

SECOND REGULAR SESSION

SENATE BILL NO. 1050

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time March 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5257S.011

AN ACT

To amend chapter 104, RSMo, by adding thereto eight new sections relating to creating a company to manage investments for public retirement systems.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 104, RSMo, is amended by adding thereto eight new sections, to be known as sections 104.1400, 104.1402, 104.1404, 104.1406, 104.1408, 104.1410, 104.1412, and 104.1414, to read as follows:

104.1400. 1. Sections 104.1400 to 104.1414 shall be known as the "Missouri Pension Trust Company Act".

2. As used in sections 104.1400 to 104.1414 unless otherwise specified the following terms mean:

(1) "Board", the board of the Missouri pension trust company;

(2) "Company", the Missouri pension trust company authorized to be chartered according to section 104.1402;

(3) "MOSERS", the Missouri state employees retirement system under this chapter;

(4) "MPERS", the Missouri department of transportation and highway patrol employees retirement system under this chapter;

(5) "Outside directors", the directors of the company other than the executive director of MOSERS and the executive director of MPERS;

(6) "Participating systems", Missouri public pension systems that contract with the company to act as trustee of the system's assets or to provide investment management or investment advisory services; provided that the public school retirement system of Missouri, the public education employee retirement system of Missouri and the Missouri local government employees retirement system shall not be

21 participating systems;

22 (7) "Systems", MOSERS and MPERS.

104.1402. 1. MOSERS and MPERS are authorized to and shall
2 cause to be established the "Missouri Pension Trust Company" for the
3 purpose of efficiently and professionally managing the investment of
4 the trust assets of MOSERS and MPERS and providing investment
5 advisory services for the benefit of the systems and participating
6 systems.

7 2. The company shall be organized as a Missouri trust company
8 under chapter 362 and its articles of agreement shall be filed with the
9 director of the division of finance according to the requirements for a
10 trust company.

11 3. The company's initial capital shall be provided by MOSERS
12 and MPERS in equal portions and MOSERS and MPERS shall be equal
13 shareholders in the company.

14 4. The company shall have the powers granted a trust company
15 but the company's business shall be limited to providing trust services,
16 investment management services and investment advisory services to
17 the systems and participating systems.

18 5. The company shall not have banking powers under chapter
19 362, other than trust powers.

20 6. The company shall establish a fee schedule, which may be
21 amended from time to time to provide revenues sufficient to recover its
22 staffing and operating costs associated with the management and
23 investment of public pension trust assets and to accumulate and
24 maintain capital and surplus satisfactory to meet requirements
25 applicable under chapters 361 and 362.

26 7. The respective executive directors of MOSERS and MPERS
27 shall sign and file the articles of agreement for the purpose of
28 establishing the company, and shall cause MOSERS and MPERS,
29 respectively to provide the initial capital and to pay all incorporation
30 and other fees or costs of establishing the company and may direct
31 their respective staffs to provide services for these purposes. The
32 executive directors and the employees of the systems shall not receive
33 any additional compensation for providing services in connection with
34 the establishment of the company. MOSERS and MPERS may
35 compensate third parties, including professional advisors and

36 attorneys, to assist in establishing the company. MOSERS and MPERS
37 shall establish one or more joint demand or interest-bearing accounts
38 at a Missouri bank to hold the funds contributed by each system for
39 purposes of paying fees and costs of establishing the company and
40 holding the initial capital in escrow pending the issuance of a
41 certificate of incorporation.

42 8. Each system may cause the transfer of any of its executives or
43 other employees to the company to provide the staffing of the company,
44 provided that neither the executive director of MOSERS nor the
45 executive director of MPERS shall be transferred to the company or
46 designated to serve as an executive or employee of the company.

104.1404. The company shall operate in compliance with the
2 requirements of chapter 362 to the extent not in conflict with this
3 chapter and subject to the authority in sections 105.687 to 105.690,
4 applicable to investment fiduciaries investing and holding the assets of
5 public employee retirement systems.

104.1406. The company shall be under the jurisdiction of the
2 director of the division of finance pursuant to the director's authority
3 under chapter 361. The director shall conduct regular examinations of
4 the company in the manner and under the conditions provided by the
5 statutes applicable to Missouri trust companies taking into account the
6 applicable provisions of this chapter and sections 105.687 to
7 105.690. The company shall pay the costs of examination as determined
8 and assessed by the director of finance.

