

1 **AN ACT to amend the retirement and**
2 **social security law, the education law**
3 **and the criminal procedure law, in**
4 **relation to reforming the New York**
5 **state public retirement system; and to**
6 **repeal certain provisions of the**
7 **retirement and social security law**
8 **relating thereto.**

9 The People of the State of New York, represented in Senate and Assembly, do
10 enact as follows:

11 Section 1. Short title. This act shall be known and may be cited as the
12 “taxpayers’ reform for upholding security and transparency act.”

13 § 2. Section 13 of the retirement and social security law, subdivision b as
14 amended by chapter 369 of the laws of 1964, subdivision d as amended by chapter
15 460 of the laws of 1971, subdivision f as amended by chapter 376 of the laws of 1965,
16 paragraph 2 of subdivision f as amended by chapter 908 of the laws of 1971,
17 subdivision h as amended by chapter 496 of the laws of 1967, subdivision i as
18 amended by chapter 1046 of the laws of 1973, subdivision j as added by chapter 510
19 of the laws of 1965 and subdivision k as added by chapter 841 of the laws of 1968, is
20 renumbered section 13-a and amended to read as follows:

21 § 13-a. Management of funds.

1 a. The funds of the retirement system shall be managed in accordance
2 with this section.

3 b. The comptroller shall be [trustee] custodian of the several funds of the
4 retirement system. Such funds shall be invested by the comptroller, as authorized by
5 the employees' retirement fund board, in securities in which he or she is authorized
6 by law to invest the funds of the state, except that he or she may invest in obligations
7 consisting of notes, bonds, debentures, or equipment trust certificates issued under an
8 indenture, which are the direct obligations of, or in the case of equipment trust
9 certificates are secured by direct obligations of, a railroad or industrial corporation, or
10 a corporation engaged directly and primarily in the production, transportation,
11 distribution, or sale of electricity or gas, or the operation of telephone or telegraph
12 systems or waterworks, or in some combination of them; provided the obligor
13 corporation is one which is incorporated under the laws of the United States, or any
14 state thereof, or of the District of Columbia, and said obligations shall be rated at the
15 time of purchase within the three highest classifications established by at least two
16 standard rating services. The maximum amount that the comptroller may invest in
17 such obligations shall not exceed thirty per centum of the assets of the New York
18 state and local employees' retirement system's funds: and provided further that not
19 more than two and one half per centum of the assets of the New York state and local
20 employees' retirement system's funds shall be invested in the obligations of anyone
21 corporation of the highest classification and subsidiary or subsidiaries thereof, that not
22 more than two per centum of the assets of the New York state and local employees'

1 retirement system's funds shall be invested in the obligations of anyone corporation
2 of the second highest classification and subsidiary or subsidiaries thereof, that not
3 more than one and one half per centum of the assets of the New York state and local
4 employees' retirement system's funds shall be invested in the obligations of any one
5 corporation of the third highest classification and subsidiary or subsidiaries thereof.
6 He or she shall, however, be subject to all terms, conditions, limitations and
7 restrictions imposed by this article and by law upon the making of such investments.
8 The comptroller shall have full power, as authorized by the board:

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

13 2. In his or her name as [trustee] custodian, to foreclose mortgages
14 upon default or to take title to real property in such proceedings in lieu thereof and to
15 lease and sell real property so acquired.

16 c. The comptroller annually shall credit to each of the funds of the
17 retirement system regular interest on the mean amount therein for the preceding year.

18 d. The custody of all funds of the retirement system shall be in the charge
19 of the head of the division of the treasury of the department of taxation and finance,
20 subject to the supervision and control of the commissioner of taxation and finance.

21 e. Payment of all pensions, annuities and other benefits shall be made as
22 provided in this article. For the purpose of meeting disbursements for pensions,

1 annuities and other payments ordered by the comptroller, the head of such division
2 may keep on deposit an available fund which shall not exceed ten per centum of the
3 total amount of the several funds of the retirement system. Every such deposit shall be
4 kept only in a bank or trust company organized under the laws of this state, or in a
5 national bank located in this state, which shall furnish adequate security therefor.

6 f. The comptroller, however, shall have a fund in his or her immediate
7 possession. Such fund shall be used for the immediate payment of:

8 1. All pensions, annuities and other benefits, and

9 2. Such expenses as may necessarily be incurred in acquiring,
10 servicing and foreclosing mortgages and in acquiring, managing and protecting
11 investments, and

12 3. Such special expenditures for which the retirement system will
13 be paid by the state or a participating employer.

14 Such fund shall be reimbursed from time to time by the head of such division
15 on the warrant of the comptroller.

16 g. Neither the comptroller, the members of the board nor any person
17 employed on the work of the retirement system shall:

18 1. Except as herein provided, have any interest, direct or indirect,
19 in the gains or profits of any investment of the retirement system, nor, in connection
20 therewith, directly or indirectly, receive any payor emolument for his services.

21 2. Except as provided in section fifty of this article:

1 (a) Directly or indirectly, for herself or himself or as an
2 agent or partner of others, borrow any of its funds or deposits or in any manner use
3 the same except to make such current and necessary payments as are authorized by
4 the comptroller, or

5 (b) Become an endorser, surety or an obligor in any manner
6 of monies loaned by or borrowed of such funds.

7 h. The retirement system may use a part of its funds, not exceeding ten
8 per centum of its assets, (1) for purchasing or leasing of land in the city of Albany and
9 the construction thereon of a suitable office building or buildings for the transaction
10 of the business of the retirement system and (2) for purchasing or leasing of land in
11 the cities of Albany, Syracuse, Buffalo, Binghamton, New York, Rochester and Utica
12 and the construction thereon of a suitable office building or buildings for purposes of
13 lease or sale to the state and (3) for purchasing or leasing of land in the city of Albany
14 on the north and south sides of Washington avenue commonly known as the “Campus
15 Site” acquired by the state for a state buildings site pursuant to the provisions of
16 chapter five hundred seventy-two of the laws of nineteen hundred forty-seven and the
17 construction thereon of power plants including service connections, electric
18 substations including service connections, garages, warehouses and restaurant
19 facilities deemed necessary for the efficient and economical operation of the office
20 building or buildings constructed on such land and (4) for purchasing or leasing of
21 land in the city of Albany acquired by the state for suitable parking facilities for the
22 use primarily of employees of the state and persons having business with state

1 departments and state agencies and the construction thereon of such structures,
2 appurtenances and facilities deemed necessary for the efficient and economical
3 operation of the parking facilities constructed on such land and (5) for purchasing or
4 leasing of land in locations approved by the state university trustees and the
5 construction, acquisition, reconstruction, rehabilitation or improvement of suitable
6 buildings or facilities thereon for purposes of lease or sale to the state university
7 construction fund, such buildings or facilities to be used by the state university or by
8 state-operated institutions or statutory or contract colleges under the jurisdiction of
9 the state university or by the students, faculty and staff of the state university or of
10 any such state-operated institution or statutory or contract college~ and their families
11 and (6) for purchasing of lands from the New York state thruway authority and the
12 construction thereon of an office building or other buildings for purposes of lease or
13 sale to the thruway authority for its own use under such terms and conditions,
14 including consideration and length of term, as shall be agreed upon between the
15 retirement system and the thruway authority.

16 The retirement system from time to time may lease to any public agency any
17 portion of a building constructed for the transaction of its business which may not be
18 required for such purpose, upon such terms and conditions as shall be deemed to be
19 for the best interest of the retirement system.

20 Real property of the retirement system acquired or constructed pursuant to this
21 subdivision shall be exempt from taxation.

1 i. At the close of each fiscal year, the average rate of investment earnings
2 of the retirement system shall be computed by the actuary and certified to the
3 [comptroller] board. This rate shall be determined from the investment earnings
4 during the calendar year which ended three months prior to the close of the fiscal
5 year. For any year that such average rate of earnings is in excess of three per centum
6 but not in excess of four per centum, the comptroller shall declare a rate of special
7 interest, for members earning regular interest of three per centum, equal to the
8 difference between such average rate of earnings and three per centum expressed to
9 the lower one-tenth of one per centum, but not in excess of one per centum. For any
10 year, commencing with the fiscal year the first day of which is April first, nineteen
11 hundred seventy, that such average rate of earnings is in excess of four per centum,
12 the special rate of interest for members earning regular interest of three per centum
13 shall be equal to the difference between such average rate of earnings and three per
14 centum expressed to the lower one-tenth of one per centum, but not in excess of two
15 per centum, and for members earning regular interest of four per centum, it shall be
16 the difference between such average rate of earnings and four per centum, expressed
17 to the lower one-tenth of one per centum, but not in excess of one per centum. Special
18 interest at such rates, shall be credited by the comptroller at the same time that regular
19 interest is credited, to the individual annuity savings accounts of persons who are
20 members as of the close of the fiscal year. Special interest shall not be considered in
21 determining rates of contribution of members. In the case of persons who last became
22 members on or after July first, nineteen hundred seventy-three, the provisions of this

1 subdivision shall apply only to the fiscal years beginning April first, nineteen hundred
2 seventy-two and ending March thirty-first, nineteen hundred seventy-three.

3 j. The retirement system may invest, within the limitations authorized for
4 investments in conventional mortgages, a part of its funds in first mortgages on real
5 property located anywhere within the boundaries of the United States and leased to
6 the government of the United States, provided however, that no such investment shall
7 be made unless the terms of the mortgage shall provide for amortization payments in
8 an amount sufficient to completely amortize the loan within the period of the lease.

9 k. The funds of the retirement system may be invested in the purchase of
10 promissory notes or bonds from the farmers home administration issued in connection
11 with the purchase or improvement of real property and which are insured by the
12 farmers home administration.

13 § 3. The retirement and social security law is amended by adding a new
14 article 3-B to read as follows:

15 **ARTICLE 3-B**

16 **TRANSPARENCY IN THE STATE RETIREMENT SYSTEM; DISCLOSURE**

17 **OF CERTAIN THIRD PARTY INTERESTS**

18 **Section**

19 **156. Definitions.**

20 **156-a. Disclosure of investment firm personnel.**

21 **156-b. Disclosure of all third-party compensation.**

22 **156-c. Disclosure of conflicts of interest.**

1 156-d. Publication of investment firm disclosures.

2 156-e. Mandatory reporting.

3 156-f. Disciplinary action.

4 156-g. Attorney general action.

5 156-h. Criminal sanctions.

6 156-i. Non-exclusivity of rights or remedies.

7 **§ 156. Definitions.**

8 As used in this article, the following terms shall have the following meanings

9 unless otherwise specified:

10 1. “Board” shall mean the employee retirement fund board established
11 within the department of audit and control by section four hundred twenty-one-a of
12 this chapter.

13 2. “Conflict of interest” shall mean an interest, financial or otherwise,
14 direct or indirect, arising from any business or transaction or professional activity or
15 any obligation of any nature, which is in apparent or actual conflict with the proper
16 discharge of a person’s or entity’s fiduciary, statutory or contractual duties to act in
17 the best interest of the retirement system’s members and/or beneficiaries.

