

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2650

**Introduced by Assembly Member Nazarian Members Nazarian,
Achadjian, and Wilk**

February 19, 2016

An act to amend Section ~~7513.6~~ of 16642 of, and to add Section 7513.76 to, the Government Code, relating to public employee retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, as amended, Nazarian. Public employee retirement systems: prohibited ~~investments~~; *investments: Turkey.*

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 the boards of administration of the Public Employees' Retirement System and State Teachers' Retirement System from making~~ investments in certain countries, including Sudan. *countries and in thermal coal companies, as specified, subject to the boards' plenary authority and fiduciary responsibility for investment of moneys and administration of the systems.*

This bill would prohibit the boards of administration of the Public Employees' Retirement System and State Teachers' Retirement System from making additional or new investments, or renewing existing

investments, of public employee retirement funds in an investment vehicle in Turkey that is issued by the government of Turkey or that is owned, controlled, or managed by the government of Turkey. The bill would require the boards to liquidate existing investments in Turkey in these types of investment vehicles on or before July 1, 2018, subject to engagement with the government of Turkey regarding whether it is transitioning to publicly accepting its responsibility for the Armenian Genocide. The bill would require these boards, on or before January 1, 2019, to make a specified report to the Legislature and the Governor regarding these actions. The bill would provide that its provisions do not require a board to take any action that the board determines in good faith is inconsistent with its constitutional fiduciary responsibilities to the retirement system. The 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, in connection with actions relating to these investments.

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

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ 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 the following:*
- 2 (a) *The State of California has officially recognized the*
- 3 *Armenian Genocide each year for decades and has repeatedly*
- 4 *urged the Republic of Turkey to acknowledge the facts of the*
- 5 *Armenian Genocide and work toward a just resolution, honor its*
- 6 *obligations under international treaties and human rights laws,*
- 7 *end all forms of religious discrimination and persecution, and*
- 8 *return Christian church properties to their rightful owners.*
- 9 (b) *Genocide is defined by the United Nations as an act*
- 10 *“committed with intent to destroy, in whole or in part, a national,*
- 11 *ethnical, racial or religious group.”*
- 12 (c) *Genocide denial is widely viewed as among the final stages*
- 13 *of genocide and serves to perpetuate the effects of genocide even*
- 14 *after the active phases of extermination, massacres, forced*
- 15 *marches, and deportation have ended.*
- 16 (d) *The government of Turkey has engaged and continues to*
- 17 *engage in an ongoing campaign of genocide denial and historical*

1 *revisionism by refusing to acknowledge its responsibility for the*
2 *Armenian Genocide, refusing to compensate its victims, and*
3 *actively pursuing a well-funded political lobbying campaign*
4 *throughout the United States, including in California, to rewrite*
5 *history and defeat legislation recognizing the Armenian Genocide.*

6 *(e) The government of Turkey has engaged and continues to*
7 *engage in efforts to effect Armenian cultural erasure since the*
8 *founding of the Republic of Turkey, including, but not limited to,*
9 *ethnic cleansings and the destruction of sacred Armenian religious*
10 *sites.*

11 *(f) Reference in Turkey by any scholar, journalist, or other*
12 *person to the massacre and deportation of Armenians in 1915 to*
13 *1923, inclusive, as genocide can be criminally prosecuted under*
14 *Article 301 of the Turkish Penal Code.*

15 *(g) The State of California is home to the largest Armenian*
16 *American population in the United States, and Armenians living*
17 *in California, most of whom are direct descendants of the survivors*
18 *of the Armenian Genocide, have enriched our state through their*
19 *leadership and contributions in business, agriculture, academia,*
20 *government, and the arts, yet continue to suffer the effects of the*
21 *continued denial campaign by the government of Turkey.*

22 *(h) The State of California, as the world's eighth largest*
23 *economy, and in accordance with principles of human rights and*
24 *justice, has taken the lead in adopting legislation to divest from*
25 *South Africa for its policy of apartheid, Sudan for its genocide in*
26 *Darfur, and Iran for its support of international terrorism,*
27 *imposing economic consequences upon regimes that engage in*
28 *conduct and policy that violate human rights or constitute crimes*
29 *against humanity.*

