

AMENDED IN ASSEMBLY MARCH 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1151

Introduced by Assembly Member Feuer

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1151, as amended, Feuer. 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.

The California Public Divest from Iran Act prohibits the Public Employees' Retirement System (*PERS*) and the State Teachers' Retirement System (*STRS*) 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. Existing law requires the Board of Administration of ~~the Public Employees' Retirement System~~ *PERS* and the Teachers' Retirement Board of ~~the State Teachers' Retirement System~~ *STRS* 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. *Existing law requires the boards of PERS and STRS, on or before June 30, 2008, to determine the companies that are subject to divestment and to notify those companies and request that those companies take substantial action to curtail or end business operations, as described above, in Iran. Existing law provides that the board is not required to divest if the board determines that the company has taken substantial action in a 90-day period to curtail or end those operations. Existing law excepts certain investments from these requirements, including those in companies providing humanitarian relief and promoting health, education, journalistic, religious, or welfare activities.*

Existing law provides that nothing in those provisions requires the Board of Administration of the ~~Public Employees' Retirement System PERS~~ or the Teachers' Retirement Board of the ~~State Teachers' Retirement System STRS~~ to take action as described in those provisions unless the board determines, in good faith *and based on specified information*, that the action is consistent with the fiduciary responsibilities of the board as described in a specified provision of the California Constitution.

~~This bill would instead provide that nothing in those provisions requires either board to take action described in this section if the board determines, in good faith, that the action would be a breach of the fiduciary responsibilities of the board as described in the provision of the California Constitution. The bill would require that any determination that an action would be a breach of fiduciary duty be made in a public hearing of the full board after proper public notice and an opportunity for public comment.~~

This bill would provide that the boards shall not invest in a company that has an investment of \$20,000,000 or more in the energy sector of Iran, including in a company that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas. The bill would require the boards to review their investments annually and would require that the boards' determinations that a company is taking substantial actions to end or

curtail its operations, as described above, be supported by findings adopted by a rollcall vote of the boards following a presentation and discussion of the findings in open session, during a properly noticed public hearing of the full board. The bill would require all proposed findings to be made public 72 hours before they are considered by the board, and that the board maintain a list of interested parties to be notified of proposed findings 72 hours before the board’s consideration. The bill would require the findings and any public comments regarding the adopted findings and determinations to be included in a report to the Legislature. The bill would make the same notice, rollcall vote, and public hearing requirements for adopted findings and determinations of the boards regarding divestments that are found to disadvantage the retirement funds. The bill would eliminate the exception provided for investments in certain companies providing humanitarian relief and promoting health, education, journalistic, religious, or welfare activities. The bill would make findings regarding the California Public Divest from Iran Act and would provide that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. *The Legislature finds and declares that Section*
 2 *7513.7 of the Government Code, known as the California Public*
 3 *Divest from Iran Act, is consistent with the authority to divest*
 4 *granted to state and local governments by, and is in accordance*
 5 *with, the provisions of Public Law 111-195, enacted July 1, 2010.*

6 ~~SECTION 1.~~

7 SEC. 2. Section 7513.7 of the Government Code is amended
 8 to read:

9 7513.7. (a) As used in this section, the following definitions
 10 shall apply:

11 (1) “Board” means the Board of Administration of the Public
 12 Employees’ Retirement System or the Teachers’ Retirement Board
 13 of the State Teachers’ Retirement System, as applicable.

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

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

9 ~~(4) “Government of Iran” means the government of Iran or its~~
10 ~~instrumentalities or political subdivisions. “Government of Iran”~~
11 ~~also means an individual, company, or public agency located in~~
12 ~~Iran that provides material or financial support to the Islamic~~
13 ~~Republic of Iran.~~

14 ~~(4) “Energy sector of Iran” means activities to develop~~
15 ~~petroleum or natural gas resources or nuclear power in Iran.~~

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

23 ~~(6) “Iran” means the Islamic Republic of Iran or a territory under~~
24 ~~the administration or control of Iran. *government of Iran and any*~~
25 ~~*agency or instrumentality of Iran.*~~

26 ~~(7) “Military equipment” means weapons, arms, or military~~
27 ~~defense supplies.~~

28 ~~(8)~~

29 (7) “Public employee retirement funds” means the Public
30 Employees’ Retirement Fund described in Section 20062 of this
31 code, and the Teachers’ Retirement Fund described in Section
32 22167 of the Education Code.

33 ~~(9)~~

34 (8) “Substantial action” means a boycott of the government of
35 Iran, curtailing business in Iran until that time described in
36 subdivision (m), or selling company assets, equipment, or real and
37 personal property located in Iran.

38 (b) The board shall not invest public employee retirement funds
39 in a company which has business operations in Iran as identified
40 by the board through, as the board deems appropriate, publicly

1 available information including, but not limited to, information
2 provided by nonprofit and other organizations and government
3 entities, that meets either of the following criteria:

4 (1) The company (A) is invested in or engaged in business
5 operations with entities in the defense or nuclear sectors of Iran
6 ~~or (B) is invested in or engaged in business operations with entities~~
7 ~~involved in the development of petroleum or natural gas resources~~
8 *or (B) has an investment of twenty million dollars (\$20,000,000)*
9 *or more in the energy sector of Iran, including in a company that*
10 *provides oil or liquefied natural gas tankers, or products used to*
11 *construct or maintain pipelines used to transport oil or liquefied*
12 *natural gas, for the energy sector of Iran, and that company is*
13 *subject to sanctions under Public Law 104-172, as renewed and*
14 *amended in 2001 and 2006.*