18 3. “Contribution” shall mean any gift, subscription, loan, advance, deposit
19 of money or thing of value made for:

20 a. the purpose of supporting a candidate for or influencing any
21 election for federal state or local office, including election to the board;

1 b. the payment of any debt incurred in connection with such
2 election; or

3 c. the transition or inaugural expenses of the successful candidate
4 for such election.

5 4. “Executive officer” shall mean the president, any vice president in
6 charge of a principal business unit, division or function, such as sales, administration
7 or finance, any other officer who performs a policy-making function, or any other
8 person who performs similar policy-making functions, for an investment firm.

9 5. “Investment firm” shall mean any person or entity who accepts an
10 investment from or provides investment management services to the retirement
11 system in connection with the management or investment of the retirement system’s
12 trust funds or assets. “Investment firm” shall include, but not be limited to, any
13 subsidiary or affiliate over which the investment firm exercises exclusive control.

14 6. “Investment firm employee” shall mean a person employed directly by
15 an investment firm or a sponsored fund thereof, and who would be considered an
16 employee for federal tax purposes. An “investment firm employee” shall not include
17 a person who is hired, engaged, utilized or retained by the investment firm to secure
18 or influence a particular transaction, investment or decision of the retirement system,
19 retirement system official, retirement system advisor or other fiduciary of the
20 retirement system.

21 7. “Investment management services” shall mean:

1 a. the business of making or recommending investment
2 management decisions, including, but not limited to, making recommendations for
3 the placement or allocation of investment funds, for or on behalf of the retirement
4 system;

5 b. the business of advising or managing a separate entity that
6 makes or recommends investment management decisions, including, but not limited
7 to, making recommendations for the placement or allocation of investment funds, for
8 or on behalf of the retirement system; or

9 c. the provision of any other financial advisory or consultant
10 services to the retirement system, such as money management or fund management
11 services, investment advice or consulting, and investment support services, including,
12 but not limited to, market research, fund accounting, custodial services and fiduciary
13 advice.

14 8. “Lobbying” shall mean any attempt to directly or indirectly influence a
15 determination related to a procurement of investment management services by the
16 retirement system, including, but not limited to, a determination by the retirement
17 system to place an investment with the investment firm by:

18 a. a retirement system official;

19 b. any fiduciary of the retirement system;

20 c. a retirement system advisor; or

21 d. any other person or entity working in cooperation with any of
22 the above.

1 9. “Lobbyist” shall mean any person or entity retained, employed or
2 designated by any other person or entity to engage in lobbying. “Lobbyist” shall not
3 include an investment firm employee.

4 10. “Relative” shall mean any person living in the same household as the
5 individual and any person who is a direct descendant of such individual’s
6 grandparents or who is the spouse of such descendant.

7 11. “Related party” shall mean any investment firm’s or sponsored fund’s
8 partner, member, executive officer, director, employee or agent thereof. “Related
9 party” shall not include limited partners of a sponsored fund or a managed account
10 and portfolio companies of a sponsored fund are not related parties.

11 12. “Retirement system” shall mean the New York state and local
12 employees’ retirement system and the New York state and local police and fire
13 retirement system.

14 13. “Retirement system advisor” shall mean any external person or entity
15 engaged by the retirement system to assist in the selection of investments or
16 investment management services for the retirement system.

17 14. “Retirement system official” shall mean any elected or appointed
18 trustee of the board, including, but not limited to, any incumbent or candidate or
19 successful candidate for the office of comptroller, or other official, staff member or
20 employee whose official duties involve responsibility for the retirement system.

21 15. “Sponsored fund” shall mean an investment fund sponsored, managed
22 or advised by an investment firm.

1 **§ 156-a. Disclosure of investment firm personnel.**

2 An investment firm shall, prior to the closing of any investment with, or
3 engagement to provide investment management services to, the retirement system,
4 and by the last day of July and January during the term of such engagement, disclose
5 to the board the following information:

6 1. the names and titles of each related party, other than administrative
7 personnel, whose standard professional duties include contact with, or communication
8 to or from, the retirement system, retirement system official, retirement system
9 advisor or other fiduciary of the retirement system. If the related party is a current or
10 former retirement system official, retirement system advisor or other fiduciary of the
11 retirement system, or a relative of any of the foregoing, then the investment firm shall
12 specifically note such information. Upon the board's request, an investment firm shall
13 provide the resume of any related party on that list, setting forth the person's
14 education, professional designations, regulatory licenses and investment and work
15 experience;

16 2. a description of the responsibilities of each related party with respect to
17 any investment with, or engagement to provide investment management services to,
18 the retirement system;

19 3. whether any related party has been registered as a lobbyist with any
20 state or the federal government in the past two years;

21 4. an update of any significant changes to any of the information included
22 in the disclosure shall be included in the next semi-annual report; and

1 5. a certification from the chief operating officer of the investment firm of
2 the accuracy regarding the information included in the semi-annual disclosures
3 required by this article.

4 **§156-b. Disclosure of all third-party compensation.**

5 An investment firm shall provide to the board prior to the closing of any
6 investment with, or engagement to provide investment management services to, the
7 retirement system, the names and addresses of all third parties that the investment
8 firm, in connection with an investment or transaction with the retirement system,
9 compensates, including, but not limited to, any fees, commissions, and retainers paid
10 by the investment firm to third parties, such as fees for legal, government relations,
11 public relations, real estate or other professional advice services or assistance, and the
12 amounts of such compensation.

13 **§ 156-c. Disclosure of conflicts of interest.**

14 1. An investment firm must promptly disclose to the board any apparent
15 or actual conflict of interest in writing, including, but not limited to, any relationship
16 between the investment firm, a related party or a relative of a related party, and any
17 retirement system official, retirement system advisor or other fiduciary of the
18 retirement system and any relatives of such persons.

19 2. An investment firm shall cure any conflict of interest by promptly
20 eliminating the conflict of interest. If an investment firm cannot or does not wish to
21 eliminate the conflict, then it shall terminate its relationship with the retirement
22 system as promptly and responsibly as legally possible.

1 3. Provided an investment firm’s disclosure of a conflict of interest
2 pursuant to this article is sufficient to inform the board of the nature and extent of the
3 conflict of interest, the board alone may determine that the investment firm’s steps to
4 cure the conflict of interest are sufficient.

5 4. If an investment firm is uncertain whether it has or would have a
6 conflict of interest, then the investment firm shall promptly inform the board, which
7 shall determine whether an actual conflict of interest exists or will exist.

8 5. If an investment firm discloses a conflict of interest to the board, it
9 shall refrain from providing investment management services in connection with
10 matters generated by the conflict of interest until the board determines that the
11 investment firm need not take further action to cure the conflict of interest or until the
12 conflict of interest is in fact cured.

13 6. An investment firm shall ensure that the governing documents of each
14 sponsored fund in which the retirement system invests contain provisions for how to
15 address material conflicts of interest between the investment firm or any related party.

16 **§ 156-d. Publication of investment firm disclosures.**

17 An investment firm shall publish all disclosures and certifications required by
18 this article on the investment firm’s website. The board shall also publish these
19 disclosure and certifications on the department of audit and control’s website.

20 **§ 156-e. Mandatory reporting.**

21 Any person or entity licensed, certified by or registered with any state agency
22 that has a reasonable basis to believe that there has been a violation of the provisions

1 of this article by any individual or entity shall report to the board and the attorney
2 general evidence of the violation.

3 **§ 156-f. Disciplinary action.**

4 A willful violation of the provisions of this article is a ground for discipline
5 against any person holding a license, certification or the like issued by a state agency.

6 **§ 156-g. Attorney general action.**

7 Where a violation of the provisions of this article is alleged to have occurred,
8 the attorney general of the state of New York may apply in the name of the people of
9 the state of New York to the supreme court of the state of New York on notice of five
10 days, for an order or injunction enjoining a person or entity from engaging in the
11 commission or continuance of any conduct in violation of this article and/or imposing
12 any such other or further relief as the court may consider just and equitable. In any
13 such proceeding, the court shall impose a civil penalty in an amount not to exceed one
14 hundred thousand dollars per violation.

15 **§ 156-h. Criminal sanctions.**

16 Any person who willfully and intentionally violates any provision of this
17 article is guilty of a misdemeanor punishable by a fine not to exceed twenty five
18 thousand dollars or by imprisonment not to exceed six months or by both such fine
19 and imprisonment. For any second or subsequent violation, the person is guilty of a
20 felony punishable by imprisonment not exceeding two years, or by a fine not
21 exceeding one hundred thousand dollars, community service of not more than one
22 thousand hours, or any combination thereof. Prosecution hereunder may be

1 conducted by the attorney general or the district attorney.

2 **§ 156-i. Non-exclusivity of rights or remedies.**

3 Nothing in this section shall be construed to limit, in any manner, any rights or
4 remedies otherwise available under law to any person or entity, including, but not
5 limited to, the attorney general, the comptroller and the superintendent of insurance.

6 § 4. Section 302 of the retirement and social security law is amended by
7 adding a new subdivision 7-a to read as follows:

8 7-a. “Employees’ retirement fund board” or “board.” The entity established
9 within the department of audit and control by section four hundred twenty-one-a of
10 this chapter.

11 § 4. Subdivision a of section 311 of the retirement and social security law, as
12 added by chapter 1000 of the laws of 1966, is amended to read as follows:

13 § 311. Duties of comptroller; the actuary.

14 a. The comptroller shall, in consultation with the employees’ retirement
15 fund board, be the administrative head of the [policemen's and firemen’s] New York
16 state and local police and fire retirement system. Subject to the limitations of this
17 article and of law, and as authorized by the board, [he] the comptroller shall adopt and
18 may amend, from time to time, rules and regulations for the administration and
19 transaction of the business of the [policemen's and firemen's] New York state and
20 local police and fire retirement system and for the custody [and control] of its funds.

21 The comptroller, as authorized by the board, shall:

22 1. Maintain all necessary accounting records, and

1 2. Keep in convenient form such data as shall be necessary for the
2 actuarial valuation of the various funds of the policemen's and firemen's retirement
3 system, and

4 3. Establish funds, [in addition to] other than those provided for by
5 this article, which in his or her judgment are necessary or required for the proper
6 fiscal management of the [policemen's and firemen's] New York state and local police
7 and fire retirement system, and

8 4. Perform such other functions as are required for the execution of
9 the provisions of this article.

10 b. The comptroller shall, in consultation with the board, engage the
11 services of an actuary and may employ such other necessary technical and
12 administrative assistance as he or she may require. For the purpose of determining
13 upon the proper tables to be prepared and submitted to the comptroller for adoption,
14 the actuary, from time to time, but at least once in each five years, shall make such
15 investigation of the mortality, service and compensation experience of the members
16 as the comptroller may authorize. On the basis of such investigation and upon the
17 recommendations of the actuary, the comptroller, as authorized by the board, shall:

18 1. Adopt for the [policemen's and firemen's] New York state and
19 local police and fire retirement system such mortality and other tables as shall be
20 deemed necessary, and

1 2. Certify the rates of deduction, if any, from compensation
2 computed to be necessary to pay the annuities authorized under the provisions of this
3 article.

4 3. From time to time, but at least once in each five years,
5 promulgate a rate or rates of estimated future investment earnings.

6 4. From time to time, but at least once in every five years,
7 promulgate a rate or rates of regular interest.

