

SENATE BILL 862

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By: **Senators Lenett and Harrington**

Introduced and read first time: February 12, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Public Pension Fund Protection Act**

3 FOR the purpose of prohibiting certain persons from making an appearance or
4 communication to the Board of Trustees for the State Retirement and Pension
5 System or any employee of the State Retirement Agency within a certain period
6 of time with the intent to initiate certain actions; requiring the Board of
7 Trustees to adopt certain regulations to require the disclosure of payments to
8 certain persons with regard to the investment of the assets of the State
9 Retirement and Pension System; requiring that certain persons who violate
10 certain regulations are prohibited from making certain investments on behalf of
11 the State Retirement and Pension System for a certain period of time; providing
12 that the Board of Trustees may reduce the period of time that certain
13 prohibitions are in place if certain persons are able to show good cause;
14 prohibiting the Board of Trustees or the Chief Investment Officer for the State
15 Retirement and Pension System from entering certain agreements with certain
16 persons who refuse to agree to certain regulations; providing that the Board of
17 Trustees is not required to take certain actions unless the actions are consistent
18 with the fiduciary responsibilities of the Board of Trustees; requiring certain
19 individuals to make certain disclosures for certain actions taken by the
20 individuals; defining certain terms; and generally relating to the monitoring of
21 actions taken by covered persons, investment managers, or placement agents
22 for the State Retirement and Pension System.

23 BY repealing and reenacting, with amendments,
24 Article – State Personnel and Pensions
25 Section 21–201
26 Annotated Code of Maryland
27 (2009 Replacement Volume and 2009 Supplement)

28 BY adding to
29 Article – State Personnel and Pensions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 21–205.1 through 21–205.3
2 Annotated Code of Maryland
3 (2009 Replacement Volume and 2009 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article – State Personnel and Pensions**

7 21–201.

8 (a) In this subtitle the following words have the meanings indicated.

9 (b) **“COVERED PERSON” MEANS A MEMBER OF THE BOARD OF**
10 **TRUSTEES, A MEMBER OF THE INVESTMENT COMMITTEE OF THE BOARD OF**
11 **TRUSTEES, THE EXECUTIVE DIRECTOR OF THE STATE RETIREMENT AGENCY,**
12 **THE CHIEF INVESTMENT OFFICER OF THE STATE RETIREMENT AGENCY, AND**
13 **AN EMPLOYEE OF THE INVESTMENT DIVISION OF THE STATE RETIREMENT**
14 **AGENCY.**

15 (c) “Fiduciary” means:

16 (1) a member of the Board of Trustees;

17 (2) a member of the Investment Committee; or

18 (3) an employee of the State Retirement Agency who exercises any
19 discretionary authority or control over:

20 (i) the management or administration of the several systems;

21 or

22 (ii) the management or disposition of the assets of the several
23 systems.

24 **[(c)](D) “INVESTMENT MANAGER” MEANS AN EXTERNAL INVESTMENT**
25 **MANAGER HIRED ON BEHALF OF THE SEVERAL SYSTEMS TO INVEST THE ASSETS**
26 **OF THE SEVERAL SYSTEMS OR THE SPONSOR OF A SPECIFIC INVESTMENT**
27 **VEHICLE INCLUDING A LIMITED PARTNERSHIP, PRIVATE EQUITY FUND, OR**
28 **PRIVATE REAL ESTATE FUND.**

29 (e) (1) **“PLACEMENT AGENT” MEANS A PERSON OR ENTITY THAT, ON**
30 **BEHALF OF ANOTHER PERSON OR ENTITY, PROMOTES, MARKETS, OFFERS, OR**
31 **SELLS INTERESTS IN SPECIFIC INVESTMENT VEHICLES IN THE STATE.**

1 **(2) “PLACEMENT AGENT” DOES NOT INCLUDE A PERSON WHO IS**
2 **A BONA FIDE EMPLOYEE OF THE OTHER PERSON OR ENTITY.**

3 **(F) “Several systems” includes the optional retirement program to the extent**
4 **that the Board of Trustees administers the program under Title 30 of this article.**