104.1408. 1. The business and affairs of the company shall be
2 managed by a board of directors consisting of individuals selected as
3 provided hereinafter. Initially the board shall consist of seven
4 members who shall be the executive director of MOSERS, the executive
5 director of MPERS and five outside directors appointed pursuant to
6 subsection 3 of this section.

7 2. The executive director of MOSERS and the executive director
8 of MPERS shall serve as directors of the company by virtue of their
9 respective offices, and their successors shall succeed them as directors
10 of the company.

11 3. The five initial outside directors shall be appointed by the
12 governor from a list of ten qualified nominees submitted by the
13 executive directors of MOSERS and MPERS, with each executive

14 director submitting five nominees. The first director selected by the
15 governor shall serve initially for a one-year term, the second director
16 shall serve initially for a two-year term, the third director shall serve
17 initially for a three-year term, the fourth director shall serve initially
18 for a four-year term, and the fifth director shall serve initially for a
19 five-year term. Subsequently, all such directors shall serve five year
20 terms. Any vacancies occurring in the office of such director shall be
21 filled by the board as described in subsection 4 of this section.

22 4. At the expiration of the term of any outside director or upon
23 the resignation of any such director or in the event of any vacancy
24 among the outside directors, the board shall elect a new outside
25 director from two nominees submitted by the executive directors of
26 MOSERS and MPERS with each executive director submitting one
27 nominee. A director who is elected to fill a vacancy shall serve for the
28 unexpired term of his or her predecessor. The executive directors of
29 MOSERS and MPERS shall not vote for directors.

30 5. No outside director may be elected to more than two
31 successive full five-year terms. Service or completion of a partial term,
32 whether by appointment or election, does not disqualify an outside
33 director from election for two additional full five-year terms.

34 6. Any person may be an outside director who:

35 (1) Is of good moral character and who has never pleaded guilty
36 to, or been found guilty of, a felony;

37 (2) Is not disqualified from service under any order issued by the
38 division of finance or the director of the division of finance; and

39 (3) Has at least five years of experience in the investment
40 business, banking or finance, including public investments, securities,
41 and economics, which may include teaching and research at the
42 collegiate and university level related to the foregoing.

43 7. The board shall annually elect, from the board, a chairman
44 and any other officers it deems necessary for the performance of its
45 duties. Board committees and subcommittees may also be formed.

104.1410. 1. The board of directors shall oversee the conduct of
2 the company's business and shall:

3 (1) Select and retain a chief executive officer, who may also be
4 designated the chief investment officer, and retain or authorize the
5 hiring of other competent management;

6 **(2) Establish business objectives consistent with serving the**
7 **investment needs of the systems and participating systems and adopt**
8 **governance and operating policies, or bylaws consistent with the**
9 **company's achievement of these objectives in a legal and sound**
10 **manner, including:**

11 **(a) Establish a written investment policy, and standards and**
12 **procedures in accordance with applicable laws and fiduciary standards**
13 **and update the same periodically;**

14 **(b) Review the investment policy periodically and not less**
15 **frequently than annually, and make appropriate changes;**

16 **(c) Establish procedures for the identification of potential**
17 **conflicts of interest and procedures to resolve those conflicts;**

18 **(d) Establish a code of conduct policy for the board and for**
19 **officers and employees of the company and, at a minimum, the policy**
20 **shall address conflicts of interest, prohibit the acceptance of any items**
21 **of value by the board or employees of the company from any current or**
22 **prospective external service providers in connection with any**
23 **purchasing, hiring or firing decision made by the board or employees**
24 **of the company, and require notice be provided to all external service**
25 **providers that a violation of this policy may lead to termination of**
26 **employment or prohibition from hiring;**

27 **(e) Establish an audit committee comprised solely of two or more**
28 **outside directors to perform the functions typically undertaken by**
29 **audit committees of other trust companies consistent with good**
30 **financial practice; and**

31 **(f) Establish or designate a committee of the board of directors,**
32 **which may be the audit committee, to monitor application of the**
33 **conflict of interest procedures and the code of conduct;**

34 **(3) Monitor operations to assure that adequate controls exist and**
35 **that the operations are carried out in accordance with applicable laws**
36 **and policies;**

37 **(4) Oversee the company's performance; and**

38 **(5) Ensure that the company meets the needs of the systems and**
39 **participating systems.**

40 **2. The company may restate its articles of agreement in the**
41 **manner provided for in chapter 362, provided that the company may**
42 **not restate its articles to increase the number of directors prior to**

