

ASSEMBLY BILL

No. 2650

Introduced by Assembly Member Nazarian

February 19, 2016

An act to amend Section 7513.6 of the Government Code, relating to public employee retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, as introduced, Nazarian. Public employee retirement systems: prohibited investments.

The California Constitution grants the retirement board of a public employee retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the retirement fund and system. The California Constitution qualifies this grant of powers by reserving to the Legislature the authority to prohibit investments if it is in the public interest and the prohibition satisfies standards of fiduciary care and loyalty required of a retirement board. Existing law prohibits specified investments in certain countries, including Sudan.

This bill would make technical, nonsubstantive changes to provisions prohibiting investment in the Sudan.

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

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

1 SECTION 1. Section 7513.6 of the Government Code is
2 amended to read:

1 7513.6. (a) As used in this section, the following definitions
2 shall apply: section:

3 (1) “Active business operations” means a company engaged in
4 business operations that provide revenue to the government of
5 Sudan or a company engaged in oil-related activities.

6 (2) “Board” means the Board of Administration of the Public
7 Employees’ Retirement System or the Teachers’ Retirement Board
8 of the State Teachers’ Retirement System, as applicable.

9 (3) “Business operations” means maintaining, selling, or leasing
10 equipment, facilities, personnel, or any other apparatus of business
11 or commerce in Sudan, including the ownership or possession of
12 real or personal property located in Sudan.

13 (4) “Company” means a sole proprietorship, organization,
14 association, corporation, partnership, venture, or other entity, its
15 subsidiary or affiliate that exists for profitmaking purposes or to
16 otherwise secure economic advantage. “Company” also means a
17 company owned or controlled, either directly or indirectly, by the
18 government of Sudan, that is established or organized under the
19 laws of or has its principal place of business in the Republic of the
20 Sudan.

21 (5) “Government of Sudan” means the government of Sudan
22 or its instrumentalities.

23 (6) “Invest” or “investment” means the purchase, ownership,
24 or control of stock of a company, association, or corporation, the
25 capital stock of a mutual water company or corporation, bonds
26 issued by the government or a political subdivision of Sudan,
27 corporate bonds or other debt instruments issued by a company,
28 or the commitment of funds or other assets to a company, including
29 a loan or extension of credit to that company.

30 (7) “Military equipment” means weapons, arms, or military
31 defense supplies.

32 (8) “Oil-related activities” means, but is not limited to, the export
33 of oil, extracting or producing oil, exploration for oil, or the
34 construction or maintenance of a pipeline, refinery, or other oil
35 field infrastructure.

36 (9) “Public employee retirement funds” means the Public
37 Employees’ Retirement Fund described in Section 20062 of this
38 code, and the Teachers’ Retirement Fund described in Section
39 22167 of the Education Code.

1 (10) “Research firm” means a reputable, neutral third-party
2 research firm.

3 (11) “Substantial action” means a boycott of the government
4 of Sudan, curtailing business in Sudan until that time described in
5 subdivision (m), selling company assets, equipment, or real and
6 personal property located in Sudan, or undertaking significant
7 humanitarian efforts in the eastern, southern, or western regions
8 of Sudan.

9 (12) “Sudan” means the Republic of the Sudan, a territory under
10 the administration or control of the Sudan, including but not limited
11 to, the Darfur region, or an individual, company, or public agency
12 located in Khartoum, northern Sudan, or the Nile River Valley
13 that supports the Republic of the Sudan.

14 (b) The board shall not invest public employee retirement funds
15 in a company with business operations in Sudan that meets all of
16 the following criteria:

17 (1) The company is engaged in active business operations in
18 Sudan. If that company is not engaged in oil-related activities, that
19 company also lacks significant business operations in the eastern,
20 southern, and western regions of Sudan.

21 (2) Either of the following apply:

22 (A) The company is engaged in oil-related activities or energy
23 or power-related operations, or contracts with another company
24 with business operations in the oil, energy, and power sectors of
25 Sudan, and the company failed to take substantial action related
26 to the government of Sudan because of the Darfur genocide.

27 (B) The company has demonstrated complicity in the Darfur
28 genocide.

29 (c) Notwithstanding subdivision (b), the board shall not invest
30 public employee retirement funds in a company that supplies
31 military equipment within the borders of Sudan. If a company
32 provides equipment within the borders of Sudan that may be readily
33 used for military purposes, including, but not limited to, radar
34 systems and military-grade transport vehicles, there shall also be
35 a strong presumption against investing in that company unless that
36 company implements safeguards to prevent the use of that
37 equipment for military purposes.

