

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8397 SENATE LABOR & COMMERCE

4. DCED IS INTERESTED IN PROVIDING AN ALASKAN PRODUCT PREFERENCE INCENTIVE FOR FEDERAL CONTRACTS MANAGED THROUGH ADOT&PF.

Under the current system, the Alaska Product Preference program cannot be used when obligating federal pass through or grant funds such as Federal Highway trust fund receipts. These receipts account for a significant portion of all capital spending in Alaska and currently prohibit bid-based incentive programs. It is possible, but as yet untested, that an after-the-fact bonus system, which provides an incentive for the use of Alaskan suppliers, may be found consistent with federal procurement regulations.

5. THE PROPOSED INNOVATIVE CONSTRUCTION PROCUREMENT METHODS PILOT PROGRAM HAS THE ABILITY TO MAKE THE INCENTIVE PROGRAM WORK BETTER THAN IT CURRENTLY DOES, AND TO BETTER ACCOMPLISH THE GOALS OF THE INCENTIVE PROGRAM.

The bonus system could be designed to encourage the choice of Alaska products, subcontractors and services throughout the life of a construction project without adding to the administrative burdens of either the contractor or the state. The bonus would encourage contractors to use the incentive to the limit of its effect. The program would provide an economic incentive for an "outside" general contractor to choose an Alaskan subcontractor, perhaps over a more comfortable choice, in order to obtain the bonus payment at the end of the contract.

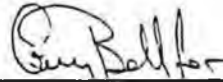
The program eliminates the need for continuous administrative monitoring of the project as the burden of proof for the inclusion of Alaskan products or services will be on the contractor to establish through paid invoices and/or photographs at the end of the construction. The program is more user friendly at the time of the bid in that all bids would be evaluated on the basis of the bottom line number submitted for the project, rather than on the complicated accounting of incentives that currently takes place. As the program matures, in-state contractors may wish to build in a percentage of the expected bonus amount into a lowering of the bid for a particular job as a competitive edge. This can be expected to lower the cost of the program over time as reduced construction costs are enjoyed by the state.

Project administration and close-out would also be easier in that one bonus amount is paid to the contractor, in addition to the final payment at the end of the job. There is a built-in incentive due to the presence of a significant bonus payment at the end of the job, to resolve disputes, and to finish marginally profitable contracts, as well as to avoid marginal litigation over claims.

In summary, the poor performance of the existing program due to:

1. the severe penalties associated with failures to use specified products;
2. the inability of the program to be used on federal grant monies;
3. the cumbersome administrative requirements; and
4. the inability to be paid for substitution of Alaskan products after bid award . . .

is addressed by the establishment of an after-the-fact bonus system that is simpler to administer, provides ongoing incentives to use Alaskan products and services throughout the life of the contract, better assists Alaskan subcontractors to take advantage of the program, and which possibly allows expansion of the incentive program to federal construction contracts administered by the state. For these reasons, the Department of Commerce and Economic Development urges your support of the innovative construction procurement methods pilot program as contained in Section 13 of Sb 212.



Paul Fuhs, Commissioner

Date: 2-3-94

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln



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JOINT SENATE LABOR & COMMERCE COMMITTEE AND SENATE ECONOMIC TASK FORCE HEARING NOVEMBER 17TH, 1993

AGENDA

I. Overview of SB 212: "Buy Alaska" Legislation (Committee Staff, Josh Fink)

Terri Bannister, with Leg. Legal, is available in Juneau

A. General Comments

1. Mary Rucker - "Buy Alaska" Program
2. Steve Rouse - "Make-It-Alaskan" Program
3. Other Public Comments

II. Investments & Financial Services

- A. Dave Martin & Diane Wilke, Principals
McKinley Capital Management
- B. Alan Johnston, Manager
Wedbush Morgan Securities
- D. Herb Berkowitz, President
Berkowitz Futures Advisory, Inc.
- E. Sterling Gallagher, President
Life Insurance Co. of Alaska
(Former Commissioner of Revenue)
- F. Fred Koken, Sr. Vice President
Smith Barney Shearson, Inc. - In Juneau

Nov. 17th Agenda

Senate L&C and Economic Task Force Hearing

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(II. Investment & Financial Services - Continued)

G. Bill Scott, Executive Director

Permanent Fund Corporation

H. Other Public Comments

III. Pilot Bonus System within DOT/PF

A. Chris Gates, Director/Division of Economic Development
DCED - In Juneau

B. Loren Rasmussen, Chief/Design Construction Standards
DOT/PF - In Juneau

C. Dugan Petty, Director/General Services
DOA - In Juneau

C. Public Comments

IV. State Publications/Printing Policy

A. Charles Gray, Publisher
Fairbank's Daily Newsminer

B. Wayne Clark, Owner
Graphic North - Fairbanks

C. Paul Gauthier or David Thoene, Owners
Norstar Color - Anchorage

D. Bob Pavitt, President
Capital Copy, Ltd. - Juneau

E. Jim Krebs
Ken Wray Printing - Anchorage

F. Other Public Comments

Alaska State Legislature

Senator Tim Kelly, Chair
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"BUY ALASKA" - An Overview

This legislation has 2 key components. It aims to both increase the share of State work going to Alaskans and build on the State's financial services infrastructure by:

- 1) **Establishing the State's policy for the procurement of investment services to increase the utilization of investment and brokerage services provided by persons located in the State.**

The State invests billions of dollars in domestic and foreign markets. By gradually increasing the portion of these financial transactions occurring through offices located in Alaska, the State will foster the development of greater expertise and ability in Alaskan investment and brokerage firms. This could bring millions of dollars in additional fees and commissions to the general fund, and increase employment in the private sector. Moreover, this could help position Alaska as a financial center in the Pacific Rim.

The affected State agencies and public corporations would themselves determine how to implement this policy, reporting to the legislature on their progress annually. The affected entities would include the Permanent Fund Corporation, the Treasury Division which manages more than a dozen funds, the Alaska Housing Finance Corporation, and the Alaska Industrial Development and Export Authority.

- 2) **Establishing an Innovative Construction Procurement Methods Pilot Program within the DOT/PF for a period of two years to implement an Alaska Bonus Program to replace the current preferences.**

The incentives provided in the Alaska Bidder's Preference, Products Preference, Alaska Hire Program, Alaska Subcontracting, and Disadvantage Business Enterprises/Equal Employment Opportunity programs are largely unworkable and consequently underutilized or not utilized at all. Allowing the DOT/PF to test on a trial basis a bonus system which provides bonuses at project completion and encourages the same policy goals would be more economically beneficial for vendors, greatly reduce administrative costs and

bid protests, and could be used in joint federal/state projects where State preferences are currently not allowed.

The commissioner would establish this program through regulation and report to the legislature on the program's progress 15 and 27 months after implementation. If successful, the legislature could expand and extend this program indefinitely, replacing the current preferences.

Lastly, this bill incorporates a number of provisions from the "Make-It-Alaskan" legislation from the 17th Legislature, House Bill 245, which would also increase the amount of State work going to Alaskans. This bill would:

- 1) Encourage procurement officers to restrict notice of contract solicitation to Alaskan suppliers and providers of services desiring to compete for state contract work. (This practice is already standard in DOT/PF);
- 2) Require the commissioner to include in his report to the legislature on State procurements the number of bidders located in-state and out-of-state that bid or made proposals on procurements. In addition, the reports would be made annually rather than biennially to provide increased accountability and legislative oversight regarding the success of increasing Alaskans participation in State procurements; and
- 3) Replace the statutory requirement that State publications be produced at State-operated facilities with a requirement that State publications be produced at a private sector facility located in the State when practicable. In addition, standards for the production of publications would be established by the Department of Administration.

SMITH BARNEY SHEARSON

FAX #907-463-5475

PHONE #907-586-6000
#800-478-0600

FAX COVER SHEET

TO: Josh Fink Committee Aide Senate Labor & Commerce Com.

FAX NUMBER: 258 4524

PHONE NUMBER: _____

FROM: Erin Koken Sr. Vice President / FC

DATE: 11/18/93 SUBJECT: Memo on test. 14

TRANSMISSION CONTAINS THIS COVER SHEET AND 2 PAGE(S)

MESSAGE: _____

Testimony given on SB 212
on 11/17/93

SMITH BARNEY SHEARSON

MEMORANDUM

FROM: Fred K. Koken, Senior Vice President/FC
SUBJECT: Testimony on Senate Bill 212
DATE: November 17, 1993

The Permanent Fund, and more recently the Department of Revenue, have policies that encourage their money managers (everything else being equal) to place business with NYSE member firms that maintain offices in Alaska. I applaud and compliment them for these policies.

The state, including all agencies and public corporations, invests billions of dollars in the various markets. And the more this can be done through vendors with local in state representation the more it will add to our economic growth and development both in terms of greater expertise and increased payroll.

I am here to testify in favor of legislation that would promote this type of activity/philosophy. There are 3 areas where I believe steps could be taken to strengthen existing and proposed procedures.

-- page 2 --

1. The permanent fund, for a number of years, has been using a formula, the object of which is to ensure an equitable division of the business they do in state among the NYSE member firms that maintain offices in state. The primary basis for the formula is employee census. Thus the firms with the larger payrolls receive a proportionately larger amount of business. This practice is fair and I would encourage other state entities to implement a similar practice.

2. Current policies only encourages the money managers, when all other things are equal, to do business through firms with local in state representation. As a result a great deal of business is done with investment firms who have no presence in Alaska. If, in situations where fees and all other costs are equal, money managers were required to execute through vendors with local representation, the state of Alaska would stop losing business to the Outside.

3. Right now the policies encourage the money managers, whether he or she is a direct state employee or the employee of one of the contract managers, to direct business through vendors with local representation, when all things are equal. This may sound redundant and indeed is; however, the point I want to make is different

-- page 3 --

and very important. When the money manager places business through the trading department of one of these local vendors - - - - - that trading department could be located in New York, Boston or Chicago - - - - - the trader believes he or she has complied with the policy; however, unless the trader specifically states that the business is for the state of Alaska and, requests that credit be given back to the Alaska operation, no monetary recognition will come back. And, these potential payroll dollars are then lost forever. If the money managers were required to notify the traders that the trade is for the state of Alaska and needs to be credited back to the Alaskan operations, then these dollars would increase the Alaskan payroll and not be lost.

I appreciate the opportunity to express my thoughts on this pending legislation. Again I thank the existing state entities for past efforts and thank you for your efforts to increase the development of the Alaskan investment and brokerage firm industry. I would be happy to answer any questions you might have.

CLERK'S OFFICE

APPROVED

Date: 7-27-93

ANCHORAGE, ALASKA
AR NO. 93-187(8-1)

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY TO DEVELOP A POLICY FOR INVESTMENT MANAGERS TO DIRECT BROKERAGE BUSINESS, COMMISSIONS, AND TRANSACTIONS TO ANCHORAGE BRANCH OFFICES OF BROKERAGE FIRMS IN ALASKA

WHEREAS, the Municipality has an obligation to taxpayers and ratepayers to ensure investment returns on Municipal funds are maximized consistent with safety of principal and investment expenses are minimized; and

WHEREAS, there is a need for the Municipality to strengthen our relationship with the Anchorage financial community to provide better service for Anchorage residents; and

WHEREAS, whenever possible it is in the best interest of the community to keep Anchorage dollars in Anchorage; and

WHEREAS, the Municipality should encourage and promote "local hire" of Alaskans and lead by example in "buying Alaska" whenever possible; and

WHEREAS, when "all other things are equal", we should encourage the direction of Municipal business toward local hire which promotes economic development in Anchorage.

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

Section 1: That the Municipality adopt a policy requiring its employees and investment managers, when "all other things are equal", to direct brokerage business, underwriting, commissions, and transactions for cash pool investments to Anchorage branch offices of brokerage firms in Alaska.

Section 2: That the Anchorage Police and Fire Retirement Board investment managers should continue to comply with the existing board policy of doing business in Alaska "when all other things are equal".

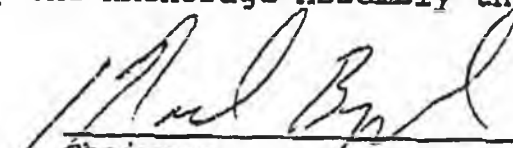
Section 3: That the Administration develop a list of the brokerage firms and the office locations utilized by the Municipality.

AM 855-93

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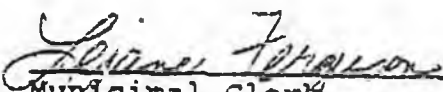
Section 4: That quarterly reports of brokerage and investment firm's location and dollar volume and commissions be reported to the Assembly effective with 4th quarter 1993.

PASSED AND APPROVED by the Anchorage Assembly this 27th day of July, 1993.



Chairman

ATTEST:



Municipal Clerk

SENATE BILL NO. 212

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST OF THE SENATE
ECONOMIC TASK FORCEIntroduced: 5/7/93
Referred: L&C, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to publications produced by state agencies and to the
2 procurement of property, property interests, and services by state agencies."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that

5 (1) the state needs to develop and maintain a strong, stable, and prosperous
6 economy based on private investment;

7 (2) the existence of a strong and healthy free enterprise system is directly
8 related to the well-being and competitive strength of Alaskan businesses and to the opportunity
9 for Alaskan businesses to have free entry into the business market and to grow and expand;

10 (3) the use of products manufactured, grown, or produced in Alaska
11 strengthens, stabilizes, and diversifies Alaska's economy;

12 (4) when governmental agencies purchase and use out-of-state products and
13 services, they reduce job-creating investments and limit the growth of the economy of Alaska;

14 (5) when bid documents for public contracts do not specify the use of available

1 Alaskan products, comparable out-of-state goods are usually purchased instead, and these
2 purchases result in a loss of revenue in the state and weaken Alaska's economic base;

3 (6) contracts are frequently awarded to out-of-state firms, even though Alaskan
4 suppliers, manufacturers, and providers of services are more accessible and responsive to the
5 needs of Alaska's business community than their out-of-state counterparts;

6 (7) there is a need for Alaska to examine its purchasing practices in order to
7 ensure that state agencies support Alaskan businesses by making every reasonable effort to
8 identify available Alaskan goods and services and to foster bidding by local businesses and
9 labor forces;

10 (8) state agencies should look outside Alaska for goods and services only if
11 they have provided notice of the procurement in Alaska.

12 (b) The legislature declares that the purpose of this Act is to foster a procurement
13 process where Alaskan businesses obtain a fair proportion of Alaska's total procurement
14 contracts by providing Alaskan businesses with a fair, equitable, and competitive bid process.

15 (c) It is the intent of the legislature that

16 (1) except as prohibited under AS 36.30.320(d), a state agency shall, when
17 practicable and economically feasible, design procurements in a way that fosters participation
18 by Alaska bidders or offerors;

19 (2) except as prohibited under AS 36.30.320(d), and unless it is anticipated that
20 two or more Alaska bidders or offerors would be capable of performing the procurement, an
21 agency that is proposing a procurement shall, when practicable and economically feasible,
22 divide or otherwise structure the procurement so that it can be performed by Alaska bidders
23 or offerors, if the proposed procurement is too large to be performed by Alaska bidders or
24 offerors, and if the procurement officer determines that Alaska bidders or offerors generally
25 would be capable of performing the procurement if the procurement were reduced in size or
26 otherwise restructured; in this paragraph, "Alaska bidders or offerors" means persons who
27 qualify as Alaska bidders under AS 36.30.170(b).

28 * Sec. 2. AS 36.30.130(a) is amended to read:

29 (a) The procurement officer shall give adequate public notice of the invitation
30 to bid at least 21 days before the date for the opening of bids. If a determination is
31 made in writing that a shorter notice period is necessary for a particular bid, the

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Terms*

1 21-day period may be shortened. The determination shall be made by the chief
2 procurement officer for bids for supplies, services, or professional services. The
3 determination shall be made by the commissioner of transportation and public facilities
4 for bids for construction or acquisition of property for the state equipment fleet.
5 Notice shall be published in the Alaska Administrative Journal. The time and manner
6 of notice must be in accordance with regulations adopted by the commissioner of
7 administration. When practicable, notice may include ~~_____~~ v. *practical*

8 (1) publication in a newspaper calculated to reach prospective bidders
9 located in the state;

10 (2) notices posted in public places within the area where the work is
11 to be performed or the material furnished; and

12 (3) notices mailed to all active prospective contractors on the
13 appropriate list maintained under AS 36.30.050

14 (A) if the contractors are located in the state;

15 (B) upon request, if the contractors are not located in the
16 state.

17 * Sec. 3. AS 36.30.540 is amended to read:

18 Sec. 36.30.540. REPORT TO LEGISLATURE. On or before January 15 of
19 each year. [BEGINNING WITH DECEMBER 1, 1989,] the commissioner shall
20 [BIENNIALY] report to the legislature concerning procurements by agencies. The
21 report must include

22 (1) the records maintained by the commissioner under AS 36.30.510
23 and the records maintained under AS 36.30.520(a) for the previous [TWO] fiscal year
24 [YEARS];

25 (2) recommendations for changes in this chapter or other laws based
26 on implementation of this chapter in the previous [TWO] fiscal year [YEARS];

27 (3) a description of any matters that involved litigation concerning this
28 chapter in the previous [TWO] fiscal year [YEARS];

29 (4) a list of procurements made under this chapter from out-of-state
30 sources during the previous [TWO] fiscal year [YEARS] together with the total
31 number of procurement contracts entered into during that period with out-of-state

1 contractors and the total value of these contracts; this paragraph does not apply to
2 procurements made under AS 36.30.320; and

3 (5) a list of procurements made under this chapter from state sources
4 during the previous [TWO] fiscal year [YEARS] together with the total number of
5 procurement contracts entered into during that period with state contractors and the
6 total value of these contracts; this paragraph does not apply to procurements made
7 under AS 36.30.320;

8 (6) the number of bidders and offerors that bid on or made
9 proposals for procurements under this chapter, the number of these bidders and
10 offerors that were located in the state, and the number of these bidders and
11 offerors that were located outside the state; this paragraph does not apply to
12 procurements made under AS 36.30.320.

13 * Sec. 4. AS 36.30.540 is amended by adding a new subsection to read:

14 (b) A state agency that is subject to AS 36.30.895 and that contracts for
15 investment and brokerage services shall submit to the legislature on or before
16 January 15 of each year a report covering the preceding fiscal year and reporting on
17 the state agency's progress in implementing AS 36.30.895.

18 * Sec. 5. AS 36.30.850(b)(13) is amended to read:

19 (13) purchases of income-producing assets for the state treasury or a
20 public corporation of the state, except as provided by AS 36.30.540(b) and
21 36.30.895;

22 * Sec. 6. AS 36.30.850(b)(15) is amended to read:

23 (15) a contract that is a delegation, in whole or in part, of investment
24 powers held by the commissioner of revenue under AS 14.40.400, AS 14.42.200,
25 14.42.210, AS 18.56.095, AS 37.10.070, 37.10.071, or AS 37.14, except as provided
26 by AS 36.30.540(b) and 36.30.895;

27 * Sec. 7. AS 36.30.850(b)(16) is amended to read:

28 (16) a contract that is a delegation, in whole or in part, of investment
29 powers or fiduciary duties of the Board of Trustees of the Alaska Permanent Fund
30 Corporation under AS 37.13, except as provided by AS 36.30.540(b) and 36.30.895;

31 * Sec. 8. AS 36.30.850(b) is amended by adding a new paragraph to read:

1 (30) contracts to be performed in an area outside of the country and
2 requiring knowledge of the customs, procedures, rules, or laws of the area.

3 * Sec. 9. AS 36.30 is amended by adding a new section to read:

4 Sec. 36.30.895. STATE POLICY FOR PROCUREMENT OF INVESTMENT
5 SERVICES. It is the policy of the state that state agencies that procure investment and
6 brokerage services increase the utilization of brokerage and investment services
7 provided by persons located in the state. In this section, "state agency" includes the
8 University of Alaska, the Alaska Railroad Corporation, the Alaska Housing Finance
9 Corporation, the Alaska Aerospace Development Corporation, the Alaska State Pension
10 Investment Board, and the Alaska permanent fund established under AS 37.13.010, but
11 does not include the state trustees or federal trustees under AS 37.14.450.

12 * Sec. 10. AS 44.99.200 is repealed and reenacted to read:

13 Sec. 44.99.200. PRODUCTION OF PUBLICATIONS. The publications of a
14 state agency shall be produced at a private sector facility located in the state when
15 practicable. The Department of Administration shall establish standards for the
16 production of publications by state agencies, except that the Board of Regents of the
17 University of Alaska shall establish the standards for the university. The standards
18 shall be designed to promote simplicity, low cost, and consistency.

19 * Sec. 11. AS 44.99.210 is amended to read:

20 Sec. 44.99.210. DISCLOSURES ON PUBLICATION. If [A PUBLICATION
21 OF A STATE AGENCY IS EXEMPTED UNDER AS 44.99.200(a) FROM BEING
22 PRODUCED AT A STATE-OPERATED FACILITY AND IF] the actual annual costs
23 for a [THE] publication of a state agency that are paid from the general fund exceed
24 \$1,500, the publication must include a statement that gives the name of the agency
25 releasing the publication, the purpose of the publication, the cost for each copy of the
26 publication, and the city and state where the printing was done. The statement must
27 read: "This publication was released by . . . (name of state agency) . . . produced at
28 a cost of \$ per copy to . . . (statement of purpose) . . . , and printed in
29 . (city and state where printed)." If the publication is required by law, the statement
30 must also include: "This publication is required by . . . (appropriate citation to Alaska
31 law)." The statement may include, if applicable, a declaration of the revenue raised

1 by the sale of the publication or from the purchase of advertising in the publication.
2 The statement shall be printed in one conspicuous place in the body of the publication
3 in a type size that is not smaller than eight points and shall be placed in a box
4 composed of at least one point rule. In this section, "cost for each copy" means the
5 figure that results after dividing the total contract cost of producing the publication by
6 the number of copies produced. This section does not apply to a publication that is
7 intended primarily for foreign or other out-of-state use, or to a program for a public
8 ceremony of a state agency.

9 * Sec. 12. AS 44.99.230 is repealed.

10 * Sec. 13. INNOVATIVE CONSTRUCTION PROCUREMENT METHODS PILOT
11 PROGRAM. (a) Within six months after the effective date of this Act, the commissioner of
12 transportation and public facilities shall begin a two-year pilot program for the use of
13 innovative methods for the procurement of construction services by using bonuses to replace
14 the preferences required under AS 36.30.

15 (b) Notwithstanding the provisions of AS 36.30, if the commissioner determines in
16 writing that using innovative construction procurement methods for the procurement of
17 construction contracts would be in the best interests of the state, the commissioner may, by
18 regulation, adopt procedures different than those provided under AS 36.30 as necessary to use
19 bonuses instead of preferences in the procurement of construction contracts. The
20 determination must find that the innovative methods are not contrary to the intent and
21 purposes of AS 36.30, demonstrate that the innovative methods are in the best interests of the
22 state, and describe how the innovative methods modify the procurement methods and
23 procedures of AS 36.30.

