HOUSE DOCKET, NO. 1003 FILED ON: 1/19/2011

HOUSE . . . . . No. 1617

The Commonwealth of Massachusetts

PRESENTED BY:

Jay R. Kaufman

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to pension governance reform..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jay R. Kaufman	*15th Middlesex*
Thomas P. Conroy	*13th Middlesex*
William N. Brownsberger	

HOUSE DOCKET, NO. 1003 FILED ON: 1/19/2011

HOUSE . . . . . No. 1617

By Mr. Kaufman of Lexington, a petition (accompanied by bill, House, No. 1617) of Jay R. Kaufman, Thomas P. Conroy and William N. Brownsberger relative to the investment of public pension funds. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2485* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to pension governance reform..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subdivision (2) of Section 23 of Chapter 32 of the General Laws is hereby amended by striking out sub–paragraph (b) and inserting in place thereof the following: -

(b) The board of each system shall invest and reinvest the funds of such system in the PRIT Fund pursuant to subdivision (8) of section twenty two, in the PRIT Fund by purchasing shares of said fund, as provided for in the trust agreement adopted by the PRIM Board pursuant to subdivision (2A) or as follows:-

(i) in accordance with the standards set forth in subdivision (3), provided that: -

(A) no investment of funds shall be made in stocks, securities or other obligations of any company which derives more than 15 per cent of its revenues from the sale of tobacco products.

10 (B) in investing such funds the board shall employ an investment manager or investment
11 managers who shall invest the funds of the system.

12 (C) no funds shall be invested directly in mortgages or collateral loans.

13 No investment of funds shall take place until board has received from the commission an
14 acknowledgement of receipt of the following:-

15 (a) certification that, in making the selection, the board has complied with the process
16 established in section 23A;

17 (b) a copy of the vendor certification required under section 23A;

18 (c) copies of disclosure forms submitted by the selected vendor;

19 (d) a certification that the investment is not a prohibited investment as set forth in
20 regulations of the commission;

21 (e) in the event that the board has retained a consultant, a copy of the consultant reports
22 pertaining to the investment and the selected vendor;

23 (f) a copy of the board certification required under section 23A.

24 The commission may withhold the acknowledgement if it determines that it is in the best
25 interest of the retirement system provided, however, that it must so notify the board within ten
26 days of receipt of completed documents as required by this section.

27 Prior to the retention of an investment consultant the board must receive from the
28 commission an acknowledgement of receipt of the following:-

29 (a) certification that, in making the selection, the board has complied with the process
30 established in section 23A;

31 (b) copy of the vendor certification required under section 23A;

32 (c) copies of disclosure forms submitted by the selected consultant;

33 (d) copy of the board certification required under section 23A.

34 SECTION 2. Section 50 of Chapter 7 of the General Laws as appearing in the 2004
35 Official Edition is hereby amended by striking out lines 68 through 69 inclusive.

36 SECTION 3. Clause 19 of paragraph (b) of Section (1) of Chapter 30B of the General
37 Laws is hereby amended by adding the following:-

38 provided, however, that such procurements shall take place in accordance with the
39 provisions of section 23A of chapter 32.

40 SECTION 4. Chapter 32 of the General Laws is hereby amended by adding the following
41 section: -

42 Section 21A. As used in this section the following words shall, unless the context
43 requires otherwise, have the following meanings: -

44 "Affiliates", entities which are affiliates of each other when either directly or indirectly
45 one concern or individual controls or has the power to control another, or when a third party
46 controls or has the power to control both.

47 "Commission", the Public Employee Retirement Administration Commission.

48 "Contract", a contract for the furnishing of supplies or services to any retirement board.

49 "Debarment", an exclusion from contracting or subcontracting with a retirement board for
50 a reasonable, specified period of time commensurate with the seriousness of the offense.

51 "Person", any natural person, business, partnership, corporation, union, committee, club
52 or other organization, entity or group of individuals.

53 "Retirement board", a board established pursuant to the provisions of chapter 32 , the
54 provisions of chapter 34B or the Massachusetts water resources authority retirement board,
55 excluding the pension reserves investment management board.

56 "Suspension", the temporary disqualification of a vendor who is suspected upon adequate
57 evidence of engaging or having engaged in conduct which constitutes grounds for debarment.

58 "Vendor", any person that has furnished or seeks to furnish supplies or services under a
59 contract with a retirement board.