30 *(i) The State of California, through its Public Employees'*
31 *Retirement System (PERS) and its State Teachers' Retirement*
32 *System (STRS), directly invests public funds in the government of*
33 *Turkey, which then reaps profits while actively denying the*
34 *Armenian Genocide, funding its continued campaign of denial, at*
35 *least in part, through these investments in its economy.*

36 *(j) By investing public funds in the government of Turkey, the*
37 *State of California as the embodiment of its citizens contradicts*
38 *its longstanding, just position of recognizing the Armenian*
39 *Genocide and urging the government of Turkey to acknowledge*
40 *its responsibility and work toward a just resolution by honoring*

1 *its obligations under international treaties and human rights laws,*
2 *to end all forms of religious discrimination and persecution, and*
3 *to return Christian church properties to their rightful owners.*

4 *(k) It is the government of Turkey, not the people of Turkey, that*
5 *is responsible for Turkey's continued egregious violations of human*
6 *rights and active pursuit of genocide denial, cultural erasure, and*
7 *historical revisionism.*

8 *(l) PERS currently has investment holdings in bonds directly*
9 *issued by the Republic of Turkey in excess of \$185,000,000.*

10 *(m) STRS currently has investment holdings in bonds directly*
11 *issued by the Republic of Turkey in excess of several hundred*
12 *million dollars.*

13 *(n) Investment in the Republic of Turkey enables its government*
14 *to continue to deny justice to the Armenian people.*

15 *(o) Divesting these funds would ensure that the State of*
16 *California is in no way complicit in the continued denial of the*
17 *Armenian Genocide by the government of Turkey and would*
18 *encourage said government to acknowledge the Armenian*
19 *Genocide and to reach a fair and just resolution of reparations*
20 *for the survivors of the Armenian Genocide.*

21 *SEC. 2. Section 7513.76 is added to the Government Code, to*
22 *read:*

23 *7513.76. (a) As used in this section, the following terms have*
24 *the following meanings:*

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

28 *(2) "Government of Turkey" means the government of Turkey*
29 *or its instrumentalities or political subdivisions. "Government of*
30 *Turkey" also includes any and all investment vehicles, government*
31 *bonds, or financial institutions and entities that are owned,*
32 *controlled, or operated by the government of Turkey.*

33 *(3) "Turkey" means the Republic of Turkey or any territory*
34 *under the administration or control of Turkey.*

35 *(4) "Public employee retirement funds" means the Public*
36 *Employees' Retirement Fund described in Section 20062 and the*
37 *Teachers' Retirement Fund described in Section 22167 of the*
38 *Education Code.*

39 *(b) The board shall not make additional or new investments or*
40 *renew existing investments of public employee retirement funds in*

1 any investment vehicle in Turkey that meets either of the following
2 criteria:

3 (1) The investment vehicle is issued by the government of Turkey.

4 (2) The investment vehicle is owned, controlled, or managed
5 by the government of Turkey.

6 (c) The board shall liquidate investments in Turkey in an
7 investment vehicle described in subdivision (b) on or before July
8 1, 2018. In making a determination whether to liquidate
9 investments, the board shall constructively engage with the
10 government of Turkey to establish whether the government of
11 Turkey is transitioning to publicly accepting its responsibility for
12 the Armenian Genocide.

13 (d) On or before January 1, 2019, the board shall file a report
14 with the Legislature, in compliance with Section 9795, and the
15 Governor, that shall include the following:

16 (1) A list of investment vehicles in Turkey of which the board
17 has liquidated its investments pursuant to subdivision (c).

18 (2) A list of investment vehicles in Turkey in connection with
19 which the board engaged with the government of Turkey pursuant
20 to subdivision (c), with supporting documentation to substantiate
21 the board's determination.

22 (3) A list of investment vehicles in Turkey of which the board
23 has not liquidated its investments as a result of a determination
24 made pursuant to subdivision (e) that a sale or transfer of
25 investments is inconsistent with the fiduciary responsibilities of
26 the board as described in Section 17 of Article XVI of the
27 California Constitution and the board's findings adopted in support
28 of that determination.