24 (c) Within 15 months after the pilot program begins, the commissioner shall report
25 to the legislature on the construction contracts awarded during the first year of the pilot
26 program. Within 27 months after the pilot program begins, the commissioner shall report to
27 the legislature on the construction contracts awarded during the second year of the pilot
28 program.

29 (d) The legislature may review the pilot program at any time during the program and
30 may make the program permanent or broaden the scope of the innovative procurement
31 program.

- 1 (e) In this section,
2 (1) "best interests of the state" means that the proposed action would provide
3 (A) an economic benefit to the private businesses and citizens of the
4 state;
5 (B) an economic benefit to state government; and
6 (C) greater administrative efficiencies than existing procedures provide;
7 (2) "commissioner" means the commissioner of transportation and public
8 facilities.

9 * Sec. 14. AS 36.30.540(a)(6), enacted by sec. 3 of this Act, applies to reports due after
10 the effective date of this Act.

11 * Sec. 15. IMPLEMENTATION REPORTS. The first report under AS 36.30.540(b),
12 enacted by sec. 4 of this Act, is due January 15, 1995, and must cover the activities of the
13 reporting state agency since the effective date of this Act.

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
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SECTIONAL ANALYSIS FOR SB 212: "BUY ALASKA BILL"

Section 1: Findings, Purpose, and Intent.

Section 2: Amends AS 36.30.130, Public Notice of Invitation to Bid, to encourage procurement officers to restrict notice of contract solicitation to Alaskan suppliers and providers of services desiring to compete for state contract work, unless specifically requested by an out-of-state contractor. (This practice already in DOT/PF.)

Section 3: Amends AS 36.30.540, Procurements Report to the Legislature, to require that the commissioner's report on procurement to the legislature include the number of bidders located in the State and out-of-state that bid or made proposals on procurements. This will allow the legislature to track the success of the procurement reforms. This section also would require annual instead of biennially reports.

Section 4: Amends AS 36.30.540 to require State agencies subject to the State policy on procurement for investment services (Section 9) to submit a report to the legislature by January 15 of each year reporting on its progress in implementing the policy.

Sections 5, 6, and 7: Amends AS 36.30.850(b)(13), (15), and (16), Exemptions to the Procurement Code, to subject the following procurements to both the reporting requirements in Section 4 and the State Policy on Procurement for Investment Services in Section 9:
1) Purchases of income producing assets for the State treasury or a public corporation of the State; 2) A contract that is a delegation of investment powers held by the commissioner of revenue; and 3) A contract that is a delegation of investment powers or fiduciary duties of the Board of Trustees of the Alaska Permanent Fund Corporation.

Section 8: Amends AS 36.30.850(b) to exempt from the procurement code contracts to be performed outside the country which require knowledge of the local customs and laws. (This is a technical amendment added last year at the request of the Administration.)

- SECTIONAL ANALYSIS

Section 9: Adds a new section, 36.30.895: State Policy for Procurement of Investment Services. This new provision clearly establishes that it is the State's policy to increase its utilization of brokerage and investment services provided by persons located in the State for investment and brokerage procurements, while leaving it up to the affected agency or public corporation to implement.

Section 10: Repeals and re-enacts AS 44.99.200, Production of Publications, to replace the requirement that State publications be produced at State-operated facilities with a requirement that State publications be produced at a private sector facility located in the State when practicable. In addition, it mandates that standards for the production of publications be established by the Department of Administration.

Section 11: Amends AS 44.99.210, Disclosures on Publication, to conform to Section 10.

Section 12: Repeals AS 44.99.230, Standards for State Publications. This provision was amended into 44.99.200 (Section 10).

Section 13: Establishes an Innovative Construction Procurement Methods Pilot Program within the DOT/PF for a period of two years. This program will allow the department, through regulation, to use bonuses to replace the current preferences required under AS 36.30.

The commissioner must first determine in writing that using the innovative methods is in the best interests of the state, not contrary to the intent and purposes of the current preference system, and describe how the innovative methods modify the procurement procedures of 36.30. The commissioner shall make two reports to the legislature on the construction contracts awarded under the pilot program 15 and 27 months after it begins.

Section 14: Establishes that report requirements under Section 10 of this act apply to reports due after the effective date of this act.

Section 15: Establishes that the first report under Section 4 of this act is due January 15, 1995.

No.	Statutory Reference	Agency	Division	Summary	To Whom	Timing *	Currently Produced ?	Cost	Agency Recommendation
1	05.05.030(a)	DCED	Occupational Licensing	Study semi-professional and professional athletic programs of the state and report annually to the Governor. The report shall include recommendations for the advancement and improvement of athletic programs in the state.	Governor		Yes	Existing staff time	Necessary, biennial acceptable (AMEND)
2	10.06.160	DCED	Banking & Securities	Annual list and weekly update of additions, deletions, and changes to domestic and authorized foreign corporations with the superior court of each judicial district	Superior Court	Weekly	Yes	Existing staff time + \$4,000 in postage and handling	Report not necessary (REPEAL)
3	12.62.017	DPS	State and municipal law enforcement agencies	Requires each state or municipal agency to submit an annual report to the commission in the form required.	Governor's Commission on the Administration of Justice		No, Commission has not met in last 8 years.	N/A	Report not necessary (REPEAL)
4	14.36.010(b)(4)	DOE		DOE shall evaluate the approved plan of operation for community school program at least once each four years and report to the legislature annually on the community school programs evaluated in the preceding year.	Legislature	Before 15th day of session	Yes	\$500 printing + 3 days staff time	Necessary, biennial acceptable (AMEND)
5	14.40.170(a)(9)	University of Alaska	Bd of Regents	Board of Regents must submit a report on the expenditures made during the preceding year from funds derived from sales, leases, exchanges or transfers of land conveyed to U of A in settlement of claims to land granted to state in accordance with Act of 3/4/15.	Legislature	Within 1st 10 days of session	Yes, in U of A report to Legislature in December	Existing staff time	Necessary, biennial acceptable (AMEND)
6	14.40.190	University of Alaska	Bd of Regents	Board of Regents report on the condition of University property, of all receipts and expenditures, including the administration and disposition of appropriated and restricted funds, and of educational and other work performed.	Legislature	Beginning of session	Yes	Existing staff time	Necessary, biennial acceptable (AMEND)
7	14.42.030(a)(5)	DOE	Post Secondary Commission	Commission submits a report to the legislature which recommends necessary or desirable changes in the programs of several segments of the total complex of public and private post-secondary education in Alaska.	Legislature	Within 10 days of session	No, annual assessment underway expected to replace report	N/A	Report not necessary (REPEAL)
8	15.13.110(d)	DOA	APOC	APOC must within 60 days prepare a summary of campaign supplier transactions by candidate or group. This report was originally required when the campaign disclosure law included expenditure limits as a check to insure that candidates did not exceed the statutory expenditure limits.	Public suppliers to campaigns	60 days after election	No, originally required when campaign disclosure laws included expenditure limits	N/A	Report not necessary (REPEAL)

LEGEND:

N/A = Not available

N/R = Not reported

* Unless otherwise noted, annually

No.	Statutory Reference	Agency	Division	Summary	To Whom	Timing *	Currently Produced ?	Cost	Agency Recommendation
9	16.05.130(b)	ADF&G	Legislature	Waterfowl Tag Fee Account within the Fish and Game Fund. Report annually to the public and the legislature on the use of money derived from waterfowl conservation tags and limited edition prints.	Legislature	Prior to April 15	No	N/A	Necessary, biennial acceptable (AMEND)
10	16.05.825(c)	ADF&G	Legislature	Upland Game Bird Release Program. Report annually the results of tagging game birds released and compilation of harvest statistics.	Legislature		No, department does not release game birds	N/A	Report not necessary (REPEAL) (Consider repeal of entire section)
11	18.20.100	DHSS	Medical Assistance	Regulation of Hospitals. DHSS shall prepare and publish an annual report of its activities and operations under 18.20.020 - 130.	Public		No	N/A	Report not necessary (REPEAL)
12	18.65.260(a)	DPS	Police Standards Council	The council may accept donations. Any donations will be detailed in the council's annual report.	DPS		No, council formerly funded, no report in 11 years	N/A	Report not necessary (REPEAL)
13	18.67.170	DPS	Violent Crimes Compensation Board	Board report annually to governor and legislature on its activities including a brief description of the facts of each case and amount compensated.	Governor/ Legislature		Yes, in Jan	\$3,035 Printing \$1,035 + staff time, \$2,000	Necessary, biennial acceptable (AMEND)
14	19.10.140	DOT/PF		DOT/PF establishes a continuing 5-yr long-range program for highway construction and maintenance. A statement of the program shall be submitted annually. The long-range plan must include in detail the program developed under 19.10.150	Governor/ Legislature		Yes, in Feb	\$303,000 Printing \$3,000 + 13,500 hours at a cost of \$300,000 (includes Hdqtrs & 3 regions)	Necessary, biennial acceptable (AMEND)
15	19.30.233(a)-(b)	DOT/PF		By October 1 a local government that has received Local Service Roads & Trail money shall prepare a report showing the use of the money in the last 12 months. No later than December 1 the commissioner shall prepare a report showing the use of the funds & the status of all projects for which DOT/PF has responsibility.	DOT/PF/ Governor	Oct 1 & Dec 1	No, reports are not critical to Agency operations	N/A	Reports not necessary (REPEAL)
16	24.45.031(a)(4)	DOA	APOC	APOC administers the statute on regulation of lobbying and will prepare and publish annually a report to the governor, the legislature and the public.	Governor/ Legislature/Public	By February 1	Yes, combined with APOC biennial report under AS 15.13.030(9)	Existing staff time	Necessary, biennial acceptable (AMEND)

No.	Statutory Reference	Agency	Division	Summary	To Whom	Timing *	Currently Produced ?	Cost	Agency Recommendation
17	26.05.190(b)	DM&VA	Adjutant General	Each year the Adjutant General shall prepare a detailed report of all transactions of the Adjutant General's office showing the receipts and expenditures of the office for the preceding year.	Governor	Before January 2	No, redundant with information provided by AKSAS	N/A	Report not necessary (REPEAL)
18	26.10.010	DM&VA	Veterans Affairs	The department shall submit a report of its activities relating to veterans services for the preceding year.	Governor	Before January 15	No	N/A	Report not necessary (REPEAL)
19	29.60.420(a)	DCED		Community Facilities Grants. DCED report annually to the Legislature about grants made under 29.60.400.	Legislature		No, program not funded since 1985	N/A	Report not necessary (REPEAL)
20	36.10.130	DOL	Administrative Services Division	The Commissioner of Labor and the Attorney General shall report annually on the status of employment of residents of the state, the effect of non-resident employment and methods to increase resident hire.	Governor/ Legislature	By January 31	Yes	\$53,229 Printing \$3,229 Staff for 10 mos \$40,000 + data processing of \$10,000	Necessary, biennial acceptable. (AMEND) (Recommend 3-year sunset to coincide with STEP Bill.)
21	37.07.020(d)	Office of Governor	OMB	The Governor shall report annually to the legislature the long-range fiscal and economic consequences of (1) alternate levels of capitalization of the investment funds (2) alternate investment policy for general fund surplus	Legislature	Before the start of session	No, present form "archaic" alternate form for info might be useful	N/A	Report not necessary (REPEAL)
22	37.10.050(c)	DOR		DOR shall publish in newspaper in each judicial district the amount of state money deposited in each bank or financial institution. Copy of report to the legislature.	Legislature/ Public	In June & December	Yes	\$1,200 per year	Report not necessary; serves no purpose today (REPEAL)
23	38.05.300(b)	DNR	Land & Water	Written report which describes and shows the location of all classifications of state land made under this section during the preceding year.	Legislature	Not later than Feb 1	Yes	Included with land bank report under AS 38.04.020	Report not necessary; duplicates info in land bank report AS 38.04.020 (REPEAL)
	39.25.195(h)	DOA	Personnel	Director of Personnel report to the legislature on no. permanent and emergency hire practices in state government.	Legislature	Within 1st 10 days of session	Yes	\$1,900 Printing \$400 + staff time 40-60 hours, \$1,500	Report not necessary; reporting may be inconsequential (REPEAL)
25	39.30.070	DOA	Retirement & Benefits	DOA shall study the problem of old age and survivors' insurance protection for employees of local governments and their instrumentalities and report to the legislature covering the administration of 39.30.010-080 during the preceding year.	Legislature	Beginning of session	No, Financial administration moved to IRS in 1987	N/A	Report not necessary (REPEAL)

No.	Statutory Reference	Agency	Division	Summary	To Whom	Timing *	Currently Produced ?	Cost	Agency Recommendation
26	39.50.050(d)	DOA	APOC	APOC is required to publish copies of Conflict of Interest Statements to facilitate the filing of lobbyist reports. Information is made available on an individual basis for lobbyists.	Lobbyists	Convening of Legislative Session	No, however, a list and/or copies of reports are available upon request.	Existing staff time	Report not necessary (REPEAL)
27	41.15.240	DNR	Forestry	Fire Suppression Fund. DNR shall keep records showing income and expenditures of the fund and report to the governor and the legislature on the operation of the fund.	Governor/ Legislature	No later than 10th day	No, appropriations to fund no longer made; now in Forestry's budget	N/A	Report not necessary (REPEAL)
28	41.35.360	DNR	Alaska Historical Commission	The commissioner shall make annual report to the Governor on the activities of the Alaska Historical Commission.	Governor		No separate report, info provided in quarterly newsletter	N/A	Report not necessary (REPEAL)
29	43.05.010(5)	DOR	Commissioner	Annual report to the governor for transmittal to the legislature on the Agency and state laws relating to taxation and tax administration.	Governor/ Legislature		No, report has not been produced for at least 10 years	N/A	Report not necessary (REPEAL)
30	43.20.014(c)	DOR		Alaska Net Income Tax Act. Income Tax Education Credit. DOR must report to LB&A on the credits taken. In addition each public college and university include contributions received in their operating budget request.	LB&A	By September 30	No, the credit is infrequently used	N/A	Report not necessary (REPEAL)
31	43.40.010(i)	DOT/PF		Motor Fuel Tax/Highway Fuel Tax Account. DOT/PF shall submit a budget covering anticipated revenues and their expenditure for approval by the legislature. This budget covers the year following adjournment.	Legislature	Within 30 days after legislature convenes	Yes, info is reported in department budget request & appropriation bill	Existing staff time	Separate report not necessary (REPEAL)
	43.65.018(c)	DOR		Mining Business Education Credit. DOR reports to LB&A on the number of credits taken. Each public college or university include contribution in annual operating budget.	LB&A	September 30 each year	No, costs outweigh the benefits	N/A	Report not necessary (REPEAL)
33	43.75.018(c)	DOR		Fisheries Business Education Credit. DOR reports to LB&A on the number of credits taken. Each public college or university include contribution in annual operating budget.	LB&A	September 30 each year	No, the credit is used infrequently	Existing staff time	Report not necessary (REPEAL)
34	44.09.017(c)	DOA		DOA shall contract for the minting and sale of commemorative gold medallions. The contractor shall submit a report on the production and sale of the medallions.	Legislature	Before January 20	Yes	Existing staff time	Report not necessary; no requests for report, info would continue to be available (REPEAL)

No.	Statutory Reference	Agency	Division	Summary	To Whom	Timing *	Currently Produced ?	Cost	Agency Recommendation
35	44.19.035	Office of Governor		Until the Jones Act is repealed the governor will publish an annual report documenting the harmful effects of the Act on Alaska Commerce.	Legislature	No later than convening day	No	N/A	Report not necessary; unlikely report will result in repeal of Jones Act (REPEAL)
36	44.19.144(a)(3)	Office of Governor	OMB	OMB Director will make an annual report to the Governor on the activities of the office.	Governor		No	N/A	Report not necessary; staff meetings provide Governor with weekly updates on OMB (REPEAL)
37	44.19.145(d)(2)	Office of Governor	OMB	OMB shall prepare an integrated report on the long-range development program of the state and submit it for inclusion into the governor's report to the legislature.	Governor		No	N/A	Report not necessary; function is primarily the responsibility of DCFD, which provides monthly reports on its activities. (REPEAL)
38	44.19.161(4)	Office of Governor	OMB/ Governmental Coordination	Alaska Coastal policy Council shall submit to the legislature annually that portion of the Coastal Management Program approved or amended by the Council during the preceding year.	Legislature	No later than 10th day of session	Yes	\$6,000 Printing \$3,000 + staff time of 100 hours, \$3,000	Necessary, biennial acceptable (AMEND)
39	44.19.188	Office of Governor	Yukon-Taiya Comm.	The Yukon-Taiya Commission shall report annually concerning the work of the commission and shall recommend legislation by Congress and the state to carry out the purposes of 44.19.181 - 188.	Governor/ Legislature		No	N/A	Report not necessary; commission no longer functioning (REPEAL)
40	44.19.564(a)(4)	Office of Governor	OMB/DOA Info Svc. Telecommunications	Information Council. Publish a report on the activities of the council.	Public	In the 1st quarter calendar year	No. Report has not been done due to lack of staff	N/A	Report not necessary (REPEAL)
41	44.21.310(a)(2)	DOA	Telecommunications	Make an annual report to the governor and legislature on the activities of the Agency.	Governor/ Legislature		Included in statewide information mgmt plan	\$1,134	Included in statewide plan, separate report not necessary (REPEAL)
42	44.21.315(c)	DOA	Telecommunications	DOA annual report on the current FY instructional telecommunications activities. After public hearings submit annually an updated long-term development plan prepared with DOE/UA/Local School.	Governor/ Legislature		Included in statewide information mgmt plan		Included in statewide plan, separate report not necessary (REPEAL)
43	44.42.065(a)	DOT/PF		DOT/PF shall perform energy audits on public buildings at least once every seven years. Submit an annual report on the audits done each year.	Legislature	Not later than Feb 1	No, unit producing report disbanded	N/A	Report not necessary (REPEAL)

No.	Statutory Reference	Agency	Division	Summary	To Whom	Timing *	Currently Produced ?	Cost	Agency Recommendation
44	44.68.240	DOT/PF		Equipment Maintenance & Operation of Supply Depots. There is a working capital fund established for the use of DOT/PF. DOT/PF submit a report on the operation of the fund.	Governor/ Legislature	When budget is submitted	No, info reported in DOA Annual Fin Rept for the State	N/A	Report not necessary (REPEAL)
45	44.83.960	DCED	APA/AEA	DCED assisted by the Alaska Authority will prepare and annually revise a long-term energy plan and the annual revisions will be submitted to commissioners for review and then to the Governor. After approval from Governor, submit to legislature.	Governor/ Legislature	Not later than Feb 1	No, lack of funds to continue updates & revisions to plan	N/A	Report not necessary (REPEAL)
46	44.38.210	DCED	AIDEA	Alaska Industrial Development and Export Authority. Annual report including financial statement audited by an independent outside auditor.	Governor/ Legislature/Public	By Jan 10	Yes	\$10,000 Six staff at various grades levels Est.hrs. 157.5 Est.Cost \$3,728.00	Necessary, biennial acceptable (AMEND)
47	46.03.020(11)	DEC	Commissioner	Report annually to the legislature permits that have been included or deleted under 46.35 (Environmental Procedures Coordination).	Legislature		No permits are being issued under 46.35; hence, nothing to report	N/A	Report not necessary. (REPEAL)
48	46.03.032(k)	DEC		Alaska Clean Water Fund. Provide to the legislature an annual report on the clean water fund.	Legislature	On/before 1st day of session	Yes	\$900 printing < \$500, staff time	Necessary, biennial acceptable (AMEND)
49	47.07.040	DHSS	Medical Assistance	Provide an annual report to the legislature	Legislature	Mar 15	N/R		(REPEAL that portion of the statute that relates to providing an annual report)
50	47.07.072	DHSS	Medical Assistance	The Commission shall submit to the Governor a report on the prospective payments made under this chapter during the current FY and an estimate of the payments that will be made during the remainder of the current FY and the next FY.	Governor	Not later than Sep 30	No, currently reported in DHSS budget	N/A	Report not necessary (REPEAL)
51	47.10.300(4)	DHSS	DFYS	DHSS report each year on programs for runaway minors in the state.	Governor/ Legislature	Each Jan	No	N/A	Report not necessary (REPEAL)
52	47.25.540	DHSS	Public Assistance	The department shall make a report to the Governor for the preceding year stating the number of recipients	Governor	Within 90 days end CY	Yes	N/R	Report not necessary (REPEAL)
53	47.45.100(4)	DOA	Pioneer Benefits	DOA publish an annual report showing the financial condition of the Alaska Longevity Bonus fund.	Public		No, bonus funded by GF appropriation in oper budget	N/A	Report not necessary (REPEAL)

No.	Statutory Reference	Agency	Division	Summary	To Whom	Timing *	Currently Produced ?	Cost	Agency Recommendation
54	47.55.010(c)(5)	DOA	Pioneer Benefits	Annual report on the operation of Pioneer Homes.	Legislature		No	N/A	Necessary, biennial acceptable (AMEND)



Senate Economic Task Force

State Capitol, Room 101, Juneau, Alaska 99801
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Chair
Senator Tim Kelly
*Chairman, Senate Labor
and Commerce Committee*

Vice-Chair
Senator Bert Sharp
*Chairman, Senate
Transportation Committee*

Member
Senator Rick Halford
Senate President

Member
Senator George Jacko
*Chairman, Senate Rules
Committee*

Member
Senator Robin Taylor
*Chairman, Judiciary
Committee*

Member
Senator Fred Zharoff
Senate District C

Member
Senator Suzanne Little
Senate District D

MEMORANDUM/FAX TRANSMITTAL

TO: Senator Rick Halford
Senator Bert Sharp
Senator George Jacko
Senator Robin Taylor
Senator Fred Zharoff
Senator Suzanne Little

FROM: Senator Tim Kelly, Chair *TDK*
Senate Economic Task Force
Senate Labor & Commerce Committee

DATE: November 8, 1993

RE: November 17th Senate Economic Task Force/
Senate Labor & Commerce Committee Hearing
on SB 212, "Buy Alaska" legislation.

The Senate Economic Task Force will be holding a joint hearing teleconferenced statewide with the Senate Labor & Commerce Committee on November 17th at 1:00 p.m. chaired in Anchorage. Testimony will be taken on Senate Bill 212, the "Buy Alaska" bill.

This legislation aims to increase the share of State purchases of goods and services going to Alaskans. I've attached the bill, an overview, and sectional analysis for your reference. In addition, I've attached correspondence to Commissioners Darrell Rexwinkel and Bruce Campbell with specific questions regarding the current efforts to utilize Alaskan businesses. (Similar letters were sent to Commissioner Usera and Permanent Fund Board Executive Director Bill Scott, respectively.)