60 (a) The Commission shall establish and maintain a consolidated list of vendors to whom
61 contracts shall not be awarded and from whom offers, bids, or proposals shall not be solicited.
62 The list shall show at a minimum the following information:

63 (1) the names of those persons debarred or suspended in alphabetical order with
64 appropriate cross reference where more than one name is involved in a single debarment or
65 suspension;

66 (2) the basis of authority for each debarment or suspension;

67 (3) the extent of restrictions imposed;

68 (4) the termination date of each debarment or suspension; and

69 (5) in the case of a suspension, the hearing date, if and when set, for debarment
70 proceedings.

71 The commission shall cause the list to be kept current by the issuance of notices of
72 additions and deletions. The list shall be published on a periodic basis, together with notices of
73 additions and deletions there from, in the goods and services bulletin and the central register
74 published by the state secretary and in such other publications as the commission shall designate.
75 The commission shall also forward said list to the inspector general, the attorney general, and the
76 state auditor.

77 (b) Debarment may be imposed for the following causes:

78 (1) conviction or final adjudication by a court or administrative agency of competent
79 jurisdiction of any of the following offenses:

80 (i) a criminal offense incident to obtaining or attempting to obtain a public or private
81 contract or subcontract, or in the performance of such contract or subcontract;

82 (ii) a criminal offense involving embezzlement, theft, forgery, bribery, falsification or
83 destruction of records, receiving stolen property or any other offense indicating a lack of
84 business integrity or business honesty which seriously and directly affects the vendor's present
85 responsibility as a public contractor;

86 (iii) a violation of state or federal antitrust laws arising out of the submission of bids or
87 proposals;

88 (iv) a violation of chapter two hundred and sixty-eight A;

89 (v) a violation of chapter thirty – two

90 (2) substantial evidence, as determined by the commission, of any of the following acts:

91 (i) willfully supplying materially false information incident to obtaining or attempting to
92 obtain or performing any public contract or subcontract;

93 (ii) willful failure to comply with record-keeping and accounting requirements prescribed
94 by law or regulation;

95 (iii) a record of failure to perform or of unsatisfactory performance in accordance with
96 the terms of one or more public contracts, provided that such failure to perform or unsatisfactory
97 performance has occurred within a reasonable period of time preceding the determination to
98 debar and provided further that such failure to perform or unsatisfactory performance was not
99 caused by factors beyond the vendor's control;

100 (iv) the submission to the board or the commission of an inaccurate disclosure statement

101 (v); the failure to disclose to the board and the commission any compensation provided to
102 any person in regards to attempting to obtain or the performance of a public contract or
103 subcontract, including, but not limited to, compensation provided by third parties retained by the
104 vendor to any other person;

105 (vi) any other cause affecting the responsibility of a vendor which the commission
106 determines to be of such a serious and compelling nature as to warrant debarment.

107 (c) No vendor may be suspended unless the commission has first informed the vendor by
108 written notice of the proposed suspension mailed by registered or certified mail to the vendor's
109 last known address, except when the commission determines that immediate suspension is

110 necessary to prevent serious harm to the retirement system, in which case the suspension shall
111 take effect immediately upon signing by the executive director of an order of suspension, and
112 notice shall be mailed to the vendor at the earliest opportunity. The notice shall inform the
113 vendor of the reasons for the proposed suspension and shall state that the vendor may within
114 fourteen days respond in writing and may in such response request a hearing. The commission
115 may extend the period for response at the request of the vendor. The commission shall determine
116 whether to impose the suspension or, in the case of an emergency suspension imposed prior to
117 notice to the vendor, whether to continue the suspension after reviewing the vendor's response, if
118 any, and making such investigation as the commission determines is necessary and appropriate.
119 An indictment, or any information or other filing by a public agency charging a criminal offense,
120 for any of the offenses listed in paragraph (1) of subsection (c) shall constitute adequate evidence
121 to support a suspension.

122 If the vendor requests a hearing, and the suspension is not based on an indictment, the
123 commission shall conduct a hearing according to the rules for the conduct of adjudicatory
124 hearings established by the secretary of administration pursuant to chapter thirty A. Such hearing
125 shall be initiated within thirty days of the imposition of the suspension, unless the vendor
126 requests that the hearing be delayed. Officers and employees of the commission and records of
127 the commission shall not be subject to subpoena for such hearing, if in the opinion of the
128 commission production of records or testimony would prejudice any pending investigation by the
129 commission.