8 c. On the basis of such aforesaid tables and an estimated rate or rates of
9 future investment earnings as the comptroller, in consultation with the board, shall
10 adopt:

11 1. The actuary shall make an annual valuation of the assets and
12 liabilities of the funds of the [policemen's and firemen's] New York state and local
13 police and fire retirement system, and

14 2. The comptroller shall certify annually the rates expressed as
15 proportions of payroll of members, which shall be used in computing the
16 contributions required to be made by employers to the pension accumulation fund.

17 d. The comptroller, in consultation with the board, shall make an annual
18 report showing the valuation of the assets and liabilities of the funds of the
19 [policemen's and firemen's] New York state and local police and fire retirement
20 system, as certified by the actuary, a statement of receipts and disbursements and his
21 recommendations in regard thereto. Such report shall be published with and as a part
22 of the annual report of the comptroller.

1 e. Special interest, if any, shall be credited annually in the same manner
2 as regular interest pursuant to subdivision i of section three hundred thirteen of this
3 article to the individual annuity savings accounts of persons who are members as of
4 the close of the fiscal year.

5 f. The records of the [policemen's and firemen's] New York state and
6 local police and fire retirement system shall be open to public inspection.

7 g. The comptroller, as authorized by the board, shall adopt and amend
8 pursuant to this article only such rules and regulations as he determines to be for the
9 best interest of the retirement system and its members.

10 § 6. Section 313 of the retirement and social security law, as added by
11 chapter 1000 of the laws of 1966, subdivision d as amended by chapter 460 of the
12 laws of 1971, paragraph 2 of subdivision f as amended by chapter 908 of the laws of
13 1971 and subdivision i as amended by chapter 1046 of the laws of 1973, is amended
14 to read as follows:

15 § 313. Management of funds.

16 a. The funds of the [policemen's and firemen's] New York state police
17 and fire retirement system shall be managed in accordance with this section.

18 b. The members of the employees' retirement fund board shall be trustees
19 of the several funds of the New York state and fire retirement system and the
20 comptroller shall be [trustee] custodian of such [the several] funds [of the policemen's
21 and firemen's retirement system]. Such funds shall be invested by the comptroller, as
22 authorized by the board, in securities in which he or she is authorized by law to invest

1 the funds of the state, except that he or she may invest in obligations consisting of
2 notes, bonds, debentures or equipment trust certificates issued under an indenture,
3 which are the direct obligations of, or in the case of equipment trust certificates are
4 secured by direct obligations of, a railroad or industrial corporation, or a corporation
5 engaged directly and primarily in the production, transportation, distribution, or sale
6 of electricity, or gas, or the operation of telephone or telegraph systems or
7 waterworks, or in some combination of them; provided the obligor corporation is one
8 which is incorporated under the laws of the United States, or any state thereof, or of
9 the District of Columbia, and said obligations shall be rated at the time of purchase
10 within the three highest classifications established by at least two standard rating
11 services. The maximum amount that the comptroller, as authorized by the employees'
12 retirement fund board, may invest in such obligations shall not exceed thirty per
13 centum of the assets of the New York state [policemen's and firemen's] and local
14 police and fire retirement system's funds; and provided further that not more than two
15 and one-half per centum of the assets of the New York state policemen's and
16 firemen's retirement system's funds shall be invested in the obligations of any one
17 corporation of the highest classification and subsidiary or subsidiaries thereof, that not
18 more than two per centum of the assets of the New York state [policemen's and
19 firemen's] and local police and fire retirement system's funds shall be invested in the
20 obligations of any one corporation of the second highest classification and subsidiary
21 or subsidiaries thereof, that not more than one and one-half per centum of the assets
22 of the New York state policemen's and firemen's retirement system's funds shall be

1 invested in the obligations of any one corporation of the third highest classification
2 and subsidiary or subsidiaries thereof. [He] The board shall, however, be subject to all
3 terms, conditions, limitations and restrictions imposed by this article and by law upon
4 the making of such investments. The comptroller, as authorized by the board, shall
5 have full power:

6 1. To hold, purchase, sell, assign, transfer or dispose of any of the
7 securities or investments, in which any of the funds of the [policemen's and
8 firemen's] New York state and local police and fire retirement system shall be
9 invested, including the proceeds of such investments and any monies belonging to
10 such funds, and

11 2. In his or her name as [trustee] custodian, to foreclose mortgages
12 upon default or to take title to real property in such proceedings in lieu thereof and to
13 lease and sell real property so acquired.

14 c. The comptroller, as authorized by the employees' retirement fund
15 board, annually shall credit to each of the funds of the [policemen's and firemen's]
16 New York state and local police and fire retirement system regular interest on the
17 mean amount therein for the preceding year.

18 d. The custody of all funds of the [policemen's and firemen's] New York
19 state and local police and fire retirement system shall be in the charge of the head of
20 the division of the treasury of the department of taxation and finance, subject to the
21 supervision and control of the commissioner of taxation and finance.

1 e. Payment of all pensions, annuities and other benefits shall be made as
2 provided in this article. For the purpose of meeting disbursements for pensions,
3 annuities and other payments ordered by the comptroller, the head of such division
4 may keep on deposit an available fund which shall not exceed ten per centum of the
5 total amount of the several funds of the [policemen's and firemen's] New York state
6 and local police and fire retirement system. Every such deposit shall be kept only in a
7 bank or trust company organized under the laws of this state, or in a national bank
8 located in this state, which shall furnish adequate security therefor.

9 f. The comptroller, however, shall have a fund in his or her immediate
10 possession. Such fund shall be used for the immediate payment of:

11 1. All pensions, annuities and other benefits, and

12 2. Such expenses as may necessarily be incurred in acquiring,
13 servicing and foreclosing mortgages and in acquiring, managing and protecting
14 investments, and

15 3. Such special expenditures for which the [policemen's and
16 firemen's] New York state and local police and fire retirement system will be paid by
17 the state or a participating employer. Such fund shall be reimbursed from time to time
18 by the head of such division on the warrant of the [comptroller] board.

19 g. Neither the comptroller nor any person employed on the work of the
20 [policemen's and firemen's] New York state and local police and fire retirement
21 system shall:

1 1. Except as herein provided, have any interest, direct or indirect,
2 in the gains or profits of any investment of the [policemen's and firemen's] New York
3 state and local police and fire retirement system, nor, in connection therewith, directly
4 or indirectly, receive any pay or emolument for his services.

5 2. Except as provided in section three hundred fifty of this article:

6 (a) Directly or indirectly, for himself or as an agent or
7 partner of others, borrow any of its funds or deposits or in any manner use the same
8 except to make such current and necessary payments as are authorized by the
9 [comptroller] board, or

10 (b) Become an endorser, surety or an obligor in any manner
11 of monies loaned by or borrowed of such funds.

12 h. The [policemen's and firemen's] New York state and local police and
13 fire retirement system may use a part of its funds, not exceeding ten per centum of its
14 assets, (1) for purchasing or leasing of land in the city of Albany and the construction
15 thereon of a suitable office building or buildings for the transaction of the business of
16 the retirement system, (2) for purchasing or leasing of land in the cities of Albany,
17 Syracuse, Buffalo, Binghamton, New York, Rochester and Utica and the construction
18 thereon of a suitable office building or buildings for purposes of lease or sale to the
19 state, (3) for purchasing or leasing of land in the city of Albany on the north and south
20 sides of Washington avenue commonly known as the "Campus Site" acquired by the
21 state for a state building site pursuant to the provisions of chapter five hundred
22 seventy-two of the laws of nineteen hundred forty-seven and the construction thereon

1 of power plants including service connections, electric substations including service
2 connections, garages, warehouses and restaurant facilities deemed necessary for the
3 efficient and economical operation of the office building or buildings constructed on
4 such land and (4) for purchasing or leasing of land in the city of Albany acquired by
5 the state for suitable parking facilities for the use primarily of employees of the state
6 and persons having business with state departments and state agencies and the
7 construction thereon of such structures, appurtenances and facilities deemed
8 necessary for the efficient and economical operation of the parking facilities
9 constructed on such land and (5) for purchasing or leasing of land in locations
10 approved by the state university trustees and the construction, acquisition,
11 reconstruction, rehabilitation or improvement of suitable buildings or facilities
12 thereon for purposes of lease or sale to the state university construction fund, such
13 buildings or facilities to be used by the state university or by state-operated
14 institutions or statutory or contract colleges under the jurisdiction of the state
15 university or by the students, faculty and staff of the state university or of any such
16 state-operated institution or statutory or contract college, and their families. The
17 policemen's and firemen's retirement system from time to time may lease to any
18 public agency any portion of a building constructed for the transaction of its business
19 which may not be required for such purpose, upon such terms and conditions as shall
20 be deemed to be for the best interest of the [policemen's and firemen's] New York
21 state and local police and fire retirement system. Real property of the [policemen's

1 and firemen's] New York state and local police and fire retirement system acquired or
2 constructed pursuant to this subdivision shall be exempt from taxation.

3 i. At the close of each fiscal year, the average rate of investment earnings
4 of the retirement system shall be computed by the actuary and certified to the
5 [comptroller] board. This rate shall be determined from the investment earnings
6 during the calendar year which ended three months prior to the close of the fiscal
7 year. For any year that such average rate of earnings is in excess of three per centum
8 but not in excess of four per centum, the [comptroller] board shall declare a rate of
9 special interest, for members earning regular interest of three per centum, equal to the
10 difference between such average rate of earnings and three per centum, expressed to
11 the lower one-tenth of one per centum, but not in excess of one per centum. For any
12 year, commencing with the fiscal year the first day of which is April first, nineteen
13 hundred seventy, that such average rate of earnings is in excess of four per centum,
14 the special rate of interest for members earning regular interest of three per centum
15 shall be equal to the difference between such average rate of earnings and three per
16 centum, expressed to the lower one-tenth of one per centum, but not in excess of two
17 per centum, and for members earning regular interest of four per centum, it shall be
18 the difference between such average rate of earnings and four per centum, expressed
19 to the lower one-tenth of one per centum, but not in excess of one per centum. Special
20 interest at such rates, shall be credited, by the comptroller at the same time that
21 regular interest is credited, to the individual annuity savings accounts of persons who
22 are members as of the close of the fiscal year. Special interest shall not be considered

1 in determining rates of contribution of members. In the case of persons who last
2 became members on or after July first, nineteen hundred seventy-three, the provisions
3 of this subdivision shall apply only to the fiscal years [year] beginning April first,
4 nineteen hundred seventy-two and ending March thirty-first, nineteen hundred
5 seventy-three.

6 j. The retirement system may invest, within the limitations authorized for
7 investments in conventional mortgages, a part of its funds in first mortgages on real
8 property located anywhere within the boundaries of the United States and leased to
9 the government of the United States, provided however, that no such investment shall
10 be made unless the terms of the mortgage shall provide for amortization payments in
11 an amount sufficient to completely amortize the loan within the period of the lease.

12 § 7. Subdivision 4 of section 421 of the retirement and social security
13 law is REPEALED and a new subdivision 4 is added to read as follows:

14 4. The term “employees retirement fund board” or “board” shall mean the
15 entity established within the department of audit and control by section four hundred
16 twenty-one-a of this chapter.