Notices will be sent to 1,500 Alaskan businesses that have done or attempted to do business with the State. This should be an informative and constructive meeting, and your attendance would be greatly appreciated. If you have any questions, please contact myself or my staff, Josh Fink, at 258-8180.

Thank you. I hope to see you there.

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

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Juneau, Alaska 99801-2196

Historical and Statutory Notes**1989 Legislation**

St.1989, c. 341, § 14, an emergency act, approved Aug. 15, 1989, redesignated subds. (7) to

(13) as subds. (5) to (11), and in subd. (11), substituted "subdivision (6), (7), (8), (9) or (10)" for "subdivision (8), (9), (10), (11) or (12)".

§ 23. Management of funds**(1) State Employees' Retirement System and Teachers' Retirement System.**

[See main volume for text of paragraphs (a) to (c) of subdivision (1)]

(d) Subject in each instance to the approval of the investment committee established under the provisions of paragraph (a), the state treasurer shall invest and reinvest such funds, to the extent not required for current disbursements as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section provided that the state treasurer shall not invest or reinvest such funds in any state-chartered bank having a descriptive rating of (c) or (d) under section fourteen of chapter one hundred and sixty-seven or any federally insured depository institution having an assigned rating of (C) or (D) under section 807 (b)(2) of the Community Reinvestment Act of 1977, 12 USC 2901 et seq.; and provided, further, that:

(i) no funds are to be invested directly in mortgages or in collateral loans;

(ii) after January first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through its subsidiaries has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall remain invested in the stocks, securities or other obligations of any company doing business in or with the Republic of South Africa. Any proceeds of sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in the commonwealth so long as such use is consistent with sound investment policy;

(iii) After July first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual or corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military air craft for use or deployment in any activity in Northern Ireland, and no assets shall remain invested in the stocks, securities or other obligations of any such company so engaged. Any proceeds from sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in the commonwealth so long as such use is consistent with sound investment policy;

(iv) Notwithstanding the provisions of the clauses (ii) and (iii), if sound investment policy so requires, the investment committee may vote to spread the sale of investments described in said clauses over no more than three years, so that no less than one-third the value of said investments is sold in any one year. So long as any funds remain invested in any bank, financial institution or firm so referred to in clause (ii) or (iii), the investment committee shall annually, on or before January thirty-first, file with the clerk of the senate and the clerk of the house of representatives a report listing all such related investments held by the fund and their book value as of the preceding December first.

[See main volume for text of subdivisions (2) to (4)]

Amended by St.1990, c. 102, § 3.

Historical and Statutory Notes**1990 Legislation**

St.1990, c. 102, § 3, an emergency act, approved July 6, 1990, and by § 42 made applicable to any examination report issued with respect to an examination commenced after July 1, 1990, in

the introductory paragraph of subd. (1)(d), added, "the state treasurer shall not invest or reinvest such funds in any state-chartered bank having a descriptive rating of (c) or (d) under section fourteen of chapter one hundred and sixty-seven or any federally insured depository institution having an assigned rating of (C) or (D) under

section 807(b)(2) of the Community Reinvestment Act of 1977, 12 USC 2901 et seq.; and provided, further, that".

Section 46 of St.1990, c. 102, provides:

"The provisions of this act are severable, and if any of its provisions or an application thereof shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions of other applications thereof."

Related Laws:

St.1990, c. 150, § 26, approved Aug. 1, 1990, and by § 383 made effective as of July 1, 1990, provides:

"Notwithstanding the provisions of any general or special law to the contrary, no funds of the

state employees' retirement system, the state teachers' retirement system, or the Pension Reserves Investment Trust Fund shall be loaned or pledged to the commonwealth, or used for the purchase of any bond, note or other obligation of the commonwealth without the prior approval of the investment committee established under paragraph (a) of subdivision (1) of section twenty-three of chapter thirty-two of the General Laws or of the pension reserves investment management board, as applicable, and the prior written notification of the house and senate committees on ways and means; provided further, that the requirements of this section shall be in addition to and not in lieu of any other requirements established under any general or special law for the investment and use of such funds."

PENSIONS FOR JUSTICES AND COURT OFFICERS

§ 65C. Surviving spouses of judges

Notes of Decisions

2. In general

So-called "pop-up" provision provided by this section—which provides that if a judge elects a reduced pension allowance with a survivor benefit for his or her spouse, but the spouse prede-

ceases the judge, the judge will be entitled to a full pension allowance—does not apply to judges who retired before the effective date of the amendment, January 12, 1988, regardless of whether they have subsequently been recalled. Op.Atty.Gen., March 2, 1989.

§ 65D½. Inactive member; appointment; election to become member

Notwithstanding any provision of this chapter to the contrary, any member inactive of a retirement system appointed by the governor to a position as a chief justice, justice, associate justice, judge, associate judge or special justice may elect within thirty days of such appointment to become a member in service of the system pertaining to the position to which he is appointed, subject to the provisions of sections sixty-five A to sixty-five D, inclusive; provided, however, that any such member inactive who is receiving or had received a retirement allowance shall repay into the system from which he is receiving or had received such allowance the total amount of any such allowance received from the date of his retirement to the date of his again becoming a member in service.

Added by St.1989, c. 608, § 1.

Historical and Statutory Notes

1989 Legislation

St.1989, c. 608, § 1, was approved Dec. 19, 1989.

Section 2 of St.1989, c. 608, provides:

"The provisions of this act shall apply to any inactive member of a retirement system serving in an appointed office as described in said section sixty-five D ½ of chapter thirty-two of the General Laws on or after the effective date of this act, and making the election provided for in said section sixty-five D ½ within thirty days of said effective date or of said appointment, whichever is later. Any such inactive member so serving and electing shall pay to the annuity savings fund of the system pertaining to the position to which he is appointed an amount equal to that which would have been withheld as regular deductions from his regular compensation, together with regular interest thereon, for the period

of his service in such appointed office prior to such election, had such service been rendered as an active member of said system. Upon completion of such payments, which shall be made in one sum or in installments, as the state retirement board shall prescribe, such member shall receive service credit for said period of service. In the event any new retirement allowance becomes effective for him before the completion of such payment, such member shall, in addition to credit for his actual membership service rendered since the date of such election, be entitled to credit for that proportion of said period which the total amount of payments actually made, together with regular interest thereon to the date his allowance becomes effective, bears to the total amount of what such payments, together with regular interest thereon to the effective date such allowance becomes effective would have been had the member made payment there-

(13) Notwithstanding any other provision of this section or of any other general or special law, any system accepting the provisions of this section shall not be required to appropriate the normal cost of any benefits accepted under subdivision (8), (9), (10), (11) or (12) for any year prior to the fiscal year in which the first annual pension assistance grant is payable to such system.

Added by St.1987, c. 697, § 76.

¹ So in original; there are no subsections (5) and (6).

Historical Note

St.1987, c. 697, § 76, an emergency act, was approved Jan. 12, 1988.

§ 23. Management of funds

(1) State Employees' Retirement System and Teachers' Retirement System. (a) There shall be an unpaid investment committee which shall have general supervision of the investment and reinvestment of the funds of the state employees' retirement system and of the teachers' retirement system. Such committee shall consist of three members as follows: the state treasurer who shall be a member ex officio and who shall serve as chairman, the commissioner of banks who shall be a member ex officio, and a third member who shall be qualified by training and experience in the investment of funds as the result of having been principally employed in such occupation for a period of at least ten years and who shall be chosen by the other two for a term of three years. If a third member is not chosen by the other two members before February first, nineteen hundred and forty-six, in the first instance, and thereafter within thirty days after the expiration of the term of the third member, the governor shall appoint a third member for a term of three years. Each member of such committee shall continue to hold office until the expiration of his term and until the qualification of his successor. The state treasurer shall furnish such clerical assistants as may be required to carry on the work of the investment committee.

(b) The state treasurer shall be the treasurer-custodian of the state employees' retirement system and of the teachers' retirement system and shall have the custody of the funds and securities of each such system. The funds of each such system shall be invested separately or in one or more combined investment funds established by the state treasurer. The state treasurer may cause any stock, bond, or security of each such system to be held for its account and not in a fiduciary capacity to be registered and held in the name of a partnership or a cooperative nominee named by him. The members of the partnership or the cooperative nominee shall be restricted to the state treasurer and the first, second and third deputy treasurer, as the state treasurer may so designate. Payments from the funds of each such system shall be made by the state treasurer only upon vouchers signed by two persons designated by the respective boards of such systems by a vote a duly attested copy of which, bearing upon its face specimen signatures of such

persons, shall be filed with the state treasurer as his authority for making payments upon vouchers so signed.

(c) The state treasurer shall annually, on or before May first, file in the office of the commissioner of public employee retirement and with the secretary of the appropriate board, on a form prescribed by the commissioner, a sworn statement of the financial condition of each such system as of December thirty-first of the previous year. The board of each such system shall, subject to the same conditions and requirements, file in the office of the commissioner of public employee retirement a sworn statement of the financial condition of such system as of December thirty-first of the previous year and of all the financial transactions thereof during the previous year. The commissioner may for cause shown extend the time for filing any such statement.

(d) Subject in each instance to the approval of the investment committee established under the provisions of paragraph (a), the state treasurer shall invest and reinvest such funds, to the extent not required for current disbursements as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section provided that:

(i) no funds are to be invested directly in mortgages or in collateral loans;

(ii) after January first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through its subsidiaries has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall remain invested in the stocks, securities or other obligations of any company doing business in or with the Republic of South Africa. Any proceeds of sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in the commonwealth so long as such use is consistent with sound investment policy;

(iii) After July first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual or corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military air craft for use or deployment in any activity in Northern Ireland, and no assets shall remain invested in the stocks, securities or other obligations of any such company so engaged. Any proceeds from sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in the commonwealth so long as such use is consistent with sound investment policy;

(iv) Notwithstanding the provisions of the clauses (ii) and (iii), if sound investment policy so requires, the investment committee may vote to spread the sale of investments described in said clauses over no more than three

years, so that no less than one-third the value of said investments is sold in any one year. So long as any funds remain invested in any bank, financial institution or firm so referred to in clause (ii) or (iii), the investment committee shall annually, on or before January thirty-first, file with the clerk of the senate and the clerk of the house of representatives a report listing all such related investments held by the fund and their book value as of the preceding December first.

(2) **Systems for Counties, Cities, Towns, etc.** (a) The county, city or town treasurer, the secretary-treasurer of the Massachusetts Turnpike Authority, the treasurer of the Massachusetts Bay Transportation Authority, the treasurer of the Massachusetts Housing Finance Agency, the secretary-treasurer of the Massachusetts Port Authority, the treasurer of the Blue Hills Regional Vocational School system, the treasurer of the Greater Lawrence Sanitary District and the treasurer of the Minuteman Regional Vocational Technical School District shall be the treasurer-custodian of the system established under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws, in any county, city or town, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, the Massachusetts Housing Finance Agency, the Massachusetts Port Authority, the Blue Hills Regional Vocational School system, the Greater Lawrence Sanitary District or the Minuteman Regional Vocational Technical School District, as the case may be, and shall have the custody of the funds of any such system. Payments from such funds shall be made by him only upon vouchers signed by two persons designated by the board of any such system by a vote a duly attested copy of which, bearing upon its face specimen signatures of such persons, shall be filed with the treasurer-custodian as his authority for making payments upon vouchers so signed. No voucher shall be drawn unless it shall have been previously authorized by vote of the board.

(b) The board of each such system shall invest and reinvest the funds of such system, to the extent not required for current disbursements in the PRIT Fund pursuant to subdivision (8) of section twenty-two, in the PRIT Fund by purchasing shares of said fund in one or more combined investment funds established by the state treasurer, or as follows:

(i) In securities, other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided that:—

(A) Not more than twenty per cent of the assets of any such system shall be invested in railroad obligations, nor shall more than two per cent of said assets be invested in the obligations of any one operating railroad corporation, including its direct and assumed obligations and including the obligations of lessor railroad corporations which derive seventy-five per cent or more of their income from leases of their railroads to said operating railroad corporation.

(B) Not more than thirty-five per cent of the assets of any such system shall be invested in the bonds of the telephone companies, nor shall more than

three and one-half per cent of such assets be invested in the bonds of any one telephone company.

(C) Not more than fifty per cent of the assets of any such system shall be invested in the bonds of public service companies, nor shall more than four per cent of such assets be invested in the bonds of any one such corporation.

(D) Not more than fifteen per cent of the assets of any such system shall be invested in obligations made eligible for investments under the provisions of section fifteen B of chapter one hundred and sixty-seven and section forty-nine of chapter one hundred and sixty-eight, in effect on June thirtieth, nineteen hundred and eighty-three and included on the list of investments pursuant to section fifteen A of chapter one hundred and sixty-seven, nor shall more than one per cent of such assets be invested in the obligations of any one obligor so made eligible for investment.

(E) Not more than twenty-five per cent of the assets of any such system shall be invested in bank stocks, bank holding company stocks, and insurance companies stocks, nor shall more than two and one-half percent of such assets be invested in the stock of any one bank or insurance company.

(ii) In deposits in the savings funds of savings banks organized under the laws of the commonwealth; and

(iii) In paid-up shares and accounts of and in co-operative banks.

(iv) In share accounts of federal savings and loan associations located in the commonwealth.

(v) In mortgage pass-through securities and mortgage-backed bonds which are rated Aa or better by Standard and Poor's or any other independent rating service designated by the investment committee and issued by a mortgage lender, as herein defined, or issued through a conduit pooling of loans of such mortgage lenders. Any corporate trust, as defined in section one of chapter sixty-two, organized and operated exclusively for the purpose of acting as a conduit for pooling such loans under this clause or clause (v) of paragraph (d) of subdivision (1), or both, shall be exempt from taxation under chapter sixty-two.

Each mortgage pass-through security and mortgage-backed bond shall be secured or backed by mortgage loans made or acquired by a mortgage lender on residential real estate located in the commonwealth. Each such loan shall generally meet the standards expected of a reasonably prudent investor.

All proceeds received by a mortgage lender from the sale of mortgage pass-through securities and mortgage-backed bonds to the retirement systems shall be used solely for mortgage loans on real estate located in the commonwealth.

The word "mortgage lender" as used herein, shall mean any savings bank, co-operative bank, credit union, trust company, federal savings and loan association, national banking association or mortgage banking company which is incorporated or maintains an office in the commonwealth; and provided, however, that any savings bank or group of savings banks may

participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by the Mutual Savings Central Fund, Inc., as defined in section one of chapter forty-four of the acts of nineteen hundred and thirty-two, and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause, and shall represent obligations of said fund and not of any bank or group of banks; provided, further, that any co-operative bank or group of co-operative banks may participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by The Co-operative Central Bank, as defined in section one of chapter forty-five of the acts of nineteen hundred and thirty-two and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause and shall represent obligations of said central bank and not of any such bank or group of banks; and provided further that any credit union or group of credit unions may participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by the Central Credit Union Fund, Inc., as defined in section one of chapter two hundred and sixteen of the acts of nineteen hundred and thirty-two, and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause, and shall represent obligations of said fund and not of any such credit union or group of credit unions.

(vi) In group annuity contracts or other retirement plan funding agreements issued by a life insurance company authorized to transact business in the commonwealth.

(vii) in shares of one or more combined investment funds approved by the commissioner of banks which invest in accordance with the provisions of subdivision (3) in stocks, bonds, notes and other interest bearing obligations appearing on the list prepared by the commissioner of banks under section fifteen A of chapter one hundred and sixty-seven.

(c) The board of each such system shall designate one or more banks or trust companies, organized under the laws of the commonwealth or of the United States, in which the treasurer-custodian shall keep on deposit such sums as may be required for current disbursements; provided, that any such sum on deposit in any one bank or trust company shall not exceed ten per cent of the amount of the paid-up capital and surplus thereof. The board shall also designate one or more such banks or trust companies in which the securities of the system shall be kept under the name of the retirement system in one or more safe deposit boxes. The board, subject to rules promulgated by the commissioner, may deposit such securities in a securities depository registered with the Securities and Exchange Commission of the United States. Such securities may be kept under the joint custody of the treasurer-custodian and a member of the board other than the treasurer-custodian, who shall be designated by the board, or such securities may be kept by a custodian who shall be designated by the board, which custodian shall be a bank or trust company, organized under the laws of the commonwealth or of the United States. The board may cause any stock, bond or other security, or cash, of any such system to be registered and held, or deposited and held, in the name of one or more nominees appointed by him for the purpose of facilitating

security trading, money management and certificate delivery. The board shall designate the members of any such nominee only from among the following individuals: the assistant treasurers of the respective county, city, or town; any employee of a custodian that is authorized pursuant to this paragraph to have custody of securities or cash of a system; and the treasurer-custodian himself. Each individual so designated shall be covered with respect to his service on behalf of any such nominee by a fidelity bond, in such form and amount as the commissioner of public employee retirement may determine, which coverage may be by separate bond or by incorporation in a bond otherwise required by section three of chapter thirty-five, section thirty-five of chapter forty-one, section thirty-nine A of chapter forty-one or other applicable law or practice. Such custodian shall collect the interest and dividends on all securities deposited with it, shall collect all called and matured securities deposited with it, and shall deposit the same in a bank or trust company as directed by the board; shall advise the board of all such deposits, of all stock dividends, rights, calls and maturities of all securities deposited with it; shall purchase, sell, deliver, and receive securities on the order of the board; and shall prepare and deliver to the board a list, at such time as the board may require, of all securities held by it with their current market values. Such custodian may make a reasonable charge for such services.

(d) Any person who assists any board or member thereof in the purchase, sale, investment or reinvestment of the funds of any such system, without the written consent of the commissioner of public employee retirement after notice in writing by him to such board or member to desist therefrom as provided for in subdivision (4) shall be punished as provided for in section twenty-four.

(e) The board of each such system shall annually, on or before May first, file in the office of the commissioner of public employee retirement, on a form prescribed by him, a sworn statement of the financial condition of such system as of December thirty-first of the previous year and of all the financial transactions thereof during the previous year. The commissioner may for cause shown extend the time for filing any such statement.

(f) The board may employ any qualified bank, trust company, corporation, firm, or person to advise it on the investment of the fund and may pay for such advice.

(g) Clauses (i) to (vi), inclusive, of paragraph (b) shall not apply to the board of any local retirement system which upon application is determined by the commissioner to have a record of investment management which merits broader investment powers, provided that:—

(i) no funds are to be invested directly in mortgages or in collateral loans;

(ii) subsequent to the date of such determination no new investment of funds shall be made in any bank or financial institution which directly or through its subsidiaries has outstanding loans to the Republic of South Africa or its instrumentalities, and no new investment of funds shall be made in

stocks, securities or other obligations of any company doing business in or with the Republic of South Africa;

(iii) subsequent to the date of such determination no new investment of funds shall be made in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or development in any activity in Northern Ireland, and no new investment of funds shall be made in the stocks, securities or other obligations of any company so engaged. In making such determination the commissioner shall consider the diversification of the risk of the investments of such board, the return on the investments of such board, the past performance of the investment portfolio of such board and the extent and quality of professional advice received by such board regarding the investment of funds. Any such board shall invest and reinvest consistent with sound investment policy and the requirements of subdivision (3).

(2A) Pension Reserves Investment Management Board. (a) There shall be an unpaid pension reserves investment management board which shall have general supervision of the investment and reinvestment of the PRIT Fund established under the provisions of subdivision (8) of section twenty-two.

Such board shall consist of nine members as follows: the governor, ex officio, or his designee, the state treasurer, ex officio, or his designee, who shall serve as chairman of the board, a representative of a public safety organization appointed by the governor, a private citizen experienced in the field of investment or financial management appointed by the state treasurer, and a person who is not an employee or official of the commonwealth, appointed by the governor, an employee or retiree who is a member of the state teachers retirement system who shall be elected by the members in or retired from such a system for a term of three years in such a manner as the commissioner shall determine, a representative of a union which represents among its membership nonpublic safety municipal and state employees appointed by the treasurer, an employee or retiree who is a member of the state employees' retirement system who shall be elected by the members in or retired from such system for a term of three years in such a manner as the commissioner shall determine, and the commissioner of public employee retirement ex officio, the appointed members shall serve for four years, provided that the initial appointments shall be for the following terms.

The private citizen appointed by the state treasurer shall serve for one year, the retirement board member appointed by the governor shall serve two years, the representative of the teacher's union appointed by the governor for three years, the other appointees for a term of four years. Any vacancy among the appointed members that may occur before the expiration of a term shall be filled by an appointment by either the governor or the treasurer, whomever has the right of making the initial appointment. Any appointed member of the board, including members appointed to fill a vacancy shall be

eligible for reappointment. Any appointed member may be removed from his appointment for cause by the governor or the treasurer, whomever had the original right of making the appointment.

(b) Five members of the board shall constitute a quorum. The members of the board shall not receive a salary but shall be reimbursed for actual and necessary expenses. The provisions of chapter two hundred and sixty-eight A shall apply to all members of the board; provided, however, that the board may make investments in which a member has an interest or involvement if, however, such interest or involvement is disclosed in advance to the other members of the board and contemporaneously recorded in the minutes of the board; and provided, further, that no member having such an interest or involvement may participate in any particular matter, as defined in section one of chapter two hundred and sixty-eight A, relating to such investment.

(d) The PRIM board shall annually on or before May first, file with the clerk of the house of representatives and with the secretary of the retirement board of each system which is a participant in said fund, on a form prescribed by the commissioner, a sworn statement of the financial condition of said fund as of December thirty-first the previous year. The commissioner may for cause shown extend the time for filing any such statement.