130 A suspension shall not exceed twelve months unless a pending administrative or judicial
131 proceeding in which the vendor is a party may result in a conviction or final adjudication of an
132 offense listed in paragraph (1) of subsection (c).

133 (d) No vendor may be debarred under this section unless the commission has first
134 informed the vendor by written notice of the proposed debarment mailed by registered or
135 certified mail to the vendor's last known address. The notice shall inform the vendor of the
136 reasons for the debarment and shall state that the vendor will be accorded an opportunity for a
137 hearing if the vendor so requests within fourteen days of receipt of the notice. A hearing
138 requested under this paragraph shall be conducted by the commission within sixty days of receipt
139 of the request, unless the commission grants additional time therefore at the request of the
140 vendor. The hearing shall be conducted according to the rules for the conduct of adjudicatory
141 hearings established by the commissioner of administration pursuant to chapter thirty A. A
142 debarment shall not be imposed until (i) fourteen days after receipt by the vendor of notice of the
143 proposed debarment if no hearing is requested, or (ii) the issuance of a written decision by the
144 commission which makes specific findings that there is sufficient evidence to support the
145 debarment and that debarment for the period specified in the decision is required to protect the
146 integrity of the public contracting process. A vendor shall be notified forthwith of the decision by
147 registered or certified mail, and of the vendor's right to judicial review in the event that the
148 decision is adverse to the vendor. If a suspension precedes a debarment, the suspension period
149 shall be considered in determining the debarment period.

150 (e) A debarment or suspension may include all known affiliates of a vendor. The decision
151 to include a known affiliate within the scope of a debarment or suspension shall be made on a
152 case-by-case basis, after giving due regard to all relevant facts and circumstances. The offense or
153 act of an individual justifying suspension, or the evidence justifying a suspension, may be
154 imputed to the entity with which the individual is connected when such offense or act occurred in
155 connection with the individual's performance of duties for or on behalf of the entity or with the

156 knowledge, approval, or acquiescence of the entity or one or more of its principals. The entity's
157 acceptance of the benefits derived from the conduct shall be evidence of such knowledge,
158 approval, or acquiescence. The offense or act of an entity justifying debarment, or the evidence
159 justifying a suspension, may be imputed to any officer, director, shareholder, partner, employee
160 or other individual associated with the entity who participated in, knew of, or had reason to know
161 of the entity's act. An entity may not be suspended or debarred except in accordance with the
162 procedures set forth in this section.

163 (f) In determining whether to debar a vendor, or the period of a debarment, all mitigating
164 facts and circumstances shall be taken into consideration. A debarment may be removed or the
165 period thereof may be reduced by the commission upon the submission of an application
166 supported by documentary evidence setting forth appropriate grounds for the granting of relief,
167 such as newly discovered material evidence, reversal of a judgment or conviction, bona fide
168 change of ownership or management, or the elimination of the cause for which the debarment
169 was imposed.

170 (g) During the period for which a person has been debarred or suspended, that person
171 shall not submit or cause to be submitted offers, bids, or proposals to any retirement board, nor
172 shall any retirement board solicit or consider offers, bids, or proposals from, nor execute, renew,
173 or extend any contract with, a debarred or suspended vendor, and a vendor shall not contract for
174 services from a debarred or suspended subcontractor on any contract with a retirement system.

175 SECTION 5. Subdivision (3) of Section 23 of Chapter 32 of the General Laws is hereby
176 amended by adding the following:

177 Each member of a retirement board established pursuant to the provisions of this chapter
178 shall upon the commencement of their term file with the commission a statement acknowledging
179 that they are aware of and will comply with the standards set forth in chapter 268A of the general
180 laws, the provisions of this chapter and the provisions of regulations promulgated pursuant to
181 this chapter.

182 SECTION 6. Chapter 32 of the General Laws is hereby amended by adding the following
183 section:-

184 Section 20C. (a) Every member of a retirement board shall file a statement of financial
185 interests for the preceding calendar year with the commission within thirty days after becoming a
186 member of a retirement board, on or before May first of each year thereafter that such person is a
187 member of a retirement board and on or before May first of the year after such person ceases to
188 be a member of a retirement board;

189 (b) The commission shall, upon receipt of a statement of financial interests pursuant to
190 the provisions of this section, issue to the person filing such statement a receipt verifying the fact
191 that a statement of financial interests has been filed and a receipted copy of such statement.

192 (c) No member of a retirement board shall be allowed to continue in his duties unless he
193 has filed a statement of financial interests with the commission as required by this section.