17 § 8. Section 421 of the retirement and social security law is amended by
18 adding seven new subdivisions 6, 7, 8, 9, 10, 11 and 12 to read as follows:

19 6. The term “attorney general” shall mean the state attorney general.

20 7. The term “employees' retirement fund board” or “board” shall mean the
21 entity established within the department of audit and control by section four hundred
22 twenty-one-a of this article.

1 8. The term “governor” shall mean the governor of the state.

2 9. The term “temporary president of the senate” shall mean the temporary
3 president of the state senate.

4 10. The term “minority leader of the senate” shall mean the minority leader
5 of the state senate.

6 11. The term “speaker of the assembly” shall mean the speaker of the state
7 assembly.

8 12. The term “minority leader of the assembly” shall mean the minority
9 leader of the state assembly.

10 § 9. The retirement and social security law is amended by adding a new
11 section 421-a to read as follows:

12 § 421-a. The employees’ retirement fund board.

13 a. There is hereby established within the department of audit and control
14 the employees’ retirement fund board. The board shall consist of:

15 1. the comptroller;

16 2. one member appointed by the governor who shall be
17 experienced in the field of investments, and further, who shall not have been an
18 employee of the retirement system in the preceding three years;

19 3. one member appointed by the attorney general who shall be
20 experienced in the field of investments, and further, who shall not have been an
21 employee of the retirement system in the preceding three years;

1 4. one member appointed by the temporary president of the senate
2 who shall be experienced in the field of investments, and further, who shall not have
3 been an employee of the retirement system in the preceding three years;

4 5. one member appointed by the minority leader of the senate who
5 shall be experienced in the field of investments, and further, who shall not have been
6 an employee of the retirement system in the preceding three years;

7 6. one member appointed by the speaker of the assembly who shall
8 be experienced in the field of investments, and further, who shall not have been an
9 employee of the retirement system in the preceding three years; and

10 7. one member appointed by the minority leader of the assembly
11 who shall be experienced in the field of investments, and further, who shall not have
12 been an employee of the retirement system in the preceding three years;

13 8. six members, selected under the supervision of the board as
14 follows:

15 (a) two active members elected by the active membership of
16 the retirement system;

17 (b) one retired member elected by the retired membership of
18 the retirement system.

19 (c) one county employee member elected by the county
20 employees of the local retirement system;

21 (d) one village, town or city employee member elected by
22 village, town or city employees of the local retirement system; and

1 (e) one member of the New York state local police and fire
2 retirement system elected by employees of such retirement system;

3 b. The chair of the board shall be the comptroller.

4 c. The members of the board shall be the trustees of the several funds of
5 the retirement system, shall owe such funds and its members a fiduciary duty, and
6 shall within ten days after his or her designation, take the oath of office set forth in
7 article XIII, section 1 of the state constitution and cause the same to be filed in the
8 office of secretary of state.

9 d. Except for the comptroller, the term for each member of the board shall
10 be four years; provided, however, that of the members initially appointed to the board,
11 the term of the governor's appointee shall be four years; the term of the attorney
12 general's appointee shall be three years; the terms of the appointees of the temporary
13 president, speaker of the assembly, minority leader of the senate and minority leader
14 of the assembly shall be three years; and the six members selected under paragraph
15 five of subdivision a of this section shall serve a term of two years. Appointed
16 members of the board may be reappointed upon the completion of their term in office.
17 Vacancies to the board shall be filled in the same manner as original appointments.

18 e. With respect to the selection of members of the board under paragraph
19 eight of subdivision a of this section, the board shall cause ballots to be distributed to
20 each active and retired member of the system in advance of each election, and shall
21 provide for the return of the voted ballots to the board without cost to the member,
22 and shall develop election procedures. The results shall be certified by the secretary

1 of state. The board may require all persons who perform election duties to certify,
2 under penalty of perjury, that they properly performed those duties. As provided for
3 by the board, in consultation with the board of elections, candidates for board seats
4 described in paragraph eight of subdivision a of this section shall file campaign
5 statements with the secretary of state no later than two days before the beginning of
6 the ballot period, as determined by the board for the period ending five days before
7 the beginning of the ballot period. All campaign statements filed under this section
8 shall be signed and verified by the filer. The verification shall state that the filer has
9 used reasonable diligence in its preparation, and that to the best of his or her
10 knowledge it is true and complete.

11 f. Except for the comptroller, members of the board shall serve without
12 compensation, but shall be reimbursed for actual and necessary expenses incurred
13 through service on the board. Members of the board who are not otherwise employed
14 by the state of New York shall receive one hundred dollars for every day or portion
15 thereof of actual attendance at meetings of the board or any meeting of any committee
16 of the board and which meeting is conducted for the purpose of carrying out the
17 powers and duties of the board, together with their necessary traveling expenses
18 incurred in connection with performance of their official duties. Members of the
19 board who are employed by the state of New York shall, to the extent practicable, be
20 released from work to the extent necessary so that they may discharge their duties and
21 obligations as board members.

22 g. A quorum of the board is seven members.

1 h. The board shall appoint as employees who serve at its pleasure an
2 executive officer, a chief actuary, a chief investment officer, a benefits professional,
3 and other investment officers and portfolio managers, and shall fix their
4 compensation. When fixing the compensation for such positions the board shall,
5 consistent with existing law, be mindful of its fiduciary responsibility to its members
6 to recruit and retain highly qualified and effective employees for these positions.

7 i. The board may appoint a committee of one or more of its members to
8 perform any act within the power of the board itself to perform. The board may also
9 delegate authority to the executive officer to perform those acts. Except where the
10 board, in delegating authority to a committee or the executive officer, provides that
11 the committee or the executive officer may act finally, all acts of the committee or the
12 executive officer shall be reported to the board, at its next regular meeting, and shall
13 be subject to review and ratification or reversal by the board.

14 j. Reversal by the board of any act of the committee or the executive
15 officer shall be effective as of the date fixed by the board, but payment of benefits
16 prior to board action shall not be affected by that action, except for such recovery of
17 amounts paid from the person to whom they were paid as the board may direct.

18 k. The executive officer may delegate to his or her subordinates any act or
19 duty unless the board by motion or resolution recorded in the minutes has required
20 him or her to act personally.

21 l. The board may promulgate such rules and regulations as it deems
22 proper; provided, however, that within one year of the effective date of this section,

1 the board shall promulgate rules and regulations that address retirement system
2 governance matters which include, but are not limited to:

3 1. a code of ethics applicable to board members, retirement system
4 staff, employees and other retirement system fiduciaries;

5 2. a process requiring all persons covered by the retirement
6 system's conflict of interest policy to report and disclose potential, actual or apparent
7 conflicts of interest;

8 3. a policy for addressing, in a transparent fashion, situations
9 giving rise to potential, actual or apparent conflicts of interest;

10 4. a policy for processing and reviewing any and all information
11 disclosed to the board by investment firms pursuant to the provisions of article 3-B of
12 the retirement and social security law.

13 5. verification by board members and other retirement system
14 staff, employees and other retirement system fiduciaries that each is in compliance
15 with applicable regulatory requirements, the retirement system's governance
16 standards, policies and procedures, code of ethics, standards governing reporting of
17 the retirement system's performance, rules governing and retaining appropriate
18 records and documents, rules governing personal investment transactions, and the
19 suitability of all investments made by the retirement system in the current or previous
20 year given the retirement system's standards, investment objectives, and investment
21 policies; and

1 6. public disclosure of relevant and appropriate information
2 regarding the operation and function of the board.

3 m. Individuals appointed or elected to the board shall participate in
4 training, developed and administered by the department of audit and control in
5 consultation with the attorney general and the superintendent of insurance, regarding
6 their legal, fiduciary, financial and ethical responsibilities as trustees within one year
7 of appointment to a board. Board members shall participate in such continuing
8 training as may be required to remain informed of best practices, regulatory and
9 statutory changes relating to the effective oversight of the management and financial
10 activities of the retirement system and to adhere to the highest standards of
11 responsible governance.

12 n. The common retirement fund, shall hold harmless and indemnify all
13 members of the board of trustees, officers and employees of the common retirement
14 fund from financial loss arising out of any claim, demand, suit, action, proceeding or
15 judgment by reason of alleged negligence or other act by such board member, officer
16 or employee provided that such board member, officer or employee at the time of
17 such alleged negligence or act was acting in the discharge of their duties and within
18 the scope of their employment and that such damages did not result from the willful
19 and wrongful act or gross negligence of such board member, officer or employee and
20 provided further that such board member, officer or employee shall, within five days
21 of the time after the date on which they are personally served with or receives actual

1 notice of any summons, complaint, process, notice, demand, claim or pleading,
2 deliver the original or a copy thereof to the common retirement fund's legal advisor.

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

5 § 422. Establishment of a common retirement fund.

6 1. There is hereby established a fund, in the custody of the comptroller, to
7 be known as the common retirement fund. Notwithstanding any other provision of
8 this chapter, all of the assets and income of the employees' retirement system and of
9 the [policemen's and firemen's] New York state and local police and fire retirement
10 system shall be held by the comptroller as [trustee] custodian of such fund, except as
11 such assets and income may be allocated or distributed to the funds of each retirement
12 system by the comptroller.

13 2. The fund shall consist initially of the total assets of the employees'
14 retirement system as of March thirty-first, nineteen hundred sixty-seven, as such
15 assets are defined in subdivision a of section two hundred ninety-three of this chapter.
16 After the annual valuation of the assets and liabilities of the employees' retirement
17 system and the determination relating to assets and liabilities required by subdivision
18 b of section two hundred ninety-three of this chapter, the comptroller shall credit to
19 each retirement system a participating interest in the assets of such fund in the
20 proportion and percentage that the assets of each retirement system bear to the total
21 assets of the common retirement fund. On March thirty-first, nineteen hundred sixty-
22 eight, and at the close of each succeeding fiscal year, the comptroller shall credit each

1 retirement system with a participating interest in such fund in the proportion and
2 percentage that the interest attributable to each retirement system bears to the total
3 assets of such fund, after considering contributions, earnings, disbursements and
4 expenses attributable to each system.

5 §11. Section 423 of the retirement and social security law, as amended by
6 chapter 770 of the laws of 1970, is amended to read as follows:

7 § 423. Investments. [a. On and after April first, nineteen hundred sixty-seven,
8 the comptroller]

9 1. The comptroller, as authorized by the employees' retirement fund
10 board, shall invest the available monies of the common retirement fund in any
11 investments and securities authorized by law for each retirement system and shall
12 hold such investments in his or her name as [trustee] custodian of such fund,
13 notwithstanding any other provision of this chapter. Participating interests in such
14 investments shall be credited to each retirement system in the manner and at the time
15 specified in [paragraph] subdivision two of section four hundred twenty-two of this
16 article.

17 [b.] 2. To assist in the management of the monies of the common retirement
18 fund, the comptroller, as authorized by the board, shall appoint an investment
19 advisory committee consisting of not less than seven members who shall serve for his
20 term of office. A vacancy occurring from any cause other than expiration of term
21 shall be filled by the comptroller for the remainder of the term. Each member of the
22 committee shall be experienced in the field of investments and shall have served, or

1 shall be serving, as a senior officer or member of the board of an insurance company,
2 banking corporation or other financial or investment organization authorized to do
3 business in the state of New York. The committee shall advise the [comptroller] board
4 on investment policies relating to the monies of the common retirement fund and shall
5 review, from time to time, the investment portfolio of the fund and make such
6 recommendations as may be deemed necessary.