(e) The PRIM board shall:

(i) act as trustees for each participating retirement system for which it invests or manages monies in accordance with the standard of care set forth in subdivision (3); provided, however, that the duties and obligations of the PRIM board and of participating or purchasing systems shall be set forth in a declaration of trust adopted by the PRIM board; and provided, further, that any declaration of trust and any amendments thereto adopted by said board shall be subject to the approval of the joint committee on public service; and provided, further, that if said committee takes no final action relative thereto within forty-five days of the date of the filing thereof with the clerk of the house of representatives and the senate, such declarations of trust and such amendments thereto shall be deemed to be approved;

(ii) employ an executive director as provided in paragraph (f);

(iii) employ investment advisors, legal counsel, and consultants as it deems necessary;

(iv) establish a formula to measure the value of the shares in said fund purchased by or held by participating retirement systems and other purchasing retirement systems;

(v) determine and allocate annually to participating and other purchasing retirement systems earnings on shares owned by said systems;

(vi) adopt an annual budget and supplemental budgets as deemed necessary by the board subject to the approval of the house and senate committees on ways and means; provided, however, that if the said committees has taken no final action to disapprove any such budget, within sixty days of its being filed with said general court it shall be deemed to be approved; and provided,

further, that if the general court disapproves any such budget within such sixty days, said board shall operate under the annualized budgetary level most recently approved pending the filing and subsequent approval of any other such annual or supplemental request;

(vii) approve or ratify decisions of the executive director;

(viii) formulate policies and procedures deemed necessary and appropriate to carry out its function;

(ix) maintain a record of its proceedings;

(x) undertake any other activities necessary to implement the duties and powers set forth herein;

(xi) File quarterly, on or before March first, June first, September first, and December first of each year, with the house and senate committee on ways and means and with the joint committee on public service a report detailing brokerage transactions, fees paid to investment consultants and managers, master trustee and custody fees, a detailed investment portfolio analysis describing all holdings in the PRIT Fund, and a budget status report detailing expenses by month; provided, however, that said analysis and said reports shall be made available on the first day of each month upon the request of the chairman of any said committees;

(xii) Assess fees to participating and other purchasing retirement systems for the reasonable and necessary expenses incurred by the board in managing the PRIT Fund, which shall be paid by the board from earnings of the PRIT Fund without appropriation and in conformance with the budgetary levels established pursuant to clause (vi);

(xiii) Acts as treasurer-custodian of the PRIT Fund and shall have the custody of the funds and securities of said fund.

(f) The PRIM board shall select an executive director who shall serve at the pleasure of the board. The provisions of sections nine A, forty-five, forty-six and forty-six C of chapter thirty, chapter thirty-one, and chapter one hundred and fifty E shall not apply to the executive director or any other employees of the board.

(g) The executive director, shall with the approval of the board:

(i) plan, direct, coordinate and execute administrative and investment functions in conformity with the policies and directives of the board;

(ii) employ professional and clerical staff as necessary;

(iii) report to the board on all operations under his control and supervision;

(iv) require state officials from any department or officials from any participating retirement system to produce and provide access to any financial documents the board deems necessary in the conduct of its investment activities;

(v) undertake any other activities necessary to implement the powers and duties set forth herein.

(h) Subject to the approval or ratification of the PRIM board, the executive director shall invest and reinvest such funds held by such board to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section; provided, however, that no funds are to be invested directly in mortgages or in collateral loans; provided, further, that no funds are to be invested in any bank or financial institution which directly or through its subsidiaries, has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall be invested in stocks, securities or other obligation of any company doing business in or with the Republic of South Africa; and provided, further, that no funds are to be invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or deployment in any activity in Northern Ireland, and no assets shall be invested in the stocks, securities or other obligations of any such company so engaged. The investment and fund management policies adopted by the PRIM board shall not be subject to any rules or regulations promulgated by the commissioner of public employee retirement governing the investment of funds by the retirement boards.

(i) at least two members of the PRIT board shall be minority people, as set forth in the definition of "Minority" contained in section forty C of chapter seven of the General Laws as added by section seven of chapter five hundred and seventy-nine of the acts of nineteen hundred and eighty.

(j) The PRIM board shall be subject to the provisions of sections thirty-nine A and sections forty (E) to forty (J), inclusive, of chapter seven.

(3) **Fiduciary Standards.** A fiduciary as defined in section one shall discharge his duties for the exclusive purpose of providing benefits to members and their beneficiaries with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and by diversifying the investments of the system so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

(4) **Orders to protect the system.** If the commissioner determines after a hearing that the investment or recordkeeping practices of any board are not being conducted with reasonable care, skill, prudence or diligence, he may order such board to take or desist from any action that in his judgment is necessary to preserve the integrity of the system. If the commissioner has reason to believe that the investment and recordkeeping practices of any board are not being conducted with reasonable care, skill, prudence or diligence, he may issue a temporary order which shall remain in effect until

an investigation, hearing and determination can be made. Violation of any such order shall be punished as provided for in section twenty-four.

Added by St.1945, c. 658, § 1. Amended by St.1950, c. 162, § 1; St.1954, c. 126, § 1; St.1956, c. 417; St.1957, c. 533; St.1958, c. 407; St.1960, c. 744, §§ 1, 2; St.1961, c. 441, §§ 1, 2; St.1967, c. 597, § 19; St.1971, c. 1012, § 11; St.1972, c. 343, §§ 1, 2; St.1973, c. 300; St.1973, c. 1003, § 16; St.1975, c. 487; St.1975, c. 768, §§ 1, 2; St.1976, c. 269, § 2; St.1977, c. 369; St.1978, c. 487, § 15; St.1978, c. 566, § 6; St.1979, c. 267, §§ 2, 3; St.1979, c. 342, § 18; St.1980, c. 491, §§ 1, 2; St.1980, c. 556, § 17; St.1981, c. 781, §§ 1 to 4; St.1981, c. 795, § 4; St.1982, c. 630, §§ 27 to 29; St.1982, c. 669; St.1983, c. 36; St.1983, c. 364, § 15; St.1983, c. 371, §§ 2, 3; St.1983, c. 661, §§ 18 to 22; St.1986, c. 557, §§ 48, 49; St.1987, c. 697, §§ 77 to 87, 89 to 92.

Historical Note

St.1950, c. 162, § 1, approved March 6, 1950, in subd. (2)(b) added cl. (iv).

St.1954, c. 126, § 1, approved Feb. 17, 1954, in subd. (2)(b), rewrote cl. (iii), which prior thereto read:

"In serial, paid-up or matured shares of cooperative banks organized under the laws of the commonwealth; provided, that not more than twenty per cent of the total amount of all the funds of any such system shall be invested in such shares."

St.1956, c. 417, approved May 31, 1956, in subd. (2)(b), rewrote cl. (i) which prior thereto read:

"In securities, other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided, that the percentage of the total amount of all the funds of any such system which may be invested in any one class of such securities shall not exceed the percentage of the total amount of all the deposits of any savings bank which may be so invested;"

St.1957, c. 533, approved July 16, 1957, in the former second sentence of subd. (1)(b), inserted "and the percentage of the total amount of all the funds of each such system which may be invested in the bonds of any one corporation", substituted "percentages" for "percentage" following "shall not exceed the", deleted "all" preceding "the deposits", and added at the end of the sentence, "except that thirty per cent of the total amount of all the funds of each such system may be invested in bonds of public service companies".

St.1958, c. 407, approved June 18, 1958, in subd. (2)(b), substituted in cl. (i)(B), "twenty-five per cent" for "twenty per cent", in cl. (i)(C), "forty per cent" for "thirty per cent", in cl. (i)(D), "ten per cent" for "five per cent" and in cl. (i)(E), "fifteen per cent" for "ten per cent" and inserted "and one-half".

St.1960, c. 744, § 1, approved Oct. 29, 1960, in subd. (2)(C), in the third sentence, substituted "may" for "shall", and added at the end, "or

such securities may be kept by a custodian who shall be designated by the board, which custodian shall be a bank or trust company, organized under the laws of the commonwealth or of the United States"; and added the fourth and fifth sentences.

Section 2 of St.1960, c. 744, added subd. (2)(f).

St.1961, c. 441, § 1, approved May 5, 1961, in subd. (1)(b), deleted the second sentence which read, "Subject in each instance to the approval of the investment committee established under the provisions of paragraph (a) of this subdivision, the state treasurer shall invest and reinvest such funds, to the extent not required for current disbursements, in bonds which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided, that the percentage of the total amount of all the funds of each such system which may be invested in any one class of such bonds, and the percentage of the total amount of all the funds of each such system which may be invested in the bonds of any one corporation, shall not exceed the percentages of the total amount of the deposits of any savings bank which may be so invested, except that thirty per cent of the total amount of all the funds of each such system may be invested in bonds of public service companies."

Section 2 of St.1961, c. 441, added subd. (1)(d).

St.1967, c. 597, § 19, an emergency act, approved Sept. 6, 1967, in the first sentence of subd. (2)(a), inserted "or the secretary-treasurer of the Massachusetts Turnpike Authority" and "or the Massachusetts Turnpike Authority".

St.1971, c. 1012, § 11, approved Nov. 9, 1971, in the first sentence of subd. (2)(a) deleted "or" following "town treasurer", inserted "and the treasurer of the Massachusetts Bay Transportation Authority", deleted "or" preceding "the Massachusetts Turnpike", and inserted "or the Massachusetts Bay Transportation Authority".

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32:23. Management of funds.

[Introductory paragraph of paragraph (d) of subdivision (1) as amended by 1990, 102, Sec. 3 effective July 6, 1990 applicable to an examination report issued with respect to an examination commenced after July 1, 1990. See 1990, 102, Sec. 42. For text effective until July 6, 1990, see 1988 Edition.]

(d) Subject in each instance to the approval of the investment committee established under the provisions of paragraph (a), the state treasurer shall invest and reinvest such funds, to the extent not required for current disbursements as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section provided that the state treasurer shall not invest or reinvest such funds in any state-chartered bank having a descriptive rating of (c) or (d) under section fourteen of chapter one hundred and sixty-seven or any federally insured depository institution having an assigned rating of (C) or (D) under section 807 (b)(2) of the Community Reinvestment Act of 1977, 12 USC 2901 et seq.; and provided, further, that:

32:94B. Disability or death caused by certain conditions of cancer; paid fire member; presumption.

[Added by 1990, 100, Sec. 2 effective July 5, 1990 applicable as provided by 1990, 100, Secs. 4 — 6.]

Section 94B. (1) Notwithstanding the provisions of any general or special law to the contrary, any condition of cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral or prostate systems, resulting in total disability or death to a uniformed member of a paid fire department, or to any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, shall, if he successfully passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, unless it is shown by a preponderance of the evidence that non-service connected risk factors or non-service connected accidents or hazards undergone, or any combination thereof, caused such incapacity. The provisions of this section shall only apply if the disabling or fatal condition is a type of cancer which may, in general, result from exposure to heat,

For effective date provisions of St.1971, c. 1012, see the Historical Note following § 1 of this chapter.

St.1972, c. 343, § 1, approved May 31, 1972, in subd. (1)(d), in cl. (i)(B), substituted "thirty-five per cent" for "twenty-five per cent" and "three and one-half per cent" for "two and one-half per cent", in cl. (i)(C), substituted "fifty per cent" for "forty per cent" and "four per cent" for "three per cent", in cl. (i)(D), substituted "fifteen per cent" for "ten per cent", and in cl. (i)(E), substituted "twenty-five per cent" for "fifteen per cent" and "two and one-half per cent" for "one and one-half per cent", and inserted "bank holding company stocks".

Section 2 of St.1972, c. 343, in subd. (2)(b), in cl. (i)(B), substituted "thirty-five per cent" for "twenty-five per cent", and "three and one-half per cent" for "two and one-half per cent", in cl. (i)(C), substituted "fifty per cent" for "forty per cent" and "four per cent" for "three per cent", in cl. (i)(E), substituted "twenty-five per cent" for "fifteen per cent" and "two and one-half per cent" for "one and one-half per cent".

St.1973, c. 300, approved May 21, 1973, in subd. (2)(b), in cl. (i)(D), substituted "fifteen per cent" for "ten per cent", and "sections forty-nine and fifty" for "section fifty".

St.1973, c. 1003, § 16, an emergency act, approved Nov. 8, 1973, in subd. (2)(a), in the first sentence deleted "and" following "Turnpike Authority", inserted "and the treasurer of the Massachusetts Housing Finance Agency", deleted "or" following "Turnpike Authority" where appearing second and inserted "or the Massachusetts Housing Financing Agency".

St.1975, c. 487, inserted the third and fourth sentences of subd. (1)(b).

St.1975, c. 487, was approved July 14, 1975. Emergency declaration by the Governor was filed July 22, 1975.

St.1975, c. 768, § 1, approved Dec. 16, 1975, in the second sentence of subd. (1)(b), inserted "or in one or more combined investment funds established by the state treasurer".

Section 2 of St.1975, c. 768, in the introductory paragraph of subd. (2)(b), inserted "in one or more combined investment funds established by the state treasurer, or".

St.1976, c. 269, § 2, approved Aug. 4, 1976, added subd. (3).

St.1977, c. 369, approved July 6, 1977, in subd. (2)(c), inserted the fourth through sixth sentences.

St.1978, c. 487, § 15, approved July 18, 1978, in subd. (2)(a), in the first sentence, deleted "and" following "Transportation Authority" inserted "and the Secretary-treasurer of the Massachusetts Port Authority", deleted "or" follow-

ing "Transportation Authority" where appearing second and inserted "or the Massachusetts Port Authority".

St.1978, c. 566, § 6, approved July 22, 1978, and made effective upon the date of dissolution of the Massachusetts Turnpike Authority, in subd. (1)(a), in the first sentence, substituted "the funds" for "and" and inserted "and the funds of the Massachusetts Turnpike Authority employees' retirement system"; and in subd. (2)(a), in the first sentence, deleted "Massachusetts Turnpike Authority" following "Towns" in heading and deleted "the secretary-treasurer of the Massachusetts Turnpike Authority" following "town treasurer", and deleted "the Massachusetts Turnpike Authority" following "city or town, the". However, the Massachusetts Turnpike Authority was not dissolved, and the amendments did not take effect.

St.1979, c. 267, § 2, approved June 9, 1979, in the first sentence of subd. (1)(c), substituted "May first" for "March first."

Section 3 of St.1979, c. 267, in the first sentence of subd. (2)(c), substituted "May first" for "March first".

St.1979, c. 342, § 18, approved June 30, 1979, and by § 19 made effective upon passage, in subd. (1)(d), inserted "as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such use is consistent with sound investment policy and the other requirements of this section".

St.1980, c. 491, § 1, approved July 14, 1980, added cl. (v) to subd. (1)(d).

Section 2 of St.1980, c. 491, added cl. (v) to subd. (2)(b).

St.1980, c. 556, § 17, approved July 16, 1980, in the first sentence of subd. (2)(a), inserted "the treasurer of the Blue Hills Regional Vocational School system and the treasurer of the Greater Lawrence Sanitary District", deleted "or" following "Housing Finance Authority" where second appearing, and inserted "the Blue Hills Regional Vocational School system, or the Greater Lawrence Sanitary District".

For provisions of St.1980, c. 556, relating to the Greater Lawrence Sanitary District employees retirement system and the Blue Hills Regional Vocational School employees retirement system, see the Historical Note following § 1 of this chapter.

St.1981, c. 781, § 1, in subd. (1)(d), in the first paragraph of cl. (v), added the second sentence.

Section 2 of St.1981, c. 781, in subd. (2)(b), in the first paragraph of cl. (v), added the second sentence.

Section 3 of St.1981, c. 781, in subd. (1)(d), added cl. (vi).

Section 4 of St.1981, c. 781, in subd. (2)(b), added cl. (vi).

St.1981, c. 781 was approved Jan. 2, 1982. Emergency declaration by the Governor was filed Jan. 11, 1982.

St. 1981, c. 795, § 4, an emergency act, approved Jan. 13, 1982, in subd. (1)(d), in the fourth paragraph of cl. (v) substituted "shall represent obligations of said central bank and not of any such bank or group of banks; and," for "shall represent obligations of said central bank and not of any such bank and" and "shall represent obligations of said fund and not of any credit union or group of credit unions" for "shall represent obligations of said fund and not of any credit union or group of credit unions or group of banks".

St.1982, c. 630, § 27, an emergency act, approved Jan. 4, 1983, and by § 56 made effective upon passage, in subd. (1)(c), substituted "commissioner of public employee retirement" for "commissioner of insurance" in two places.

Section 28 of St.1982, c. 630, in subd. (2)(d), substituted "commissioner of public employee retirement" for "commissioner of insurance".

Section 29 of St.1982, c. 630, in subd. (2)(c), substituted "commissioner of public employee retirement" for "commissioner of insurance".

St.1982, c. 669, in subd. (1)(d), added cls. (vi) and (vii) without reference to cl. (vi) as added by St.1981, c. 781, § 3.

St.1982, c. 669 was returned by the Governor, to the Senate, the branch in which it originated, with his objections thereto, was passed by the Senate, Jan. 3, 1983, and, in concurrence, by the House of Representatives, Jan. 4, 1983, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution; and thereby has the force of a law.

St.1983, c. 36, approved April 4, 1983, in subd. (1)(d), added cls. (ix) and (x).

St.1983, c. 364, § 15, in the first sentence of subd. (2)(a), deleted "and" preceding "the treasurer of the Greater Lawrence" and inserted ", and the treasurer of the Minuteman Regional Vocational Technical School District", deleted "or" preceding "the Greater Lawrence" and inserted ", or the Minuteman Regional Vocation Technical School District".

St.1983, c. 364, was approved Sept. 10, 1983. Emergency declaration by the Governor was filed on Sept. 12, 1983.

For provisions of St.1983, c. 364, relating to the Minuteman Regional Vocational Technical School District employees retirement system, see the Historical Note following § 1 of this chapter.

St.1983, c. 371, § 2, an emergency act, approved Sept. 26, 1983, and by § 105 made

effective as of July 1, 1983, in subd. (1)(d), in cl. (i)(D), deleted "by savings banks" preceding "under the provisions" and substituted "section fifteen B of chapter one hundred and sixty-seven and section forty-nine of chapter one hundred and sixty-eight, in effect on June thirtieth, nineteen hundred and eighty-three and included on the list of investments pursuant to section fifteen A of chapter one hundred and sixty-seven" for "section forty-nine and section fifty of chapter one hundred and sixty-eight".

Section 3 of St.1983, c. 371, in subd. (2)(b), cl. (i)(D), deleted "by savings banks" preceding "under the provisions" and substituted "section fifteen B of chapter one hundred and sixty-seven and section forty-nine of chapter one hundred and sixty-eight, in effect on June thirtieth, nine hundred and eighty-three and included on the list of investments pursuant to section fifteen A of chapter one hundred and sixty-seven" for "section forty-nine and section fifty of chapter one hundred and sixty-eight".

St.1983, c. 661, § 18, an emergency act, approved Dec. 20, 1983, and by § 29 made effective upon passage, rewrote subd. (1)(d), which prior thereto read:

"Subject in each instance to the approval of the investment committee established under the provisions of paragraph (a) of this subdivision, the state treasurer shall invest and reinvest such funds, to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such use is consistent with sound investment policy and the other requirements of this section, as follows:

"(i) In securities, other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided that:—

"(A) Not more than twenty per cent of the assets of any such system shall be invested in railroad obligations, nor shall more than two per cent of the said assets be invested in the obligations of any one operating railroad corporation, including its direct and assumed obligations and including also the obligations of lessor railroad corporations which derive seventy-five per cent or more of their income from leases of their railroads to said operating railroad corporation.

"(B) Not more than thirty-five per cent of the assets of any such system shall be invested in the bonds of telephone companies, nor shall more than three and one-half per cent of such assets be invested in the bonds of any one telephone company.

"(C) Not more than fifty per cent of the assets of any such system shall be invested in the bonds of public service companies, nor

shall more than four per cent of such assets be invested in the bonds of any one such corporation.

"(D) Not more than fifteen per cent of the assets of any such system shall be invested in obligations made eligible for investment under the provisions of section fifteen B of chapter one hundred and sixty-seven and section forty-nine of chapter one hundred and sixty-eight, in effect on June thirtieth, nineteen hundred and eighty-three and included on the list of investments pursuant to section fifteen A of chapter one hundred and sixty-seven, nor shall more than one per cent of such assets be invested in the obligations of any one obligor so made eligible for investment.

"(E) Not more than twenty-five per cent of the assets of any such system shall be invested in bank stocks, bank holding company stocks and insurance companies stocks, nor shall more than two and one-half per cent of such assets be invested in the stock of any one bank or insurance company.

"(ii) In deposits in the savings funds or savings banks organized under the laws of the commonwealth;

"(iii) In paid-up shares and accounts of and in co-operative banks; and

"(iv) In share accounts of federal savings and loan associations located in the commonwealth.

"(v) In mortgage pass-through securities and mortgage-backed bonds which are rated Aa or better by Standard and Poor's or any other independent rating service designated by the investment committee and issued by a mortgage lender, as herein defined, or issued through a conduit pooling of loans of such mortgage lenders. Any corporate trust, as defined in section one of chapter sixty-two, organized and operated exclusively for the purpose of acting as a conduit for pooling such loans under this clause or clause (v) of paragraph (b) of subdivision (2), or both, shall be exempt from taxation under chapter sixty-two.

"Each mortgage pass-through security and mortgage-backed bond shall be secured or backed by mortgage loans made or acquired by a mortgage lender on residential real estate located in the commonwealth. Each such loan shall generally meet the standards expected of a reasonably prudent investor.

"All proceeds received by a mortgage lender from the sale of mortgage pass-through securities and mortgage-backed bonds to the retirement systems shall be used solely for mortgage loans on real estate located in the commonwealth.

"The word 'mortgage lender' as used herein, shall mean any savings bank, co-operative bank, credit union, trust company, federal sav-

ings and loan association, national banking association or mortgage banking company which is incorporated or maintains an office in the commonwealth; and provided, however, that any savings bank or group of savings banks may participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by the Mutual Savings Central Fund, Inc., as defined in section one of chapter forty-four of the acts of nineteen hundred and thirty-two, and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause, and shall represent obligations of said fund and not of any such bank or group of banks; and provided, further, that any co-operative bank or group of co-operative banks may participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by The Co-operative Central Bank, as defined in section one of chapter forty-five of the acts of nineteen hundred and thirty-two and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause and shall represent obligations of said central bank and not of any such bank or group of banks; and, provided further that any credit union or group of credit unions may participate in the issuance of mortgage pass-through securities and mortgage backed bonds by the Central Credit Union Fund, Inc., as defined in section one of chapter two hundred and sixteen of the acts of nineteen hundred and thirty-two, and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause, and shall represent obligations of said fund and not of any credit union or group of credit unions.

"Text of clause (vi) of subdivision (1), paragraph (d), as added by St. 1981, c. 781, § 3

"(vi) In group annuity contracts or other retirement plan funding agreements issued by a life insurance company authorized to transact business in the commonwealth.

"Text of clause (vi) of subdivision (1), paragraph (d), as added by St. 1982, c. 669

"(vi) After January 1, 1983, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through its subsidiaries has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall remain invested in the stocks, securities or other obligations of any company doing business in or with the Republic of South Africa. Any proceeds of sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in Massachusetts so long as such use is consistent with sound investment policy.

"(vii) Notwithstanding the provisions of the preceding paragraph, if sound investment policy so required the investment committee may vote to spread the sale of such investments over no more than three years so that no less than one-third the value of said investments is sold in any one year. So long as any funds remain invested in any bank, financial institution or firm referred to in paragraph (vi), the investment committee shall annually, on or before January thirty-first, file with the clerk of the senate and the clerk of the house of representatives a report listing all South Africa-related investments held by the fund and their book market value as of the preceding December first.

"(viii) [Blank].