194 (d) The statement of financial interests filed pursuant to the provisions of this section
195 shall be on a form prescribed by the commission and shall be signed under penalty of perjury by
196 the reporting person.

197 (e) Reporting persons shall disclose, to the best of their knowledge, the following
198 information for the preceding calendar year, or as of the last day of said year with respect to the
199 information required by clauses (2), (3) and (6) below; such persons shall also disclose the same
200 information with respect to their immediate family provided, however, that no amount need be
201 given for such information with regard to the reporting person's immediate family:

202 (1) the name and address of, the nature of association with, the share of equity in, if
203 applicable, of each business with which he is associated;

204 (2) the identity of all securities and other investments with a fair market value of greater
205 than one thousand dollars which were beneficially owned, not otherwise reportable hereunder;

206 (3) the name and address of each creditor to whom more than one thousand dollars was
207 owed; provided, however, that obligations arising out of retail installment transactions,
208 educational loans, medical and dental expenses, debts incurred in the ordinary course of
209 business, and any obligation to make alimony or support payments, shall not be reported; and
210 provided, further, that such information need not be reported if the creditor is a relative of the
211 reporting person within the third degree of consanguinity or affinity;

212 (4) the name and address of the source, and the cash value of any reimbursement for
213 expenses aggregating more than one hundred dollars in the calendar year if the recipient is a
214 member of a retirement board and the source of such reimbursement is a person having a direct
215 interest in a matter before the retirement board of which the recipient is a member;

216 (5) the name and address of the donor, and the fair market value, if determinable, of any
217 gifts aggregating more than one hundred dollars in the calendar year, if the recipient is a member

218 of a retirement board and the source of such gift(s) is a person(s) having a direct interest in a
219 matter before the retirement board of which the recipient is a member;

220 (6) the name and address of the source, and the fair market value, of any honoraria
221 aggregating more than one hundred dollars if the recipient is a member of a retirement board and
222 the source of such honoraria is a person having a direct interest in a matter before a retirement
223 board;

224 (7) the name and address of any creditor who has forgiven an indebtedness of over one
225 thousand dollars, and the amount forgiven if the creditor is a person having a direct interest in a
226 matter before a retirement board; provided, however, that no such information need be reported
227 if the creditor is a relative within the third degree of consanguinity or affinity of the reporting
228 person, or the spouse of such a relative; and ,

229 (8)the name and address of any business from which the reporting person is taking a
230 leave of absence;

231 Nothing in this section shall be construed to require the disclosure of information, which
232 is privileged by law.

233 Failure of a reporting person to file a statement of financial interests within thirty days
234 after receiving notice in writing from the Commission which states in detail the deficiency and
235 the penalties for failure to file a statement of financial interests, or the filing of an incomplete
236 statement of financial interests after receipt of such a notice shall result in the removal of the
237 reporting person from the board and he or she shall not be permitted to serve on any retirement
238 board established pursuant to the provisions of this chapter, provided, however, that, in the event
239 that the reporting person has filed an incomplete statement of financial interests said removal

240 shall be stayed upon the filing of an appeal under sub-division (4) of section 16. In the event the
241 non-complying member is an ex-officio member his or her appointing authority shall appoint a
242 different individual to serve on the board or in the event that said member is directly elected by
243 the people a different individual shall be appointed to serve on the board by the Mayor, County
244 Commissioners or Board of Selectman as the case may be.

245 SECTION 7. Clause 26th of Section 7 of Chapter 4 of the General Laws is hereby
246 amended by adding the following sub-clause:-

247 (q) statements filed pursuant to Section 20C of Chapter 32.

248 SECTION 8. Section 20 of Chapter 32 of the General Laws is hereby amended by adding
249 the following paragraph:-

250 (4 7/8 C) No employee, contractor, vendor or any person receiving any remuneration,
251 financial benefit or consideration of any kind, other than a retirement benefit or the statutory
252 stipend for serving on the retirement board, from a retirement board or from any person doing
253 business with a retirement board shall be eligible to serve on a retirement board provided,
254 however, that an employee of a retirement board may serve on a retirement board other than the
255 retirement board by which he or she is employed and provided, further, that the provisions of this
256 paragraph shall apply only to individuals who first become members of a retirement board on or
257 after January 1, 2012.