7 3. The comptroller, as authorized by the board, shall appoint a separate
8 mortgage advisory committee, with the advice and consent of the investment advisory
9 committee, to review proposed mortgage and real estate investments by the common
10 retirement fund. In making investments, as authorized by law, the [comptroller] board
11 shall be guided by policies established by each committee from time to time; and, in
12 the event the mortgage advisory committee disapproves a proposed mortgage or real
13 estate investment, such shall not be made.

14 4. No officer or employee of any state department or agency shall be
15 eligible for membership on either committee. Each committee shall convene
16 periodically on call of the comptroller, or on call of the chairman. The members of
17 each committee shall be entitled to reimbursement for their actual and necessary
18 expenses but shall receive no compensation for their services.

19 § 12. Subdivisions 2 and 3 of section 423-a of the retirement and social
20 security law, as added by chapter 112 of the laws of 1986, are amended to read as
21 follows:

1 2. On or before the first day of January of each year, the comptroller, as
2 authorized by the employees' retirement fund board, shall determine the existence of
3 affirmative action taken by institutions or companies doing business in Northern
4 Ireland to eliminate ethnic or religious discrimination based on actions taken for:

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

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

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

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

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

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

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

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

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

6 3. Consistent with sound investment policy, the [comptroller] board shall
7 invest the assets of the common retirement fund in such a manner that the investments
8 in institutions doing business in or with Northern Ireland shall reflect the advances
9 made by such institutions in eliminating discrimination as established pursuant to
10 subdivision two of this section.

11 § 13. Section 423-b of the retirement and social security law, as added by
12 chapter 624 of the laws of 1999, is amended to read as follows:

13 § 423-b. New York state venture capital program.

14 The comptroller, as authorized by the employees' retirement fund board, is
15 hereby authorized to establish within the common retirement fund a New York state
16 venture capital program for the purpose of investing in qualified businesses as defined
17 in paragraph [six] seven of subdivision (a) of section eleven of the tax law. The
18 comptroller, as authorized by the board, may [is authorized to] invest up to two
19 hundred fifty million dollars of assets of the common retirement fund to carry out the
20 purposes of this section. The comptroller, as authorized by the board, may make
21 investments pursuant to this section in partnerships, corporations, trusts or limited
22 liability companies organized on a for profit basis that enter into agreements to invest

1 the moneys of the New York state venture capital program in qualified businesses.
2 The comptroller, as authorized by the board, shall make such investments consistent
3 with the provisions of paragraph (b) of subdivision nine of section one hundred
4 seventy-seven of this chapter. The [comptroller] board may establish procedures
5 necessary to insure that investments of moneys of the New York state venture capital
6 program are, for each investment in a qualified business, equitably matched by
7 investments made by other sources. The [comptroller] board shall, to the maximum
8 extent practicable, insure that the geographic distribution of investments in the
9 program is in proportion to the state population.

10 § 14. Section 424 of the retirement and social security law, as added by
11 chapter 306 of the laws of 1967, is amended to read as follows:

12 § 424. Distribution of earnings. At the close of each fiscal year, the average
13 rate of investment earnings of the common retirement fund shall be computed by the
14 actuary and certified to the comptroller. This rate shall be determined from the
15 investment earnings during the calendar year, which ended three months prior to the
16 close of the fiscal year. The amount of such earnings attributable to each retirement
17 system shall be computed by the actuary and certified to the [comptroller] board,
18 [who] which shall thereupon credit each retirement system in accordance therewith.

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

21 § 425. Separability of retirement systems. No provision of this article shall be
22 construed as an impairment of the separability of or of the corporate powers and

1 privileges of the employees' retirement system or the policemen's and firemen's
2 retirement system. The comptroller, as authorized by the employees' retirement fund
3 board, shall establish or continue separate funds and accounts for each retirement
4 system, consistent with the common retirement fund herein provided for, as may be
5 required to carry out the separate purposes and privileges of each retirement system.

6 § 16. The retirement and social security law is amended by adding a new
7 article 22 to read as follows:

8 **ARTICLE 22**

9 **STANDARDS AND CONDUCT OF THIRD PARTIES**

10 **Section**

11 1110. Definitions.

12 1111. Placement agents or lobbyists prohibited.

13 1112. No campaign contributions or solicitations.

14 1113. Internal controls and procedures.

15 1114. Certain employment prohibited.

16 1115. Prohibition of certain financial relationships.

17 1116. Certain contacts prohibited.

18 1117. Gifts.

19 1118. Mandatory reporting.

20 1119. Disciplinary action.

21 1120. Attorney General action.

22 1121. Criminal sanctions.

1 1122. Non-exclusivity of rights or remedies.

2 **1110. Definitions.**

3 As used in this article, the following terms shall have the following meanings
4 unless otherwise specified:

5 1. “Board” shall mean the employee retirement fund board established
6 within the department of audit and control by section four hundred twenty-one-a of
7 this chapter.

8 2. “Conflict of interest” shall mean an interest, financial or otherwise,
9 direct or indirect, arising from any business or transaction or professional activity or
10 any obligation of any nature, which is in apparent or actual conflict with the proper
11 discharge of a person’s or entity’s fiduciary, statutory or contractual duties to act in
12 the best interest of the retirement system’s members and/or beneficiaries.

13 3. “Contribution” shall mean any gift, subscription, loan, advance, deposit
14 of money or thing of value made for:

15 (a) the purpose of supporting a candidate for or influencing any
16 election for federal state or local office, including election to the board;

17 (b) the payment of any debt incurred in connection with such
18 election; or

19 (c) transition or inaugural expenses of the successful candidate for
20 such election.

21 4. “Executive officer” shall mean the president, any vice president in
22 charge of a principal business unit, division or function (such as sales, administration

1 or finance), any other officer who performs a policy-making function, or any other
2 person who performs similar policy-making functions, for an investment firm.

3 5. “Investment firm” shall mean any person or entity that accepts an
4 investment from or provides investment management services to the retirement
5 system in connection with the management or investment of the retirement system’s
6 trust funds or assets. “Investment firm” shall include but not be limited to any
7 subsidiary or affiliate over which the investment firm exercises exclusive control.

8 6. “Investment firm employee” shall mean a person employed directly by
9 an investment firm or a sponsored fund thereof, and who would be considered an
10 employee for federal tax purposes. “Investment firm employee” shall not include a
11 person who is hired, engaged, utilized or retained by the investment firm to secure or
12 influence a particular transaction, investment or decision of the retirement system,
13 retirement system official, retirement system advisor or other fiduciary of the
14 retirement system.

15 7. “Investment management services” shall mean:

16 a. The business of making or recommending investment
17 management decisions, including, but not limited to, making recommendations for the
18 placement or allocation of investment funds, for or on behalf of the retirement system;

19 b. the business of advising or managing a separate entity that
20 makes or recommends investment management decisions, including, but not limited
21 to, making recommendations for the placement or allocation of investment funds, for
22 or on behalf of the retirement system; or

1 c. the provision of any other financial advisory or consultant
2 services to the retirement system, such as money management or fund management
3 services, investment advice or consulting, and investment support services, including,
4 but not limited to, market research, fund accounting, custodial services and fiduciary
5 advice.

6 8. “Lobbying” shall mean any attempt to directly or indirectly influence a
7 determination related to a procurement of investment management services by the
8 retirement system, including, but not limited to, a determination by the retirement
9 system to place an investment with the investment firm by:

10 a. a retirement system official;

11 b. any fiduciary of the retirement system;

12 c. a retirement system advisor; or

13 d. any other person or entity working in cooperation with any of
14 the above.

15 9. “Lobbyist” shall mean any person or entity retained, employed or
16 designated by any other person or entity to engage in lobbying. “Lobbyist” shall
17 not include a investment firm employee.

18 10. “Placement agent” shall mean any person or entity, including, but not
19 limited to, a lobbyist, solicitor, intermediary or consultant, that is directly or indirectly
20 hired, engaged, utilized, retained or compensated (regardless of whether upon a fixed,
21 contingent or any other basis) or otherwise given any other tangible or intangible item
22 or benefit having monetary value by the investment firm for the purpose of

1 promoting, facilitating or soliciting the placement with the investment firm of an
2 investment by the retirement system. A placement agent shall not include a bona fide
3 employee of the investment firm or any person whose sole basis of compensation
4 from the investment firm is the actual provision of legal, accounting, engineering, real
5 estate or other professional advice, services or assistance unrelated to soliciting,
6 introducing, finding, or referring clients to the investment firm or attempting to
7 influence in any way an existing or potential investment in or business relationship
8 with the investment firm.

9 11. “Relative” shall mean any person living in the same household as the
10 individual and any person who is a direct descendant of that individual’s
11 grandparents or who is the spouse of such descendant.

12 12. “Related party” shall mean any investment firm’s or sponsored fund’s
13 partner, member, executive officer, director, employee or agent thereof. “Related
14 party” shall not include limited partners of a sponsored fund or a managed account
15 and portfolio companies of a sponsored fund are not related parties.

16 13. “Retirement system” shall mean the New York state employees’
17 retirement system and the New York state and local police and fire retirement
18 system.

19 14. “Retirement system advisor” shall mean any external person or entity
20 engaged by the retirement system to assist in the selection of investments or
21 investment management services for the retirement system.

1 15. “Retirement system official” shall mean any elected or appointed
2 trustee of the board, including, but not limited to, any incumbent or candidate or
3 successful candidate for the office of comptroller, or other official, staff member or
4 employee whose official duties involve responsibility for the retirement system.

5 16. “Solicitor” shall mean any person or entity that, in any way, directly or
6 indirectly, solicits, finds, introduces or refers any other person or entity to the
7 investment firm, including, but not limited to, any intermediary, consultant, broker,
8 introducer, referrer, finder, public- or government-relations expert or marketer. A
9 “solicitor” shall not include any investment firm employee or any person whose sole
10 basis of compensation from the investment firm is the actual provision of legal,
11 accounting, engineering, real estate or other professional advice, services or
12 assistance that is unrelated to any solicitation, introduction, finding, or referral of
13 persons or entities to the investment firm or the brokering, fostering, establishing or
14 maintaining of a relationship between the investment firm and the retirement system.

15 17. “Sponsored fund” shall mean an investment fund sponsored, managed
16 or advised by an investment firm.

17 **§ 1111. Placement agents prohibited.**

18 1. An investment firm shall not directly or indirectly hire, engage, utilize,
19 retain or compensate any person or entity, including, but not limited to, a placement
20 agent, to directly or indirectly communicate for any purpose with any retirement
21 system official in connection with any investment or engagement between the
22 investment firm and the retirement system, including, but not limited to:

1 a. introducing, finding, referring, facilitating, arranging,
2 expediting, fostering or establishing a relationship with, or obtaining access to the
3 retirement system;

4 b. soliciting an investment from or investment management
5 services business to the retirement system; or

6 c. influencing or attempting to influence the outcome of any
7 investment or other financial decision by the retirement system.

