Assembly Bill No. 221

CHAPTER 671

An act to amend Section 16642 of, and to add Section 7513.7 to, the Government Code, relating to investments.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 221, Anderson. Public retirement systems: investments: Iran.

The California Constitution provides that the Legislature may by statute prohibit retirement board investments if it is in the public interest to do so, and providing that the prohibition satisfies specified fiduciary standards.

Existing law prohibits the Public Employees' Retirement System and the State Teachers' Retirement System from investing public employee retirement funds in a company with active business operations in Sudan, as specified. Existing law also requires these retirement systems to sell or transfer any investments in a company with business operations in Sudan. Existing law requires these retirement systems to submit an annual report to the Legislature regarding any investments in a company with business operations in Sudan and the sale or transfer of those investments. Existing law requires the state to indemnify, from the General Fund, and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract with, these retirement systems by reason of any decision to restrict, reduce, or eliminate investments in Sudan, as specified.

This bill would create the California Public Divest from Iran Act and additionally prohibit the Public Employees' Retirement System and the State Teachers' Retirement System from investing public employee retirement funds in a company with business operations in Iran that is invested in or engaged in business operations with entities in the defense or nuclear sectors of Iran, or the company is invested or engaged in business operations with entities involved in the development of petroleum or natural gas resources of Iran, and that company is subject to sanctions under federal law, as specified, or the company is engaged in business operations with an Iranian organization that has been labeled as a terrorist organization by the United States government. The bill would require the Board of Administration of the Public Employees' Retirement System and the Teachers' Retirement Board of the State Teachers' Retirement System to sell or transfer any investments in a company with business operations in Iran, until Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide support for acts of international terrorism and the President of the United States determines and certifies that Iran has ceased its efforts to design, develop, manufacture, or acquire a nuclear explosive device or related materials and technology, as specified. The bill would make related legislative findings and declarations.

This bill would require these boards to report to the Legislature any investments in a company with specified business operations in Iran and the sale or transfer of those investments, subject to the fiduciary duty of these boards, by January 1, 2009, and every year thereafter.

This bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract with, these retirement systems.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) The Securities and Exchange Commission has determined that business activities in foreign states such as Iran sponsoring terrorism and that are subject to sanctions by the United States may materially harm the share value of foreign companies. Shares in these foreign companies may be held in the portfolio of public retirement systems in this state.

(b) Publicly traded companies in the United States are substantially restricted in doing business in or with foreign states such as Iran that the United States Department of State has identified as sponsoring terrorism.

(c) Public retirement systems in this state currently invest on behalf of the citizens of California in publicly traded foreign companies that may be at risk due to business ties with foreign states such as Iran that sponsor terrorism and are involved in the proliferation of weapons of mass destruction.

(d) Investments in publicly traded foreign companies that have business operations in or with foreign states such as Iran are liable for sanctions under United States law and risk the pensions of the dedicated public employees of this state.

(e) Excluding companies with business activities in foreign states such as Iran that sponsor terrorism and divesting from public portfolios will help protect the public retirement systems in this state from investment losses related to these business activities and may improve the investment performance of the public retirement systems.

(f) Public Law 104-172, as renewed and amended in 2001 and 2006, specifically provides for sanctions to be imposed on any entity that has invested at least twenty million dollars ($20,000,000) in any year since 1996 to develop petroleum or natural gas resources of Iran.

(g) It is unconscionable for this state to invest in foreign companies with business activities benefiting foreign states such as Iran that commit egregious violations of human rights and sponsor terrorism.

(h) It is the Government of Iran, and not the people of Iran, that is responsible for Iran's support of terrorism and which commits egregious violations of human rights under which its own citizens are required to live.

SEC. 2. Section 7513.7 is added to the Government Code, to read:

7513.7. (a) As used in this section, the following definitions shall apply:

(1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(2) "Business operations" means maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Iran, including the ownership or possession of real or personal property located in Iran.

(3) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. "Company" also means a company owned or controlled, either directly or indirectly, by the government of Iran, that is established or organized under the laws of or has its principal place of business in the Islamic Republic of Iran.

(4) "Government of Iran" means the government of Iran or its instrumentalities or political subdivisions. "Government of Iran" also means an individual, company, or public agency located in Iran that provides material or financial support to the Islamic Republic of Iran.

(5) "Invest" or "investment" means the purchase, ownership, or control of stock of a company, association, or corporation, the capital stock of a mutual water company or corporation, bonds issued by the government or a political subdivision of Iran, corporate bonds or other debt instruments issued by a company, or the commitment of funds or other assets to a company, including a loan or extension of credit to that company.

(6) "Iran" means the Islamic Republic of Iran or a territory under the administration or control of Iran.

(7) "Military equipment" means weapons, arms, or military defense supplies.

(8) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(9) "Substantial action" means a boycott of the government of Iran, curtailing business in Iran until that time described in subdivision (m), or selling company assets, equipment, or real and personal property located in Iran.

(b) The board shall not invest public employee retirement funds in a company which has business operations in Iran as identified by the board through, as the board deems appropriate, publicly available information including, but not limited to, information provided by nonprofit and other organizations and government entities, that meets either of the following criteria:

(1) The company (A) is invested in or engaged in business operations with entities in the defense or nuclear sectors of Iran or (B) is invested in or engaged in business operations with entities involved in the development of petroleum or natural gas resources of Iran, and that company is subject to sanctions under Public Law 104-172, as renewed and amended in 2001 and 2006.