"(ix) After July first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual or corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland, and no assets shall remain invested in the stocks, securities or other obligations of any such company so engaged. Any proceeds of sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in Massachusetts so long as such use is consistent with sound investment policy.

"(x) Notwithstanding the provisions of the preceding paragraph, if sound investment policy so requires, the investment committee may vote to spread the sale of such investments over no more than three years so that no less than one-third the value of said investments is sold in any one year. So long as any funds remain invested in any bank, financial institution or firm so referred to in clause (ix), the investment committee shall annually, on or before January thirty-first, file with the clerk of the senate and the clerk of the house of representatives a report listing all such related investments held by the fund and their book market value as of the preceding December first."

Section 19 of St.1983, c. 661, in the introductory paragraph of subd. (2)(b), inserted "in the PRIT Fund pursuant to subdivision (8) of section twenty-two, in the PRIT Fund by purchasing shares if authorized pursuant to paragraph (g)".

Section 19A of St.1983, c. 661, in subd. (2)(b), added cl. (vii).

Section 20 of St.1983, c. 661, added subd. (2)(g).

Section 21 of St.1983, c. 661, inserted subd. (2A).

Section 22 of St.1983, c. 661, in subd. (3), inserted "for the exclusive purpose of providing benefits to members and their beneficiaries", inserted "a" preceding "like character", and added "and by diversifying the investments of the system so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so".

St.1986, c. 557, § 48, an emergency act and corrections bill, approved Dec. 8, 1986, in subd. (2A)(a), in the first sentence of the second paragraph, substituted "board" for "members" where first appearing.

Section 49 of St.1986, c. 557, in subd. (2A)(b), in the third sentence, substituted "disclosed" for "diclosed".

St.1987, c. 697, § 77, an emergency act, approved Jan. 12, 1988, in subd. (2)(b), in the introductory clause substituted "of said fund" for "if authorized pursuant to paragraph (g)".

Section 78 of St.1987, c. 697, in subd. (2)(c) inserted the third sentence.

Section 79 of St.1987, c. 697, in subd. (2)(c), in the seventh sentence substituted "public employee retirement" for "insurance".

Section 80 of St.1987, c. 697, in subd. (2)(d), substituted "Any" for "Any board or member thereof or any", "any board or member thereof" for "such board or member", and inserted "to such board or member" and "as provided for in subdivision (4)".

Section 81 of St.1987, c. 697, in subd. (2)(e), in the first sentence substituted "May" for "March".

Section 82 of St.1987, c. 697, rewrote subd. (2)(g), which prior thereto read:

"Clause (i) to (vii), inclusive, of paragraph (b) shall not apply to the board of any local retirement system which upon application is determined by the commissioner to have a record of investment management which merits broader investment powers; provided, however, that no funds are to be invested directly in mortgages or in collateral loans. In making such determination the commissioner shall consider the diversification of the risk of the investments of such board, the return of the investments of such board, the past performance of the investment portfolio of such board and the extent and quality of professional advice received by such board regarding the investment of funds. Any such board shall invest and reinvest consistent with sound investment policy and the requirements of subdivision (3)."

Section 83 of St.1987, c. 697, in subd. (2A)(a), in the first sentence of the second paragraph substituted "public safety organization" for "public safety union" and "and a person who is not an employee or official of the commonwealth," for "a member of the board of a participating local retirement system".

Section 84 of St.1987, c. 697, deleted subd. (2A)(c), which read:

"The state treasurer shall be treasurer-custodian of the PRIT Fund and shall have the custody of the funds and securities of said Fund."

Section 85 of St.1987, c. 697, in subd. (2A)(e), in cl. (i), added three provisos.

Section 86 of St.1987, c. 697, in subd. (2A)(e), rewrote cl. (vi), which prior thereto read:

"assess brokers fees to participating and other purchasing retirement systems for the expenses of the board;".

Section 87 of St.1987, c. 697, in subd. (2A)(e) added cls. (xi) to (xiii).

Section 89 of St.1987, c. 697, in subd. (2A)(g), in cl. (ii) deleted from the end ", including staff to advise and assist appointed members of the board; provided that each appointed member may have at his discretion, one such staff person to advise and assist said member".

Section 90 of St.1987, c. 697, rewrote subd. (2A)(h), which prior thereto read:

"Subject to the approval or ratification of the PRIM board, the executive director shall invest and reinvest such funds contained in said fund, to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section; provided, however, that no funds are to be invested directly in mortgages or in collateral loans; provided, further, that the executive director shall transfer not less than two million dollars of said fund into a fund managed by the Massachusetts Technology Development Corporation on behalf of the board; and provided, further, that said Massachusetts Technology Development Corporation shall manage the fund in accordance with the provisions of section four A of chapter forty G."

Section 91 of St.1987, c. 697, added subd. (2A)(j).

Section 92 of St.1987, c. 697, added subd. (4).

Sections 129 and 133 of St.1987, c. 697, provide:

"Section 129. Notwithstanding the provisions of subdivision (2A) of section twenty-three of chapter thirty-two of the General Laws; the pension reserves investment management board shall operate under the annual

budget adopted by said board for the fiscal year nineteen hundred and eight-eight until such time as said budget or any other annual or supplemental budget request filed by the board is approved in accordance with the provisions of said subdivision."

"Section 133. Notwithstanding any general or special law or regulation to the contrary, the board of each retirement system investing in accordance with the provisions of paragraph (g) of subdivision (2) of section twenty-three of chapter thirty-two of the General Laws and, the state treasurer, acting as the treasurer/custodian of the state employees' retirement system and the teachers' retirement system, and as the chairman of the pension reserves investment management board, are hereby authorized and directed to investigate by means of a survey the extent to which corporations organized under the laws of the United States or the several states and operating in Northern Ireland, in which the assets of said retirement systems or the Pension Reserves Investment Trust Fund are invested, adhere to principals of nondiscrimination in employment and freedom of workplace opportunity. In conducting said survey, said boards and said treasurer may utilize any information presently available relative to similar pension plans. In making said determination, said boards and said treasurer shall consider, without limitation, the following standards for corporate activity:

"(1) equal access to employment, promotion, and job-preservation without regard to religious affiliation or other minority status;

"(2) the promotion of religious tolerance within the workplace, and the eradication of any manifestations of religious and other illegal discrimination;

"(3) adherence to other legal and regulatory guidelines for nondiscrimination and equality of opportunity, existing in Northern Ireland;

"(4) adherence to the McBride Principles for Northern Ireland, so-called.

"Said treasurer shall set forth the results of said investigation by filing a report with the clerks of the house of representatives and of the senate not later than the first business day in January of each year. Said boards shall set forth the results of said investigation by filing a report with the public employee retirement administration not later than the first business day in January of each year. Said report shall include, but not be limited to, the names and addresses of all United States corporations operating in Northern Ireland in which the assets of said retirement systems or trust fund are invested, and the findings of said boards and said treasurer relative to these corporations' adherence to the standards for corporate activity as set forth. Said boards and said treasurer

shall also report their recommendations, if any, consistent with prudent fiduciary practice, based upon the findings of said investigation. Said report shall be available for public inspection in the offices where they are prepared and where they are filed.

"Said boards and said treasurer, subject to the approval of the investment committee, established under paragraph (a) of subdivision (1) of section twenty-three of chapter thirty-two of the General Laws, and said pension reserves investment management board, established under paragraph (a) of subdivision (2A) of said section twenty-three, shall, where necessary, appropriate, and consistent with pru-

dent standards for fiduciary practice, initiate and support shareholder petitions or initiatives requiring corporate action in compliance with the standards for nondiscrimination set forth in this act."

Prior Laws:

- St.1913, c. 832, § 11.
- St.1926, c. 184, § 3.
- G.L.1932 (Ter.Ed.) c. 32, § 14.
- G.L. c. 32, § 31H, as added by St.1936, c. 318, § 1.
- G.L. c. 32, § 25H, as added by St.1936, c. 400, § 1.
- St.1941, c. 113, §§ 1, 2.

Cross References

- Banking commissioner, preparation and submission of annual list to investment committee of bank meeting local community needs, see c. 167, § 15.
- Group insurance of state employees, investment of funds, see c. 32A, § 9A.
- Tax exemptions, corporate trusts, see c. 62, § 8.

Code of Massachusetts Regulations

- Public employee retirement administration,
 - Exemption from investment restrictions by commissioner, see 840 CMR 19.05.
 - Investment advice and management, see 840 CMR 16.03, 16.06.
 - Revocation of exemption from investment restrictions, see 840 CMR 19.07.
 - Standards of conduct for investment advisors, see 840 CMR 17.04.

Law Review Commentaries

- Cooperative banks, deposits of public retirement systems. Andrew A. Caffrey and Arthur E. Tyler, 1 Annual Survey of Mass.Law, Boston College, pp. 79, 80 (1954).
- Legislative pension decisions, amendment, alteration or repeal of annuity, pension or retirement. Sidney A. Aisner, 1 Annual Survey of Mass.Law, Boston College, pp. 256, 257 (1954).

Library References

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|---|---|
| Counties ⇨69(3). | C.J.S. Counties § 130. |
| Municipal Corporations ⇨167(1), 200(1), 200(9). | C.J.S. Municipal Corporations §§ 588, 589, 614, 615. |
| Officers and Public Employees ⇨101.5(1). | C.J.S. Officers and Public Employees §§ 243 to 248. |
| Schools ⇨63(5), 146(1). | C.J.S. Schools and School Districts §§ 118, 149, 150, 231 to 236. |
| States ⇨64.1(1). | C.J.S. States §§ 104 to 115. |
| Towns ⇨29. | C.J.S. Towns §§ 71, 72. |
| WESTLAW Topic Nos. 104, 268, 283, 345, 360 381. | |

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

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Alaska State Legislature



October 19, 1993

TO: Senator Tim Kelly
FROM: Christine M. Cheff *Cheff*
RE: Small Money Manager Laws in Massachusetts & Oregon
Attn: Josh Fink

I spoke with investment managers at the Massachusetts State Treasurers Office and the Oregon Treasury Department, and with an attorney at the Oregon AG's office concerning your request. No one with whom I spoke was aware of any state laws concerning "small money managers." It was suggested that what you might be looking for is information about the investment of small cap(italization) funds. Attached are copies of the Massachusetts and Oregon statutes to which I was directed for information concerning such investments.

Copies of the regulations pertaining to these statutes have been requested. I will be out of the office until October 27, however, Dale Brandt will forward the information to you when it arrives.

Please let us know if we may be of further assistance on this matter.

Attachments
:cmc

MASSACHUSETTS
GENERAL LAWS ANNOTATED

*Under Arrangement of the Official
General Laws of Massachusetts*

Volume 3

Chapters 29 to 31A

ST. PAUL, MINN.
WEST PUBLISHING CO.

Notes of Decisions

In general 1

for state employees and teachers requires approval of investment committee for systems and not that of the Governor. Op.Atty.Gen., June 9, 1958, p. 76.

1. In general

Sale, by state treasurer, of bonds representing investments of funds of retirement systems

§ 36. Mortgages held by commonwealth; discharge; assignments

If the state treasurer is authorized to discharge a mortgage held by the commonwealth, he may instead thereof assign it; but such assignment shall not impose upon the commonwealth any liability, express or implied.

Historical and Statutory Notes

St.1847, c. 195.

P.S.1882, c. 1, § 57.

G.S.1860, c. 15, § 13.

R.L.1902, c. 6, § 63.

Cross References

Mortgages, method of discharge, see c. 183, § 54.

§ 37. Real estate acquired by foreclosure; sale by state

Real estate acquired by the commonwealth by foreclosure may, with the approval of the governor and council, be conveyed by the state treasurer upon payment of the amount of the mortgage debt with the interest and expenses accrued thereon.

Historical and Statutory Notes

St.1804, c. 103, § 1.

G.S.1860, c. 15, § 14.

R.L.1902, c. 6, § 64.

St.1856, c. 68, § 1.

P.S.1882, c. 16, § 58.

§ 38. Investment of commonwealth funds; loans

With the exception of funds used in connection with a deferred compensation program for state employees, and funds of the state employees' retirement system or the teachers' retirement system, all funds over which the commonwealth has exclusive control shall be invested by the state treasurer with the approval of the governor and council as follows:

(a) In the public funds of the United States or of the District of Columbia or of this commonwealth, or in the legally authorized bonds of any other New England state, or of any other state of the United States, other than a territory or dependency thereof, which has not less than seven hundred and fifty thousand inhabitants as established by the last national census, and which has not within the twenty years prior to the making of such investment defaulted in the payment of any part of either principal or interest of any legal debt.

(b) In the bonds or notes of a county, city or town of this commonwealth.

(c) In the bonds or notes of an incorporated district in this commonwealth whose net indebtedness does not exceed five per cent of the last preceding valuation of the property therein for the assessment of taxes.

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(d) In the bonds or notes of any city of Maine, New Hampshire, Vermont, Rhode Island or Connecticut, whose net indebtedness does not exceed five per cent of the last preceding valuation of the property therein for the assessment of taxes; or of any county or town of said states whose net indebtedness does not exceed three per cent of such valuation; or of any incorporated water district of said states which has within its limits more than ten thousand inhabitants, and whose bonds or notes are a direct obligation on all the taxable property of such district, and whose net indebtedness does not exceed three per cent of such valuation; provided, that there is not included within the limits of such water district, either wholly or in part, any city or town the bonds or notes of which are not a legal investment.

(e) In the legally authorized bonds for municipal purposes of any city of any state of the United States, other than one of the New England states, whose bonds are eligible under subdivision (a) of this section; provided, that such city was incorporated as such at least twenty-five years prior to the date of such investment, and has at such date not less than thirty thousand nor more than one hundred thousand inhabitants, as established by the last national census preceding such date, and that its net indebtedness does not exceed five per cent of the valuation of the taxable property therein, to be ascertained by the last preceding valuation of property therein for the assessment of taxes.

(f) In the legally authorized bonds for municipal purposes of any city of any state of the United States, other than one of the New England states, whose bonds are eligible under subdivision (a) of this section; provided, that such city was incorporated as such at least twenty-five years prior to the date of such investment, and has at such date more than one hundred thousand inhabitants, established in the same manner as is provided in subdivision (e) of this section, and that its net indebtedness does not exceed seven per cent of the valuation of the taxable property therein, to be ascertained as provided in said subdivision (e).

(g) In subdivisions (d), (e) and (f) of this section the words "net indebtedness" mean the indebtedness of a county, city, town or district, omitting debts created for supplying the inhabitants with water and debts created in anticipation of taxes to be paid within one year, and deducting the amount of sinking funds available for the payment of the indebtedness included.

(h) The state treasurer, with the approval of the attorney general and of the governor and council, may consent to any refunding plan relative to securities held in funds over which the commonwealth has exclusive control and may do such incidental acts as may be necessary in connection with such refunding.

(i) In the promissory notes of an industrial, commercial, finance, banking, railroad or public utility corporation conducting business in this state when such notes mature not later than one year subsequent to their respective dates of issue; provided, however, that, at the time of any such investment, (1) such corporation has capital stock, premium thereon and surplus of at least twenty-five million dollars, (2) the securities of such corporation are eligible

for investment by life insurance companies authorized to do business in the commonwealth, and (3) all outstanding debt obligations of such corporation which have any rating from two or more standard rating services are rated within the three highest classifications established by at least two such rating services, or, if none of the outstanding debt obligations of such corporation has any rating from two such rating services, that such outstanding debt obligations are rated at the time of investment within the three highest classifications established by at least two such rating services, or the notes of such corporation at the time of investment are rated prime by the National Credit Office; provided, further, that the commonwealth's investment in the notes of any one company shall not exceed twenty per cent of the capital and surplus of such company.

(j) In bankers acceptances and bills of exchange eligible for purchase by federal reserve banks and which have been accepted by a bank, a trust company, a private banker or an investment company, or by a banking corporation which is organized under the laws of the United States or of any state thereof and which is a member of the federal reserve system.

(k) In repurchase agreements secured by United States Treasury obligations or United States Treasury obligations bearing a maturity date not later than one year.

The state treasurer may purchase with a portion of the State Lottery Fund, as established and defined in section thirty-five of chapter ten, from insurance companies lawfully doing business in the commonwealth, annuities payable to the commonwealth to be used for payment of lottery prizes. Such annuities shall not be subject to the provisions of section one hundred and eighteen of chapter one hundred and seventy-five limiting payment of annuities to individuals, and shall, to the extent that such annuities are payable to the commonwealth, be exempt from taxation under section twenty of chapter sixty-three. Contracts for the purchase of such annuities shall be subject to competitive bidding and shall be awarded to the lowest responsible bidder. All such bids and contracts shall be public records.

The state treasurer may also purchase with a portion of the said State Lottery Fund, bonds, notes, shares in combined investment funds or other interest bearing obligations in accordance with the standards set forth in subdivision (3) of section twenty-three of chapter thirty-two.

Funds in connection with a deferred compensation program for state employees may be invested by the treasurer pursuant to section sixty-four; provided, however, that such funds, whether or not invested, shall remain in the sole control of the treasurer, and may be used by the commonwealth at any time and for any purpose.

The treasurer may lend securities purchased from funds authorized by this section, provided that at the time of the execution of the loan at least one hundred per cent of the market value of the security lent shall be secured by cash or securities guaranteed by the United States government or any agency of the United States government. At all times during the term of each such

STATE OFFICERS

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loan the collateral shall be equal to not less than ninety-five per cent of the full market value of the security and said collateral shall not be more than one hundred thousand dollars less than the full market value of the security. Amended by St.1934, c. 356; St.1945, c. 658, § 7; St.1966, c. 414; St.1972, c. 807, § 2; St.1973, c. 304; St.1976, c. 422, §§ 1, 2; St.1981, c. 710; St.1985, c. 552.

Historical and Statutory Notes

St.1862, c. 187, § 1.
P.S.1882, c. 16, § 60.

St.1882, c. 130.
R.L.1902, c. 6, § 65.

St.1916, c. 192.
St.1926, c. 197, § 1.

St.1972, c. 807, § 2, approved July 19, 1972, in the first paragraph, in the introductory clause, substituted a comma for "or of the" preceding "teachers" and inserted "or funds used in connection with a deferred compensation program for state employees".

St.1973, c. 304, an emergency act, approved May 22, 1973, added the second paragraph.

St.1976, c. 422, § 1, an emergency act, approved Oct. 18, 1976, in the first paragraph, rewrote the introductory clause, which prior thereto read:

"Funds over which the commonwealth has exclusive control, except funds of the state em-

ployees' retirement system, teachers' retirement system or funds used in connection with a deferred compensation program for state employees, shall be invested by the state treasurer with the approval of the governor and council as follows:"

Section 2 of St.1976, c. 422, added the third (now fourth) paragraph.

St.1981, c. 710, approved Dec. 24, 1981, added the fourth (now fifth) paragraph.

St.1985, c. 552, approved Dec. 4, 1985, inserted the third paragraph.

Cross References

Massachusetts Technology Park Corporation, investment of funds, see c. 40J, § 4.

Library References

States ⇨124.
WESTLAW Topic No. 360.
C.J.S. States § 225.

Notes of Decisions

In general 1
Community development finance corporations 2

1. In general

State Treasurer is authorized by § 34A of this chapter to deposit public moneys in his possession and funds over which Commonwealth has exclusive control in co-operative banks, and to invest such moneys and funds in shares of federal savings and loan associations, subject to limitations set forth in statute, and approval of Governor and Council is not required for such deposits or investments. Op. Atty.Gen., Feb. 26, 1963, p. 114.

State treasurer may invest highway fund or general fund money in notes of commonwealth issued to provide funds for loans to cities and towns on tax titles under St.1933, c. 49, authorizing cities and towns to make tax-title borrowing from commonwealth on notes

approved by Emergency Finance Board. Op. Atty.Gen., Dec. 12, 1961, p. 123.

Sale, by state treasurer, of bonds representing investments of funds of retirement systems for state employees and teachers requires approval of investment committee for systems and not that of the Governor. Op. Atty.Gen., June 9, 1958, p. 76.

2. Community development finance corporations

Objects of statutes permitting state treasurer to sell Commonwealth bonds to purchase all of capital stock of community development finance corporation under bonding authorization and goals of community development finance corporation, to reduce unemployment and stimulate economy and redevelopment of substandard, decadent or blighted areas of Commonwealth by providing capital to community development corporations within such areas, were public purposes, and if there were

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benefits to private parties, such benefits were merely incidental to achievement of public purpose, and thus community development finance corporation was established primarily for valid public purpose for which public funds could be expended consistent with State Constitution. Opinion of the Justices to the Governor (1977) 369 N.E.2d 447, 373 Mass.App. 904.

Legislative findings that substandard, decadent, or blighted areas in Commonwealth, in which unemployment was aggravated by low level of economic activity, needed substantial funds for development, which was not adequately available from private capital, and that providing capital to community development corporations within such areas was public purpose for which public money may be expended and invested were entitled to weight in judicial assessment of whether expenditure of public money was for public purpose. *Id.*

Question of whether the community development finance corporation was created for a valid public purpose for which public funds

could be expended presented solemn occasion warranting advisory opinion only insofar as it involved question as to propriety of sale of Commonwealth bonds. Opinion of the Justices to the Governor (1977) 369 N.E.2d 447, 373 Mass. 904.

Although procedure by which Commonwealth would borrow funds and purchase all of common stock of community development finance corporation and by which community development finance corporation would then invest stock proceeds in community development corporations within substandard, decadent or blighted areas of Commonwealth to reduce unemployment and stimulate economy and redevelopment of such areas did not change essential character of transactions as state guarantees of loans to ultimate borrowers, such did not involve unconstitutional lending Commonwealth's credit, in that community development corporations are not private borrowers. *Id.*

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§ 38A. Investment funds; establishment; sale of participation units

Notwithstanding any contrary provision of law, the state treasurer may establish, with the advice of the investment advisory council, one or more combined investment funds for the purpose of investing funds of the commonwealth, trust funds, and funds under the custody of agencies, authorities, commissions, boards, political subdivisions and other public units within the commonwealth; provided, that the state treasurer shall adopt appropriate accounting procedures from which the exact interest of such funds so combined for investment can be determined. The state treasurer may adopt such rules and regulations as may be necessary to administer the provisions of this act.

The state treasurer is authorized to sell to all agencies, authorities, commissions, boards, political subdivisions and other public units within the commonwealth, participation units in any such combined investment fund. Such participation units issued by the treasurer are made legal investments for all the funds under the custody of such agencies, authorities, commissions, boards, political subdivisions and other public units within the commonwealth. With the advice of the investment advisory council, the state treasurer shall adopt rules and regulations as may be necessary to administer the provisions of this section.

The state treasurer may invest in only those instruments permitted within this chapter or chapter thirty-two.

Added by St.1975, c. 786, § 3.

Historical and Statutory Notes

St.1975, c. 786, § 3, was approved Dec. 18, 1975.