8 2. This section shall not apply to:

9 a. any related party who is acting within the scope of their
10 professional duties on behalf of the investment firm;

11 b. any person or entity whose sole basis of compensation from an
12 investment firm is the actual provision of legal, accounting, engineering, real estate or
13 other professional advice, services or assistance that is unrelated to any solicitation,
14 introduction, finding, or referral of clients to the investment firm or the brokering,
15 fostering, establishing or maintaining of a relationship between the investment firm
16 and the retirement system; or

17 c. lobbying of the government on issues unrelated to investment or
18 other financial decisions by retirement system officials.

19 **§ 1112. No campaign contributions or solicitations.**

20 1. An investment firm shall not accept, manage or retain an investment from,
21 or provide investment management services to, the retirement system within two
22 years after a contribution to a retirement system official is made by:

- 1 a. the investment firm;
2 b. any related party or relative of a related party, including, but not
3 limited to, a person who becomes a related party within two years after a contribution
4 to a retirement system official; or
5 c. the investment firm, related party or relative of a related party to
6 any political party to aid a retirement system official, or to any political action
7 committee controlled by the investment firm, related party, or relative of a related
8 party of an investment firm to aid a retirement system official.

9 2. An investment firm, related party, or relative of a related party shall
10 not, directly or indirectly, solicit any person or political action committee to make,
11 solicit or coordinate any contribution to a retirement system official if the investment
12 firm is seeking or has accepted an investment from the retirement system or is
13 currently providing or seeking to provide investment management services to the
14 retirement system.

15 3. Subdivision two of this section shall not apply to a contribution made
16 by a related party or relative of a related party to a retirement system official for
17 whom the related party or relative of a related party was entitled to vote at the time of
18 the contribution and that does not exceed three hundred dollars from each person or
19 entity in the aggregate to any retirement system official, per election.

20 **§ 1113. Internal controls and procedures.**

21 1. In cooperation with the board, an investment firm shall adopt internal
22 written procedures to monitor and ensure compliance with this article and shall

1 provide a copy of those procedures to the board and the attorney general.

2 2. The internal written procedures may be reviewed by the board, the
3 attorney general or the superintendent of insurance on an annual basis to ensure that
4 they comply with the provisions of this article.

5 3. An investment firm must observe:

6 (a) accounting and operating controls established by law, and

7 (b) the retirement system's regulations and internal rules and
8 policies, including, but not limited to, restrictions and prohibitions on the use of such
9 retirement system's property for personal or other non-retirement system purposes,
10 unless otherwise provided for in the governing documents of a sponsored fund.

11 **§ 1114. Certain employment prohibited.**

12 An investment firm shall not employ or compensate, in any way, any
13 retirement system official, retirement system advisor or other fiduciary of the
14 retirement system for two years after termination of such person's relationship with
15 the retirement system unless such person shall not appear, practice, communicate or
16 otherwise render services before the retirement system.

17 **§ 1115. Prohibition of certain financial relationships.**

18 An investment firm and related parties shall not have any direct or indirect
19 financial, commercial or business relationship with any retirement system official,
20 retirement system advisor or other fiduciary of the retirement system or any relatives
21 of such persons, unless the board consents after full disclosure by the investment firm.

22 **§ 1116. Certain contacts prohibited.**

1 1. Upon the release of any request for proposal, invitation for bid, or
2 comparable procurement vehicle for any investment or other investment management
3 services by the retirement system, there shall be no communication or contact
4 between an investment firm or related party and any retirement system official
5 concerning the subject of the procurement process until the process is completed.
6 Requests for technical clarification regarding the procurement process itself shall be
7 permissible and must be directed to the person or persons designated by the
8 retirement system. Nothing in this provision shall preclude an investment firm from
9 complying with any request for information by the retirement system during this
10 period.

11 2. An investment firm may not participate in, advise or consult on a
12 specific matter before a retirement system, other than in connection with an
13 investment in a sponsored fund or the investment activities of a sponsored fund as
14 provided in the governing documents of such sponsored fund, that involves a
15 business, contract, property or investment in which the investment firm has a
16 pecuniary interest if it is reasonably foreseeable that action by or on behalf of such
17 retirement system on that matter would be likely to, directly or indirectly, confer a
18 benefit on the investment firm by reason of the investment firm's interest in such
19 business, contract, property or investment.

20 **§ 1117. Gifts.**

21 Neither an investment firm, a related party nor a relative of a related party
22 shall offer or confer any gift having more than a nominal value, whether in the form

1 of money, service, loan, travel, lodging, meals, refreshments, gratuity, entertainment,
2 discount, forbearance or promise, or in any other form, upon any retirement system
3 official including, but not limited to, any relative of such persons, under
4 circumstances in which it could reasonably be inferred that the gift was intended to
5 influence the person, or could reasonably be expected to influence the person, in the
6 performance of the person's official duties or was intended as a reward for any
7 official action on the person's part.

8 **§ 1118. Mandatory reporting.**

9 Any person or entity licensed, certified by or registered with any state agency
10 that has a reasonable basis to believe that there has been a violation of the provisions
11 of this article by any individual or entity shall report to the board and the attorney
12 general evidence of the violation.

13 **§ 1119. Disciplinary action.**

14 A willful violation of the provisions of this article is a ground for discipline
15 against any person holding a license, certification or the like issued by a state agency.

16 **§ 1120. Attorney general action.**

17 Where a violation of the provisions of this article is alleged to have occurred,
18 the attorney general of the state of New York may apply in the name of the People of
19 the State of New York to the supreme court of the state of New York within the
20 judicial district in which such violation is alleged to have occurred, on notice of five
21 days, for an order or injunction enjoining a person or entity from engaging in the
22 commission or continuance of any conduct in violation of this article and/or imposing

1 any such other or further relief as the court may consider just and equitable. In any
2 such proceeding, the court shall impose a civil penalty in an amount not to exceed one
3 hundred thousand dollars per violation and, where appropriate, restitution to
4 aggrieved persons or for other victims of such violation.

5 **§ 1121. Criminal sanctions.**

6 Any person who willfully and intentionally violates any provision of this
7 article is guilty of a misdemeanor punishable by a fine not to exceed twenty five
8 thousand dollars or by imprisonment not to exceed six months or by both such fine
9 and imprisonment. For any second or subsequent violation, the person is guilty of a
10 felony punishable by imprisonment not exceeding two years, or by a fine not
11 exceeding one hundred thousand dollars, community service of not more than one
12 thousand hours, or any combination thereof. Prosecution hereunder may be
13 conducted by the attorney general or the district attorney.

14 **§ 1122. Non-exclusivity of rights or remedies.**

15 Nothing in this section shall be construed to limit, in any manner, any rights or
16 remedies otherwise available under law to any person or entity, including, but not
17 limited to, the attorney general, the comptroller and the superintendent of insurance.

18 § 17. The retirement and social security law is amended by adding a new
19 section 111-b to read as follows:

20 **§ 111-b. Protection against theft of property and honest services.**

21 Any person who shall engage in a scheme constituting a systematic ongoing
22 course of conduct with intent to defraud the retirement system by false or fraudulent

1 pretenses, representations or promises, and thereby obtains property from the
2 retirement system or deprives such retirement system, the office of audit and control
3 or the employee retirement fund board established by section four hundred twenty-
4 one-a of the education law from the intangible right of honest services shall be guilty
5 of a class E felony.

6 § 18. The education law is amended by adding a new section 525-a to read as
7 follows:

8 **§ 525-a. Protection against theft of property and honest services.**

9 Any person who shall engage in a scheme constituting a systematic ongoing
10 course of conduct with intent to defraud this retirement system by false or fraudulent
11 pretenses, representations or promises, and thereby obtains property from the
12 retirement system or deprives such retirement system or the retirement board from the
13 intangible right of honest services shall be guilty of a class E felony.

14 § 19. The education law is hereby amended by adding a new article 11-A to
15 read as follows:

16 **ARTICLE 11-A**

17 **TRANSPARENCY IN THE TEACHERS' RETIREMENT FUND;**

18 **DISCLOSURE OF CERTAIN THIRD PARTY INTERESTS**

19 **Section**

20 540. Definitions.

21 540-a. Disclosure of investment firm personnel.

22 540-b. Disclosure of all third-party compensation.

- 1 540-c. Disclosure of conflicts of interest.
- 2 540-d. Publication of investment firm disclosures.
- 3 540-e. Mandatory reporting.
- 4 540-f. Disciplinary action.
- 5 540-g. Attorney general action.
- 6 540-h. Criminal sanctions.
- 7 540-i. Non-exclusivity of rights or remedies.

8 **§ 540. Definitions.**

9 As used in this article, the following terms shall have the following meanings
10 unless otherwise specified:

11 1. “Conflict of interest” shall mean an interest, financial or otherwise,
12 direct or indirect, arising from any business or transaction or professional activity or
13 any obligation of any nature, which is in apparent or actual conflict with the proper
14 discharge of a person’s or entity’s fiduciary, statutory or contractual duties to act in
15 the best interest of the retirement fund’s members and/or beneficiaries.

16 2. “Contribution” shall mean any gift, subscription, loan, advance, deposit
17 of money or thing of value made for:

18 a. the purpose of supporting a candidate for or influencing any
19 election for federal state or local office, including election to the board;

20 b. the payment of any debt incurred in connection with such
21 election; or

1 c. the transition or inaugural expenses of the successful candidate
2 for such election.

3 3. “Executive officer” shall mean the president, any vice president in
4 charge of a principal business unit, division or function, such as sales, administration
5 or finance, any other officer who performs a policy-making function, or any other
6 person who performs similar policy-making functions, for an investment firm.

7 4. “Investment firm” shall mean any person or entity who accepts an
8 investment from or provides investment management services to the retirement fund
9 in connection with the management or investment of the retirement fund’s trust funds
10 or assets. “Investment firm” shall include, but not be limited to, any subsidiary or
11 affiliate over which the investment firm exercises exclusive control.

12 5. “Investment firm employee” shall mean a person employed directly by
13 an investment firm or a sponsored fund thereof, and who would be considered an
14 employee for federal tax purposes. An “investment firm employee” employee shall
15 not include a person who is hired, engaged, utilized or retained by the investment firm
16 to secure or influence a particular transaction, investment or decision of the retirement
17 fund, retirement fund official, retirement fund advisor or other retirement fund
18 fiduciary.

19 6. “Investment management services” shall mean:

20 a. the business of making or recommending investment
21 management decisions, including, but not limited to, making recommendations for

1 the placement or allocation of investment funds, for or on behalf of the retirement
2 fund;

3 b. the business of advising or managing a separate entity that
4 makes or recommends investment management decisions, including, but not limited
5 to, making recommendations for the placement or allocation of investment funds, for
6 or on behalf of the retirement fund; or

7 c. the provision of any other financial advisory or consultant
8 services to the retirement fund, such as money management or fund management
9 services, investment advice or consulting, and investment support services, including,
10 but not limited to, market research, fund accounting, custodial services and fiduciary
11 advice.

12 7. “Lobbying” shall mean any attempt to directly or indirectly influence a
13 determination related to a procurement of investment management services by the
14 retirement fund, including, but not limited to, a determination by the retirement fund
15 to place an investment with the investment firm by:

16 a. a retirement fund official;

17 b. any fiduciary of the retirement fund;

18 c. a retirement fund advisor; or

19 d. any other person or entity working in cooperation with any of
20 the above.