29 (e) Nothing in this section shall require a board to take action
30 as described in this section unless the board determines in good
31 faith that the action described in this section is consistent with the
32 fiduciary responsibilities of the board described in Section 17 of
33 Article XVI of the California Constitution.

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

36 16642. Present, future, and former board members of the Public
37 Employees' Retirement System or the State Teachers' Retirement
38 System, jointly and individually, state officers and employees,
39 research firms described in subdivision (d) of Section 7513.6, and
40 investment managers under contract with the Public Employees'

1 Retirement System or the State Teachers' Retirement System shall
2 be indemnified from the General Fund and held harmless by the
3 State of California from all claims, demands, suits, actions,
4 damages, judgments, costs, ~~charges~~ *charges*, and expenses,
5 including court costs and attorney's fees, and against all liability,
6 losses, and damages of any nature whatsoever that these present,
7 future, or former board members, officers, employees, research
8 firms as described in subdivision (d) of Section 7513.6, or contract
9 investment managers shall or may at any time sustain by reason
10 of any decision to restrict, reduce, or eliminate investments
11 pursuant to Sections 7513.6, 7513.7, ~~and 7513.75~~. 7513.75, and
12 7513.76.

13 ~~SECTION 1. Section 7513.6 of the Government Code is~~
14 ~~amended to read:~~

15 7513.6. (a) ~~As used in this section:~~

16 (1) ~~"Active business operations" means a company engaged in~~
17 ~~business operations that provide revenue to the government of~~
18 ~~Sudan or a company engaged in oil-related activities.~~

19 (2) ~~"Board" means the Board of Administration of the Public~~
20 ~~Employees' Retirement System or the Teachers' Retirement Board~~
21 ~~of the State Teachers' Retirement System, as applicable.~~

22 (3) ~~"Business operations" means maintaining, selling, or leasing~~
23 ~~equipment, facilities, personnel, or any other apparatus of business~~
24 ~~or commerce in Sudan, including the ownership or possession of~~
25 ~~real or personal property located in Sudan.~~

26 (4) ~~"Company" means a sole proprietorship, organization,~~
27 ~~association, corporation, partnership, venture, or other entity, its~~
28 ~~subsidiary or affiliate that exists for profitmaking purposes or to~~
29 ~~otherwise secure economic advantage. "Company" also means a~~
30 ~~company owned or controlled, either directly or indirectly, by the~~
31 ~~government of Sudan, that is established or organized under the~~
32 ~~laws of or has its principal place of business in the Republic of the~~
33 ~~Sudan.~~

34 (5) ~~"Government of Sudan" means the government of Sudan~~
35 ~~or its instrumentalities.~~

36 (6) ~~"Invest" or "investment" means the purchase, ownership,~~
37 ~~or control of stock of a company, association, or corporation, the~~
38 ~~capital stock of a mutual water company or corporation, bonds~~
39 ~~issued by the government or a political subdivision of Sudan,~~
40 ~~corporate bonds or other debt instruments issued by a company,~~

1 or the commitment of funds or other assets to a company, including
2 a loan or extension of credit to that company.

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

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

9 (9) ~~“Public employee retirement funds” means the Public~~
10 ~~Employees’ Retirement Fund described in Section 20062 of this~~
11 ~~code, and the Teachers’ Retirement Fund described in Section~~
12 ~~22167 of the Education Code.~~

13 (10) ~~“Research firm” means a reputable, neutral third-party~~
14 ~~research firm.~~

15 (11) ~~“Substantial action” means a boycott of the government~~
16 ~~of Sudan, curtailing business in Sudan until that time described in~~
17 ~~subdivision (m), selling company assets, equipment, or real and~~
18 ~~personal property located in Sudan, or undertaking significant~~
19 ~~humanitarian efforts in the eastern, southern, or western regions~~
20 ~~of Sudan.~~

