OF TRUSTEE OF THE EMPLOYEE RETIREMENT SYSTEM BOARD.

E. "APPOINTING OFFICER" MEANS THE STATE ELECTED OFFICIAL RESPONSIBLE FOR APPOINTING THE DESIGNATING MEMBERS.

2. ORGANIZATION OF THE DESIGNATING COMMISSION. A. A DESIGNATING COMMISSION FOR THE EMPLOYEE RETIREMENT SYSTEM BOARD IS HEREBY ESTABLISHED. THE DESIGNATING COMMISSION SHALL CONSIST OF TEN MEMBERS OF WHOM FOUR SHALL BE APPOINTED BY THE GOVERNOR, AND ONE EACH BY THE ATTORNEY GENERAL, THE STATE COMPTROLLER, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, AND THE MINORITY LEADER OF THE ASSEMBLY. OF THE FOUR MEMBERS APPOINTED BY THE GOVERNOR, NO MORE THAN TWO SHALL BE ENROLLED IN THE SAME POLITICAL PARTY. NO MEMBER OF THE DESIGNATING COMMISSION SHALL BE A MEMBER OF THE LEGISLATURE, AN EMPLOYEE OF STATE GOVERNMENT, HOLD ANY OFFICE IN ANY POLITICAL PARTY OR BE A REGISTERED LOBBYIST IN THIS STATE OR IN ANY OTHER STATE. NO MEMBER OF THE DESIGNATING COMMISSION SHALL BE A PARTNER, OF COUNSEL OR OTHERWISE EMPLOYED BY A LOBBYING FIRM OR ANY ENTITY RECEIVING A STATE CONTRACT THAT SHARES IN ANY PART OF THE PROFIT DERIVED

FROM LOBBYING. TO THE EXTENT POSSIBLE, THE MEMBERS OF THE DESIGNATING COMMISSION SHALL BE INDIVIDUALS WITH KNOWLEDGE OR EXPERIENCE IN THE FIELD OF SECURITIES INVESTMENTS, PENSION ADMINISTRATION, PENSION LAW OR GOVERNMENTAL FINANCE.

B. THE MEMBERS FIRST APPOINTED BY THE GOVERNOR SHALL HAVE RESPECTIVELY ONE, TWO, THREE AND FOUR-YEAR TERMS AS HE SHALL DESIGNATE. THE MEMBER FIRST APPOINTED BY THE ATTORNEY GENERAL SHALL HAVE A TWO-YEAR TERM. THE MEMBER FIRST APPOINTED BY THE STATE COMPTROLLER SHALL HAVE A TWO-YEAR TERM. THE MEMBER FIRST APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE SHALL HAVE A ONE-YEAR TERM. THE MEMBER FIRST APPOINTED BY THE MINORITY LEADER OF THE SENATE SHALL HAVE A TWO-YEAR TERM. THE MEMBER FIRST APPOINTED BY THE SPEAKER OF THE ASSEMBLY SHALL HAVE A FOUR-YEAR TERM. THE MEMBER FIRST APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY SHALL HAVE A THREE-YEAR TERM. EACH SUBSEQUENT APPOINTMENT SHALL BE FOR A TERM OF FOUR YEARS.

C. A VACANCY SHALL BE DEEMED TO OCCUR IMMEDIATELY UPON THE APPOINTMENT OR ELECTION OF ANY MEMBER TO AN OFFICE THAT WOULD DISQUALIFY HIM OR HER FOR APPOINTMENT TO, OR MEMBERSHIP ON, THE DESIGNATING COMMISSION. A VACANCY OCCURRING FOR ANY REASON OTHER THAN BY EXPIRATION OF TERM SHALL BE FILLED BY THE APPOINTING OFFICER FOR THE REMAINDER OF THE UNEXPIRED TERM. NO MEMBER OF THE DESIGNATING COMMISSION SHALL HOLD OFFICE FOR MORE THAN NINETY DAYS AFTER THE EXPIRATION OF HIS OR HER TERM. IF THE APPOINTING OFFICER FAILS TO APPOINT A PERSON TO A VACANT OFFICE, BY A MAJORITY VOTE WITHOUT VACANCY, THE DESIGNATING COMMISSION SHALL SELECT A PERSON TO FILL THE VACANT OFFICE.

D. THE MEMBERS SHALL DESIGNATE ONE OF THEIR NUMBER TO SERVE AS CHAIRMAN FOR A PERIOD OF TWO YEARS OR UNTIL HIS OR HER TERM OF OFFICE EXPIRES, WHICHEVER PERIOD IS SHORTER.

