

ASSEMBLY BILL

No. 761

Introduced by Assembly Member Dickinson

February 21, 2013

An act to add Section 7513.4 to the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 761, as introduced, Dickinson. Public retirement systems: investments.

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 boards of 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 and Iran, as specified.

This bill would additionally prohibit the Public Employees' Retirement System and the California State Teachers' Retirement System from investing public employee retirement funds in a company with business operations that are described as the manufacture, sale, marketing, or distribution of firearms or ammunition, as specified. 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 these business operations.

This bill would require these boards to report to the Legislature any investments in a company with these business operations and the sale

or transfer of those investments, subject to the fiduciary duty of these boards, by January 1, 2015, and every year thereafter.

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 all of the
2 following:

3 (a) According to the Office of the Attorney General,
4 approximately 2,900 persons were hospitalized in 2011 due to
5 injuries from a firearm, and approximately 2,800 persons were
6 killed by firearms either by homicide, suicide, or accident.

7 (b) Statistics compiled by the Federal Bureau of Investigation
8 (FBI) demonstrate that firearms are overwhelmingly the most
9 common weapon used in California homicides.

10 (c) According to the FBI, while California ranks 30th in gun
11 deaths per capita, California had the highest number of total gun
12 deaths out of any state last year, accounting for 68 percent of all
13 gun murders in the United States.

14 (d) Approximately 600,000 guns are sold by dealers every year
15 in California, a sharp increase over time compared to 200,000 per
16 year in 2002.

17 (e) Comprehensive surveys of gun violence from 2011 have
18 shown that firearms play a major role in violent crime in California.

19 (f) Notwithstanding the fact that California has made significant
20 strides to reduce gun violence, guns continue to be a major threat
21 to public health and safety.

22 (g) Numerous gun violence prevention groups, including The
23 Brady Campaign to End Gun Violence and The Law Center to
24 Prevent Gun Violence have praised California's record of
25 developing innovative solutions to gun violence which serve as
26 models for other states and for the federal government.

27 (h) The Legislature therefore finds that the divestment of public
28 employee retirement funds from companies that manufacture, sell,
29 market, or distribute guns and ammunition is in the public interest
30 of the state, for the preservation of the public peace, health, or
31 safety.

32 SEC. 2. Section 7513.4 is added to the Government Code, to
33 read:

1 7513.4. (a) As used in this section, the following definitions
2 shall apply:

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

6 (2) "Business operations" means manufacturing, selling,
7 marketing, or distributing firearms or ammunition.

8 (3) "Company" means a sole proprietorship, organization,
9 association, corporation, partnership, venture, or other entity, its
10 subsidiary or affiliate that exists for profitmaking purposes or to
11 otherwise secure economic advantage.

12 (4) "Invest" or "investment" means the purchase, ownership,
13 or control of stock of a company, association, or corporation or
14 corporate bonds issued by a company which manufactures, sells,
15 markets, or distributes firearms or ammunition.

16 (5) "Public employee retirement funds" means the Public
17 Employees' Retirement Fund described in Section 20062, and the
18 Teachers' Retirement Fund described in Section 22167 of the
19 Education Code.

20 (6) "Substantial action" means selling assets, equipment, or real
21 and personal property of a company that manufactures, sells,
22 markets, or distributes firearms or ammunition.

23 (b) The board shall not invest public employee retirement funds
24 in a company that has business operations as described in paragraph
25 (2) of subdivision (a) as identified by the board through any source
26 of public information, as the board deems appropriate, including,
27 but not limited to, information provided by nonprofit and other
28 organizations and government entities.

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

32 (d) (1) If the board's investment in a company described in
33 subdivision (b) is limited to an investment via an externally and
34 actively managed commingled fund, the board shall contact that
35 fund manager in writing and request that the fund manager remove
36 that company from the fund as described in subdivision (f). On or
37 before June 30, if the fund or account manager creates a fund or
38 account devoid of companies described in subdivision (b), the
39 transfer of board investments from the prior fund or account to the
40 fund or account devoid of companies with business operations as

described in paragraph (2) of subdivision (a) shall be deemed to satisfy subdivision (f).

(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 (f). 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 (g).

(3) The board shall make a good faith effort to identify any private equity investments that involve companies described in subdivision (b). If the board determines that a private equity investment clearly involves a company described in subdivision (b), the board shall consider, at its discretion, if those private equity investments shall be subject to subdivision (f). If the board determines that a private equity investment clearly involves a company described in subdivision (b), and the board does not take action as described in subdivision (f), the board shall include the reasons for its decision in the report described in subdivision (g).

(e) 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 (f) 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 pursuant to this subdivision. If the board determines based on credible information available to the public that a company has taken substantial action or has made sufficient progress toward substantial action before the expiration of that 90-day period, that company shall not be subject to an action described in subdivision (f). 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. Any determination made at each 90-day interval that a company has taken substantial action shall be supported by findings adopted by a roll-call vote of the board following a presentation and discussion of the findings in open session, during a properly noticed public

1 hearing of the full board. All proposed findings of the board shall
2 be made public 72 hours before they are considered by the board,
3 and the board shall maintain a list of interested parties who shall
4 be notified of the proposed findings 72 hours before the board's
5 consideration. The findings and any public comments regarding
6 the adopted findings and determinations made pursuant to this
7 subdivision shall be included in the report to the Legislature
8 required by subdivision (g). A company that fails to complete
9 substantial action within one year from the date of the initial notice
10 by the board shall be subject to the actions described in subdivision
11 (f).

12 (f) If a company described in subdivision (d) fails to complete
13 substantial action by the time described in subdivision (e), the
14 board shall take the following actions:

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

17 (2) The board shall liquidate the investments of the board in
18 that company no later than 18 months after this subdivision applies
19 to that company. The board shall liquidate those investments in a
20 manner consistent with the board's fiduciary responsibilities as
21 described in Section 17 of Article XVI of the California
22 Constitution.

23 (g) On or before January 1, 2015, and every year thereafter, the
24 board shall file a report with the Legislature. The report shall
25 describe the following:

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

30 (2) A detailed summary of the business operations of each
31 company identified in paragraph (1).

32 (3) Whether the board has reduced its investments in a company
33 with business operations that satisfy the criteria in subdivision (b).

34 (4) If the board has not completely reduced its investments in
35 a company with business operations that satisfy the criteria in
36 subdivision (b), a timeline for when the board anticipates that the
37 board will reduce all investments in that company or adopt the
38 findings in support of a determination made pursuant to subdivision
39 (h) pertaining to why a sale or transfer of investments is
40 inconsistent with the fiduciary responsibilities of the board as

1 described in Section 17 of Article XVI of the California
2 Constitution.

3 (5) A detailed summary of investments that were transferred to
4 funds or accounts devoid of companies with business operations
5 as described in subdivision (b).

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

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

32 (i) The report shall be submitted in compliance with Section
33 9795.