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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 1297** Session of  
2008

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INTRODUCED BY BROWNE, WOZNIAK, RAFFERTY, M. WHITE, FONTANA,  
WAUGH, TOMLINSON, C. WILLIAMS, FUMO, EARLL, BAKER,  
WONDERLING, MUSTO, COSTA, PIPPY, RHOADES, ARMSTRONG AND  
WASHINGTON, FEBRUARY 26, 2008

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JULY 2, 2008

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AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled,  
2 as amended, "An act relating to the finances of the State  
3 government; providing for the settlement, assessment,  
4 collection, and lien of taxes, bonus, and all other accounts  
5 due the Commonwealth, the collection and recovery of fees and  
6 other money or property due or belonging to the Commonwealth,  
7 or any agency thereof, including escheated property and the  
8 proceeds of its sale, the custody and disbursement or other  
9 disposition of funds and securities belonging to or in the  
10 possession of the Commonwealth, and the settlement of claims  
11 against the Commonwealth, the resettlement of accounts and  
12 appeals to the courts, refunds of moneys erroneously paid to  
13 the Commonwealth, auditing the accounts of the Commonwealth  
14 and all agencies thereof, of all public officers collecting  
15 moneys payable to the Commonwealth, or any agency thereof,  
16 and all receipts of appropriations from the Commonwealth,  
17 authorizing the Commonwealth to issue tax anticipation notes  
18 to defray current expenses, implementing the provisions of  
19 section 7(a) of Article VIII of the Constitution of  
20 Pennsylvania authorizing and restricting the incurring of  
21 certain debt and imposing penalties; affecting every  
22 department, board, commission, and officer of the State  
23 government, every political subdivision of the State, and  
24 certain officers of such subdivisions, every person,  
25 association, and corporation required to pay, assess, or  
26 collect taxes, or to make returns or reports under the laws  
27 imposing taxes for State purposes, or to pay license fees or  
28 other moneys to the Commonwealth, or any agency thereof,  
29 every State depository and every debtor or creditor of the

1 Commonwealth," further providing for the expiration of  
2 provisions relating to prudent investments; providing for  
3 INVESTMENT POLICY, FOR ANNUAL INVESTMENT REPORT, FOR <—  
4 SEGREGATION OF DUTIES, FOR LIMITATIONS ON INVESTMENT <—  
5 RELATIONSHIPS AND CAMPAIGN CONTRIBUTIONS AND FOR audit of  
6 securities deposited with State Treasurer; in disposition of  
7 abandoned and unclaimed property, further providing for  
8 judicial action upon determination; and making a related  
9 repeal.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. Section 301.1(i) of the act of April 9, 1929  
13 (P.L.343, No.176), known as The Fiscal Code, amended November 9,  
14 2006 (P.L.1335, No.138), is amended to read:

15 Section 301.1. Investment of Moneys.--\* \* \*

16 (i) (1) Notwithstanding subsections (a) through (h), the  
17 Treasury Department shall have the exclusive management and full  
18 power to invest and reinvest the moneys of any fund as shall be  
19 accumulated beyond the ordinary needs of the various funds and  
20 which are not authorized by law to be invested by any board,  
21 commission or State officer, subject, however, to the [exercise <—  
22 of that degree of judgment and care under the circumstances then  
23 prevailing which persons of prudence, discretion and  
24 intelligence who are familiar with such matters exercise in the  
25 management of their own affairs not in regard to speculation but  
26 in regard to the permanent disposition of the funds, considering  
27 the probable income to be derived therefrom as well as the  
28 probable safety of their capital. The Treasury Department shall  
29 have the power to hold, purchase, sell, assign, transfer and  
30 dispose of any securities, including equity securities and  
31 mutual funds consisting in whole or in part of equity  
32 securities, and investments in any such fund as well as the  
33 proceeds of such investments and of the money belonging to any  
34 such fund. The Treasury Department shall, through the Governor,

1 submit to the General Assembly annually, at the same time the  
2 Treasury Department submits its budget covering administrative  
3 expenses, a report identifying the nature and amount of all  
4 existing investments made pursuant to this section.] PRUDENT ←  
5 INVESTOR STANDARD.