Cross References

Local or regional officers, liability for deposits lost by reason of bankruptcy, see c. 44, § 55A. Massachusetts Technology Park Corporation, investment of funds, see c. 40J, § 4.

Library References

States ⇨124.
WESTLAW Topic No. 360.
C.J.S. States § 225.

Trust funds, see M.P.S. vol. 18A, Randall and Franklin, § 1301.

Comments.

Deposits and investments of municipal funds, see M.P.S. vol. 18A, Randall and Franklin, § 1305.

§ 38B. Deferred compensation committee; state treasurer's office

There shall be in the office of the state treasurer a deferred compensation committee, consisting of three members, one of whom shall be appointed by the governor, shall represent the employees who contract with the state treasurer for a deferred compensation program under section sixty-four, and shall be chairman, one of whom shall be appointed by the commissioner of insurance, and one of whom shall be appointed by the state treasurer. Said committee shall meet from time to time and shall oversee the operation of the day to day operation of the deferred compensation program. The members of said committee shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

Added by St.1976, c. 422, § 3.

Historical and Statutory Notes

St.1976, c. 422, § 3, an emergency act, was approved Oct. 18, 1976.

Code of Massachusetts Regulations

Deferred compensation, definitions, see 960 CMR 3.02.

Library References

States ⇨45.
WESTLAW Topic No. 360.
C.J.S. States §§ 79, 80, 82, 136.

§ 38C. Investments; bonds or notes; contracts; powers of state treasurer

In connection with or incidental to the acquisition or carrying of any investment or program of investment or carrying of bonds or notes, the state treasurer, after consultation with the finance advisory board, may enter into such contracts as he may determine to be necessary or appropriate to place the investment or obligation of the commonwealth, as represented by the bonds or notes, investment or program of investment and the contract or contracts, in whole or in part, on such interest rate or cash flow basis as he may desire, including without limitation interest rate swap agreements, insur-

ance agreements, forward payment conversion agreements, futures, contracts, contracts providing for payments based on levels of, or changes in, interest rates or stock or other indices, contracts to exchange cash flows or a series of payments and contracts to hedge payment, rate, spread or similar exposure, including without limitation interest rate floors or caps, options, puts and calls. Such contracts shall contain such payment, security, default, remedy and other terms and conditions as the state treasurer, after consultation with the finance advisory board, may deem appropriate and shall be entered into with such party or parties as the state treasurer, after consultation with the finance advisory board, may select, after giving due consideration, where applicable, for the creditworthiness of the counterparty or counterparties, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate.

Added by St.1989, c. 655, § 18.

Historical and Statutory Notes

St.1989, c. 655, § 18, was approved Jan. 6, 1990. Emergency declaration by the Governor was filed March 12, 1990.

§ 39. Bonds, etc., held by commonwealth; exchanges

When the commonwealth holds any bond, note or certificate of indebtedness payable to bearer and issued by a county, city, town or district or any domestic corporation, such county, city, town, district or corporation shall, at the request of the state treasurer, issue in exchange therefor a bond, note or certificate of the same effect, payable to the commonwealth by name. The commonwealth shall pay the expense involved in making such exchange. Any county, city, town, district or corporation neglecting or refusing to comply with this section shall be punished by a fine of not more than fifty dollars.

Historical and Statutory Notes

St.1909, c. 136.
St.1916, c. 152.
St.1917, c. 116.

Cross References

Applicability to instruments held by county sinking fund commissioners, see c. 35, § 43.

§ 40. Trust deposits with state regulated

No deposit required to be made by any corporation in trust with the state treasurer, or any part thereof, shall consist of a mortgage upon real estate or of a loan upon personal notes or of notes secured by collateral. He may receive, as a part of such deposit, money or certificates of deposit, or certified checks on any approved state depository, and may hold the same without interest until it may reasonably be invested in a proper legal security.

MASSACHUSETTS
GENERAL LAWS ANNOTATED

*Under Arrangement of the Official
General Laws of Massachusetts*

Volume 3A

Chapters 32 to 32B

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(13) Notwithstanding any other provision of this section or of any other general or special law, any system accepting the provisions of this section shall not be required to appropriate the normal cost of any benefits accepted under subdivision (8), (9), (10), (11) or (12) for any year prior to the fiscal year in which the first annual pension assistance grant is payable to such system.

Added by St.1987, c. 697, § 76.

¹ So in original; there are no subsections (5) and (6).

Historical Note

St.1987, c. 697, § 76, an emergency act, was approved Jan. 12, 1988.

§ 23. Management of funds

(1) **State Employees' Retirement System and Teachers' Retirement System.** (a) There shall be an unpaid investment committee which shall have general supervision of the investment and reinvestment of the funds of the state employees' retirement system and of the teachers' retirement system. Such committee shall consist of three members as follows: the state treasurer who shall be a member ex officio and who shall serve as chairman, the commissioner of banks who shall be a member ex officio, and a third member who shall be qualified by training and experience in the investment of funds as the result of having been principally employed in such occupation for a period of at least ten years and who shall be chosen by the other two for a term of three years. If a third member is not chosen by the other two members before February first, nineteen hundred and forty-six, in the first instance, and thereafter within thirty days after the expiration of the term of the third member, the governor shall appoint a third member for a term of three years. Each member of such committee shall continue to hold office until the expiration of his term and until the qualification of his successor. The state treasurer shall furnish such clerical assistants as may be required to carry on the work of the investment committee.

(b) The state treasurer shall be the treasurer-custodian of the state employees' retirement system and of the teachers' retirement system and shall have the custody of the funds and securities of each such system. The funds of each such system shall be invested separately or in one or more combined investment funds established by the state treasurer. The state treasurer may cause any stock, bond, or security of each such system to be held for its account and not in a fiduciary capacity to be registered and held in the name of a partnership or a cooperative nominee named by him. The members of the partnership or the cooperative nominee shall be restricted to the state treasurer and the first, second and third deputy treasurer, as the state treasurer may so designate. Payments from the funds of each such system shall be made by the state treasurer only upon vouchers signed by two persons designated by the respective boards of such systems by a vote a duly attested copy of which, bearing upon its face specimen signatures of such

persons, shall be filed with the state treasurer as his authority for making payments upon vouchers so signed.

(c) The state treasurer shall annually, on or before May first, file in the office of the commissioner of public employee retirement and with the secretary of the appropriate board, on a form prescribed by the commissioner, a sworn statement of the financial condition of each such system as of December thirty-first of the previous year. The board of each such system shall, subject to the same conditions and requirements, file in the office of the commissioner of public employee retirement a sworn statement of the financial condition of such system as of December thirty-first of the previous year and of all the financial transactions thereof during the previous year. The commissioner may for cause shown extend the time for filing any such statement.

(d) Subject in each instance to the approval of the investment committee established under the provisions of paragraph (a), the state treasurer shall invest and reinvest such funds, to the extent not required for current disbursements as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section provided that:

(i) no funds are to be invested directly in mortgages or in collateral loans;

(ii) after January first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through its subsidiaries has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall remain invested in the stocks, securities or other obligations of any company doing business in or with the Republic of South Africa. Any proceeds of sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in the commonwealth so long as such use is consistent with sound investment policy;

(iii) After July first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual or corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military air craft for use or deployment in any activity in Northern Ireland, and no assets shall remain invested in the stocks, securities or other obligations of any such company so engaged. Any proceeds from sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in the commonwealth so long as such use is consistent with sound investment policy;

(iv) Notwithstanding the provisions of the clauses (ii) and (iii), if sound investment policy so requires, the investment committee may vote to spread the sale of investments described in said clauses over no more than three

years, so that no less than one-third the value of said investments is sold in any one year. So long as any funds remain invested in any bank, financial institution or firm so referred to in clause (ii) or (iii), the investment committee shall annually, on or before January thirty-first, file with the clerk of the senate and the clerk of the house of representatives a report listing all such related investments held by the fund and their book value as of the preceding December first.

(2) **Systems for Counties, Cities, Towns, etc.** (a) The county, city or town treasurer, the secretary-treasurer of the Massachusetts Turnpike Authority, the treasurer of the Massachusetts Bay Transportation Authority, the treasurer of the Massachusetts Housing Finance Agency, the secretary-treasurer of the Massachusetts Port Authority, the treasurer of the Blue Hills Regional Vocational School system, the treasurer of the Greater Lawrence Sanitary District and the treasurer of the Minuteman Regional Vocational Technical School District shall be the treasurer-custodian of the system established under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws, in any county, city or town, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, the Massachusetts Housing Finance Agency, the Massachusetts Port Authority, the Blue Hills Regional Vocational School system, the Greater Lawrence Sanitary District or the Minuteman Regional Vocational Technical School District, as the case may be, and shall have the custody of the funds of any such system. Payments from such funds shall be made by him only upon vouchers signed by two persons designated by the board of any such system by a vote a duly attested copy of which, bearing upon its face specimen signatures of such persons, shall be filed with the treasurer-custodian as his authority for making payments upon vouchers so signed. No voucher shall be drawn unless it shall have been previously authorized by vote of the board.

(b) The board of each such system shall invest and reinvest the funds of such system, to the extent not required for current disbursements in the PRIT Fund pursuant to subdivision (8) of section twenty-two, in the PRIT Fund by purchasing shares of said fund in one or more combined investment funds established by the state treasurer, or as follows:

(i) In securities, other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided that:—

(A) Not more than twenty per cent of the assets of any such system shall be invested in railroad obligations, nor shall more than two per cent of said assets be invested in the obligations of any one operating railroad corporation, including its direct and assumed obligations and including the obligations of lessor railroad corporations which derive seventy-five per cent or more of their income from leases of their railroads to said operating railroad corporation.

(B) Not more than thirty-five per cent of the assets of any such system shall be invested in the bonds of the telephone companies, nor shall more than

three and one-half per cent of such assets be invested in the bonds of any one telephone company.

(C) Not more than fifty per cent of the assets of any such system shall be invested in the bonds of public service companies, nor shall more than four per cent of such assets be invested in the bonds of any one such corporation.

(D) Not more than fifteen per cent of the assets of any such system shall be invested in obligations made eligible for investments under the provisions of section fifteen B of chapter one hundred and sixty-seven and section forty-nine of chapter one hundred and sixty-eight, in effect on June thirtieth, nineteen hundred and eighty-three and included on the list of investments pursuant to section fifteen A of chapter one hundred and sixty-seven, nor shall more than one per cent of such assets be invested in the obligations of any one obligor so made eligible for investment.

(E) Not more than twenty-five per cent of the assets of any such system shall be invested in bank stocks, bank holding company stocks, and insurance companies stocks, nor shall more than two and one-half per cent of such assets be invested in the stock of any one bank or insurance company.

(ii) In deposits in the savings funds of savings banks organized under the laws of the commonwealth; and

(iii) In paid-up shares and accounts of and in co-operative banks.

(iv) In share accounts of federal savings and loan associations located in the commonwealth.

(v) In mortgage pass-through securities and mortgage-backed bonds which are rated Aa or better by Standard and Poor's or any other independent rating service designated by the investment committee and issued by a mortgage lender, as herein defined, or issued through a conduit pooling of loans of such mortgage lenders. Any corporate trust, as defined in section one of chapter sixty-two, organized and operated exclusively for the purpose of acting as a conduit for pooling such loans under this clause or clause (v) of paragraph (d) of subdivision (1), or both, shall be exempt from taxation under chapter sixty-two.

Each mortgage pass-through security and mortgage-backed bond shall be secured or backed by mortgage loans made or acquired by a mortgage lender on residential real estate located in the commonwealth. Each such loan shall generally meet the standards expected of a reasonably prudent investor.

All proceeds received by a mortgage lender from the sale of mortgage pass-through securities and mortgage-backed bonds to the retirement systems shall be used solely for mortgage loans on real estate located in the commonwealth.

The word "mortgage lender" as used herein, shall mean any savings bank, co-operative bank, credit union, trust company, federal savings and loan association, national banking association or mortgage banking company which is incorporated or maintains an office in the commonwealth; and provided, however, that any savings bank or group of savings banks may

participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by the Mutual Savings Central Fund, Inc., as defined in section one of chapter forty-four of the acts of nineteen hundred and thirty-two, and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause, and shall represent obligations of said fund and not of any bank or group of banks; provided, further, that any co-operative bank or group of co-operative banks may participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by The Co-operative Central Bank, as defined in section one of chapter forty-five of the acts of nineteen hundred and thirty-two and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause and shall represent obligations of said central bank and not of any such bank or group of banks; and provided further that any credit union or group of credit unions may participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by the Central Credit Union Fund, Inc., as defined in section one of chapter two hundred and sixteen of the acts of nineteen hundred and thirty-two, and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause, and shall represent obligations of said fund and not of any such credit union or group of credit unions.

(vi) In group annuity contracts or other retirement plan funding agreements issued by a life insurance company authorized to transact business in the commonwealth.

(vii) in shares of one or more combined investment funds approved by the commissioner of banks which invest in accordance with the provisions of subdivision (3) in stocks, bonds, notes and other interest bearing obligations appearing on the list prepared by the commissioner of banks under section fifteen A of chapter one hundred and sixty-seven.

(c) The board of each such system shall designate one or more banks or trust companies, organized under the laws of the commonwealth or of the United States, in which the treasurer-custodian shall keep on deposit such sums as may be required for current disbursements; provided, that any such sum on deposit in any one bank or trust company shall not exceed ten per cent of the amount of the paid-up capital and surplus thereof. The board shall also designate one or more such banks or trust companies in which the securities of the system shall be kept under the name of the retirement system in one or more safe deposit boxes. The board, subject to rules promulgated by the commissioner, may deposit such securities in a securities depository registered with the Securities and Exchange Commission of the United States. Such securities may be kept under the joint custody of the treasurer-custodian and a member of the board other than the treasurer-custodian, who shall be designated by the board, or such securities may be kept by a custodian who shall be designated by the board, which custodian shall be a bank or trust company, organized under the laws of the commonwealth or of the United States. The board may cause any stock, bond or other security, or cash, of any such system to be registered and held, or deposited and held, in the name of one or more nominees appointed by him for the purpose of facilitating

security trading, money management and certificate delivery. The board shall designate the members of any such nominee only from among the following individuals: the assistant treasurers of the respective county, city, or town; any employee of a custodian that is authorized pursuant to this paragraph to have custody of securities or cash of a system; and the treasurer-custodian himself. Each individual so designated shall be covered with respect to his service on behalf of any such nominee by a fidelity bond, in such form and amount as the commissioner of public employee retirement may determine, which coverage may be by separate bond or by incorporation in a bond otherwise required by section three of chapter thirty-five, section thirty-five of chapter forty-one, section thirty-nine A of chapter forty-one or other applicable law or practice. Such custodian shall collect the interest and dividends on all securities deposited with it, shall collect all called and matured securities deposited with it, and shall deposit the same in a bank or trust company as directed by the board; shall advise the board of all such deposits, of all stock dividends, rights, calls and maturities of all securities deposited with it; shall purchase, sell, deliver, and receive securities on the order of the board; and shall prepare and deliver to the board a list, at such time as the board may require, of all securities held by it with their current market values. Such custodian may make a reasonable charge for such services.

(d) Any person who assists any board or member thereof in the purchase, sale, investment or reinvestment of the funds of any such system, without the written consent of the commissioner of public employee retirement after notice in writing by him to such board or member to desist therefrom as provided for in subdivision (4) shall be punished as provided for in section twenty-four.

(e) The board of each such system shall annually, on or before May first, file in the office of the commissioner of public employee retirement, on a form prescribed by him, a sworn statement of the financial condition of such system as of December thirty-first of the previous year and of all the financial transactions thereof during the previous year. The commissioner may for cause shown extend the time for filing any such statement.

(f) The board may employ any qualified bank, trust company, corporation, firm, or person to advise it on the investment of the fund and may pay for such advice.

(g) Clauses (i) to (vii), inclusive, of paragraph (b) shall not apply to the board of any local retirement system which upon application is determined by the commissioner to have a record of investment management which merits broader investment powers, provided that:—

(i) no funds are to be invested directly in mortgages or in collateral loans;

(ii) subsequent to the date of such determination no new investment of funds shall be made in any bank or financial institution which directly or through its subsidiaries has outstanding loans to the Republic of South Africa or its instrumentalities, and no new investment of funds shall be made in

stocks, securities or other obligations of any company doing business in or with the Republic of South Africa;

(iii) subsequent to the date of such determination no new investment of funds shall be made in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or development in any activity in Northern Ireland, and no new investment of funds shall be made in the stocks, securities or other obligations of any company so engaged. In making such determination the commissioner shall consider the diversification of the risk of the investments of such board, the return on the investments of such board, the past performance of the investment portfolio of such board and the extent and quality of professional advice received by such board regarding the investment of funds. Any such board shall invest and reinvest consistent with sound investment policy and the requirements of subdivision (3).

(2A) Pension Reserves Investment Management Board. (a) There shall be an unpaid pension reserves investment management board which shall have general supervision of the investment and reinvestment of the PRIT Fund established under the provisions of subdivision (8) of section twenty-two.

Such board shall consist of nine members as follows: the governor, ex officio, or his designee, the state treasurer, ex officio, or his designee, who shall serve as chairman of the board, a representative of a public safety organization appointed by the governor, a private citizen experienced in the field of investment or financial management appointed by the state treasurer, and a person who is not an employee or official of the commonwealth, appointed by the governor, an employee or retiree who is a member of the state teachers retirement system who shall be elected by the members in or retired from such a system for a term of three years in such a manner as the commissioner shall determine, a representative of a union which represents among its membership nonpublic safety municipal and state employees appointed by the treasurer, an employee or retiree who is a member of the state employees' retirement system who shall be elected by the members in or retired from such system for a term of three years in such a manner as the commissioner shall determine, and the commissioner of public employee retirement ex officio, the appointed members shall serve for four years, provided that the initial appointments shall be for the following terms.

The private citizen appointed by the state treasurer shall serve for one year, the retirement board member appointed by the governor shall serve two years, the representative of the teacher's union appointed by the governor for three years, the other appointees for a term of four years. Any vacancy among the appointed members that may occur before the expiration of a term shall be filled by an appointment by either the governor or the treasurer, whomever has the right of making the initial appointment. Any appointed member of the board, including members appointed to fill a vacancy shall be

eligible for reappointment. Any appointed member may be removed from his appointment for cause by the governor or the treasurer, whomever had the original right of making the appointment.

(b) Five members of the board shall constitute a quorum. The members of the board shall not receive a salary but shall be reimbursed for actual and necessary expenses. The provisions of chapter two hundred and sixty-eight A shall apply to all members of the board; provided, however, that the board may make investments in which a member has an interest or involvement if, however, such interest or involvement is disclosed in advance to the other members of the board and contemporaneously recorded in the minutes of the board; and provided, further, that no member having such an interest or involvement may participate in any particular matter, as defined in section one of chapter two hundred and sixty-eight A, relating to such investment.

(d) The PRIM board shall annually on or before May first, file with the clerk of the house of representatives and with the secretary of the retirement board of each system which is a participant in said fund, on a form prescribed by the commissioner, a sworn statement of the financial condition of said fund as of December thirty-first the previous year. The commissioner may for cause shown extend the time for filing any such statement.

(e) The PRIM board shall:

(i) act as trustees for each participating retirement system for which it invests or manages monies in accordance with the standard of care set forth in subdivision (3); provided, however, that the duties and obligations of the PRIM board and of participating or purchasing systems shall be set forth in a declaration of trust adopted by the PRIM board; and provided, further, that any declaration of trust and any amendments thereto adopted by said board shall be subject to the approval of the joint committee on public service; and provided, further, that if said committee takes no final action relative thereto within forty-five days of the date of the filing thereof with the clerk of the house of representatives and the senate, such declarations of trust and such amendments thereto shall be deemed to be approved;

(ii) employ an executive director as provided in paragraph (f);

(iii) employ investment advisors, legal counsel, and consultants as it deems necessary;

(iv) establish a formula to measure the value of the shares in said fund purchased by or held by participating retirement systems and other purchasing retirement systems;

(v) determine and allocate annually to participating and other purchasing retirement systems earnings on shares owned by said systems;

(vi) adopt an annual budget and supplemental budgets as deemed necessary by the board subject to the approval of the house and senate committees on ways and means; provided, however, that if the said committees has taken no final action to disapprove any such budget, within sixty days of its being filed with said general court it shall be deemed to be approved; and provided,

further, that if the general court disapproves any such budget within such sixty days, said board shall operate under the annualized budgetary level most recently approved pending the filing and subsequent approval of any other such annual or supplemental request;

(vii) approve or ratify decisions of the executive director;

(viii) formulate policies and procedures deemed necessary and appropriate to carry out its function;

(ix) maintain a record of its proceedings;

(x) undertake any other activities necessary to implement the duties and powers set forth herein;

(xi) File quarterly, on or before March first, June first, September first, and December first of each year, with the house and senate committee on ways and means and with the joint committee on public service a report detailing brokerage transactions, fees paid to investment consultants and managers, master trustee and custody fees, a detailed investment portfolio analysis describing all holdings in the PRIT Fund, and a budget status report detailing expenses by month; provided, however, that said analysis and said reports shall be made available on the first day of each month upon the request of the chairman of any said committees;

(xii) Assess fees to participating and other purchasing retirement systems for the reasonable and necessary expenses incurred by the board in managing the PRIT Fund, which shall be paid by the board from earnings of the PRIT Fund without appropriation and in conformance with the budgetary levels established pursuant to clause (vi);

(xiii) Acts as treasurer-custodian of the PRIT Fund and shall have the custody of the funds and securities of said fund.

(f) The PRIM board shall select an executive director who shall serve at the pleasure of the board. The provisions of sections nine A, forty-five, forty-six and forty-six C of chapter thirty, chapter thirty-one, and chapter one hundred and fifty E shall not apply to the executive director or any other employees of the board.

(g) The executive director, shall with the approval of the board:

(i) plan, direct, coordinate and execute administrative and investment functions in conformity with the policies and directives of the board;

(ii) employ professional and clerical staff as necessary;

(iii) report to the board on all operations under his control and supervision;

(iv) require state officials from any department or officials from any participating retirement system to produce and provide access to any financial documents the board deems necessary in the conduct of its investment activities;

(v) undertake any other activities necessary to implement the powers and duties set forth herein.

(h) Subject to the approval or ratification of the PRIM board, the executive director shall invest and reinvest such funds held by such board to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section; provided, however, that no funds are to be invested directly in mortgages or in collateral loans; provided, further, that no funds are to be invested in any bank or financial institution which directly or through its subsidiaries, has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall be invested in stocks, securities or other obligation of any company doing business in or with the Republic of South Africa; and provided, further, that no funds are to be invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or deployment in any activity in Northern Ireland, and no assets shall be invested in the stocks, securities or other obligations of any such company so engaged. The investment and fund management policies adopted by the PRIM board shall not be subject to any rules or regulations promulgated by the commissioner of public employee retirement governing the investment of funds by the retirement boards.