5 **21-205.1.**

6 **(A) THIS SECTION DOES NOT APPLY TO A COVERED PERSON WHO,**
7 **AFTER LEAVING THAT POSITION, ACTS AS AN AGENT FOR THE STATE.**

8 **(B) A FORMER COVERED PERSON MAY NOT, FOR A PERIOD OF 2 YEARS**
9 **AFTER LEAVING THAT POSITION, ACT AS AN AGENT OR REPRESENT ANY**
10 **PERSON, BY HAVING ANY FORMAL OR INFORMAL CONTACT WITH OR MAKING**
11 **ANY ORAL OR WRITTEN COMMUNICATION TO A COVERED PERSON OR ANY**
12 **EMPLOYEE OF THE STATE RETIREMENT AGENCY IF:**

13 **(1) THE CONTACT OR COMMUNICATION IS MADE FOR THE**
14 **PURPOSE OF INFLUENCING A DECISION TO INVEST THE ASSETS OF THE**
15 **SEVERAL SYSTEMS IN A SPECIFIC INVESTMENT VEHICLE; AND**

16 **(2) THE COVERED PERSON RECEIVES COMPENSATION AS A**
17 **RESULT OF THE SPECIFIC INVESTMENT BEING MADE.**

18 **21-205.2.**

19 **(A) THE BOARD OF TRUSTEES SHALL ADOPT ONE OR MORE POLICIES IN**
20 **THE INVESTMENT POLICY MANUAL DESCRIBED IN § 21-116(C) OF THIS TITLE,**
21 **TO REQUIRE THE FOLLOWING DISCLOSURES BEFORE TO THE COMMITMENT TO**
22 **THE INVESTMENT OF ASSETS OF THE SEVERAL SYSTEMS:**

23 **(1) DISCLOSURE OF THE EXISTENCE OF RELATIONSHIPS AMONG**
24 **OR BETWEEN INVESTMENT MANAGERS, PLACEMENT AGENTS, AND COVERED**
25 **PERSONS;**

26 **(2) DISCLOSURE OF WHETHER A PLACEMENT AGENT’S PRIMARY**
27 **BUSINESS ROUTINELY INVOLVES CAPITAL-RAISING ACTIVITIES;**

28 **(3) INFORMATION REGARDING EACH OFFICER, PARTNER, OR**
29 **PRINCIPAL OR THE PLACEMENT AGENT DETAILING THE PERSON’S EDUCATION,**
30 **PROFESSIONAL DESIGNATIONS, REGULATORY LICENSES AND REGISTRATIONS,**
31 **AND INVESTMENT AND WORK EXPERIENCE;**

1 **(4) A DESCRIPTION OF ANY COMPENSATION OF ANY KIND**
2 **PROVIDED, OR AGREED TO BE PROVIDED, TO THE PLACEMENT AGENT;**

3 **(5) A DESCRIPTION OF THE SERVICES TO BE PERFORMED BY THE**
4 **PLACEMENT AGENT; AND**

5 **(6) A STATEMENT WHETHER THE PLACEMENT AGENT OR ANY OF**
6 **THE PLACEMENT AGENT'S AFFILIATES ARE REGISTERED WITH THE SECURITIES**
7 **AND EXCHANGE COMMISSION OR THE FINANCIAL INDUSTRY REGULATORY**
8 **ASSOCIATION, OR ARE OTHERWISE SUBJECT TO REGULATION IN ANY**
9 **JURISDICTION OR BY ANY SELF-REGULATORY ORGANIZATION, AND THE**
10 **DETAILS OF THAT REGISTRATION OR REGULATION OR EXPLANATION AS TO WHY**
11 **NO REGISTRATION OR REGULATION IS REQUIRED.**

12 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
13 **SUBSECTION, ANY INVESTMENT MANAGER OR PLACEMENT AGENT THAT**
14 **VIOLATES THE POLICIES ADOPTED BY THE BOARD OF TRUSTEES UNDER**
15 **SUBSECTION (A) OF THIS SECTION MAY NOT SOLICIT ANY NEW INVESTMENT FOR**
16 **5 YEARS AFTER THE VIOLATION WAS COMMITTED.**