258 SECTION 9. Paragraph (b) of Section 19 of Chapter 34B of the General Laws is hereby
259 amended in line 14 by inserting the following after the word “32”:-

260 Provided that no employee, contractor, vendor or person receiving any remuneration,
261 financial benefit or consideration of any kind, other than a retirement benefit or the statutory
262 stipend for serving on the retirement board, from a retirement board or from any person doing
263 business with a retirement board shall be eligible to serve on a retirement board provided,
264 however, that an employee of a retirement board may serve on a retirement board other than the
265 retirement board by which he or she is employed and provided, further, that the provisions of this
266 paragraph shall apply only to individuals who first become members of a retirement board on or
267 after January 1, 2012.

268 SECTION 10. Chapter 32 of the General Laws is hereby amended by adding the
269 following section –

270 Section 23A (a) This section shall apply to every retirement board contract for the
271 procurement of investment, actuarial, legal and accounting services.

272 As used in this section the following words shall, unless the context requires otherwise,
273 have the following meanings:-

274 "Contract", all types of agreement for the procurement of services, regardless of what the
275 parties may call the agreement.

276 "Contractor", a person having a contract with the retirement board.

277 "Retirement board", a board established under the provisions of this chapter, the
278 provisions of chapter thirty – four B or the Massachusetts water resources authority retirement
279 board excluding the pension reserves investment management board.

280 "Majority vote", as to any action by or on behalf of a retirement board, a simple majority
281 of the board.

282 "Minor informalities", minor deviations, insignificant mistakes, and matters of form
283 rather than substance of the proposal, or contract document which can be waived or corrected
284 without prejudice to other offerors, potential offerors, or the retirement board.

285 "Person", any natural person, business, partnership, corporation, union, committee, club,
286 or other organization, entity or group of individuals.

287 "Procurement", acquiring a service, and all functions that pertain to the obtaining of a
288 service, including description of requirements, selection and solicitation of sources, preparation
289 and award of contract, and all phases of contract administration.

290 “Procurement officer”, an individual duly authorized by the retirement board to assist in a
291 procurement.

292 "Proposal", a written offer to provide a service at a stated price submitted in response to a
293 request for proposals.

294 "Purchase description", the words used in a solicitation to describe the services to be
295 purchased, including specifications attached to or incorporated by reference into the solicitation.

296 "Request for proposals", the documents utilized for soliciting proposals, including
297 documents attached or incorporated by reference.

298 "Responsible bidder or offeror", a person who has the capability to perform fully the
299 contract requirements, and the integrity and reliability which assures good faith performance.

300 "Responsive bidder or offeror", a person who has submitted a bid or proposal which
301 conforms in all respects to the request for proposals.

302 "Services", the furnishing of labor, time, or effort by a contractor, not involving the
303 furnishing of a specific end product other than reports. This term shall not include employment
304 agreements, collective bargaining agreements, or grant agreements.

305 (1) A retirement board shall enter into procurement contracts for investment, actuarial,
306 legal and accounting services utilizing competitive sealed proposals, in accordance with the
307 provisions of this section.

308 (2) A retirement board that awards a contract shall maintain a file on each such contract
309 and shall include in such file a copy of all written documents required by this section. Written
310 documents required by this section shall be retained by the retirement board for at least six years
311 from the date of final payment under the contract.

312 (a) The retirement board or its procurement officer shall give public notice of the request
313 for proposals and a reasonable time prior to the date for the opening of proposals. The notice
314 shall:

315 (1) indicate where, when and for how long the request for proposal may be obtained;

316 (2) describe the service desired, and reserve the right of the retirement board to reject any
317 or all bids;

318 (3) remain posted, for at least two weeks, in a conspicuous place in or near the offices of
319 the retirement board until the time specified in the request for proposals; and

320 (4) be published at least once, not less than two weeks prior to the time specified for the
321 receipt of proposals, in a newspaper of general circulation within the area served by the
322 retirement board and in the case of a procurement for investment, accounting, actuarial or legal
323 services in a publication of interest to those engaged in providing such services.

324 The retirement board or its procurement officer shall also place the notice in any
325 publication established by the state secretary for the advertisement of such procurements.

326 The retirement board or its procurement officer may distribute copies of the notice to
327 prospective bidders, and may compile and maintain lists of prospective bidders to which notices
328 may be sent.