1 8. “Lobbyist” shall mean any person or entity retained, employed or
2 designated by any other person or entity to engage in lobbying. “Lobbyist” shall not
3 include an investment firm employee.

4 9. “Relative” shall mean any person living in the same household as the
5 individual and any person who is a direct descendant of such individual’s
6 grandparents or who is the spouse of such descendant.

7 10. “Related party” shall mean any investment firm’s or sponsored fund’s
8 partner, member, executive officer, director, employee or agent thereof. “Related
9 party” shall not include limited partners of a sponsored fund or a managed account
10 and portfolio companies of a sponsored fund are not related parties.

11 11. “Retirement board” or “board” shall mean shall mean the retirement
12 board provided by section five hundred four of article 11 of this chapter.

13 12. “Retirement fund” shall mean the state teachers’ retirement fund for
14 public school teachers of the state of New York as created by chapter one hundred
15 forty of the laws of nineteen hundred ten, chapter four hundred forty-nine of the laws
16 of nineteen hundred eleven, chapter forty-four of the laws of nineteen hundred
17 fourteen, chapter one hundred three of the laws of nineteen hundred nineteen and
18 chapter one hundred sixty-one of the laws of nineteen hundred twenty-three.

19 13. “Retirement fund advisor” shall mean any external person or entity
20 engaged by the retirement fund to assist in the selection of investments or investment
21 management services for the retirement fund.

1 14. “Retirement fund official” shall mean any elected or appointed trustee,
2 including any incumbent or candidate or successful candidate for the office of
3 comptroller, or other official, staff member or employee whose official duties involve
4 responsibility for the retirement fund.

5 15. “Sponsored fund” shall mean an investment fund sponsored, managed
6 or advised by an investment firm.

7 **§ 540-a. Disclosure of investment firm personnel.**

8 An investment firm shall, prior to the closing of any investment with, or
9 engagement to provide investment management services to, the retirement fund, and
10 by the last day of July and January during the term of such engagement, disclose to
11 the board the following information:

12 1. the names and titles of each related party, other than administrative
13 personnel, whose standard professional duties include contact with, or communication
14 to or from, the retirement fund, retirement fund official, retirement fund advisor or
15 other fiduciary of the retirement fund. If the investment firm employee is a current
16 or former official, retirement fund official, retirement fund advisor or other retirement
17 fund fiduciary, or a relative of any of the foregoing, then the investment firm shall
18 specifically note such information. Upon the board’s request, an investment firm
19 shall provide the resume of any investment firm employee on that list, setting forth
20 the employee's education, professional designations, regulatory licenses and
21 investment and work experience;

1 2. a description of the responsibilities of each investment firm employee
2 with respect to any investment with, or engagement to provide investment
3 management services to, the retirement fund;

4 3. whether any investment firm employee has been registered as a
5 lobbyist with any state or the federal government in the past two years;

6 4. an update of any significant changes to any of the information included
7 in the disclosure shall be included in the next semi-annual report; and

8 5. a certification from the chief operating officer of the investment firm of
9 the accuracy regarding the information included in the semi-annual disclosures
10 required by this article.

11 **§540-b. Disclosure of all third-party compensation.**

12 An investment firm shall provide to the board prior to the closing of any
13 investment with, or engagement to provide investment management services to, the
14 retirement fund, the names and addresses of all third parties that the investment firm,
15 in connection with an investment or transaction with the retirement fund,
16 compensates, including, but not limited to, any fees, commissions, and retainers paid
17 by the investment firm to third parties, such as fees for legal, government relations,
18 public relations, real estate or other professional advice services or assistance, and the
19 amounts of such compensation.

20 **§ 540-c. Disclosure of conflicts of interest.**

21 1. An investment firm must promptly disclose to the board any apparent
22 or actual conflict of interest in writing, including, but not limited to, any relationship

1 between the investment firm, a related party or a relative of a related party, and any
2 retirement fund official, retirement fund advisor or other fiduciary of the retirement
3 fund and any relatives of such persons.

4 2. An investment firm shall cure any conflict of interest by promptly
5 eliminating the conflict of interest. If an investment firm cannot or does not wish to
6 eliminate the conflict, then it shall terminate its relationship with the retirement fund
7 as promptly and responsibly as legally possible.

8 3. Provided an investment firm's disclosure of a conflict of interest
9 pursuant to this article is sufficient to inform the board of the nature and extent of the
10 conflict of interest, the board alone may determine that the investment firm's steps to
11 cure the conflict of interest are sufficient.

12 4. If an investment firm is uncertain whether it has or would have a
13 conflict of interest, then the investment firm shall promptly inform the board, who
14 shall determine whether an actual conflict of interest exists or will exist.

15 5. If an investment firm discloses a conflict of interest to the board, it
16 shall refrain from providing investment management services in connection with
17 matters generated by the conflict of interest until the board determines that the
18 investment firm need not take further action to cure the conflict of interest or until the
19 conflict of interest is in fact cured.

20 6. An investment firm shall ensure that the governing documents of each
21 sponsored fund in which the retirement fund invests contain provisions for how to

1 address material conflicts of interest between the investment firm or any investment
2 firm employee, and any related party.

3 **§ 540-d. Publication of investment firm disclosures.**

4 An investment firm shall publish all disclosures and certifications required by
5 this article on the investment firm’s website. The board shall also publish these
6 disclosure and certifications on the website of the New York state teachers’ retirement
7 fund.

8 **§ 540-e. Mandatory reporting.**

9 Any person or entity licensed, certified by or registered with any state agency
10 that has a reasonable basis to believe that there has been a violation of the provisions
11 of this article by any individual or entity shall report to the board and the attorney
12 general evidence of the violation.

13 **§ 540-f. Disciplinary action.**

14 A willful violation of the provisions of this article is a ground for discipline
15 against any person holding a license, certification or the like issued by a state agency.

16 **§ 540-g. Attorney general action.**

17 Where a violation of the provisions of this article is alleged to have occurred,
18 the attorney general of the state of New York may apply in the name of the people of
19 the state of New York to the supreme court of the state of New York on notice of five
20 days, for an order or injunction enjoining a person or entity from engaging in the
21 commission or continuance of any conduct in violation of this article and/or imposing
22 any such other or further relief as the court may consider just and equitable. In any

1 such proceeding, the court shall impose a civil penalty in an amount not to exceed one
2 hundred thousand dollars per violation.

3 **§ 540-h. Criminal sanctions.**

4 Any person who willfully and intentionally violates any provision of this
5 article is guilty of a misdemeanor punishable by a fine not to exceed twenty five
6 thousand dollars or by imprisonment not to exceed six months or by both such fine
7 and imprisonment. For any second or subsequent violation, the person is guilty of a
8 felony punishable by imprisonment not exceeding two years, or by a fine not
9 exceeding one hundred thousand dollars, community service of not more than one
10 thousand hours, or any combination thereof. Prosecution hereunder may be
11 conducted by the attorney general or the district attorney.

12 **§ 540-i. Non-exclusivity of rights or remedies.**

13 Nothing in this section shall be construed to limit, in any manner, any rights or
14 remedies otherwise available under law to any person or entity, including, but not
15 limited to, the attorney general and the commissioner of education.

16 § 20. The education law is amended by adding a new Article 11-B to read as
17 follows:

18 **ARTICLE 11-B**

19 **STANDARDS AND CONDUCT OF THIRD PARTIES**

20 **Section**

21 541-a. Definitions.

22 541-b. Placement agents or lobbyists prohibited.

1 541-c. No campaign contributions or solicitations.

2 541-d. Internal controls and procedures.

3 541-e. Certain employment prohibited.

4 541-f. Prohibition of certain financial relationships.

5 541-g. Certain contacts prohibited.

6 541-h. Gifts.

7 541-i. Mandatory reporting.

8 541-j. Disciplinary action.

9 541-k. Attorney General action.

10 541-l. Criminal sanctions.

11 541-m. Non-exclusivity of rights or remedies.

12 **541-a. Definitions.**

13 As used in this article, the following terms shall have the following meanings

14 unless otherwise specified:

15 1. “Conflict of interest” shall mean an interest, financial or otherwise,
16 direct or indirect, arising from any business or transaction or professional activity or
17 any obligation of any nature, which is in apparent or actual conflict with the proper
18 discharge of a person’s or entity’s fiduciary, statutory or contractual duties to act in
19 the best interest of the retirement fund’s members and/or beneficiaries.

20 2. “Contribution” shall mean any gift, subscription, loan, advance, deposit
21 of money or thing of value made for:

1 (a) the purpose of supporting a candidate for or influencing any
2 election for federal state or local office, including election to the board;

3 (b) the payment of any debt incurred in connection with such
4 election; or

5 (c) transition or inaugural expenses of the successful candidate for
6 such election.

7 3. “Executive officer” shall mean the president, any vice president in
8 charge of a principal business unit, division or function (such as sales, administration
9 or finance), any other officer who performs a policy-making function, or any other
10 person who performs similar policy-making functions, for an investment firm.

11 4. “Investment firm” shall mean any person or entity that accepts an
12 investment from or provides investment management services to the retirement fund
13 in connection with the management or investment of the retirement fund’s trust funds
14 or assets. “Investment firm” shall include, but not be limited to, any subsidiary or
15 affiliate over which the investment firm exercises exclusive control.

16 5. “Investment firm employee” shall mean a person employed directly by
17 an investment firm or a sponsored fund thereof, and who would be considered an
18 employee for federal tax purposes. “Investment firm employee” shall not include a
19 person who is hired, engaged, utilized or retained by the investment firm to secure or
20 influence a particular transaction, investment or decision of the retirement fund,
21 retirement fund official, retirement fund advisor or other retirement fund fiduciary.

22 6. “Investment management services” shall mean:

1 a. The business of making or recommending investment
2 management decisions, including, but not limited to, making recommendations for the
3 placement or allocation of investment funds, for or on behalf of the retirement fund;

4 b. the business of advising or managing a separate entity that
5 makes or recommends investment management decisions, including, but not limited
6 to, making recommendations for the placement or allocation of investment funds, for
7 or on behalf of the retirement fund; or

8 c. the provision of any other financial advisory or consultant
9 services to the retirement fund, such as money management or fund management
10 services, investment advice or consulting, and investment support services, including,
11 but not limited to, market research, fund accounting, custodial services and fiduciary
12 advice.

13 7. “Lobbying” shall mean any attempt to directly or indirectly influence a
14 determination related to a procurement of investment management services by the
15 retirement fund, including, but not limited to, a determination by the retirement fund
16 to place an investment with the investment firm by:

17 a. a retirement fund official;

18 b. any fiduciary of the retirement fund;

19 c. a retirement fund advisor; or

20 d. any other person or entity working in cooperation with any of
21 the above.

22 8. “Lobbyist” shall mean any person or entity retained, employed or

1 designated by any other person or entity to engage in lobbying. “Lobbyist” shall
2 not include a investment firm employee.

