

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY MARCH 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1151

Introduced by Assembly Member ~~Members~~ Feuer and Blumenfeld

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 PERS and the Teachers'

Retirement Board of 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 PERS or the Teachers' Retirement Board of 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 ~~provide that prohibit~~ the boards ~~shall not invest from investing~~ in a company that has an investment of \$20,000,000 or more in the energy sector of Iran, *as defined*, 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 delete restrictions on companies invested in, or engaged in business operations with entities in, the defense and nuclear sectors of Iran.* 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 revise the circumstances under which these provisions would cease to be operative to conform with current federal law.* 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 SEC. 2. Section 7513.7 of the Government Code is amended
7 to read:

8 7513.7. (a) As used in this section, the following definitions
9 shall apply:

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

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

17 (3) "Company" means a sole proprietorship, organization,
18 association, corporation, partnership, venture, or other entity, its
19 subsidiary or affiliate that exists for profitmaking purposes or to
20 otherwise secure economic advantage. "Company" also means a
21 company owned or controlled, either directly or indirectly, by the
22 government of Iran, that is established or organized under the laws

1 of or has its principal place of business in the ~~Islamic Republic of~~
2 Iran.

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

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

12 (6) “Iran” means the government of Iran and any agency or
13 instrumentality of Iran.

14 (7) “Public employee retirement funds” means the Public
15 Employees’ Retirement Fund described in Section 20062 of this
16 code, and the Teachers’ Retirement Fund described in Section
17 22167 of the Education Code.

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

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

28 (1) The company ~~(A) is invested in or engaged in business~~
29 ~~operations with entities in the defense or nuclear sectors of Iran~~
30 ~~or (B) has an investment of twenty million dollars (\$20,000,000)~~
31 or more in the energy sector of Iran, including in a company that
32 provides oil or liquefied natural gas tankers, or products used to
33 construct or maintain pipelines used to transport oil or liquefied
34 natural gas, for the energy sector of Iran, and that company is
35 subject to sanctions under Public Law 104-172, as renewed and
36 amended in 2001 and 2006.

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

1 (c) Annually, on or before June 30, the board shall review its
2 investment portfolio and determine which companies are subject
3 to divestment.

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

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

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

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

39 (3) The board shall make a good faith effort to identify any
40 private equity investments that involve companies described in

1 subdivision (b), or are linked to the government of Iran. If the
2 board determines that a private equity investment clearly involves
3 a company described in subdivision (b), or is linked to the
4 government of Iran, the board shall consider, at its discretion, if
5 those private equity investments shall be subject to subdivision
6 (h). If the board determines that a private equity investment clearly
7 involves a company described in subdivision (b), or is linked to
8 the government of Iran and the board does not take action as
9 described in subdivision (h), the board shall include the reasons
10 for its decision in the report described in subdivision (i).

11 (g) Except as described in subdivisions (e) and (f), the board,
12 in the board's capacity of shareholder or investor, shall notify any
13 company described in subdivision (d) that the company is subject
14 to subdivision (h) and permit that company to respond to the board.
15 The board shall request that the company take substantial action
16 no later than 90 days from the date the board notified the company
17 under this subdivision. If the board determines based on credible
18 information available to the public that a company has taken
19 substantial action or has made sufficient progress towards
20 substantial action before the expiration of that 90-day period, that
21 company shall not be subject to subdivision (h). The board shall,
22 at intervals not to exceed 90 days, continue to monitor and review
23 the progress of the company until that company has taken
24 substantial action in Iran. Any determination made at each 90-day
25 interval that a company has taken substantial action shall be
26 supported by findings adopted by a rollcall vote of the board
27 following a presentation and discussion of the findings in open
28 session, during a properly noticed public hearing of the full board.
29 All proposed findings of the board shall be made public 72 hours
30 before they are considered by the board, and the board shall
31 maintain a list of interested parties who shall be notified of
32 proposed findings 72 hours before the board's consideration. The
33 findings and any public comments regarding the adopted findings
34 and determinations made pursuant to this subdivision shall be
35 included in the report to the Legislature required by subdivision
36 (i). A company that fails to complete substantial action within one
37 year from the date of the initial notice by the board shall be subject
38 to subdivision (h).

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

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

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

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

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

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

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

24 (4) If the board has not completely reduced its investments in
25 a company that satisfies the criteria in subdivision (b), when the
26 board anticipates that the board will reduce all investments in that
27 company or the findings adopted in support of a determination
28 made pursuant to subdivision (k) pertaining to why a sale or
29 transfer of investments is inconsistent with the fiduciary
30 responsibilities of the board as described in Section 17 of Article
31 XVI of the California Constitution.

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

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

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

39 (j) If the board voluntarily sells or transfers all of its investments
40 in a company with business operations in Iran, this section shall

1 not apply except that the board shall file a report with the
2 Legislature related to that company as described in subdivision
3 (i).

4 (k) Nothing in this section shall require the board to take action
5 as described in this section if the board determines, and adopts
6 findings, in good faith and based on credible information available
7 to the public, that the action described in this section would be a
8 breach of the fiduciary responsibilities of the board as described
9 in Section 17 of Article XVI of the California Constitution. Any
10 adopted findings shall demonstrate how divestment disadvantages
11 the fund and that any feasible investment alternatives would yield
12 a lower rate of return with commensurate degrees of risk, or create
13 a higher degree of risk with commensurate rates of return. ~~Any~~
14 *Notwithstanding any other law, any* determination that an action
15 would be a breach of fiduciary duty shall require a recorded rollcall
16 vote of the full board, following a presentation and discussion of
17 findings in open session, during a properly noticed public hearing
18 of the full board. All proposed findings of the board shall be made
19 public 72 hours before they are considered by the board, and the
20 board shall maintain a list of interested parties who shall be notified
21 of proposed findings 72 hours before board consideration. The
22 findings and any public comments regarding the adopted findings
23 and determinations made pursuant to this subdivision shall be
24 included in the report to the Legislature required by subdivision
25 (i).

26 (l) This section shall cease to be operative if ~~both of the~~
27 ~~following apply:~~

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

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

36 *the President of the United States has made the certifications*
37 *specified in paragraphs (1) and (2) of subdivision (a) of Section*
38 *8551 of Title 22 of the United States Code.*

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

1 (n) The provisions of this section are severable. If any provision
2 of this section or its application is held invalid, that invalidity shall
3 not affect other provisions or applications that can be given effect
4 without the invalid provision or application.

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