329 (b) The retirement board shall unconditionally accept a proposal without alteration or
330 correction, except as provided in this paragraph. A bidder may correct, modify, or withdraw a
331 proposal by written notice received in the office designated in the request for proposals prior to
332 the time and date set for the proposal opening. After proposal opening, a bidder may not change
333 the price or any other provision of the proposal in a manner prejudicial to the interests of the
334 retirement board or fair competition. The retirement board shall waive minor informalities or
335 allow the bidder to correct them. If a mistake and the intended proposal are clearly evident on the
336 face of the proposal document, the procurement officer shall correct the mistake to reflect the
337 intended correct proposal and so notify the bidder in writing, and the bidder may not withdraw
338 the proposal. A bidder may withdraw a proposal if a mistake is clearly evident on the face of the
339 proposal document but the intended correct proposal is not similarly evident.

340 (c) The retirement board shall solicit proposals through a request for proposals. The
341 request for proposals shall include:

342 (1) the time and date for receipt of proposals, the address of the office to which the
343 proposals are to be delivered, the maximum time for proposal acceptance by the retirement
344 board;

345 (2) the purchase description and all evaluation criteria that will be utilized pursuant to
346 paragraph (d); and

347 (3) all contractual terms and conditions applicable to the procurement provided that the
348 contract may incorporate by reference a plan submitted by the selected offeror for providing the
349 required services.

350 The request for proposals may incorporate documents by reference; provided, however,
351 that the request for proposals specifies where prospective offerors may obtain the documents.
352 The retirement board or its procurement officer shall make copies of the request for proposals
353 available to all persons on an equal basis.

354 (d) The retirement board or its procurement officer shall not open the proposals publicly,
355 but shall open them in the presence of one or more witnesses at the time specified in the request
356 for proposals. Notwithstanding the provisions of section seven of chapter four, until the
357 completion of the evaluations, or until the time for acceptance specified in the request for
358 proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and
359 shall not be disclosed to competing offerors. At the opening of proposals the retirement board or
360 its procurement officer shall prepare a register of proposals which shall include the name of each
361 offeror and the number of modifications, if any, received. The register of proposals shall be open
362 for public inspection.

363 (e) The retirement board or its consultant retained pursuant to the provisions of this
364 chapter shall be responsible for the initial evaluation of the proposals. The retirement board or its
365 consultant retained pursuant to the provisions of this chapter shall prepare their initial
366 evaluations based solely on the criteria set forth in the request for proposals. The evaluations
367 shall specify in writing:

368 (1) for each evaluation criterion, a rating of each proposal as highly advantageous,
369 advantageous, not advantageous, or unacceptable, and the reasons for the rating;

370 (2) a composite rating for each proposal, and the reasons for the rating; and

371 (3) revisions, if any, to each proposed plan for providing the required services which
372 should be obtained by negotiation prior to awarding the contract to the offeror of the proposal.

373 In the event the initial evaluation is conducted by a consultant retained pursuant to the
374 provisions of this chapter said consultant shall review all initial evaluations with the retirement
375 board and provide to each member of the retirement board the initial evaluation of each proposal.

376 (f) The retirement board shall determine the most advantageous proposal from a
377 responsible and responsive offeror taking into consideration price and the evaluation criteria set
378 forth in the request for proposals. The retirement board shall award the contract by written notice
379 to the selected offeror within the time for acceptance specified in the request for proposals. The
380 parties may extend the time for acceptance by mutual agreement. The retirement board may
381 condition an award on successful negotiation of the revisions specified in the evaluation, and
382 shall explain in writing the reasons for omitting any such revision from a plan incorporated by
383 reference in the contract.

384 (g)(1) In the event of a competitive process to select an investment service provider the
385 request for proposals shall include mandatory contractual terms and conditions to be
386 incorporated into the contract including provisions stating that the contractor is a fiduciary with
387 respect to the funds which the contractor invests on behalf of the retirement board, provisions
388 stating that the contractor shall not be indemnified by the retirement board, provisions requiring
389 the contractor to annually inform the commission and the board of any arrangements in oral or in
390 writing, for compensation or other benefit received or expected to be received by the contractor
391 or a related person from others in connection with the contractors services to the retirement
392 board or any other client, provisions requiring the contractor to annually disclose to the
393 commission and the retirement board any compensation, in whatever form, paid or expected to
394 be paid, directly or indirectly, by the contractor or a related person to others in relation to the
395 contractors services to the retirement board or any other client, and provisions requiring the
396 contractor to annually disclose to the commission and the retirement board in writing any
397 conflict of interest the contractor may have that could reasonably be expected to impair the
398 contactor's ability to render unbiased and objective services to the retirement board. Other
399 mandatory contractual terms and conditions shall address investment objectives, brokerage
400 practices, proxy voting and tender offer exercise procedures, terms of employment and
401 termination provisions. The retirement board shall make a preliminary determination of the most
402 advantageous proposal from a responsible and responsive offeror taking into consideration price
403 and the evaluation criteria set forth in the request for proposals. The retirement board or its duly
404 designated agent, subject to the approval of the retirement board, may negotiate all terms of the
405 contract not deemed mandatory or non-negotiable with such offeror. If, after negotiation with
406 such offeror, the retirement board in consultation with its duly designated agent and its

