

# HOUSE . . . . . No. 1617

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Jay R. Kaufman*

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*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..

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/21/2011</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>	<i>1/31/2011</i>
<i>William N. Brownsberger</i>		<i>1/28/2011</i>

# HOUSE . . . . . No. 1617

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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.

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

## The Commonwealth of Massachusetts

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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:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"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;

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

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

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

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

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

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

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

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

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

(v) a violation of chapter thirty – two

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A person submitting a proposal for the procurement or disposal of services to any 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)

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

The commission shall provide retirement board with a statement of completion of education form on or before December 31 of each year. The board shall provide the forms to 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.