6 (1.1) WHEN INVESTING, REINVESTING, PURCHASING, ACQUIRING,  
7 EXCHANGING, SELLING OR MANAGING PUBLIC FUNDS, THE TREASURY  
8 DEPARTMENT SHALL ACT AS A FIDUCIARY WITH CARE, SKILL, PRUDENCE  
9 AND DILIGENCE UNDER THE CIRCUMSTANCES THEN PREVAILING,  
10 SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, THE GENERAL ECONOMIC  
11 CONDITIONS AND THE ANTICIPATED NEEDS OF THE FUNDS, THAT A  
12 PRUDENT PERSON ACTING IN A LIKE CAPACITY AND WITH FAMILIARITY  
13 WITH THOSE MATTERS WOULD USE IN THE CONDUCT OF FUNDS OF A LIKE  
14 CHARACTER AND WITH LIKE OBJECTIVES. THE FOLLOWING SHALL APPLY:

15 (I) THE PRIMARY OBJECTIVE OF THE TREASURY DEPARTMENT SHALL  
16 BE TO SAFEGUARD THE PRINCIPAL OF THE FUNDS. THE SECONDARY  
17 OBJECTIVE SHALL BE TO MEET THE LIQUIDITY NEEDS OF THE FUNDS. THE  
18 THIRD OBJECTIVE SHALL BE TO ACHIEVE A RETURN ON THE FUNDS.

19 (II) THE PRUDENT INVESTOR STANDARD EMBRACES THE DUTY OF  
20 LOYALTY WHEREBY ACTIONS MUST BE IN ACCORDANCE WITH THE SOLE  
21 PURPOSE DOCTRINE TO ACCOMPLISH THE PRUDENT INVESTOR OBJECTIVES  
22 AND NOT IN PURSUIT OF OTHER OBJECTIVES EXCEPT AS OTHERWISE  
23 PROVIDED BY STATUTE.

24 (III) THE PRUDENT INVESTOR STANDARD EMBRACES THE DUTY TO  
25 MONITOR THE ONGOING CIRCUMSTANCES OF INVESTMENTS FOR ONGOING  
26 APPROPRIATENESS OF INVESTMENTS TO MEET THE PRUDENT INVESTOR  
27 OBJECTIVES.

28 (IV) THE TREASURY DEPARTMENT SHALL HAVE THE POWER AND  
29 AUTHORITY TO INVEST IN SECURITIES SUBJECT TO THE THEN PREVAILING  
30 STANDARDS THAT INSTITUTIONAL INVESTORS EMPLOY IN THE CONTEXT OF

1 INVESTMENT DECISIONS MADE WITH CONSIDERATION OF FIDUCIARY  
2 STANDARDS.

3 (V) THE TREASURY DEPARTMENT SHALL MAINTAIN AND PUBLISH A  
4 LIST OF PROHIBITED INVESTMENTS WITHIN ITS INVESTMENT POLICY.

5 (2) The authority to invest or reinvest the moneys of any  
6 fund pursuant to this subsection shall expire [December 31,  
7 2008] December 31, 2010. The Treasury Department may maintain  
8 investments pursuant to this subsection which are in existence  
9 on the expiration date in this paragraph for not more than two  
10 years following such expiration date.

11 Section 2. The act is amended by adding ~~a section~~ SECTIONS ←  
12 to read:

13 SECTION 301.2. INVESTMENT POLICY.--THE STATE TREASURER SHALL ←  
14 MAINTAIN AN INVESTMENT POLICY. THE INVESTMENT POLICY SHALL  
15 INCLUDE PROVISIONS ON GENERAL INVESTMENT PRINCIPLES INCLUDING  
16 ASSET ALLOCATION, LIQUIDITY AND OPERATIONAL CASH MANAGEMENT  
17 REQUIREMENTS, PROHIBITED INVESTMENT ACTIVITY, INVESTMENT  
18 PERFORMANCE REVIEW AND ANY OTHER ITEM THAT THE STATE TREASURER  
19 MAY INCLUDE. THE STATE TREASURER SHALL REVIEW AND IF NECESSARY  
20 UPDATE THE INVESTMENT POLICY AT LEAST ANNUALLY. THE TREASURY  
21 DEPARTMENT SHALL POST, MAINTAIN AND UPDATE THE INVESTMENT POLICY  
22 AS NECESSARY ON ITS PUBLICLY ACCESSIBLE INTERNET WEBSITE.