38 (d) (1) The board shall, without regard to the provisions
39 regarding competitive bidding, contract with a research firm or
40 firms to determine those companies that have business operations

1 in Sudan. Those research firms shall, in the aggregate, obtain data
2 on a majority of companies with business operations in Sudan. On
3 or before March 30, 2007, those research firms shall report any
4 findings to the board and those research firms shall submit further
5 findings to the board if there is a change of circumstances in Sudan.

6 (2) In addition to the reports described in paragraph (1), the
7 board shall take all of the following actions no later than March
8 30, 2007:

9 (A) Review publicly available information regarding companies
10 with business operations in Sudan.

11 (B) Contact other institutional investors that invest in companies
12 with business operations in Sudan.

13 (C) Send written notice to a company with business operations
14 in Sudan that the company may be subject to this section.

15 (e) (1) The board shall determine, by the next applicable board
16 meeting and based on the information and reports described in
17 subdivision (d), if a company meets the criteria described in
18 subdivision (b) or (c). If the board plans to invest or has
19 investments in a company that meets the criteria described in
20 subdivision (b) or (c), that planned or existing investment shall be
21 subject to subdivisions (g) and (h).

22 (2) Investments of the board in a company that does not meet
23 the criteria described in subdivision (b) or (c) or does not have
24 active business operations in Sudan are not subject to subdivision
25 (h), provided that the company does not subsequently meet the
26 criteria described in subdivision (b) or (c) or engage in active
27 business operations. The board shall identify the reasons why that
28 company does not satisfy the criteria described in subdivision (b)
29 or (c) or does not engage in active business operations in the report
30 to the Legislature described in subdivision (i).

31 (f) (1) Notwithstanding subdivision (e), if the board's
32 investment in a company described in subdivision (b) or (c) is
33 limited to investment via an externally and actively managed
34 commingled fund, the board shall contact that fund manager in
35 writing and request that the fund manager remove that company
36 from the fund as described in subdivision (h). On or before June
37 30, 2007, if the fund or account manager creates a fund or account
38 devoid of companies described in subdivision (b) or (c), the transfer
39 of board investments from the prior fund or account to the fund

1 or account devoid of companies with business operations in Sudan
2 shall be deemed to satisfy subdivision (h).

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

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

28 (g) Except as described in subdivision (f) or paragraph (2) of
29 subdivision (e), the board, in the board's capacity of shareholder
30 or investor, shall notify any company described in paragraph (1)
31 of subdivision (e) that the company is subject to subdivision (h)
32 and permit that company to respond to the information and reports
33 described in subdivision (d). The board shall request that the
34 company take substantial action no later than 90 days from the
35 date the board notified the company under this subdivision. If the
36 board determines that a company has taken substantial action or
37 has made sufficient progress towards substantial action before the
38 expiration of that 90-day period, that company shall not be subject
39 to subdivision (h). The board shall, at intervals not to exceed 90
40 days, continue to monitor and review the progress of the company

1 until that company has taken substantial action in Sudan. A
2 company that fails to complete substantial action or continue to
3 make sufficient progress towards substantial action by the next
4 time interval shall be subject to subdivision (h).

5 (h) If a company described in paragraph (1) of subdivision (e)
6 fails to complete substantial action by the time described in
7 subdivision (g), the board shall take the following actions:

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

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

17 (i) On or before January 1, 2008, and every year thereafter, the
18 board shall file a report with the Legislature. The report shall
19 describe the following:

20 (1) A list of investments the board has in companies with
21 business operations in Sudan, including, but not limited to, the
22 issuer, by name, of the stock, bonds, securities, and other evidence
23 of indebtedness.

24 (2) A detailed summary of the business operations a company
25 described in paragraph (1) has in Sudan and whether that company
26 satisfies all of the criteria in subdivision (b) or (c).

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

29 (4) If the board has not completely reduced its investments in
30 a company that satisfies the criteria in subdivision (b) or (c), when
31 the board anticipates that the board will reduce all investments in
32 that company or the reasons why a sale or transfer of investments
33 is inconsistent with the fiduciary responsibilities of the board as
34 described in Section 17 of Article XVI of the California
35 Constitution.

36 (5) Any information described in subdivision (e).

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

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

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

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

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

15 (2) Investments in a company that promotes health, education,
16 journalistic, or religious activities in or welfare in the western,
17 eastern, or southern regions of Sudan.

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

20 (m) This section shall remain in effect only until one of the
21 following occurs, and as of the date of that action, is repealed:

22 (1) The government of Sudan halts the genocide in Darfur for
23 12 months as determined by both the Department of State and the
24 Congress of the United States.

25 (2) The United States revokes its current sanctions against
26 Sudan.