3 9. “Placement agent” shall mean any person or entity, including, but not
4 limited to, a lobbyist, solicitor, intermediary or consultant, that is directly or indirectly
5 hired, engaged, utilized, retained or compensated (regardless of whether upon a fixed,
6 contingent or any other basis) or otherwise given any other tangible or intangible item
7 or benefit having monetary value by the investment firm for the purpose of
8 promoting, facilitating or soliciting the placement with the investment firm of an
9 investment by the retirement fund. A placement agent shall not include a bona fide
10 employee of the investment firm or any person whose sole basis of compensation
11 from the investment firm is the actual provision of legal, accounting, engineering, real
12 estate or other professional advice, services or assistance unrelated to soliciting,
13 introducing, finding, or referring clients to the investment firm or attempting to
14 influence in any way an existing or potential investment in or business relationship
15 with the investment firm.

16 10. “Relative” shall mean any person living in the same household as the
17 individual and any person who is a direct descendant of that individual’s
18 grandparents or who is the spouse of such descendant.

19 11. “Related party” shall mean any investment firm’s or sponsored fund’s
20 partner, member, executive officer, director, employee or agent thereof. “Related
21 party” shall not include limited partners of a sponsored fund or a managed account
22 and portfolio companies of a sponsored fund are not related parties.

1 12. “Retirement board” or “board” shall mean shall mean the retirement
2 board provided by section five hundred four of article 11 of this chapter.

3 13. “Retirement fund” shall mean the state teachers’ retirement fund for
4 public school teachers of the state of New York as created by chapter one
5 hundred forty of the laws of nineteen hundred ten, chapter four hundred forty-nine of
6 the laws of nineteen hundred eleven, chapter forty-four of the laws of nineteen
7 hundred fourteen, chapter one hundred three of the laws of nineteen hundred
8 nineteen and chapter one hundred sixty-one of the laws of nineteen hundred twenty-
9 three.

10 14. “Retirement fund advisor” shall mean any external person or entity
11 engaged by the retirement fund to assist in the selection of investments or investment
12 management services for the retirement fund.

13 15. “Retirement fund official” shall mean any elected or appointed trustee,
14 including any incumbent or candidate or successful candidate for the office of
15 comptroller, or other official, staff member or employee whose official duties involve
16 responsibility for the retirement fund.

17 16. “Solicitor” shall mean any person or entity that, in any way, directly or
18 indirectly, solicits, finds, introduces or refers any other person or entity to the
19 investment firm, including, but not limited to, any intermediary, consultant, broker,
20 introducer, referrer, finder, public- or government-relations expert or marketer. A
21 “solicitor” shall not include any investment firm employee or any person whose sole
22 basis of compensation from the investment firm is the actual provision of legal,

1 accounting, engineering, real estate or other professional advice, services or
2 assistance that is unrelated to any solicitation, introduction, finding, or referral of
3 persons or entities to the investment firm or the brokering, fostering, establishing or
4 maintaining of a relationship between the investment firm and the retirement fund.

5 17. “Sponsored fund” shall mean an investment fund sponsored, managed
6 or advised by an investment firm.

7 **§ 541-b. Placement agents prohibited.**

8 1. An investment firm shall not directly or indirectly hire, engage, utilize,
9 retain or compensate any person or entity, including, but not limited to, a placement
10 agent, to directly or indirectly communicate for any purpose with any retirement fund
11 official in connection with any investment or engagement between the investment
12 firm and the retirement fund, including, but not limited to,:

13 a. introducing, finding, referring, facilitating, arranging,
14 expediting, fostering or establishing a relationship with, or obtaining access to the
15 retirement fund;

16 b. soliciting an investment from or investment management
17 services business to the retirement fund; or

18 c. influencing or attempting to influence the outcome of any
19 investment or other financial decision by the retirement fund.

20 2. This section shall not apply to:

21 a. any related party who is acting within the scope of their
22 professional duties on behalf of the investment firm;

1 b. any person or entity whose sole basis of compensation from an
2 investment firm is the actual provision of legal, accounting, engineering, real estate or
3 other professional advice, services or assistance that is unrelated to any solicitation,
4 introduction, finding, or referral of clients to the investment firm or the brokering,
5 fostering, establishing or maintaining of a relationship between the investment firm
6 and the retirement fund; or

7 c. lobbying of the government on issues unrelated to investment or
8 other financial decisions by retirement fund officials.

9 **§ 541-c. No campaign contributions or solicitations.**

10 1. An investment firm shall not accept, manage or retain an investment
11 from, or provide investment management services to, the retirement fund within two
12 years after a contribution to a retirement fund official is made by:

13 a. the investment firm;

14 b. any related party or relative of a related party, including, but not
15 limited to, a person who becomes a related party within two years after a contribution
16 to a retirement fund official; or

17 c. the investment firm, related party, or relative of a related party
18 to any political party to aid a retirement fund official, or any political action
19 committee controlled by the investment firm, related party, or relative of a related
20 party of an investment firm.

21 2. An investment firm, related party, or relative of a related party shall
22 not, directly or indirectly, solicit any person or political action committee to make,

1 solicit or coordinate any contribution to a retirement fund official if the investment
2 firm is seeking or has accepted an investment from the retirement fund or is currently
3 providing or is providing or seeking to provide investment management services to
4 the retirement fund.

5 3. Subdivision two of this section shall not apply to a contribution made
6 by a related party or relative of a related party to a retirement fund official for whom
7 the related party or relative of a related party was entitled to vote at the time of the
8 contribution and that does not exceed three hundred dollars from each person or entity
9 in the aggregate to any retirement fund official, per election.

10 **§ 541-d. Internal controls and procedures.**

11 1. In cooperation with the board, an investment firm shall adopt internal
12 written procedures to monitor and ensure compliance with this article and shall
13 provide a copy of those procedures to the board and the attorney general.

14 2. The internal written procedures may be reviewed by the board, the
15 attorney general or the superintendent of insurance on an annual basis to ensure that
16 they comply with the provisions of this article.

17 3. An investment firm must observe:

- 18 (a) accounting and operating controls established by law, and
19 (b) the retirement fund's regulations and internal rules and policies,
20 including, but not limited to, restrictions and prohibitions on the use of such
21 retirement fund's property for personal or other non-retirement fund purposes, unless
22 otherwise provided for in the governing documents of a sponsored fund.

1 **§ 541-e. Certain employment prohibited.**

2 An investment firm shall not employ or compensate, in any way, any
3 retirement fund official, retirement fund advisor or other fiduciary of the retirement
4 fund for two years after termination of such person's relationship with the retirement
5 fund unless such person shall not appear, practice, communicate or otherwise render
6 services before the retirement fund.

7 **§ 541-f. Prohibition of certain financial relationships.**

8 An investment firm and related parties shall not have any direct or indirect
9 financial, commercial or business relationship with any retirement fund official,
10 retirement fund advisor or other fiduciary of the retirement fund or any relatives of
11 such persons, unless the board consents after full disclosure by the investment firm.

12 **§ 541-g. Certain contacts prohibited.**

13 1. Upon the release of any request for proposal, invitation for bid, or
14 comparable procurement vehicle for any investment or other investment management
15 services by the retirement fund, there shall be no communication or contact between
16 an investment firm or related party and any retirement fund official concerning the
17 subject of the procurement process until the process is completed. Requests for
18 technical clarification regarding the procurement process itself shall be permissible
19 and must be directed to the person or persons designated by the retirement fund.
20 Nothing in this provision shall preclude an investment firm from complying with any
21 request for information by the retirement fund during this period.

22 2. An investment firm may not participate in, advise or consult on a

1 specific matter before a retirement fund, other than in connection with an investment
2 in a sponsored fund or the investment activities of a sponsored fund as provided in the
3 governing documents of such sponsored fund, that involves a business, contract,
4 property or investment in which the investment firm has a pecuniary interest if it is
5 reasonably foreseeable that action by or on behalf of such retirement fund on that
6 matter would be likely to, directly or indirectly, confer a benefit on the investment
7 firm by reason of the investment firm's interest in such business, contract, property or
8 investment.

9 **§ 541-h. Gifts.**

10 Neither an investment firm, a related party nor a relative of a related party
11 shall offer or confer any gift having more than a nominal value, whether in the form
12 of money, service, loan, travel, lodging, meals, refreshments, gratuity, entertainment,
13 discount, forbearance or promise, or in any other form, upon any retirement fund
14 official including, but not limited to, any relative of such persons, under
15 circumstances in which it could reasonably be inferred that the gift was intended to
16 influence the person, or could reasonably be expected to influence the person, in the
17 performance of the person's official duties or was intended as a reward for any
18 official action on the person's part.

19 **§ 541-i. Mandatory reporting.**

20 Any person or entity licensed, certified by or registered with any state agency
21 that has a reasonable basis to believe that there has been a violation of the provisions
22 of this article by any individual or entity shall report to the board and the attorney

1 general evidence of the violation.

2 **§ 541-j. Disciplinary action.**

3 A willful violation of the provisions of this article is a ground for discipline
4 against any person holding a license, certification or the like issued by a state agency.

5 **§ 541-k. Attorney general action.**

6 Where a violation of the provisions of this article is alleged to have occurred,
7 the attorney general of the state of New York may apply in the name of the People of
8 the State of New York to the supreme court of the state of New York within the
9 judicial district in which such violation is alleged to have occurred, on notice of five
10 days, for an order or injunction enjoining a person or entity from engaging in the
11 commission or continuance of any conduct in violation of this article and/or imposing
12 any such other or further relief as the court may consider just and equitable. In any
13 such proceeding, the court shall impose a civil penalty in an amount not to exceed one
14 hundred thousand dollars per violation and, where appropriate, restitution to
15 aggrieved persons or for other victims of such violation.

16 **§ 541-l. Criminal sanctions.**

17 Any person who willfully and intentionally violates any provision of this
18 article is guilty of a misdemeanor punishable by a fine not to exceed twenty five
19 thousand dollars or by imprisonment not to exceed six months or by both such fine
20 and imprisonment. For any second or subsequent violation, the person is guilty of a
21 felony punishable by imprisonment not exceeding two years, or by a fine not
22 exceeding one hundred thousand dollars, community service of not more than one

1 thousand hours, or any combination thereof. Prosecution hereunder may be
2 conducted by the attorney general or the district attorney.

3 **§ 541-m. Non-exclusivity of rights or remedies.**

4 Nothing in this section shall be construed to limit, in any manner, any rights or
5 remedies otherwise available under law to any person or entity, including, but not
6 limited to, the attorney general and the commissioner of education.

7 § 21. Section 30.10 (3) (b) of the criminal procedure law is hereby amended
8 to read as follows:

9 (b) A prosecution for any offense involving misconduct by a public servant
10 may be commenced at any time during the [defendant's] public servant's service in
11 such office or within five years after the termination of such service; provided
12 however, that in no event shall the period of limitation be extended by more than five
13 years beyond the period otherwise applicable under subdivision two. This shall apply
14 where the defendant is the public servant or is acting in concert with the public
15 servant to commit the offense.

16 § 22. Severability. If any title, section, subdivision, paragraph or other part of
17 this article shall be adjudged invalid by any court of competent jurisdiction, such
18 judgment shall not invalidate the remainder thereof, but shall be confined in its
19 operation to the part directly involved in the controversy wherein such judgment shall
20 have been rendered.

21 § 23. This act shall take effect on the one hundred and eightieth day after it
22 shall become law.