(i) at least two members of the PRIT board shall be minority people, as set forth in the definition of "Minority" contained in section forty C of chapter seven of the General Laws as added by section seven of chapter five hundred and seventy-nine of the acts of nineteen hundred and eighty.

(j) The PRIM board shall be subject to the provisions of sections thirty-nine A and sections forty (E) to forty (J), inclusive, of chapter seven.

(3) Fiduciary Standards. A fiduciary as defined in section one shall discharge his duties for the exclusive purpose of providing benefits to members and their beneficiaries with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and by diversifying the investments of the system so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

(4) Orders to protect the system. If the commissioner determines after a hearing that the investment or recordkeeping practices of any board are not being conducted with reasonable care, skill, prudence or diligence, he may order such board to take or desist from any action that in his judgment is necessary to preserve the integrity of the system. If the commissioner has reason to believe that the investment and recordkeeping practices of any board are not being conducted with reasonable care, skill, prudence or diligence, he may issue a temporary order which shall remain in effect until

an investigation, hearing and determination can be made. Violation of any such order shall be punished as provided for in section twenty-four.

Added by St.1945, c. 658, § 1. Amended by St.1950, c. 162, § 1; St.1954, c. 126, § 1; St.1956, c. 417; St.1957, c. 533; St.1958, c. 407; St.1960, c. 744, §§ 1, 2; St.1961, c. 441, §§ 1, 2; St.1967, c. 597, § 19; St.1971, c. 1012, § 11; St.1972, c. 343, §§ 1, 2; St.1973, c. 300; St.1973, c. 1003, § 16; St.1975, c. 487; St.1975, c. 768, §§ 1, 2; St.1976, c. 269, § 2; St.1977, c. 369; St.1978, c. 487, § 15; St.1978, c. 566, § 6; St.1979, c. 267, §§ 2, 3; St.1979, c. 342, § 18; St.1980, c. 491, §§ 1, 2; St.1980, c. 556, § 17; St.1981, c. 781, §§ 1 to 4; St.1981, c. 795, § 4; St.1982, c. 630, §§ 27 to 29; St.1982, c. 669; St.1983, c. 36; St.1983, c. 364, § 15; St.1983, c. 371, §§ 2, 3; St.1983, c. 661, §§ 18 to 22; St.1986, c. 557, §§ 48, 49; St.1987, c. 697, §§ 77 to 87, 89 to 92.

Historical Note

St.1950, c. 162, § 1, approved March 6, 1950, in subd. (2)(b) added cl. (iv).

St.1954, c. 126, § 1, approved Feb. 17, 1954, in subd. (2)(b), rewrote cl. (iii), which prior thereto read:

"In serial, paid-up or matured shares of cooperative banks organized under the laws of the commonwealth; provided, that not more than twenty per cent of the total amount of all the funds of any such system shall be invested in such shares."

St.1956, c. 417, approved May 31, 1956, in subd. (2)(b), rewrote cl. (i) which prior thereto read:

"In securities, other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided, that the percentage of the total amount of all the funds of any such system which may be invested in any one class of such securities shall not exceed the percentage of the total amount of all the deposits of any savings bank which may be so invested;"

St.1957, c. 533, approved July 16, 1957, in the former second sentence of subd. (1)(b), inserted "and the percentage of the total amount of all the funds of each such system which may be invested in the bonds of any one corporation", substituted "percentages" for "percentage" following "shall not exceed the", deleted "all" preceding "the deposits", and added at the end of the sentence, "except that thirty per cent of the total amount of all the funds of each such system may be invested in bonds of public service companies".

St.1958, c. 407, approved June 18, 1958, in subd. (2)(b), substituted in cl. (i)(B), "twenty-five per cent" for "twenty per cent", in cl. (i)(C), "forty per cent" for "thirty per cent", in cl. (i)(D), "ten per cent" for "five per cent" and in cl. (i)(E), "fifteen per cent" for "ten per cent" and inserted "and one-half".

St.1960, c. 744, § 1, approved Oct. 29, 1960, in subd. (2)(C), in the third sentence, substituted "may" for "shall", and added at the end, "or

such securities may be kept by a custodian who shall be designated by the board, which custodian shall be a bank or trust company, organized under the laws of the commonwealth or of the United States"; and added the fourth and fifth sentences.

Section 2 of St.1960, c. 744, added subd. (2)(f).

St.1961, c. 441, § 1, approved May 5, 1961, in subd. (1)(b), deleted the second sentence which read, "Subject in each instance to the approval of the investment committee established under the provisions of paragraph (a) of this subdivision, the state treasurer shall invest and reinvest such funds, to the extent not required for current disbursements, in bonds which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided, that the percentage of the total amount of all the funds of each such system which may be invested in any one class of such bonds, and the percentage of the total amount of all the funds of each such system which may be invested in the bonds of any one corporation, shall not exceed the percentages of the total amount of the deposits of any savings bank which may be so invested, except that thirty per cent of the total amount of all the funds of each such system may be invested in bonds of public service companies."

Section 2 of St.1961, c. 441, added subd. (1)(d).

St.1967, c. 597, § 19, an emergency act, approved Sept. 6, 1967, in the first sentence of subd. (2)(a), inserted "or the secretary-treasurer of the Massachusetts Turnpike Authority" and "or the Massachusetts Turnpike Authority".

St.1971, c. 1012, § 11, approved Nov. 9, 1971, in the first sentence of subd. (2)(a) deleted "or" following "town treasurer", inserted "and the treasurer of the Massachusetts Bay Transportation Authority", deleted "or" preceding "the Massachusetts Turnpike", and inserted "or the Massachusetts Bay Transportation Authority".

For effective date provisions of St.1971, c. 1012, see the Historical Note following § 1 of this chapter.

St.1972, c. 343, § 1, approved May 31, 1972, in subd. (1)(d), in cl. (i)(B), substituted "thirty-five per cent" for "twenty-five per cent" and "three and one-half per cent" for "two and one-half per cent", in cl. (i)(C), substituted "fifty per cent" for "forty per cent" and "four per cent" for "three per cent", in cl. (i)(D), substituted "fifteen per cent" for "ten per cent", and in cl. (i)(E), substituted "twenty-five per cent" for "fifteen per cent" and "two and one-half per cent" for "one and one-half per cent" and inserted "bank holding company stocks".

Section 2 of St.1972, c. 343, in subd. (2)(b), in cl. (i)(B), substituted "thirty-five per cent" for "twenty-five per cent", and "three and one-half per cent" for "two and one-half per cent", in cl. (i)(C), substituted "fifty per cent" for "forty per cent" and "four per cent" for "three per cent", in cl. (i)(E), substituted "twenty-five per cent" for "fifteen per cent" and "two and one-half per cent" for "one and one-half per cent".

St.1973, c. 300, approved May 21, 1973, in subd. (2)(b), in cl. (i)(D), substituted "fifteen per cent" for "ten per cent", and "sections forty-nine and fifty" for "section fifty".

St.1973, c. 1003, § 16, an emergency act, approved Nov. 8, 1973, in subd. (2)(a), in the first sentence deleted "and" following "Turnpike Authority", inserted "and the treasurer of the Massachusetts Housing Finance Agency", deleted "or" following "Turnpike Authority" where appearing second and inserted "or the Massachusetts Housing Financing Agency".

St.1975, c. 487, inserted the third and fourth sentences of subd. (1)(b).

St.1975, c. 487, was approved July 14, 1975. Emergency declaration by the Governor was filed July 22, 1975.

St.1975, c. 768, § 1, approved Dec. 16, 1975, in the second sentence of subd. (1)(b), inserted "or in one or more combined investment funds established by the state treasurer".

Section 2 of St.1975, c. 768, in the introductory paragraph of subd. (2)(b), inserted "in one or more combined investment funds established by the state treasurer, or".

St.1976, c. 269, § 2, approved Aug. 4, 1976, added subd. (3).

St.1977, c. 369, approved July 6, 1977, in subd. (2)(c), inserted the fourth through sixth sentences.

St.1978, c. 487, § 15, approved July 18, 1978, in subd. (2)(a), in the first sentence, deleted "and" following "Transportation Authority" inserted "and the Secretary-treasurer of the Massachusetts Port Authority", deleted "or" follow-

ing "Transportation Authority" where appearing second and inserted "or the Massachusetts Port Authority".

St.1978, c. 566, § 6, approved July 22, 1978, and made effective upon the date of dissolution of the Massachusetts Turnpike Authority, in subd. (1)(a), in the first sentence, substituted "the funds" for "and" and inserted "and the funds of the Massachusetts Turnpike Authority employees' retirement system"; and in subd. (2)(a), in the first sentence, deleted "Massachusetts Turnpike Authority" following "Towns" in heading and deleted "the secretary-treasurer of the Massachusetts Turnpike Authority" following "town treasurer", and deleted "the Massachusetts Turnpike Authority" following "city or town, the". However, the Massachusetts Turnpike Authority was not dissolved, and the amendments did not take effect.

St.1979, c. 267, § 2, approved June 9, 1979, in the first sentence of subd. (1)(c), substituted "May first" for "March first."

Section 3 of St.1979, c. 267, in the first sentence of subd. (2)(e), substituted "May first" for "March first".

St.1979, c. 342, § 18, approved June 30, 1979, and by § 19 made effective upon passage, in subd. (1)(d), inserted "as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such use is consistent with sound investment policy and the other requirements of this section".

St.1980, c. 491, § 1, approved July 14, 1980, added cl. (v) to subd. (1)(d).

Section 2 of St.1980, c. 491, added cl. (v) to subd. (2)(b).

St.1980, c. 556, § 17, approved July 16, 1980, in the first sentence of subd. (2)(a), inserted "the treasurer of the Blue Hills Regional Vocational School system and the treasurer of the Greater Lawrence Sanitary District", deleted "or" following "Housing Finance Authority" where second appearing, and inserted "the Blue Hills Regional Vocational School system, or the Greater Lawrence Sanitary District".

For provisions of St.1980, c. 556, relating to the Greater Lawrence Sanitary District employees retirement system and the Blue Hills Regional Vocational School employees retirement system, see the Historical Note following § 1 of this chapter.

St.1981, c. 781, § 1, in subd. (1)(d), in the first paragraph of cl. (v), added the second sentence.

Section 2 of St.1981, c. 781, in subd. (2)(b), in the first paragraph of cl. (v), added the second sentence.

Section 3 of St.1981, c. 781, in subd. (1)(d), added cl. (vi).

Section 4 of St.1981, c. 781, in subd. (2)(b), added cl. (vi).

St.1981, c. 781 was approved Jan. 2, 1982. Emergency declaration by the Governor was filed Jan. 11, 1982.

St. 1981, c. 795, § 4, an emergency act, approved Jan. 13, 1982, in subd. (1)(d), in the fourth paragraph of cl. (v) substituted "shall represent obligations of said central bank and not of any such bank or group of banks; and," for "shall represent obligations of said central bank and not of any such bank and" and "shall represent obligations of said fund and not of any credit union or group of credit unions" for "shall represent obligations of said fund and not of any credit union or group of credit unions or group of bank

St.1982, c. 630, § 27, an emergency act, approved Jan. 4, 1983, and by § 56 made effective upon passage, in subd. (1)(c), substituted "commissioner of public employee retirement" for "commissioner of insurance" in two places.

Section 28 of St.1982, c. 630, in subd. (2)(d), substituted "commissioner of public employee retirement" for "commissioner of insurance".

Section 29 of St.1982, c. 630, in subd. (2)(e), substituted "commissioner of public employee retirement" for "commissioner of insurance".

St.1982, c. 669, in subd. (1)(d), added cls. (vi) and (vii) without reference to cl. (vi) as added by St.1981, c. 781, § 3.

St.1982, c. 669 was returned by the Governor, to the Senate, the branch in which it originated, with his objections thereto, was passed by the Senate, Jan. 3, 1983, and, in concurrence, by the House of Representatives, Jan. 4, 1983, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution; and thereby has the force of a law.

St.1983, c. 36, approved April 4, 1983, in subd. (1)(d), added cls. (ix) and (x).

St.1983, c. 364, § 15, in the first sentence of subd. (2)(a), deleted "and" preceding "the treasurer of the Greater Lawrence" and inserted ", and the treasurer of the Minuteman Regional Vocational Technical School District", deleted "or" preceding "the Greater Lawrence" and inserted ", or the Minuteman Regional Vocation Technical School District".

St.1983, c. 364, was approved Sept. 10, 1983. Emergency declaration by the Governor was filed on Sept. 12, 1983.

For provisions of St.1983, c. 364, relating to the Minuteman Regional Vocational Technical School District employees retirement system, see the Historical Note following § 1 of this chapter.

St.1983, c. 371, § 2, an emergency act, approved Sept. 26, 1983, and by § 105 made

effective as of July 1, 1983, in subd. (1)(d), in cl. (i)(D), deleted "by savings banks" preceding "under the provisions" and substituted "section fifteen B of chapter one hundred and sixty-seven and section forty-nine of chapter one hundred and sixty-eight, in effect on June thirtieth, nineteen hundred and eighty-three and included on the list of investments pursuant to section fifteen A of chapter one hundred and sixty-seven" for "section forty-nine and section fifty of chapter one hundred and sixty-eight".

Section 3 of St.1983, c. 371, in subd. (2)(b), cl. (i)(D), deleted "by savings banks" preceding "under the provisions" and substituted "section fifteen B of chapter one hundred and sixty-seven and section forty-nine of chapter one hundred and sixty-eight, in effect on June thirtieth, nine hundred and eighty-three and included on the list of investments pursuant to section fifteen A of chapter one hundred and sixty-seven" for "section forty-nine and section fifty of chapter one hundred and sixty-eight".

St.1983, c. 661, § 18, an emergency act, approved Dec. 20, 1983, and by § 29 made effective upon passage, rewrote subd. (1)(d), which prior thereto read:

"Subject in each instance to the approval of the investment committee established under the provisions of paragraph (a) of this subdivision, the state treasurer shall invest and reinvest such funds, to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such use is consistent with sound investment policy and the other requirements of this section, as follows:

"(i) In securities, other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided that:—

"(A) Not more than twenty per cent of the assets of any such system shall be invested in railroad obligations, nor shall more than two per cent of the said assets be invested in the obligations of any one operating railroad corporation, including its direct and assumed obligations and including also the obligations of lessor railroad corporations which derive seventy-five per cent or more of their income from leases of their railroads to said operating railroad corporation.

"(B) Not more than thirty-five per cent of the assets of any such system shall be invested in the bonds of telephone companies, nor shall more than three and one-half per cent of such assets be invested in the bonds of any one telephone company.

"(C) Not more than fifty per cent of the assets of any such system shall be invested in the bonds of public service companies, nor

shall more than four per cent of such assets be invested in the bonds of any one such corporation.

"(D) Not more than fifteen per cent of the assets of any such system shall be invested in obligations made eligible for investment under the provisions of section fifteen B of chapter one hundred and sixty-seven and section forty-nine of chapter one hundred and sixty-eight, in effect on June thirtieth, nineteen hundred and eighty-three and included on the list of investments pursuant to section fifteen A of chapter one hundred and sixty-seven, nor shall more than one per cent of such assets be invested in the obligations of any one obligor so made eligible for investment.

"(E) Not more than twenty-five per cent of the assets of any such system shall be invested in bank stocks, bank holding company stocks and insurance companies stocks, nor shall more than two and one-half per cent of such assets be invested in the stock of any one bank or insurance company.

"(ii) In deposits in the savings funds of savings banks organized under the laws of the commonwealth;

"(iii) In paid-up shares and accounts of and in co-operative banks; and

"(iv) In share accounts of federal savings and loan associations located in the commonwealth.

"(v) In mortgage pass-through securities and mortgage-backed bonds which are rated Aa or better by Standard and Poor's or any other independent rating service designated by the investment committee and issued by a mortgage lender, as herein defined, or issued through a conduit pooling of loans of such mortgage lenders. Any corporate trust, as defined in section one of chapter sixty-two, organized and operated exclusively for the purpose of acting as a conduit for pooling such loans under this clause or clause (v) of paragraph (b) of subdivision (2), or both, shall be exempt from taxation under chapter sixty-two.

"Each mortgage pass-through security and mortgage-backed bond shall be secured or backed by mortgage loans made or acquired by a mortgage lender on residential real estate located in the commonwealth. Each such loan shall generally meet the standards expected of a reasonably prudent investor.

"All proceeds received by a mortgage lender from the sale of mortgage pass-through securities and mortgage-backed bonds to the retirement systems shall be used solely for mortgage loans on real estate located in the commonwealth.

"The word 'mortgage lender' as used herein, shall mean any savings bank, co-operative bank, credit union, trust company, federal sav-

ings and loan association, national banking association or mortgage banking company which is incorporated or maintains an office in the commonwealth; and provided, however, that any savings bank or group of savings banks may participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by the Mutual Savings Central Fund, Inc., as defined in section one of chapter forty-four of the acts of nineteen hundred and thirty-two, and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause, and shall represent obligations of said fund and not of any such bank or group of banks; and provided, further, that any co-operative bank or group of co-operative banks may participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by The Co-operative Central Bank, as defined in section one of chapter forty-five of the acts of nineteen hundred and thirty-two and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause and shall represent obligations of said central bank and not of any such bank or group of banks; and, provided further that any credit union or group of credit unions may participate in the issuance of mortgage pass-through securities and mortgage-backed bonds by the Central Credit Union Fund, Inc., as defined in section one of chapter two hundred and sixteen of the acts of nineteen hundred and thirty-two, and such pass-through securities and bonds shall otherwise satisfy the criteria prescribed in this clause, and shall represent obligations of said fund and not of any credit union or group of credit unions.

"Text of clause (vi) of subdivision (1), paragraph (d), as added by St.1981, c. 781, § 3

"(vi) In group annuity contracts or other retirement plan funding agreements issued by a life insurance company authorized to transact business in the commonwealth.

"Text of clause (vi) of subdivision (1), paragraph (d), as added by St.1982, c. 669

"(vi) After January 1, 1983, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through its subsidiaries has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall remain invested in the stocks, securities or other obligations of any company doing business in or with the Republic of South Africa. Any proceeds of sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in Massachusetts so long as such use is consistent with sound investment policy.

"(vii) Notwithstanding the provisions of the preceding paragraph, if sound investment policy so required the investment committee may vote to spread the sale of such investments over no more than three years so that no less than one-third the value of said investments is sold in any one year. So long as any funds remain invested in any bank, financial institution or firm referred to in paragraph (vi), the investment committee shall annually, on or before January thirty-first, file with the clerk of the senate and the clerk of the house of representatives a report listing all South Africa-related investments held by the fund and their book market value as of the preceding December first.

"(viii) [Blank].

"(ix) After July first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual or corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland, and no assets shall remain invested in the stocks, securities or other obligations of any such company so engaged. Any proceeds of sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in Massachusetts so long as such use is consistent with sound investment policy.

"(x) Notwithstanding the provisions of the preceding paragraph, if sound investment policy so requires, the investment committee may vote to spread the sale of such investments over no more than three years so that no less than one-third the value of said investments is sold in any one year. So long as any funds remain invested in any bank, financial institution or firm so referred to in clause (ix), the investment committee shall annually, on or before January thirty-first, file with the clerk of the senate and the clerk of the house of representatives a report listing all such related investments held by the fund and their book market value as of the preceding December first."

Section 19 of St.1983 c. 661, in the introductory paragraph of subd. (2)(b), inserted "in the PRIT Fund pursuant to subdivision (8) of section twenty-two, in the PRIT Fund by purchasing shares if authorized pursuant to paragraph (g)".

Section 19A of St.1983, c. 661, in subd. (2)(b), added cl. (vii).

Section 20 of St.1983, c. 661, added subd. (2)(g).

Section 21 of St.1983, c. 661, inserted subd. (2A).

Section 22 of St.1983, c. 661, in subd. (3), inserted "for the exclusive purpose of providing benefits to members and their beneficiaries", inserted "a" preceding "like character", and added "and by diversifying the investments of the system so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so".

St.1986, c. 557, § 48, an emergency act and corrections bill, approved Dec. 8, 1986, in subd. (2A)(a), in the first sentence of the second paragraph, substituted "board" for "members" where first appearing.

Section 49 of St.1986, c. 557, in subd. (2A)(b), in the third sentence, substituted "disclosed" for "diclosed".

St.1987, c. 697, § 77, an emergency act, approved Jan. 12, 1988, in subd. (2)(b), in the introductory clause substituted "of said fund" for "if authorized pursuant to paragraph (g)".

Section 78 of St.1987, c. 697, in subd. (2)(c) inserted the third sentence.

Section 79 of St.1987, c. 697, in subd. (2)(c), in the seventh sentence substituted "public employee retirement" for "insurance".

Section 80 of St.1987, c. 697, in subd. (2)(d), substituted "Any" for "Any board or member thereof or any", "any board or member thereof" for "such board or member", and inserted "to such board or member" and "as provided for in subdivision (4)".

Section 81 of St.1987, c. 697, in subd. (2)(e), in the first sentence substituted "May" for "March".

Section 82 of St.1987, c. 697, rewrote subd. (2)(g), which prior thereto read:

"Clause (i) to (vii), inclusive, of paragraph (b) shall not apply to the board of any local retirement system which upon application is determined by the commissioner to have a record of investment management which merits broader investment powers; provided, however, that no funds are to be invested directly in mortgages or in collateral loans. In making such determination the commissioner shall consider the diversification of the risk of the investments of such board, the return of the investments of such board, the past performance of the investment portfolio of such board and the extent and quality of professional advice received by such board regarding the investment of funds. Any such board shall invest and reinvest consistent with sound investment policy and the requirements of subdivision (3)."

Section 83 of St.1987, c. 697, in subd. (2A)(a), in the first sentence of the second paragraph substituted "public safety organization" for "public safety union" and "and a person who is not an employee or official of the commonwealth," for "a member of the board of a participating local retirement system".

Section 84 of St.1987, c. 697, deleted subd. (2A)(c), which read:

"The state treasurer shall be treasurer-custodian of the PRIT Fund and shall have the custody of the funds and securities of said Fund."

Section 85 of St.1987, c. 697, in subd. (2A)(e), in cl. (i), added three provisos.

Section 86 of St.1987, c. 697, in subd. (2A)(e), rewrote cl. (vi), which prior thereto read:

"assess brokers fees to participating and other purchasing retirement systems for the expenses of the board;"

Section 87 of St.1987, c. 697, in subd. (2A)(e) added cls. (xi) to (xiii).

Section 89 of St.1987, c. 697, in subd. (2A)(g), in cl. (ii) deleted from the end ", including staff to advise and assist appointed members of the board; provided that each appointed member may have at his discretion, one such staff person to advise and assist said member".