E. NO MEMBER OF THE DESIGNATING COMMISSION SHALL RECEIVE COMPENSATION, BUT MAY RECEIVE HIS OR HER ACTUAL AND NECESSARY EXPENSES INCURRED IN THE DISCHARGE OF HIS OR HER DUTIES.

F. EIGHT MEMBERS OF THE DESIGNATING COMMISSION SHALL CONSTITUTE A QUORUM.

3. FUNCTIONS OF THE DESIGNATING COMMISSION. A. THE DESIGNATING COMMISSION SHALL CONSIDER AND EVALUATE THE QUALIFICATIONS OF CANDIDATES FOR APPOINTMENT AS A MEMBER OF THE EMPLOYEE RETIREMENT SYSTEM BOARD AND, AS A VACANCY OCCURS IN ANY SUCH OFFICE, SHALL APPOINT PERSONS WHO BY THEIR CHARACTER, TEMPERAMENT, PROFESSIONAL APTITUDE AND EXPERIENCE ARE WELL QUALIFIED TO HOLD SUCH OFFICE. THE DESIGNATING COMMISSION SHALL SELECT ONE SUCH PERSON TO SERVE AS CHAIR OF THE BOARD.

B. AN APPOINTMENT AS MEMBER OF THE EMPLOYEE RETIREMENT SYSTEM BOARD BY THE DESIGNATING COMMISSION SHALL REQUIRE THE CONCURRENCE OF SEVEN MEMBERS OF THE DESIGNATING COMMISSION. THE APPOINTMENT SHALL BE TRANSMITTED TO THE GOVERNOR, THE ATTORNEY GENERAL, THE STATE COMPTROLLER, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY IN A SINGLE WRITTEN REPORT, WHICH SHALL BE RELEASED TO THE PUBLIC BY THE DESIGNATING COMMISSION AT THE TIME IT IS SUBMITTED. THE REPORT SHALL BE IN WRITING, SIGNED ONLY BY THE CHAIRMAN, AND SHALL INCLUDE THE DESIGNATING COMMISSION'S FINDINGS RELATING TO THE CHARACTER, TEMPERAMENT, PROFESSIONAL APTITUDE, EXPERIENCE, QUALIFICATIONS AND FITNESS FOR OFFICE OF EACH CANDIDATE WHO IS APPOINTED COMMISSIONER.

C. NO PERSON SHALL BE APPOINTED MEMBER OF THE BOARD BY THE DESIGNATING COMMISSION WHO HAS NOT CONSENTED TO BE A CANDIDATE, WHO HAS NOT BEEN PERSONALLY INTERVIEWED BY A QUORUM OF THE MEMBERSHIP OF THE DESIGNATING COMMISSION, AND WHO HAS NOT FILED A FINANCIAL STATEMENT WITH THE DESIG-

NATING COMMISSION, ON A FORM TO BE PRESCRIBED BY THE DESIGNATING COMMISSION. THE FINANCIAL STATEMENT SHALL CONSIST OF A SWORN STATEMENT OF THE PERSON'S ASSETS, LIABILITIES AND SOURCES OF INCOME, AND ANY OTHER RELEVANT FINANCIAL INFORMATION WHICH THE DESIGNATING COMMISSION MAY REQUIRE. THE DESIGNATING COMMISSION SHALL TRANSMIT THE FINANCIAL STATEMENT FILED BY EACH PERSON WHO IS APPOINTED TO THE GOVERNOR, THE ATTORNEY GENERAL, THE STATE COMPTROLLER, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY. THE DESIGNATING COMMISSION SHALL MAKE AVAILABLE TO THE PUBLIC THE FINANCIAL STATEMENT FILED BY THE PERSON WHO IS APPOINTED TO FILL A VACANCY. THE FINANCIAL STATEMENTS FILED BY ALL OTHER PERSONS NOT APPOINTED BY THE DESIGNATING COMMISSION SHALL BE CONFIDENTIAL.

