

5873

2015-2016 Regular Sessions

I N   S E N A T E

June 9, 2015

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Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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     S 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     S 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  
20    of investments and shall have served, or shall be serving, as a senior  
21    officer or member of the board of an insurance company, banking corpo-  
22    ration or other financial or investment organization authorized to do  
23    business in the state of New York. The committee shall advise the comp-  
24    troller on investment policies relating to the monies of the common  
25    retirement fund and shall review, from time to time, the investment

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

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1 portfolio of the fund and make such recommendations as may be deemed  
2 necessary.

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

11 (C) No officer or employee of any state department or agency shall be  
12 eligible for membership on either committee. Each committee shall  
13 convene periodically on call of the comptroller, or on call of the  
14 chairman. The members of each committee shall be entitled to reimburse-  
15 ment for their actual and necessary expenses but shall receive no  
16 compensation for their services.

17 3. (A) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE COMP-  
18 TROLLER SHALL NOT HAVE THE POWER TO INVEST THE AVAILABLE MONIES OF THE  
19 COMMON RETIREMENT FUND IN ANY STOCKS, DEBT OR OTHER SECURITIES OF ANY  
20 CORPORATION OR COMPANY, OR ANY SUBSIDIARY, AFFILIATE OR PARENT OF ANY  
21 CORPORATION OR COMPANY, AMONG THE TWO HUNDRED LARGEST PUBLICLY TRADED  
22 FOSSIL FUEL COMPANIES, AS ESTABLISHED BY CARBON CONTENT IN THE COMPA-  
23 NIES' PROVEN OIL, GAS AND COAL RESERVES. THE COMPTROLLER SHALL, IN  
24 ACCORDANCE WITH SOUND INVESTMENT CRITERIA AND CONSISTENT WITH HIS OR HER  
25 FIDUCIARY OBLIGATIONS, DIVEST ANY SUCH STOCKS OR OTHER SECURITIES WHETH-  
26 ER THEY ARE OWNED DIRECTLY OR HELD THROUGH SEPARATE ACCOUNTS OR ANY  
27 COMMINGLED FUNDS. DIVESTMENT PURSUANT TO THIS SUBDIVISION MUST BE  
28 COMPLETED BY JANUARY FIRST, TWO THOUSAND TWENTY, WITH THE EXCEPTION OF  
29 COMPANIES ENGAGED IN THE MINING, EXTRACTION OR PRODUCTION OF COAL,  
30 DIVESTMENT FROM WHICH MUST BE COMPLETED NO LATER THAN ONE YEAR AFTER THE  
31 EFFECTIVE DATE OF THIS SUBDIVISION.

32 (B) THE COMPTROLLER SHALL BE PERMITTED TO CEASE DIVESTING FROM COMPA-  
33 NIES UNDER PARAGRAPH (A) OF THIS SUBDIVISION, REINVEST IN COMPANIES FROM  
34 WHICH IT DIVESTED UNDER PARAGRAPH (A) OF THIS SUBDIVISION, OR CONTINUE  
35 TO INVEST IN COMPANIES FROM WHICH IT HAS NOT YET DIVESTED UPON CLEAR AND  
36 CONVINCING EVIDENCE SHOWING THAT AS A DIRECT RESULT OF SUCH DIVESTMENT,  
37 THE TOTAL AND AGGREGATE VALUE OF ALL ASSETS UNDER MANAGEMENT BY, OR ON  
38 BEHALF OF, THE COMMON RETIREMENT FUND BECOMES OR SHALL BECOME: (I) EQUAL  
39 TO OR LESS THAN NINETY-NINE AND ONE-HALF PERCENT; OR (II) ONE HUNDRED  
40 PERCENT LESS FIFTY BASIS POINTS OF THE HYPOTHETICAL VALUE OF ALL ASSETS  
41 UNDER MANAGEMENT BY, OR ON BEHALF OF, THE COMMON RETIREMENT FUND ASSUM-  
42 ING NO DIVESTMENT FROM ANY COMPANY HAD OCCURRED UNDER SAID PARAGRAPH (A)  
43 OF THIS SUBDIVISION. CESSATION OF DIVESTMENT, REINVESTMENT OR ANY  
44 SUBSEQUENT ONGOING INVESTMENT AUTHORIZED BY THIS SECTION SHALL BE  
45 STRICTLY LIMITED TO THE MINIMUM STEPS NECESSARY TO AVOID THE CONTINGENCY  
46 SET FORTH IN THE PRECEDING SENTENCE. FOR ANY CESSATION OF DIVESTMENT,  
47 AND IN ADVANCE OF SUCH CESSATION, AUTHORIZED BY THIS SUBDIVISION, THE  
48 COMPTROLLER SHALL PROVIDE A WRITTEN REPORT TO THE ATTORNEY GENERAL, THE  
49 SENATE STANDING COMMITTEE ON CIVIL SERVICE AND PENSIONS, AND THE ASSEM-  
50 BLY STANDING COMMITTEE ON GOVERNMENTAL EMPLOYEES, UPDATED SEMI-ANNUALLY  
51 THEREAFTER AS APPLICABLE, SETTING FORTH THE REASONS AND JUSTIFICATION,  
52 SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, FOR ITS DECISIONS TO CEASE  
53 DIVESTMENT, TO REINVEST OR TO REMAIN INVESTED IN FOSSIL FUEL COMPANIES.

54 (C) WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS SUBDIVISION, THE  
55 COMPTROLLER SHALL FACILITATE THE IDENTIFICATION OF FOSSIL FUEL COMPANIES  
56 FROM WHICH THE COMMON RETIREMENT FUND IS REQUIRED TO DIVEST UNDER PARA-

1 GRAPH (A) OF THIS SUBDIVISION, AND FILE A COPY OF THIS LIST WITH THE  
2 ATTORNEY GENERAL, THE SENATE STANDING COMMITTEE ON CIVIL SERVICE AND  
3 PENSIONS, AND THE ASSEMBLY STANDING COMMITTEE ON GOVERNMENTAL EMPLOYEES.  
4 ANNUALLY THEREAFTER, THE PUBLIC FUND SHALL FILE A REPORT WITH THE ATTOR-  
5 NEY GENERAL, THE SENATE STANDING COMMITTEE ON CIVIL SERVICE AND  
6 PENSIONS, AND THE ASSEMBLY STANDING COMMITTEE ON GOVERNMENTAL EMPLOYEES  
7 THAT INCLUDES: (I) ALL INVESTMENTS SOLD, REDEEMED, DIVESTED OR WITHDRAWN  
8 IN COMPLIANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION; AND (II) ALL  
9 PROHIBITED INVESTMENTS FROM WHICH THE COMMON RETIREMENT FUND HAS NOT YET  
10 DIVESTED UNDER PARAGRAPH (A) OF THIS SUBDIVISION.  
11 S 3. This act shall take effect immediately.