23 SECTION 301.3. ANNUAL INVESTMENT REPORT.--BY NOVEMBER 30,  
24 2008, AND ANNUALLY THEREAFTER, THE STATE TREASURER SHALL SUBMIT  
25 A REPORT TO THE GOVERNOR AND TO THE CHAIR AND MINORITY CHAIR OF  
26 THE APPROPRIATIONS COMMITTEE OF THE SENATE, THE CHAIR AND  
27 MINORITY CHAIR OF THE FINANCE COMMITTEE OF THE SENATE, THE CHAIR  
28 AND MINORITY CHAIR OF THE APPROPRIATIONS COMMITTEE OF THE HOUSE  
29 OF REPRESENTATIVES AND THE CHAIR AND MINORITY CHAIR OF THE HOUSE  
30 OF REPRESENTATIVES. THE REPORT SHALL COVER THE PERIOD CONSISTING

1 OF THE MOST RECENTLY ENDED FISCAL YEAR. THE REPORT SHALL PROVIDE  
2 ~~OF~~ FOR THE FOLLOWING: <—

3 (1) AN ANALYSIS OF THE STATUS AND PERFORMANCE OF THE CURRENT  
4 INVESTMENTS AND TRANSACTIONS MADE OVER THE LAST FISCAL YEAR.

5 (2) TARGETED ASSET ALLOCATION AND ACTUAL ASSET ALLOCATION ON  
6 SEPTEMBER 30, DECEMBER 31, MARCH 31 AND JUNE 30 OF THE PREVIOUS  
7 FISCAL YEAR.

8 (3) THE STANDARDS AND MEASURES OF INVESTMENT PERFORMANCE,  
9 INCLUDING BENCHMARKS FOR EACH ASSET CLASS.

10 (4) RETURN FOR EACH ASSET CLASS INCLUDING A BREAKDOWN OF THE  
11 RETURN VERSUS THE TARGETED BENCHMARK CALCULATED NET OF FEES.

12 (5) A LIST OF EXTERNAL MANAGERS INCLUDING WHETHER THE  
13 MANAGER WAS SELECTED THROUGH COMPETITIVE BID OR AS A SOLE SOURCE  
14 SELECTION, THE PRINCIPALS AND KEY STAFF OF THE MANAGER, THE DATE  
15 OF THE MANAGER'S HIRE, THE AMOUNT OF FEES RECEIVED BY THE  
16 MANAGER IN THE PREVIOUS FISCAL YEAR AND THE RETURN ON THE  
17 MANAGER'S PORTFOLIO ~~VERSES~~ AS COMPARED TO THEIR TARGETED <—  
18 BENCHMARK.

19 (6) BROKERAGE FEES.

20 (7) SECURITIES LENDING INFORMATION.

21 (8) PROXY VOTING INFORMATION.

22 (9) INFORMATION ON SECURITIES LITIGATION.

23 SECTION 301.4. SEGREGATION OF DUTIES.--~~A PERSON THAT~~ <—  
24 ~~PROVIDES FINANCIAL SERVICES TO THE TREASURY DEPARTMENT AS AN~~  
25 ~~INVESTMENT ADVISOR MAY NOT HAVE AN INTEREST IN AN ENTITY THAT~~  
26 ~~PROVIDES INVESTMENT MANAGEMENT SERVICES OR BENEFIT IN ANY MANNER~~  
27 ~~FROM INVESTMENT ACTIONS BY THE TREASURY DEPARTMENT. A VIOLATION~~  
28 ~~OF THIS SECTION SHALL CONSTITUTE A MISDEMEANOR OF THE THIRD~~  
29 ~~DEGREE.~~ (A) A PERSON WHO PROVIDES FINANCIAL SERVICES TO THE <—  
30 TREASURY DEPARTMENT SHALL NOT BENEFIT DIRECTLY OR INDIRECTLY