4. ADDITIONAL FUNCTIONS OF THE DESIGNATING COMMISSION. THE DESIGNATING COMMISSION SHALL HAVE THE FOLLOWING FUNCTIONS, POWERS AND DUTIES:

A. ESTABLISH DETAILED COMMUNICATION PROCEDURES TO ASSURE THAT PERSONS WHO MAY BE QUALIFIED FOR APPOINTMENT TO THE BOARD, OTHER THAN THOSE WHO HAVE REQUESTED CONSIDERATION OR WHO HAVE BEEN RECOMMENDED FOR CONSIDERATION BY OTHERS, ARE ENCOURAGED TO AGREE TO BE CONSIDERED BY THE DESIGNATING COMMISSION. THE TOTAL NUMBER OF REQUESTS FOR CONSIDERATION SHALL BE DOCUMENTED FOR THE PUBLIC RECORD.

B. CONDUCT INVESTIGATIONS, ADMINISTER OATHS OR AFFIRMATIONS, INTERVIEW WITNESSES AND COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER OATH OR AFFIRMATION AND REQUIRE THE PRODUCTION OF ANY BOOKS, RECORDS, DOCUMENTS OR OTHER EVIDENCE THAT IT MAY DEEM RELEVANT OR MATERIAL TO ITS EVALUATION OF CANDIDATES FOR TRUSTEE.

C. REQUIRE FROM ANY COURT, DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION, OR OTHER AGENCY OF THE STATE OR POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC AUTHORITY SUCH ASSISTANCE, INFORMATION AND DATA, AS WILL ENABLE IT PROPERLY TO EVALUATE THE QUALIFICATIONS OF CANDIDATES, SUBJECT TO ANY ABSOLUTE JUDICIAL OR EXECUTIVE PRIVILEGE, WHERE ONE EXISTS.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DESIGNATING COMMISSION, WITH THE CONSENT OF THE APPLICANT, SHALL BE ENTITLED TO REQUIRE FROM ANY FORMAL DELIBERATIVE BODY ANY FORMAL WRITTEN COMPLAINT AGAINST A CANDIDATE, IN WHICH THE APPLICANT'S MISCONDUCT WAS ESTABLISHED, ANY PENDING COMPLAINT AGAINST A CANDIDATE, AND THE RECORD TO DATE OF ANY PENDING PROCEEDING PURSUANT TO A FORMAL WRITTEN COMPLAINT AGAINST SUCH CANDIDATE. THE DELIBERATIVE BODY THAT HAS JURISDICTION OVER SUCH COMPLAINT SHALL HAVE FIFTEEN DAYS WITHIN WHICH TO RESPOND TO A REQUEST MADE PURSUANT TO THIS SUBDIVISION.

D. REQUIRE THE APPEARANCE OF ANY CANDIDATE BEFORE IT AND INTERVIEW ANY PERSON CONCERNING THE QUALIFICATIONS OF ANY CANDIDATE.

E. ESTABLISH PROCEDURES TO COMMUNICATE WITH THE GOVERNOR, THE ATTORNEY GENERAL, THE STATE COMPTROLLER, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY CONCERNING THE QUALIFICATIONS OF ANY PERSON WHO IT HAS APPOINTED AS TRUSTEE.

F. APPOINT, AND AT PLEASURE REMOVE, A COUNSEL AND SUCH OTHER STAFF AS IT MAY REQUIRE FROM TIME TO TIME, AND PRESCRIBE THEIR POWERS AND DUTIES. THE DESIGNATING COMMISSION SHALL FIX THE COMPENSATION OF ITS STAFF AND PROVIDE FOR REIMBURSEMENT OF THEIR EXPENSES WITHIN THE AMOUNTS APPROPRIATED BY LAW.

G. DO ALL OTHER THINGS NECESSARY AND CONVENIENT TO CARRY OUT ITS FUNCTIONS PURSUANT TO THIS ARTICLE.

5. RULES OF THE DESIGNATING COMMISSION. A. THE DESIGNATING COMMISSION SHALL ADOPT, AND MAY AMEND, WRITTEN RULES OF PROCEDURE NOT INCONSISTENT WITH LAW.

B. RULES OF THE DESIGNATING COMMISSION SHALL BE FILED WITH THE SECRETARY OF STATE AND SHALL BE PUBLISHED IN THE OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE. UPON REQUEST OF ANY PERSON, THE SECRETARY OF STATE SHALL FURNISH A COPY OF THE DESIGNATING COMMISSION'S RULES WITHOUT CHARGE.

C. RULES OF THE DESIGNATING COMMISSION MAY PRESCRIBE FORMS AND QUESTIONNAIRES TO BE COMPLETED AND, IF REQUIRED BY THE DESIGNATING COMMISSION, VERIFIED BY CANDIDATES.

