STATE OF NEW YORK

10039

IN ASSEMBLY

March 8, 2018

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law and the education 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:

Section 1. 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:

§ 423. Investments. [~~a.~~] 1. On and after April first, nineteen hundred sixty-seven, the comptroller 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 name as trustee 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.~~] 2. (a) 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 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 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.

(b) 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

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

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time to time; and, in the event the mortgage advisory committee disapproves a proposed mortgage or real estate investment, such shall not be made.

(c) 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. The members of each committee shall be entitled to reimbursement for their actual and necessary expenses but shall receive no compensation for their services.

3. (a) Notwithstanding any provision of law to the contrary, the comptroller shall not have the power to invest the available monies of the common retirement fund in any stocks, debt or other securities of any corporation or company, or any subsidiary, affiliate or parent of any corporation or company, engaged in the manufacture of firearms, as defined in section 265.00 of the penal law, or ammunition. The comptroller shall, in accordance with sound investment criteria and consistent with his or her fiduciary obligations, divest any such stocks or other securities whether they are owned directly or held through separate accounts or any commingled funds. Divestment pursuant to this subdivision must be completed within five years of the effective date of this subdivision.

(b) The comptroller shall be permitted to cease divesting from companies under paragraph (a) of this subdivision, reinvest in companies from which it divested under paragraph (a) of this subdivision, or continue to invest in companies from which it has not yet divested upon clear and convincing evidence showing that as a direct result of such divestment, the total and aggregate value of all assets under management by, or on behalf of, the common retirement fund becomes or shall become: (i) equal to or less than ninety-nine and one-half percent; or (ii) one hundred percent less fifty basis points of the hypothetical value of all assets under management by, or on behalf of, the common retirement fund assuming no divestment from any company had occurred under paragraph (a) of this subdivision. Cessation of divestment, reinvestment or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence. For any cessation of divestment, and in advance of such cessation, authorized by this subdivision, the comptroller shall provide a written report to the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees, updated semi-annually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, to reinvest or to remain invested in firearm and ammunition manufacturing companies.

(c) Within sixty days of the effective date of this subdivision, the comptroller shall facilitate the identification of firearm and ammunition manufacturing companies from which the common retirement fund is required to divest under paragraph (a) of this subdivision, and file a copy of this list with the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees. Annually thereafter, the public fund shall file a report with the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees that includes: (i) all investments sold, redeemed, divested or withdrawn in compliance with paragraph (a) of this subdivision; and (ii) all prohibited investments from which the common retirement fund has not yet divested under paragraph (a) of this subdivision.

§ 2. Section 508 of the education law is amended by adding a new subdivision 12 to read as follows:

12. (a) Notwithstanding any provision of law to the contrary, the retirement board shall not have the power to invest the available moneys belonging to the retirement system in any stocks, debt or other securities of any corporation or company, or any subsidiary, affiliate or parent of any corporation or company, engaged in the manufacture of firearms, as defined in section 265.00 of the penal law, or ammunition. The retirement board shall, in accordance with sound investment criteria and consistent with its fiduciary obligations, divest any such stocks or other securities whether they are owned directly or held through separate accounts or any commingled funds. Divestment pursuant to this subdivision must be completed within five years of the effective date of this subdivision.

(b) The retirement board shall be permitted to cease divesting from companies under paragraph (a) of this subdivision, reinvest in companies from which it divested under paragraph (a) of this subdivision, or continue to invest in companies from which it has not yet divested upon clear and convincing evidence showing that as a direct result of such divestment, the total and aggregate value of all assets under management by, or on behalf of, the several funds created by this article becomes or shall become: (i) equal to or less than ninety-nine and one-half percent; or (ii) one hundred percent less fifty basis points of the hypothetical value of all assets under management by, or on behalf of, the several funds created by this article assuming no divestment from any company had occurred under paragraph (a) of this subdivision. Cessation of divestment, reinvestment or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence. For any cessation of divestment, and in advance of such cessation, authorized by this subdivision, the retirement board shall provide a written report to the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees, updated semi-annually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, to reinvest or to remain invested in firearm and ammunition manufacturing companies.

(c) Within sixty days of the effective date of this subdivision, the attorney general shall facilitate the identification of firearm and ammunition manufacturing companies from which the several funds created by this article are required to divest under paragraph (a) of this subdivision, and file a copy of this list with the retirement board, the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees. Annually thereafter, the several funds created by this article shall file a report with the retirement board, the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees that includes: (i) all investments sold, redeemed, divested or withdrawn in compliance with paragraph (a) of this subdivision; and (ii) all prohibited investments from which the common retirement fund has not yet divested under paragraph (a) of this subdivision.

§ 3. This act shall take effect immediately.