43 **January 1, 2016, and may not increase the number of directors to a**
44 **number greater than twelve.**

104.1412. 1. **Upon the issuance of a certificate by the director of**
2 **the division of finance pursuant to section 362.035, MOSERS and**
3 **MPERS shall make appropriate arrangements and enter into**
4 **appropriate agreements with the company to provide for the company's**
5 **discretionary control over the management of all investment assets of**
6 **the systems. The transition shall comply with the business plan**
7 **approved by the director of the division of finance.**

8 2. **The systems and participating systems may transfer assets to**
9 **a collective trust fund established or maintained by the company. Any**
10 **trust assets so transferred and any subsequent transfers and**
11 **contributions of the systems or participating systems together with**
12 **proceeds and reinvestments thereof may be invested as a single pool**
13 **with appropriate accounting to identify the proportionate interests of**
14 **the systems and participating systems in particular assets, asset sub-**
15 **pools, or asset classes. The assets held in such a collective trust fund**
16 **shall be held in one or more separate retirement benefit trusts for the**
17 **exclusive purpose of satisfying the obligations of each respective**
18 **system or participating system to pay retirement and other benefits**
19 **pursuant to applicable laws or plan documents and paying**
20 **administrative expenses associated with satisfying such obligations. At**
21 **no time shall any part of a retirement benefit trust held by the**
22 **company be used for or diverted to any purpose other than for the**
23 **exclusive purpose of satisfying the respective obligations of the systems**
24 **or participating systems and paying administrative expenses associated**
25 **with satisfying such obligations.**

26 3. **The company may establish standardized trust management**
27 **agreements or trust instruments that set forth the terms and conditions**
28 **for holding, managing, and distributing assets contributed by the**
29 **respective systems and participating systems and may enter such**
30 **agreements. The company's fee schedule may vary as appropriate to**
31 **reflect the company's costs with regard to the particular circumstances**
32 **of each engagement.**

33 4. **The company shall be vested with such other powers as may**
34 **be necessary or proper to enable it, its officers, employees, and agents**
35 **to carry out fully and effectively all the purposes of a trust company**

36 and particularly those necessary for the investment and custody of
37 public pension funds.

38 5. The company shall make such payments from each retirement
39 benefit trust to the respective systems or participating systems for the
40 benefit of the participants in the corresponding systems or
41 participating systems, at such time, in such manner, in such amounts,
42 in such form, and for such purposes as may be specified in one or more
43 directives issued from time to time by the person or persons authorized
44 in the trust management agreement or trust instrument governing such
45 retirement benefit trust, and the company shall have no responsibility
46 and shall be without liability for any payment made under such
47 direction. The company shall be under no duty or obligation to make
48 any inquiry or investigation as to whether any direction is made under
49 the provisions of law or the plan provisions applicable to the systems
50 or participating systems, except as provided in the trust management
51 agreement or trust instrument and the board shall not be responsible
52 in any respect for the administration of the systems or participating
53 systems. Payment to the systems or participating systems in response
54 to such direction from an authorized person or persons shall be a
55 complete discharge of the company of its responsibility for the holding
56 and safekeeping of such assets and any assets paid over shall no longer
57 constitute part of any retirement benefit trust held by the company.

104.1414. 1. In the event the company elects to dissolve or is
2 ordered by the director of the division of finance to be liquidated, the
3 company shall be liquidated under a written plan submitted by the
4 board to the director of the division of finance and may be self-
5 liquidated under the supervision of the director of the division of
6 finance by the board and the officers of the company according to the
7 approved plan.

8 2. The plan of liquidation shall protect the interests of the
9 systems and participating systems and provide for the orderly transfer
10 of trust assets to the custody of the systems and participating systems
11 or their designated trustees.

12 3. In the event the company's plan is not accepted by the director
13 of the division of finance or in the event the liquidating officers are not
14 acceptable, the director of the division of finance may appoint a
15 liquidating agent and direct reasonable resources to the agent's

16 support from the income, capital, and surplus of the company or other
17 sources as allowed by law.

18 4. In the event the company is liquidated, the remaining capital
19 and surplus at the end of the liquidation period and process shall be
20 distributed to the systems in proportion to their respective beneficial
21 interests or capital stock held and no distribution shall be made or
22 permitted for the benefit of any private person or company. Each
23 system shall be authorized to invest and manage the assets distributed
24 to it pursuant to this subsection and in accordance with the authority
25 and duties applicable to each system prior to the transfer of trust
26 assets pursuant to section 104.1412.

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