Section 90 of St.1987, c. 697, rewrote subd. (2A)(h), which prior thereto read:

"Subject to the approval or ratification of the PRIM board, the executive director shall invest and reinvest such funds contained in said fund, to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section; provided, however, that no funds are to be invested directly in mortgages or in collateral loans; provided, further, that the executive director shall transfer not less than two million dollars of said fund into a fund managed by the Massachusetts Technology Development Corporation on behalf of the board; and provided, further, that said Massachusetts Technology Development Corporation shall manage the fund in accordance with the provisions of section four A of chapter forty G."

Section 91 of St.1987, c. 697, added subd. (2A)(j).

Section 92 of St.1987, c. 697, added subd. (4).

Sections 129 and 133 of St.1987, c. 697, provide:

"Section 129. Notwithstanding the provisions of subdivision (2A) of section twenty-three of chapter thirty-two of the General Laws, the pension reserves investment management board shall operate under the annual

budget adopted by said board for the fiscal year nineteen hundred and eight-eight until such time as said budget or any other annual or supplemental budget request filed by the board is approved in accordance with the provisions of said subdivision."

"Section 133. Notwithstanding any general or special law or regulation to the contrary, the board of each retirement system investing in accordance with the provisions of paragraph (g) of subdivision (2) of section twenty-three of chapter thirty-two of the General Laws and, the state treasurer, acting as the treasurer/custodian of the state employees' retirement system and the teachers' retirement system, and as the chairman of the pension reserves investment management board, are hereby authorized and directed to investigate by means of a survey the extent to which corporations organized under the laws of the United States or the several states and operating in Northern Ireland, in which the assets of said retirement systems or the Pension Reserves Investment Trust Fund are invested, adhere to principals of nondiscrimination in employment and freedom of workplace opportunity. In conducting said survey, said boards and said treasurer may utilize any information presently available relative to similar pension plans. In making said determination, said boards and said treasurer shall consider, without limitation, the following standards for corporate activity:

"(1) equal access to employment, promotion, and job-preservation without regard to religious affiliation or other minority status;

"(2) the promotion of religious tolerance within the workplace, and the eradication of any manifestations of religious and other illegal discrimination;

"(3) adherence to other legal and regulatory guidelines for nondiscrimination and equality of opportunity, existing in Northern Ireland;

"(4) adherence to the McBride Principles for Northern Ireland, so-called.

"Said treasurer shall set forth the results of said investigation by filing a report with the clerks of the house of representatives and of the senate not later than the first business day in January of each year. Said boards shall set forth the results of said investigation by filing a report with the public employee retirement administration not later than the first business day in January of each year. Said report shall include, but not be limited to, the names and addresses of all United States corporations operating in Northern Ireland in which the assets of said retirement systems or trust fund are invested, and the findings of said boards and said treasurer relative to these corporations' adherence to the standards for corporate activity as set forth. Said boards and said treasurer

shall also report their recommendations, if any, consistent with prudent fiduciary practice, based upon the findings of said investigation. Said report shall be available for public inspection in the offices where they are prepared and where they are filed.

"Said boards and said treasurer, subject to the approval of the investment committee, established under paragraph (a) of subdivision (1) of section twenty-three of chapter thirty-two of the General Laws, and said pension reserves investment management board, established under paragraph (a) of subdivision (2A) of said section twenty-three, shall, where necessary, appropriate, and consistent with pru-

dent standards for fiduciary practice, initiate and support shareholder petitions or initiatives requiring corporate action in compliance with the standards for nondiscrimination set forth in this act."

Prior Laws:

- St.1913, c. 832, § 11.
- St.1928, c. 184, § 3.
- G.L.1932 (Ter.Ed.) c. 32, § 14.
- G.L. c. 32, § 31H, as added by St.1936, c. 318, § 1.
- G.L. c. 32, § 25H, as added by St.1936, c. 400, § 1.
- St.1941, c. 113, §§ 1, 2.

Cross References

- Banking commissioner, preparation and submission of annual list to investment committee of bank meeting local community needs, see c. 167, § 15.
- Group insurance of state employees, investment of funds, see c. 32A, § 9A.
- Tax exemptions, corporate trusts, see c. 62, § 8.

Code of Massachusetts Regulations

- Public employee retirement administration,
 - Exemption from investment restrictions by commissioner, see 840 CMR 19.05.
 - Investment advice and management, see 840 CMR 16.03, 16.06.
 - Revocation of exemption from investment restrictions, see 840 CMR 19.07.
 - Standards of conduct for investment advisors, see 840 CMR 17.04.

Law Review Commentaries

- Cooperative banks, deposits of public retirement systems. Andrew A. Caffrey and Arthur B. Tyler, 1 Annual Survey of Mass.Law, Boston College, pp. 79, 80 (1954).
- Legislative pension decisions, amendment, alteration or repeal of annuity, pension or retirement. Sidney A. Aisner, 1 Annual Survey of Mass.Law, Boston College, pp. 256, 257 (1954).

Library References

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| Counties ⇨69(3). | C.J.S. Counties § 130. |
| Municipal Corporations ⇨187(1), 200(1), 200(9). | C.J.S. Municipal Corporations §§ 588, 589, 614, 615. |
| Officers and Public Employees ⇨101.5(1). | C.J.S. Officers and Public Employees §§ 243 to 248. |
| Schools ⇨63(5), 146(1). | C.J.S. Schools and School Districts §§ 118, 149, 150, 231 to 236. |
| States ⇨64.1(1). | C.J.S. States §§ 104 to 115. |
| Towns ⇨29. | C.J.S. Towns §§ 71, 72. |
| WESTLAW Topic Nos. 104, 268, 283, 345, 360, 381. | |

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Notes of Decisions

Custody of funds 1
Investment 2

contributions to the retirement systems, but not to amounts appropriated by the legislature. *Id.*

1. Custody of funds

Funds annually appropriated by the legislature for state employees and teachers retirement systems may not be transferred to the systems' investment committee when the budget is passed or any other time since under this section the treasurer-custodian is to retain custody of the funds, while the investment committee has general supervision of the investment and reinvestment of the funds. *Op. Atty. Gen.*, July 31, 1978, p. 100.

The treasurer-custodian of funds of the state employees and teachers retirement systems has custody for investment purposes of employee

2. Investment

The fund, must be invested as prescribed in c. 32, § 23(2)(b), as appearing in St.1945, c. 658, § 1, as amended by St.1950, c. 162, § 1, and cannot be used to purchase annuities. *McCarthy v. State Board of Retirement* (1953) 116 N.E.2d 852, 331 Mass. 46.

Sale, by state treasurer, of bonds representing investments of funds of retirement systems for state employees and teachers requires approval of investment committee for systems and not that of the Governor. *Op. Atty. Gen.*, June 9, 1958, p. 76.

§ 23A. Monies appropriated for accumulating assets in advance of retirement allowance payments; investment

All monies appropriated by the general court for the express purpose of accumulating assets in advance of the payment of retirement allowances shall be invested in a manner pursuant to the provisions of section twenty-three. Added by St.1982, c. 357, § 11.

Historical Note

St.1982, c. 357, § 11, an emergency act, was approved July 20, 1982, and by § 21 made effective as of July 1, 1982.

§ 24. Violations of contributory retirement laws

(1) **Enforcement of Provisions.** If the commissioner of public employee retirement determines that any governmental unit, any officer or employee thereof, or the state board of retirement, the teachers' retirement board, or any other board subject to the provisions of sections one to twenty-eight, inclusive, or any member or employee of any such board, has violated or neglected to comply with any provisions of such sections, or the rules and regulations established thereunder, he shall give notice thereof to the governor, county commissioners, the mayor, the board of selectmen, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, the Massachusetts Housing Finance Agency, the Massachusetts Port Authority, the Blue Hills Regional Vocational School System, the Greater Lawrence Sanitary District, or the Minuteman Regional Vocational Technical School District, as the case may be, and to the board and, thereafter, if such violation or neglect continues, shall forthwith present the facts to the attorney general who shall take appropriate action. The superior court shall have jurisdiction in equity upon petition of the commissioner of public employee retirement or any interested party to compel the observance and to restrain the violation of any

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Volume 3A
Chapters 32 to 32B

1993
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Historical and Statutory Notes

1989 Legislation

St.1989, c. 341, § 14, an emergency act, approved Aug. 15, 1989, redesignated subsds. (7) to (13) as subsds. (5) to (11), and in subd. (11), substituted "subdivision (6), (7), (8), (9) or (10)" for "subdivision (8), (9), (10), (11) or (12)".

1991 Legislation

St.1991, c. 6, § 19, approved March 22, 1991, and by § 96 made effective upon enactment, in subd. (11), added the proviso.

Section 97 of St.1991, c. 6, provides:

"The provisions of this act shall be deemed severable, and if any part of this act shall be adjudged unconstitutional or invalid, such judgment shall not affect the validity of other parts thereof."

St.1991, c. 138, § 115, approved July 10, 1991, and by § 393 made effective as of July 1, 1991, in subd. (1), in the second paragraph, in the first sentence, substituted "nineteen hundred and ninety-two" for "nineteen hundred and ninety-one".

Section 116 of St.1991, c. 138, in subd. (1), in the fourth paragraph, in the first sentence, substituted "nineteen hundred and ninety-one" for "nineteen hundred and ninety".

The Governor's purported disapproval of St. 1991, c. 138, §§ 115 and 116 was held invalid. See Opinion of the Justices (1991) 582 N.E.2d 504, 411 Mass. 1201.

1992 Legislation

St.1992, c. 399, § 2, an emergency act, approved Jan. 14, 1992, in subd. (1), in the first paragraph, in the first sentence, deleted ", that no such funding schedule shall be adopted which would set forth total annual payments in any of its first six fiscal years which are less in any such year than the total estimated cost of benefits to be paid in such year for such system or for such other assumed liabilities; provided further" following "provided, however".

Section 3 of St.1992, c. 399, without reference to St.1991, c. 138, § 115, in subd. (1), in the second paragraph, in the first sentence, substituted "nineteen hundred and ninety-five" for "nineteen hundred and ninety-one".

Section 4 of St.1992, c. 399, without reference to St.1991, c. 138, § 116, in subd. (1), in the fourth paragraph, in the first sentence, substituted "June thirtieth, nineteen hundred and ninety-four" for "December thirty-first, nineteen hundred and ninety".

Section 5 of St.1992, c. 399, in subd. (4), deleted par. (e).

§ 23. Management of funds

(1) State Employees' Retirement System and Teachers' Retirement System.

[See main volume for text of paragraphs (a) to (c) of subdivision (1)]

(d) Subject in each instance to the approval of the investment committee established under the provisions of paragraph (a), the state treasurer shall invest and reinvest such funds, to the extent not required for current disbursements as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section provided that the state treasurer shall not invest or reinvest such funds in any state-chartered bank having a descriptive rating of (c) or (d) under section fourteen of chapter one hundred and sixty-seven or any federally insured depository institution having an assigned rating of (C) or (D) under section 807 (b)(2) of the Community Reinvestment Act of 1977, 12 USC 2901 et seq.; and provided, further, that:

(i) no funds are to be invested directly in mortgages or in collateral loans;

(ii) after January first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through its subsidiaries has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall remain invested in the stocks, securities or other obligations of any company doing business in or with the Republic of South Africa. Any proceeds of sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in the commonwealth so long as such use is consistent with sound investment policy;

(iii) After July first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual or corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military air craft for use or deployment in any

activity in Northern Ireland, and no assets shall remain invested in the stocks, securities or other obligations of any such company so engaged. Any proceeds from sales required under this paragraph shall be invested as much as reasonably possible in institutions or companies which invest or conduct business operations in the commonwealth so long as such use is consistent with sound investment policy;

(iv) Notwithstanding the provisions of the clauses (ii) and (iii), if sound investment policy so requires, the investment committee may vote to spread the sale of investments described in said clauses over no more than three years, so that no less than one-third the value of said investments is sold in any one year. So long as any funds remain invested in any bank, financial institution or firm so referred to in clause (ii) or (iii), the investment committee shall annually, on or before January thirty-first, file with the clerk of the senate and the clerk of the house of representatives a report listing all such related investments held by the fund and their book value as of the preceding December first.

[See main volume for text of subdivisions (2) to (4)]

Amended by St.1990, c. 102, § 3.

Historical and Statutory Notes

1990 Legislation

St.1990, c. 102, § 3, an emergency act, approved July 6, 1990, and by § 42 made applicable to any examination report issued with respect to an examination commenced after July 1, 1990, in the introductory paragraph of subd. (1)(d), added, "the state treasurer shall not invest or reinvest such funds in any state-chartered bank having a descriptive rating of (c) or (d) under section fourteen of chapter one hundred and sixty-seven or any federally insured depository institution having an assigned rating of (C) or (D) under section 807(b)(2) of the Community Reinvestment Act of 1977, 12 USC 2901 et seq.; and provided, further, that".

Section 46 of St.1990, c. 102, provides:

"The provisions of this act are severable, and if any of its provisions or an application thereof shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions of other applications thereof."

Related Laws:

St.1990, c. 150, § 26, approved Aug. 1, 1990, and by § 383 made effective as of July 1, 1990, provides:

"Notwithstanding the provisions of any general or special law to the contrary, no funds of the state employees' retirement system, the state teachers' retirement system, or the Pension Reserves Investment Trust Fund shall be loaned or pledged to the commonwealth, or used for the purchase of any bond, note or other obligation of the commonwealth without the prior approval of the investment committee established under paragraph (a) of subdivision (1) of section twenty-three of chapter thirty-two of the General Laws or of the pension reserves investment management board, as applicable, and the prior written notification of the house and senate committees on ways and means; provided further, that the requirements of this section shall be in addition to and not in lieu of any other requirements established under any general or special law for the investment and use of such funds."

§ 26. Retirement of officers in department of state police

(1) As used in this section, the following words shall, unless the context otherwise requires, have the following meanings:—

"Officer", an officer of the department of state police appointed thereto under section ten of chapter twenty-two C.

"Rating board", a board having the powers and duties provided for in this section, and consisting of the state surgeon, the commissioner of public health, the colonel of state police, or a subordinate designated by any of them from time to time by a writing filed in the office of the state board of retirement.

(2)(a) Any member in service classified in Group 3 who is an officer of the department of state police shall be retired by the state board of retirement in case the rating board, after an examination of such officer by a registered physician appointed by it, shall report in writing to the state board of retirement that such officer is physically or mentally incapacitated for the performance of duty by reason of (i) illness incurred through no fault of his own in the actual performance of duty or (ii) an injury resulting from an

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Volume 5

Containing, with some exceptions, the statute laws of Oregon of a general, public and permanent nature in effect on September 29, 1991, the normal effective date of Acts passed by the regular session of the Sixty-sixth Legislative Assembly, which adjourned June 30, 1991

PUBLISHED PURSUANT TO ORS 171.275
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STATE OF OREGON

INVESTING STATE FUNDS

293.701 Definitions for ORS 293.701 to 293.776, 293.810 and 293.820. As used in ORS 293.701 to 293.776, 293.810 and 293.820, unless the context requires otherwise:

(1) "Council" means the Oregon Investment Council.

(2) "Investment funds" means:

(a) Public Employes' Retirement Fund referred to in ORS 237.271;

(b) Industrial Accident Fund referred to in ORS 656.632;

(c) Insurance and Finance Fund referred to in ORS 705.145;

(d) Inmate Injury Fund referred to in ORS 655.540;

(e) Employment Division Special Administrative Fund referred to in ORS 657.822;

(f) Insurance Fund referred to in ORS 278.425;

(g) Funds under the control and administration of the Division of State Lands;

(h) Common School Fund Guaranty Fund referred to in ORS 327.482;

(i) State Scholarship Commission Fund referred to in ORS 348.570;

(j) Moneys made available to the Commission for the Blind under ORS 346.270 and 346.540 or rules adopted thereunder;

(k) Forest rehabilitation bonds sinking fund referred to in ORS 530.250;

(l) Oregon War Veterans' Fund referred to in ORS 407.495;

(m) Oregon War Veterans' Bond Sinking Account referred to in ORS 407.515;

(n) World War II Veterans' Compensation Fund;

(o) World War II Veterans' Bond Sinking Fund;

(p) Savings and loan association funds in the hands of the Director of the Department of Insurance and Finance;

(q) Funds in the hands of the State Treasurer that are not required to meet current demands;

(r) State funds that are not subject to the control and administration of officers or bodies specifically designated by law;

(s) Funds derived from the sale of state bonds;

(t) Social Security Revolving Account referred to in ORS 237.490;

(u) Investment funds of the State Board of Higher Education lawfully available for investment or reinvestment;

(v) Local Government Employer Benefit Trust Fund referred to in ORS 657.513;

(w) Western Oregon Timber Tax Reserve Account referred to in ORS 321.299; and

(x) Elderly and Disabled Special Transportation Fund established by ORS 391.800.

(3) "Investment officer" means the State Treasurer in the capacity as investment officer for the council. [1967 c.335 §1; 1967 c.399 §5; 1971 c.408 §1; 1975 c.363 §1a; 1975 c.471 §1a; 1977 c.491 §11; 1977 c.392 §31; 1979 c.514 §3; 1980 c.19 §2; 1981 c.660 §47; 1985 c.565 §48; 1985 c.731 §25; 1985 c.759 §38; 1985 c.816 §14; 1987 c.373 §28; 1987 c.616 §6; 1987 c.652 §17; 1989 c.224 §49; 1989 c.597 §8; 1991 c.459 §378]

293.705 [Formerly 291.604; 1965 c.285 §63; 1967 c.399 §1; repealed by 1967 c.335 §60 and 1967 c.399 §4]

293.706 Oregon Investment Council; appointment; term; vacancies. (1) There is created the Oregon Investment Council, consisting of five members, subject to Senate confirmation in the manner provided in ORS 171.562 and 171.565.

(2) One member of the council shall be a public member who serves on the Public Employes' Retirement Board. Three members, who shall be qualified by training and experience in the field of investment or finance and who may not hold any other public office or employment, shall be appointed by the Governor. One member shall be the State Treasurer. In addition, the Director of the Public Employes' Retirement System appointed by the board shall be an ex officio member of the council with no voting power.

(3) The term of office of each appointed non ex officio member of the council is four years, but each appointed member serves at the pleasure of the appointing authority. A vacancy in the appointed membership occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only. [1967 c.335 §2; 1987 c.377 §1]

293.707 [1965 c.359 §9; repealed by 1967 c.335 §60]

293.710 [Formerly 291.606; repealed by 1967 c.335 §60]

293.711 Compensation and expenses of council members; chairman. (1) A member of the council is entitled to compensation and expenses as provided in ORS 292.495.

(2) The council shall select one of its members as chairman, for a term and with powers and duties necessary for the performance of the functions of the office as the council shall determine. [1967 c.335 §§3, 4; 1969 c.311 §19]

293.715 [Formerly 291.607; repealed by 1967 c.335 §60]

293.716 State Treasurer is investment officer for council; subordinate personnel; bonds. (1) The State Treasurer is the investment officer for the council, and shall per-

form functions in that capacity as authorized or required by law and, consistent with law, by the council.

(2) The bond of the State Treasurer required from the State Treasurer by law shall be deemed to extend to the faithful performance of all functions of the office of investment officer.

(3) The investment officer may:

(a) Subject to any applicable provision of the State Personnel Relations Law, employ, prescribe the functions and fix the compensation of personnel necessary to facilitate and assist in carrying out the functions of the council and investment officer.

(b) Require a fidelity bond of any person employed by the investment officer who has charge of, handles or has access to any investment funds, state money or property. The amounts of the bonds shall be fixed by the investment officer, except as otherwise provided by law, and the sureties shall be approved by the investment officer. The premiums on the bonds shall be an expense of the State Treasurer. [1967 c.335 §5]

293.718 Reimbursement of expenses of State Treasurer. As reimbursement for expenses incurred as investment officer, the State Treasurer may deduct one-half of one percent of the amount of income received by each of the investment funds from such earnings. Amounts so deducted shall be deposited in the miscellaneous receipts account established in the General Fund for the State Treasurer, and are appropriated for payment of the expenses of the office of State Treasurer, incurred as investment officer. [1969 c.466 §2; 1989 c.319 §3]

293.720 [Formerly 291.608; repealed by 1967 c.335 §60]

293.721 General objective of investments. Moneys in the investment funds shall be invested and reinvested to achieve the investment objective of the investment funds, which is to make the moneys as productive as possible, subject to the standard set forth in ORS 293.726. [1967 c.335 §6]

293.726 Standard of judgment and care in investments; investment in corporate stock limited; investment in foreign securities prohibited. (1) In investing and reinvesting moneys in the investment funds and in acquiring, retaining, managing and disposing of investments of the investment funds there shall be exercised the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as

the probable safety of their capital. Within the limitations of the foregoing standard and subject to subsections (2) and (3) of this section and ORS 293.810, there may be acquired, retained, managed and disposed of as investments of the investment funds every kind of investment which persons of prudence, discretion and intelligence acquire, retain, manage and dispose of for their own account.

(2) Notwithstanding subsection (1) of this section, only moneys in the Public Employees' Retirement Fund, Industrial Accident Fund and the Common School Fund may be invested in the stock of any company, association or corporation, and not more than 50 percent of the moneys contributed to each of those funds may be invested in common stock.

(3) Notwithstanding subsection (1) of this section, no moneys invested pursuant to ORS 293.701 (2)(q) shall be invested in any securities originating outside the United States. [1967 c.335 §7; 1971 c.53 §1; 1973 c.385 §1; 1981 c.820 §12; 1983 c.456 §1; 1983 c.466 §1; 1987 c.759 §1]

293.731 Council to formulate and review investment policies. Subject to the objective set forth in ORS 293.721 and the standards set forth in ORS 293.726, the council shall formulate policies for the investment and reinvestment of moneys in the investment funds and the acquisition, retention, management and disposition of investments of the investment funds. The council, from time to time, shall review those policies and make changes therein as it considers necessary or desirable. The council may formulate separate policies for any fund included in the investment funds. [1967 c.335 §8]

293.735 [Formerly 291.610; repealed by 1967 c.335 §60]

293.736 Duties of investment officer; not to invest in common stock. (1) Except as provided in subsection (2) of this section and in ORS 293.741, in amounts available for investment purposes and subject to the policies formulated by the council, the investment officer shall invest and reinvest moneys in the investment funds and acquire, retain, manage, including exercise of any voting rights, and dispose of investments of the investment funds.

(2) The investment officer may not perform functions specified in subsection (1) of this section with respect to investment in common stock of moneys in the Public Employees' Retirement Fund or Industrial Accident Fund. Those functions with respect to that investment may be performed only by persons contracted with by the council as provided in ORS 293.741. [1967 c.335 §9]

293.740 [Formerly 291.611; repealed by 1967 c.335 §60]