(2) The company has demonstrated complicity with an Iranian organization that has been labeled as a terrorist organization by the United States government.

(c) On or before June 30, 2008, the board shall determine which companies are subject to divestment.

(d) After the determination described in subdivision (c), the board shall determine, by the next applicable board meeting, if a company meets the criteria described in subdivision (b). If the board plans to invest or has investments in a company that meets the criteria described in subdivision (b), that planned or existing investment shall be subject to subdivisions (g) and (h).

(e) Investments of the board in a company that does not meet the criteria described in subdivision (b) are not subject to subdivision (h) if the company does not subsequently meet the criteria described in subdivision (b). The board shall identify the reasons why that company does not satisfy the criteria described in subdivision (b) in the report to the Legislature described in subdivision (i).

(f) (1) Notwithstanding subdivisions (d) and (e), if the board's investment in a company described in subdivision (b) is limited to investment via an externally and actively managed commingled fund, the board shall contact that fund manager in writing and request that the fund manager remove that company from the fund as described in subdivision (h). On or before June 30, 2008, if the fund or account manager creates a fund or account devoid of companies described in subdivision (b), the transfer of board investments from the prior fund or account to the fund or account devoid of companies with business operations in Iran shall be deemed to satisfy subdivision (h).

(2) If the board's investment in a company described in subdivision (b) is limited to an alternative fund or account, the alternative fund or account manager creates an actively managed commingled fund that excludes companies described in subdivision (b), and the new fund or account is deemed to be financially equivalent to the existing fund or account, the transfer of board investments from the existing fund or account to the new fund or account shall be deemed to satisfy subdivision (h). If the board determines that the new fund or account is not financially equivalent to the existing fund, the board shall include the reasons for that determination in the report described in subdivision (i).

(3) The board shall make a good faith effort to identify any private equity investments that involve companies described in subdivision (b), or are linked to the government of Iran. If the board determines that a private equity investment clearly involves a company described in subdivision (b), or is linked to the government of Iran, the board shall consider, at its

discretion, if those private equity investments shall be subject to subdivision (h). If the board determines that a private equity investment clearly involves a company described in subdivision (b), or is linked to the government of Iran and the board does not take action as described in subdivision (h), the board shall include the reasons for its decision in the report described in subdivision (i).

(g) Except as described in subdivisions (e) and (f), the board, in the board's capacity of shareholder or investor, shall notify any company described in subdivision (d) that the company is subject to subdivision (h) and permit that company to respond to the board. The board shall request that the company take substantial action no later than 90 days from the date the board notified the company under this subdivision. If the board determines that a company has taken substantial action or has made sufficient progress towards substantial action before the expiration of that 90-day period, that company shall not be subject to subdivision (h). The board shall, at intervals not to exceed 90 days, continue to monitor and review the progress of the company until that company has taken substantial action in Iran. A company that fails to complete substantial action within one year from the date of the initial notice by the board shall be subject to subdivision (h).

(h) If a company described in subdivision (d) fails to complete substantial action by the time described in subdivision (g), the board shall take the following actions:

(1) The board shall not make additional or new investments or renew existing investments in that company.

(2) The board shall liquidate the investments of the board in that company no later than 18 months after this subdivision applies to that company. The board shall liquidate those investments in a manner to address the need for companies to take substantial action in Iran and consistent with the board's fiduciary responsibilities as described in Section 17 of Article XVI of the California Constitution.

(i) On or before January 1, 2009, and every year thereafter, the board shall file a report with the Legislature. The report shall describe the following:

(1) A list of investments the board has in companies with business operations that satisfy the criteria in subdivision (b), including, but not limited to, the issuer, by name, of the stock, bonds, securities, and other evidence of indebtedness.

(2) A detailed summary of the business operations a company described in paragraph (1) has in Iran.

(3) Whether the board has reduced its investments in a company that satisfies the criteria in subdivision (b).

(4) If the board has not completely reduced its investments in a company that satisfies the criteria in subdivision (b), when the board anticipates that the board will reduce all investments in that company or the reasons why a sale or transfer of investments is inconsistent with the fiduciary

responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

(5) Any information described in subdivisions (d) and (e).

(6) A detailed summary of investments that were transferred to funds or accounts devoid of companies with business operations in Iran as described in subdivision (f).

(7) An annual calculation of any costs or investment losses or other financial results incurred in compliance with the provisions of this section.

(j) If the board voluntarily sells or transfers all of its investments in a company with business operations in Iran, this section shall not apply except that the board shall file a report with the Legislature related to that company as described in subdivision (i).

(k) Nothing in this section shall require the board to take action as described in this section unless the board determines, in good faith, that the action described in this section is consistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

(*l*) Subdivision (h) shall not apply to any of the following:

(1) Investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Iran.

(2) Investments in a company that promotes health, education, or journalistic, religious, or welfare activities in Iran.

(3) Investments in a United States company that is authorized by the federal government to have business operations in Iran.

(m) This section shall cease to be operative if both of the following apply:

(1) Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide support for acts of international terrorism.

(2) Pursuant to Public Law 104-172, as amended, the President of the United States determines and certifies to the appropriate committee of the Congress of the United States that Iran has ceased its efforts to design, develop, manufacture, or acquire a nuclear explosive device or related materials and technology.

(n) This section shall be known and may be cited as the California Public Divest from Iran Act.

SEC. 3. Section 16642 of the Government Code is amended to read:

16642. Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms as described in subdivision (d) of Section

7513.6, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Sections 7513.6 and 7513.7.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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