D. RULES OF THE DESIGNATING COMMISSION SHALL PROVIDE THAT UPON THE COMPLETION BY THE DESIGNATING COMMISSION OF ITS CONSIDERATION AND EVALUATION OF THE QUALIFICATIONS OF A CANDIDATE, THERE SHALL BE NO RECONSIDERATION OF SUCH CANDIDATE FOR THE VACANCY FOR WHICH HE WAS CONSIDERED, EXCEPT WITH THE CONCURRENCE OF EIGHT MEMBERS OF THE DESIGNATING COMMISSION.

6. CONFIDENTIALITY OF PROCEEDINGS AND RECORDS. A. ALL COMMUNICATIONS TO THE DESIGNATING COMMISSION, AND ITS PROCEEDINGS, AND ALL APPLICATIONS, CORRESPONDENCE, INTERVIEWS, TRANSCRIPTS, REPORTS AND ALL OTHER PAPERS, FILES AND RECORDS OF THE DESIGNATING COMMISSION SHALL BE CONFIDENTIAL AND PRIVILEGED AND, EXCEPT FOR THE PURPOSES OF ARTICLE TWO HUNDRED TEN OF THE PENAL LAW, SHALL NOT BE MADE AVAILABLE TO ANY PERSON EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE.

B. NEITHER THE MEMBERS OF THE BOARD, MEMBERS OF THE DESIGNATING COMMISSION NOR ITS STAFF SHALL PUBLICLY DIVULGE THE NAMES OF, OR ANY INFORMATION CONCERNING, ANY CANDIDATE EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE. ANY VIOLATION OF THIS SUBDIVISION SHALL BE A CLASS A MISDEMEANOR.

7. PROCEDURES WHEN VACANCIES OCCUR. A. WHENEVER A VACANCY WILL OCCUR FOR THE POSITION OF MEMBER OF THE EMPLOYEE RETIREMENT SYSTEM BOARD BY EXPIRATION OF A TERM, THE MEMBER OF THE BOARD SHALL NOTIFY THE DESIGNATING COMMISSION OF THE ANTICIPATED VACANCY NO LATER THAN SEVEN MONTHS PRECEDING THE VACANCY. THE DESIGNATING COMMISSION SHALL MAKE ITS APPOINTMENT TO THE BOARD ON OR BEFORE THE DATE OF EXPIRATION, TO TAKE EFFECT ON THE DAY FOLLOWING SUCH EXPIRATION.

B. WHENEVER A VACANCY OCCURS OTHER THAN BY EXPIRATION OF TERM, THE COMMISSIONERS OF STATE GOVERNMENT ETHICS SHALL IMMEDIATELY NOTIFY THE DESIGNATING COMMISSION OF SUCH VACANCY. THE DESIGNATING COMMISSION SHALL MAKE ITS APPOINTMENT NO LATER THAN ONE HUNDRED TWENTY DAYS AFTER RECEIPT OF SUCH NOTICE.

S 16. This act shall take effect on the ninetieth day after it shall have become a law.

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

This bill would create an Employee Retirement System Board to serve as the trustee of the Common Retirement Fund (CRF), and would designate the Comptroller as the custodian of the CRF. Members of the Board would be nominated by a designating commission, which would be authorized to appoint and compensate staff as it may require. The Board would be authorized to make rules and regulations on the governance of the retirement system, as well as any other rules and regulations it deems appropriate, and shall direct the investment of CRF. The Board would be authorized to employ an executive director and two additional employees as it may require. This bill would also establish prohibitions on placement agents, and enact standards of integrity for investment firms dealing with the CRF.

If this bill is enacted, we estimate that there would be additional annual costs to compensate staff of the designating commission and the Board, and to reimburse the members of the designating commission and the Board for their actual and necessary expenses. These costs would be shared by the State of New York and the participating employers of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

Summary of relevant resources:

Data: March 31, 2011 Actuarial Year End File with distributions of membership and other statistics displayed in the 2011 Report of the Actuary and 2011 Comprehensive Annual Financial Report.

Assumptions and Methods: 2010 and 2011 Annual Report to the Comptroller on Actuarial Assumptions, Codes Rules and Regulations of the State of New York: Audit and Control.

Market Assets and GASB Disclosures: March 31, 2011 New York State and Local Retirement System Financial Statements and Supplementary Information.

Valuations of Benefit Liabilities and Actuarial Assets: summarized in the 2011 Actuarial Valuations report.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated March 16, 2012, and intended for use only during the 2012 Legislative Session, is Fiscal Note No. 2012-115, 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.