407 consultant retained pursuant to the provisions of this chapter determines that it is in the best
408 interests of the retirement board, the retirement board in consultation with its consultant retained
409 pursuant to the provisions of this chapter may determine the proposal which is the next most
410 advantageous proposal from a responsible and responsive offeror taking into consideration price
411 and the evaluation criteria set forth in the request for proposals, and may negotiate all terms of
412 the contract with such offeror. The retirement board shall award the contract to the most
413 advantageous proposal from a responsible and responsive offeror taking into consideration price,
414 the evaluated criteria set forth in the request for proposals, and the terms of the negotiated
415 contract. The retirement board shall award the contract by written notice to the selected offeror
416 within the time for acceptance specified in the request for proposals. The time for acceptance
417 may be extended for up to 45 days by mutual agreement between the retirement board and the
418 responsible and responsive offeror offering the most advantageous proposal as determined by the
419 retirement board.

420 On or before January 1 of each year the contractor shall file the disclosures required
421 herein with the board and the commission. Failure to file disclosures or the filing of inaccurate
422 disclosures shall subject the contractor to proceedings under section 21A.

423 (2) The retirement board may cancel a request for proposals or may reject in whole or in
424 part any and all proposals when the retirement board determines that cancellation or rejection
425 serves the best interests of the system. The retirement board shall state in writing the reason for a
426 cancellation or rejection.

427 (3) A person submitting a proposal for the procurement or disposal of services to any
428 retirement board shall certify in writing on the proposal as follows:

429 The undersigned certifies under penalties of perjury that this proposal has been made and
430 submitted in good faith and without collusion or fraud with any other person. As used in this
431 certification, the word ""person" shall mean any natural person, business, partnership,
432 corporation, union, committee, club, or other organization, entity, or group of individuals.

433

434 (Signature of individual submitting bid or proposal)

435

436 (Name of business)

437 (4) Each retirement board member shall certify to the commission in writing with respect
438 to a procurement subject to the provisions of this section, as follows:

439 The undersigned certifies under penalties of perjury that, to the best of his/her knowledge
440 and belief, this proposal has been made and submitted in good faith and without collusion or
441 fraud with any other person. As used in this certification, the word ""person" shall mean any
442 natural person, business, partnership, corporation, union, committee, club, or other organization,
443 entity, or group of individuals.

444

445 (Signature of individual retirement board member)

446

447 (Name of retirement board)

448 (5) No person shall cause or conspire to cause the splitting or division of any request for
449 proposals, proposal, solicitation, or quotation for the purpose of evading a requirement of this
450 section.

451 (6) Unless otherwise provided by law and subject to paragraph (a), a retirement board
452 may enter into a contract for any period of time which serves the best interests of the retirement
453 board; provided, however, that the retirement board shall include in the solicitation the term of
454 the contract and conditions of renewal, extension or purchase, if any.

455 (a) A retirement board shall not award a contract for a term exceeding five years,
456 including any renewal, extension, or option provided, however, that a retirement board may
457 participate in a limited partnership, trust or other entity with a term for a period longer than five
458 years as part of an investment of system assets.

459 When a contract is to contain an option for renewal, extension, or purchase, the
460 solicitation shall include notice of the provision. The retirement board shall retain sole discretion
461 in exercising the option, and no exercise of an option shall be subject to agreement or acceptance
462 by the contractor.

463 (b) The retirement board shall not exercise an option for renewal, extension or purchase
464 unless the retirement board, after reasonable investigation of costs and benefits, has determined
465 in writing that the exercise of the option is more advantageous than alternate means of procuring
466 comparable services.

467 (7) All specifications shall be written in a manner which describes the requirements to be
468 met without having the effect of exclusively requiring a proprietary service, or a procurement
469 from a sole source.