1 FROM THE INVESTMENT ACTIONS OF THE TREASURY DEPARTMENT EXCEPT AS  
2 PROVIDED IN THE CONTRACT FOR THE PROVISION OF THOSE SERVICES. NO  
3 PERSON PROVIDING FINANCIAL SERVICES SHALL KNOWINGLY DO  
4 INDIRECTLY THAT WHICH IS DIRECTLY PROHIBITED BY THIS SECTION.

5 (B) A VIOLATION OF THIS SECTION CONSTITUTES A MISDEMEANOR OF  
6 THE THIRD DEGREE.

7 (C) FOR THE PURPOSES OF THIS SECTION, "FINANCIAL SERVICES"  
8 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE PROVIDING OF  
9 INVESTMENT ADVICE AND MANAGEMENT OF INVESTMENTS.

10 SECTION 311. LIMITATIONS ON INVESTMENT RELATIONSHIPS AND ←  
11 CAMPAIGN CONTRIBUTIONS.--(A) (1) THE TREASURY DEPARTMENT SHALL  
12 NOT ENTER INTO AN INVESTMENT RELATIONSHIP WITH A PERSON WHO HAS  
13 SOLICITED ANY CONTRIBUTION ON BEHALF OF OR MADE ANY CONTRIBUTION  
14 TO A CANDIDATE COMMITTEE OR ELECTION FUND OF THE STATE TREASURER  
15 OR ANY CANDIDATE FOR STATE TREASURER. THIS PROHIBITION SHALL  
16 APPLY TO SOLICITATIONS AND CONTRIBUTIONS MADE BY THE PERSON, BY  
17 AN INDIVIDUAL REPRESENTING THE PERSON OR BY A POLITICAL ACTION  
18 COMMITTEE CONTROLLED BY THE PERSON.

19 (2) NO PERSON WHO HAS AGREED TO OR ENTERED INTO AN  
20 INVESTMENT RELATIONSHIP WITH THE TREASURY DEPARTMENT SHALL  
21 KNOWINGLY SOLICIT OR MAKE ANY CONTRIBUTION TO A CANDIDATE  
22 COMMITTEE OR ELECTION FUND OF THE STATE TREASURER OR ANY  
23 CANDIDATE FOR STATE TREASURER. THIS PROHIBITION SHALL APPLY TO  
24 SOLICITATIONS AND CONTRIBUTIONS MADE BY THE PERSON, BY AN  
25 INDIVIDUAL REPRESENTING THE PERSON OR BY A POLITICAL ACTION  
26 COMMITTEE CONTROLLED BY THE PERSON.

27 (B) SUBSECTION (A) SHALL APPLY TO THE TIME PERIOD WHICH  
28 BEGINS TWO YEARS PRIOR TO THE FOLLOWING DATES AND ENDS UPON THE  
29 TERMINATION OF THE INVESTMENT RELATIONSHIP:

30 (1) THE DATE UPON WHICH THE TREASURY DEPARTMENT FIRST

1 ANNOUNCES A PROCUREMENT OR SEARCH PROCESS THAT COULD LEAD TO AN  
2 INVESTMENT RELATIONSHIP WHICH CAN REASONABLY BE EXPECTED TO  
3 GENERATE AT LEAST \$25,000 ANNUALLY IN INCOME, FEES OR OTHER  
4 REVENUE TO THE PERSON; OR

5 (2) THE DATE UPON WHICH A PERSON APPROACHES THE TREASURY  
6 DEPARTMENT WITH A PROPOSAL TO ENTER INTO AN INVESTMENT  
7 RELATIONSHIP WITH THE TREASURY DEPARTMENT BY DISCUSSING THE  
8 SPECIFIC FACTS AND FINANCIAL TERMS OF A PARTICULAR INVESTMENT  
9 TRANSACTION OR STRATEGY.

