

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:

1 Section 1. Section 423 of the retirement and social security law, as
2 amended by chapter 770 of the laws of 1970, is amended to read as
3 follows:

4 § 423. Investments. [~~a~~] 1. On and after April first, nineteen
5 hundred sixty-seven, the comptroller shall invest the available monies
6 of the common retirement fund in any investments and securities author-
7 ized by law for each retirement system and shall hold such investments
8 in his name as trustee of such fund, notwithstanding any other provision
9 of this chapter. Participating interests in such investments shall be
10 credited to each retirement system in the manner and at the time speci-
11 fied in [~~paragraph~~] subdivision two of section four hundred twenty-two
12 of this article.

13 [~~b~~] 2. (a) To assist in the management of the monies of the common
14 retirement fund, the comptroller shall appoint an investment advisory
15 committee consisting of not less than seven members who shall serve for
16 his term of office. A vacancy occurring from any cause other than expi-
17 ration of term shall be filled by the comptroller for the remainder of
18 the term. Each member of the committee shall be experienced in the field
19 of investments and shall have served, or shall be serving, as a senior
20 officer or member of the board of an insurance company, banking corpo-
21 ration or other financial or investment organization authorized to do
22 business in the state of New York. The committee shall advise the comp-
23 troller on investment policies relating to the monies of the common
24 retirement fund and shall review, from time to time, the investment
25 portfolio of the fund and make such recommendations as may be deemed
26 necessary.

27 (b) The comptroller shall appoint a separate mortgage advisory commit-
28 tee, with the advice and consent of the investment advisory committee,
29 to review proposed mortgage and real estate investments by the common
30 retirement fund. In making investments, as authorized by law, the comp-
31 troller 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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1 time to time; and, in the event the mortgage advisory committee disap-
2 proves a proposed mortgage or real estate investment, such shall not be
3 made.

4 (c) No officer or employee of any state department or agency shall be
5 eligible for membership on either committee. Each committee shall
6 convene periodically on call of the comptroller, or on call of the
7 chairman. The members of each committee shall be entitled to reimburse-
8 ment for their actual and necessary expenses but shall receive no
9 compensation for their services.

10 3. (a) Notwithstanding any provision of law to the contrary, the comp-
11 troller shall not have the power to invest the available monies of the
12 common retirement fund in any stocks, debt or other securities of any
13 corporation or company, or any subsidiary, affiliate or parent of any
14 corporation or company, engaged in the manufacture of firearms, as
15 defined in section 265.00 of the penal law, or ammunition. The comp-
16 troller shall, in accordance with sound investment criteria and consist-
17 ent with his or her fiduciary obligations, divest any such stocks or
18 other securities whether they are owned directly or held through sepa-
19 rate accounts or any commingled funds. Divestment pursuant to this
20 subdivision must be completed within five years of the effective date of
21 this subdivision.

22 (b) The comptroller shall be permitted to cease divesting from compa-
23 nies under paragraph (a) of this subdivision, reinvest in companies from
24 which it divested under paragraph (a) of this subdivision, or continue
25 to invest in companies from which it has not yet divested upon clear and
26 convincing evidence showing that as a direct result of such divestment,
27 the total and aggregate value of all assets under management by, or on
28 behalf of, the common retirement fund becomes or shall become: (i) equal
29 to or less than ninety-nine and one-half percent; or (ii) one hundred
30 percent less fifty basis points of the hypothetical value of all assets
31 under management by, or on behalf of, the common retirement fund assum-
32 ing no divestment from any company had occurred under paragraph (a) of
33 this subdivision. Cessation of divestment, reinvestment or any subse-
34 quent ongoing investment authorized by this section shall be strictly
35 limited to the minimum steps necessary to avoid the contingency set
36 forth in the preceding sentence. For any cessation of divestment, and in
37 advance of such cessation, authorized by this subdivision, the comp-
38 troller shall provide a written report to the attorney general, the
39 senate standing committee on civil service and pensions, and the assem-
40 bly standing committee on governmental employees, updated semi-annually
41 thereafter as applicable, setting forth the reasons and justification,
42 supported by clear and convincing evidence, for its decisions to cease
43 divestment, to reinvest or to remain invested in firearm and ammunition
44 manufacturing companies.

45 (c) Within sixty days of the effective date of this subdivision, the
46 comptroller shall facilitate the identification of firearm and ammuni-
47 tion manufacturing companies from which the common retirement fund is
48 required to divest under paragraph (a) of this subdivision, and file a
49 copy of this list with the attorney general, the senate standing commit-
50 tee on civil service and pensions, and the assembly standing committee
51 on governmental employees. Annually thereafter, the public fund shall
52 file a report with the attorney general, the senate standing committee
53 on civil service and pensions, and the assembly standing committee on
54 governmental employees that includes: (i) all investments sold,
55 redeemed, divested or withdrawn in compliance with paragraph (a) of this
56 subdivision; and (ii) all prohibited investments from which the common

1 retirement fund has not yet divested under paragraph (a) of this subdivi-
2 vision.

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

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

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

40 (c) Within sixty days of the effective date of this subdivision, the
41 attorney general shall facilitate the identification of firearm and
42 ammunition manufacturing companies from which the several funds created
43 by this article are required to divest under paragraph (a) of this
44 subdivision, and file a copy of this list with the retirement board, the
45 attorney general, the senate standing committee on civil service and
46 pensions, and the assembly standing committee on governmental employees.
47 Annually thereafter, the several funds created by this article shall
48 file a report with the retirement board, the attorney general, the
49 senate standing committee on civil service and pensions, and the assem-
50 bly standing committee on governmental employees that includes: (i) all
51 investments sold, redeemed, divested or withdrawn in compliance with
52 paragraph (a) of this subdivision; and (ii) all prohibited investments
53 from which the common retirement fund has not yet divested under para-
54 graph (a) of this subdivision.

55 § 3. This act shall take effect immediately.