470 (8) All contracts shall be in writing, and the retirement board shall make no payment for a
471 service rendered prior to the execution of such contract.

472 (a) A contract made in violation of this section shall not be valid, and the retirement
473 board shall make no payment under such contract. Minor informalities shall not require
474 invalidation of a contract.

475 (b) A person who causes or conspires with another to cause a contract to be solicited or
476 awarded in violation of a provision of this section shall forfeit and pay to the appropriate
477 retirement board a sum of not more than two thousand dollars for each violation. In addition, the
478 person shall pay double the amount of damages sustained by the retirement board by reason of
479 the violation, together with the costs of any action. If more than one person participates in the
480 violation, the damages and costs may be apportioned among them.

481 (c) The commission or the retirement board shall have authority to institute a civil action
482 to enforce paragraph (b).

483 SECTION 11. Paragraph (a) of subdivision (6) of Section 20 of Chapter 32 of the
484 General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out lines
485 842 through 845 inclusive and inserting in place thereof the following: -

486 (a) The elected and appointed members of any city, town, county, regional, district, or
487 authority retirement board upon acceptance of the appropriate legislative body shall receive a
488 stipend provided, however, that said stipend shall not be less than three thousands dollars per
489 annum nor exceed seven thousand five hundred dollars per annum; provided further,

490 SECTION 12. Said subdivision, as so appearing, is hereby further amended in line 853
491 by striking out the words “three thousand” and inserting in place thereof the word “seven
492 thousand five hundred”.

493 SECTION 13. Section 20 of Chapter 32 of the General Laws is hereby amended by
494 adding the following sub-division:-

495 (7) During each full term of service retirement board members shall be required to
496 undertake eighteen hours of training provided, however, that no less than three hours take place
497 each year and no more than nine hours take place in any single year.

498 Such training shall consist of nine hours sponsored by the commission which shall
499 include, at a minimum, the topics of fiduciary responsibility, ethical conduct, and conflict-of-
500 interest, and nine hours of training on topics prescribed by the commission provided by the
501 Massachusetts Association of Contributory Retirement Systems or other local, state, regional and
502 national organizations recognized by the commission as having expertise in retirement issues of
503 importance to retirement board members or other entities, as the commission may from time to
504 time determine.

505 The commission shall arrange for at least eighteen sessions during each year for members
506 to complete this requirement. In addition, the commission shall schedule additional sessions or
507 otherwise make accommodations to insure that members are afforded the maximum opportunity
508 to complete this requirement.

509 The commission shall provide retirement board with a statement of completion of
510 education form on or before December 31 of each year. The board shall provide the forms to
511 their members. The form shall set forth the training as required by this sub-division the member

512 has undertaken during that year. Board members shall submit the completed form to the
513 commission by January 31 of the year following. The commission shall provide the member with
514 a summary of his or her status regarding the completion of this requirement by March 1 of each
515 year.

516 Failure to successfully complete the requirements of this sub-division shall prohibit a
517 board member from serving beyond the conclusion of the term in which the failure took place. In
518 the event the non-complying member is an ex officio member or a second member of a board the
519 appointing authority for the second member shall appoint a different individual to serve on the
520 board, provided, however, that in the case of the replacement of an ex officio member the
521 individual be experienced in the field of finance or auditing and provided, further, that in
522 regional retirement systems non-complying members shall be replaced in the same manner as is
523 set forth for the selection of said members.

524 Each retirement board shall notify all prospective board members and board members of
525 the requirement to complete education requirements at the time of receiving information about
526 seeking election to a retirement board, or prior to being appointed to a retirement board.

527 The commission shall annually notify board members of the requirement to complete
528 continuing education.

529 The requirements established by this sub-division shall become effective for calendar
530 year 2012.

531 SECTION 14. Chapter 150E section 7 is hereby amended by adding the following new
532 subsection (e):

533 Any employer entering into a collective bargaining agreement with an employee
534 organization must provide a copy of said agreement to the retirement board to which the
535 employees covered by the agreement are members. All retirement systems must maintain files of
536 all active collective bargaining agreements which cover the systems members. The retirement
537 board shall review collective bargaining agreements for compliance with the provisions of
538 chapter 32

539 SECTION 15. Chapter 32 section 21 is hereby amended in line 15 by adding the
540 following new sentence after the word "system":

541 Each board shall maintain copies of all collective bargaining agreements which cover the
542 systems members and shall make such agreements available to the commission for review at
543 such time as the commission shall specify.