17 **(2) THE BOARD OF TRUSTEES, BY A MAJORITY VOTE AT AN OPEN**
18 **MEETING OF THE BOARD OF TRUSTEES, MAY REDUCE THE 5-YEAR**
19 **PROHIBITION STATED IN PARAGRAPH (1) OF THIS SUBSECTION TO NOT LESS**
20 **THAN A 2-YEAR PROHIBITION.**

21 **(C) THE BOARD OF TRUSTEES OR THE CHIEF INVESTMENT OFFICER**
22 **MAY NOT ENTER INTO ANY AGREEMENT WITH AN INVESTMENT MANAGER WHO**
23 **DOES NOT AGREE IN WRITING TO COMPLY WITH THE POLICIES ADOPTED BY THE**
24 **BOARD OF TRUSTEES UNDER SUBSECTION (A) OF THIS SECTION.**

25 **(D) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE THE BOARD**
26 **OF TRUSTEES TO TAKE ACTION AS PROVIDED UNDER THIS SECTION, OR**
27 **§ 21-205.1 OR § 21-205.3 OF THIS SUBTITLE THAT THE BOARD OF TRUSTEES**
28 **DETERMINES, IN GOOD FAITH, IS INCONSISTENT WITH THE FIDUCIARY**
29 **RESPONSIBILITIES OF THE BOARD OF TRUSTEES.**

30 **21-205.3.**

31 **(A) THE BOARD OF TRUSTEES SHALL ADOPT ONE OR MORE POLICIES IN**
32 **THE INVESTMENT POLICY MANUAL DESCRIBED IN § 21-116(C) OF THIS TITLE,**
33 **TO REQUIRE THE FOLLOWING DISCLOSURES BEFORE THE COMMITMENT TO THE**
34 **INVESTMENT OF ASSETS OF THE SEVERAL SYSTEMS:**

1 **(1) ALL CAMPAIGN CONTRIBUTIONS MADE BY ANY INVESTMENT**
2 **MANAGER OR PLACEMENT AGENT TO ANY ELECTED OFFICIAL OF THE STATE OR**
3 **POLITICAL SUBDIVISION OF THE STATE DURING THE PRIOR 2-YEAR PERIOD;**

4 **(2) ANY SUBSEQUENT CAMPAIGN CONTRIBUTION MADE BY AN**
5 **INVESTMENT MANAGER OR A PLACEMENT AGENT TO AN ELECTED OFFICIAL OF**
6 **THE STATE OR POLITICAL SUBDIVISION OF THE STATE DURING THE TIME THE**
7 **INVESTMENT MANAGER OR PLACEMENT AGENT IS RECEIVING COMPENSATION**
8 **IN CONNECTION WITH ANY INVESTMENT FOR THE SEVERAL SYSTEMS;**

9 **(3) ALL GIFTS, AS DEFINED UNDER § 15-102 OF THE STATE**
10 **GOVERNMENT ARTICLE, GIVEN BY ANY INVESTMENT MANAGER OR PLACEMENT**
11 **AGENT TO ANY COVERED PERSON DURING THE PRIOR 2-YEAR PERIOD; AND**

12 **(4) ANY SUBSEQUENT GIFT GIVEN BY AN INVESTMENT MANAGER**
13 **OR A PLACEMENT AGENT TO ANY COVERED PERSON DURING THE TIME THE**
14 **INVESTMENT MANAGER OR PLACEMENT AGENT IS RECEIVING COMPENSATION**
15 **IN CONNECTION WITH ANY INVESTMENT FOR THE SEVERAL SYSTEMS ALSO**
16 **SHALL BE DISCLOSED IN ACCORDANCE WITH POLICIES ESTABLISHED BY THE**
17 **BOARD OF TRUSTEES.**

18 **(B) ANY DISCLOSURE UNDER THIS SUBSECTION SHALL BE MADE IN THE**
19 **MANNER PROVIDED FOR UNDER § 15-607(E) OF THE STATE GOVERNMENT**
20 **ARTICLE.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 July 1, 2010.