10 (C) THE STATE ETHICS COMMISSION SHALL CAUSE AN INDEPENDENT  
11 INVESTIGATION TO BE PERFORMED FOR ANY REPORTED VIOLATION OF THIS  
12 SECTION AND REPORT ANY DOCUMENTED VIOLATION TO THE STATE  
13 TREASURER FOR ACTION WITHIN TEN BUSINESS DAYS OF THE CONCLUSION  
14 OF THE INDEPENDENT INVESTIGATION. COPIES OF THIS REPORT SHALL  
15 ALSO BE SUBMITTED TO THE CHAIRMAN OF THE APPROPRIATIONS  
16 COMMITTEE OF THE SENATE AND THE CHAIRMAN OF THE APPROPRIATIONS  
17 COMMITTEE OF THE HOUSE OF REPRESENTATIVES WITHIN TEN BUSINESS  
18 DAYS OF THE CONCLUSION OF THE INDEPENDENT INVESTIGATION. THE  
19 STATE ETHICS COMMISSION SHALL SUBMIT THE REPORT TO THE  
20 LEGISLATIVE REFERENCE BUREAU FOR PUBLICATION IN THE NEXT  
21 SUCCEEDING PUBLICATION OF THE PENNSYLVANIA BULLETIN.

22 (D) IF A PERSON SEEKING AN INVESTMENT RELATIONSHIP WITH THE  
23 TREASURY DEPARTMENT IS FOUND TO BE IN VIOLATION OF THIS SECTION,  
24 THE PERSON SHALL BE PROHIBITED FROM ENGAGING IN AN INVESTMENT  
25 RELATIONSHIP WITH THE TREASURY DEPARTMENT FOR A PERIOD OF TWO  
26 YEARS. A PERSON WHO HAS AN EXISTING INVESTMENT RELATIONSHIP WITH  
27 THE TREASURY DEPARTMENT AND WHO IS FOUND TO BE IN VIOLATION OF  
28 THE PROVISIONS OF THIS SECTION SHALL BE PROHIBITED FROM  
29 PROVIDING ANY ADDITIONAL INVESTMENT SERVICES FOR THE TREASURY  
30 DEPARTMENT FOR A PERIOD OF TWO YEARS.

1       (E) IF A PERSON VOLUNTARILY REPORTS A VIOLATION OF THIS  
2 SECTION TO THE STATE ETHICS COMMISSION WITHIN 90 DAYS OF THE  
3 CONTRIBUTION'S BEING MADE, AND IT IS ESTABLISHED PURSUANT TO AN  
4 INDEPENDENT INVESTIGATION THAT THE VIOLATION WAS INADVERTENTLY,  
5 UNINTENTIONALLY OR UNKNOWINGLY MADE AND THE CONTRIBUTION WAS  
6 RETURNED, THE PROVISIONS OF SUBSECTION (D) SHALL NOT APPLY.

7       (F) AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES  
8 SHALL HAVE THE MEANING GIVEN TO THEM IN THIS SUBSECTION:

9       "CONTRIBUTION." A CONTRIBUTION REPORTABLY BY THE RECIPIENT  
10 UNDER ARTICLE XVI OF THE ACT OF JUNE 3, 1937 (P.L.1333, NO.320),  
11 KNOWN AS THE "PENNSYLVANIA ELECTION CODE."

12       "INVESTMENT RELATIONSHIP." A RELATIONSHIP BETWEEN A PERSON  
13 AND THE TREASURY DEPARTMENT FOR THE PURPOSE OF PROVIDING  
14 INVESTMENT SERVICES SUCH AS LEGAL SERVICES, INVESTMENT BANKING  
15 SERVICES, INVESTMENT ADVISORY SERVICES, UNDERWRITING SERVICES,  
16 FINANCIAL ADVISORY SERVICES OR BROKERAGE FIRM SERVICES FOR  
17 BROKERAGE, UNDERWRITING AND FINANCIAL ADVISORY ACTIVITIES.