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

18 ~~On or before June 30, 2008~~ *Annually, on or before June 30,*
19 *the board shall review its investment portfolio and determine which*
20 *companies are subject to divestment.*

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

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

34 (f) (1) Notwithstanding subdivisions (d) and (e), if the board's
35 investment in a company described in subdivision (b) is limited
36 to investment via an externally and actively managed commingled
37 fund, the board shall contact that fund manager in writing and
38 request that the fund manager remove that company from the fund
39 as described in subdivision (h). ~~On or before June 30, 2008,~~ if the
40 fund or account manager creates a fund or account devoid of

1 companies described in subdivision (b), the transfer of board
2 investments from the prior fund or account to the fund or account
3 devoid of companies with business operations in Iran shall be
4 deemed to satisfy subdivision (h).

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

16 (3) The board shall make a good faith effort to identify any
17 private equity investments that involve companies described in
18 subdivision (b), or are linked to the government of Iran. If the
19 board determines that a private equity investment clearly involves
20 a company described in subdivision (b), or is linked to the
21 government of Iran, the board shall consider, at its discretion, if
22 those private equity investments shall be subject to subdivision
23 (h). If the board determines that a private equity investment clearly
24 involves a company described in subdivision (b), or is linked to
25 the government of Iran and the board does not take action as
26 described in subdivision (h), the board shall include the reasons
27 for its decision in the report described in subdivision (i).

28 (g) Except as described in subdivisions (e) and (f), the board,
29 in the board's capacity of shareholder or investor, shall notify any
30 company described in subdivision (d) that the company is subject
31 to subdivision (h) and permit that company to respond to the board.
32 The board shall request that the company take substantial action
33 no later than 90 days from the date the board notified the company
34 under this subdivision. If the board determines *based on credible*
35 *information available to the public* that a company has taken
36 substantial action or has made sufficient progress towards
37 substantial action before the expiration of that 90-day period, that
38 company shall not be subject to subdivision (h). The board shall,
39 at intervals not to exceed 90 days, continue to monitor and review
40 the progress of the company until that company has taken

1 substantial action in Iran. *Any determination made at each 90-day*
2 *interval that a company has taken substantial action shall be*
3 *supported by findings adopted by a rollcall vote of the board*
4 *following a presentation and discussion of the findings in open*
5 *session, during a properly noticed public hearing of the full board.*
6 *All proposed findings of the board shall be made public 72 hours*
7 *before they are considered by the board, and the board shall*
8 *maintain a list of interested parties who shall be notified of*
9 *proposed findings 72 hours before the board's consideration. The*
10 *findings and any public comments regarding the adopted findings*
11 *and determinations made pursuant to this subdivision shall be*
12 *included in the report to the Legislature required by subdivision*
13 *(i). A company that fails to complete substantial action within one*
14 *year from the date of the initial notice by the board shall be subject*
15 *to subdivision (h).*

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

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

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

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

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

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

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

39 (4) If the board has not completely reduced its investments in
40 a company that satisfies the criteria in subdivision (b), when the

1 board anticipates that the board will reduce all investments in that
2 company or the ~~reasons~~ *findings adopted in support of a*
3 *determination made pursuant to subdivision (k) pertaining to why*
4 a sale or transfer of investments is inconsistent with the fiduciary
5 responsibilities of the board as described in Section 17 of Article
6 XVI of the California Constitution.

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

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

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

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

19 (k) Nothing in this section shall require the board to take action
20 as described in this section if the board determines, *and adopts*
21 *findings, in good faith and based on credible information available*
22 *to the public, that the action described in this section would be a*
23 *breach of the fiduciary responsibilities of the board as described*
24 *in Section 17 of Article XVI of the California Constitution. Any*
25 *determination that an action would be a breach of fiduciary duty*
26 *shall be made in a public hearing of the full board after proper*
27 *public notice and an opportunity for public comment.*

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

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

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

34 ~~(3) Investments in a United States company that is authorized~~
35 ~~by the federal government to have business operations in Iran.~~
36 *Constitution. Any adopted findings shall demonstrate how*
37 *divestment disadvantages the fund and that any feasible investment*
38 *alternatives would yield a lower rate of return with commensurate*
39 *degrees of risk, or create a higher degree of risk with*
40 *commensurate rates of return. Any determination that an action*

1 *would be a breach of fiduciary duty shall require a recorded*
2 *rollcall vote of the full board, following a presentation and*
3 *discussion of findings in open session, during a properly noticed*
4 *public hearing of the full board. All proposed findings of the board*
5 *shall be made public 72 hours before they are considered by the*
6 *board, and the board shall maintain a list of interested parties*
7 *who shall be notified of proposed findings 72 hours before board*
8 *consideration. The findings and any public comments regarding*
9 *the adopted findings and determinations made pursuant to this*
10 *subdivision shall be included in the report to the Legislature*
11 *required by subdivision (i).*

12 ~~(m)~~

13 *(l)* This section shall cease to be operative if both of the
14 following apply:

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

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

23 ~~(n)~~

24 *(m)* This section shall be known and may be cited as the
25 California Public Divest from Iran Act.

26 *(n)* *The provisions of this section are severable. If any provision*
27 *of this section or its application is held invalid, that invalidity shall*
28 *not affect other provisions or applications that can be given effect*
29 *without the invalid provision or application.*