18       "PERSON." AN INDIVIDUAL, ORGANIZATION OR PARTNERSHIP  
19 CURRENTLY ENGAGED IN OR SEEKING TO ENGAGE IN AN INVESTMENT  
20 RELATIONSHIP WITH THE TREASURY DEPARTMENT WHERE THE RELATIONSHIP  
21 CAN REASONABLY BE EXPECTED TO GENERATE AT LEAST \$25,000 ANNUALLY  
22 IN INCOME, FEES OR OTHER REVENUE TO THE INDIVIDUAL, ORGANIZATION  
23 OR PARTNERSHIP AND SHALL SPECIFICALLY INCLUDE:

24       (1) AUTHORIZED OR KEY PERSONNEL AS DEFINED OR IDENTIFIED BY  
25 A CONTRACTING PARTY BY BEING ATTACHED TO THE CONTRACT.

26       (2) PERSONS WHO EXPECT TO OR DO EXPERIENCE A MATERIAL  
27 FINANCIAL EFFECT ON THEIR ECONOMIC INTERESTS, INCLUDING SALARY,  
28 BONUSES, OPTIONS OR OTHER FINANCIAL INCENTIVES DIRECTLY DERIVING  
29 FROM AN INVESTMENT RELATIONSHIP.

30       Section 409. Audit of Securities Deposited with State



1 Treasurer.--(a) The Auditor General, through such agents as he  
2 may select, shall perform an annual audit of the bonds, stocks,  
3 mortgages, or other securities, which are deposited with the  
4 State Treasurer in whatever capacity, and shall audit the books  
5 in which a record is kept of such bonds, stocks, mortgages, or  
6 other securities; and, for this purpose, the Auditor General may  
7 employ such consultants, experts, accountants, or investigators  
8 as he may deem advisable. The audit may be conducted  
9 independently or as part of any other annual audit or audits  
10 conducted by the Auditor General.

11 (b) The State Treasurer shall, whenever demand is made upon  
12 him by the Auditor General, submit for the audit of the Auditor  
13 General, or his agents, all records in his possession relating  
14 to such bonds, stocks, mortgages, or other securities, including  
15 such records in the possession of any custodian or subcustodian  
16 engaged by him regarding such securities, and his failure so to  
17 do shall disqualify him from holding the office of State  
18 Treasurer.

19 Section 3. Section 1301.21 of the act, amended June 29, 2002  
20 (P.L.614, No.91), is amended to read:

21 Section 1301.21. Judicial Action upon Determinations.--[Any  
22 person aggrieved by a decision of the State Treasurer, or as to  
23 whose claim the State Treasurer has failed to act within ninety  
24 (90) days after the filing of the claim, may commence an action  
25 in the Commonwealth Court to establish his claim. The proceeding  
26 shall be brought within thirty (30) days after the decision of  
27 the State Treasurer or within one hundred twenty (120) days from  
28 the filing of the claim if the State Treasurer fails to act. The  
29 action shall be tried de novo without a jury.] (a) Any person  
30 aggrieved by a decision of the State Treasurer may appeal to the

1 Commonwealth Court. The appeal shall be filed within thirty (30)  
2 days after the decision of the State Treasurer. The case shall  
3 be heard in Commonwealth Court's appellate jurisdiction.

4 (b) Any person as to whose claim the State Treasurer has  
5 failed to take action within ninety (90) days after the filing  
6 of the claim, may commence an action in the Commonwealth Court  
7 to establish his claim within one hundred twenty (120) days from  
8 the filing of the claim. The action shall be tried de novo  
9 without a jury.

10 Section 4. Repeals are as follows:

11 (1) The General Assembly declares that the repeal under  
12 paragraph (2) is necessary to effectuate the addition of  
13 section 409 of the act.

14 (2) The act of May 21, 1923 (P.L.288, No.184), entitled  
15 "An act to better secure all bonds, stocks, mortgages, or  
16 other securities deposited with the State Treasurer, by  
17 providing for their inspection, examination, and  
18 verification, and the verification of the books, containing a  
19 record of such bonds, stocks, mortgages, or other securities,  
20 by the Auditor General or his agents," is repealed.

21 Section 5. This act shall take effect immediately.