21 (12) ~~“Sudan” means the Republic of the Sudan, a territory under~~
22 ~~the administration or control of the Sudan, including but not limited~~
23 ~~to, the Darfur region, or an individual, company, or public agency~~
24 ~~located in Khartoum, northern Sudan, or the Nile River Valley~~
25 ~~that supports the Republic of the Sudan.~~

26 (b) ~~The board shall not invest public employee retirement funds~~
27 ~~in a company with business operations in Sudan that meets all of~~
28 ~~the following criteria:~~

29 (1) ~~The company is engaged in active business operations in~~
30 ~~Sudan. If that company is not engaged in oil-related activities, that~~
31 ~~company also lacks significant business operations in the eastern,~~
32 ~~southern, and western regions of Sudan.~~

33 (2) ~~Either of the following apply:~~

34 (A) ~~The company is engaged in oil-related activities or energy~~
35 ~~or power-related operations, or contracts with another company~~
36 ~~with business operations in the oil, energy, and power sectors of~~
37 ~~Sudan, and the company failed to take substantial action related~~
38 ~~to the government of Sudan because of the Darfur genocide.~~

39 (B) ~~The company has demonstrated complicity in the Darfur~~
40 ~~genocide.~~

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

~~(d) (1) The board shall, without regard to the provisions regarding competitive bidding, contract with a research firm or firms to determine those companies that have business operations in Sudan. Those research firms shall, in the aggregate, obtain data on a majority of companies with business operations in Sudan. On or before March 30, 2007, those research firms shall report any findings to the board and those research firms shall submit further findings to the board if there is a change of circumstances in Sudan.~~

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

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

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

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

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

~~(2) Investments of the board in a company that does not meet the criteria described in subdivision (b) or (c) or does not have active business operations in Sudan are not subject to subdivision (h), provided that the company does not subsequently meet the criteria described in subdivision (b) or (c) or engage in active business operations. The board shall identify the reasons why that company does not satisfy the criteria described in subdivision (b)~~

1 or (c) or does not engage in active business operations in the report
2 to the Legislature described in subdivision (i):

3 (f) (1) Notwithstanding subdivision (c), if the board's
4 investment in a company described in subdivision (b) or (c) is
5 limited to investment via an externally and actively managed
6 commingled fund, the board shall contact that fund manager in
7 writing and request that the fund manager remove that company
8 from the fund as described in subdivision (h). On or before June
9 30, 2007, if the fund or account manager creates a fund or account
10 devoid of companies described in subdivision (b) or (c), the transfer
11 of board investments from the prior fund or account to the fund
12 or account devoid of companies with business operations in Sudan
13 shall be deemed to satisfy subdivision (h):

14 (2) If the board's investment in a company described in
15 subdivision (b) or (c) is limited to an alternative fund or account,
16 the alternative fund or account manager creates an actively
17 managed commingled fund that excludes companies described in
18 subdivision (b) or (c), and the new fund or account is deemed to
19 be financially equivalent to the existing fund or account, the
20 transfer of board investments from the existing fund or account to
21 the new fund or account shall be deemed to satisfy subdivision
22 (h). If the board determines that the new fund or account is not
23 financially equivalent to the existing fund, the board shall include
24 the reasons for that determination in the report described in
25 subdivision (i):

26 (3) The board shall make a good faith effort to identify any
27 private equity investments that involve companies described in
28 subdivision (b) or (c) or are linked to the government of Sudan. If
29 the board determines that a private equity investment clearly
30 involves a company described in subdivision (b) or (c) or is linked
31 to the government of Sudan, the board shall consider, at its
32 discretion, if those private equity investments shall be subject to
33 subdivision (h). If the board determines that a private equity
34 investment clearly involves a company described in subdivision
35 (b) or (c) or is linked to the government of Sudan and the board
36 does not take action as described in subdivision (h), the board shall
37 include the reasons for its decision in the report described in
38 subdivision (i):

39 (g) Except as described in subdivision (f) or paragraph (2) of
40 subdivision (c), the board, in the board's capacity of shareholder

1 or investor, shall notify any company described in paragraph (1)
2 of subdivision (e) that the company is subject to subdivision (h)
3 and permit that company to respond to the information and reports
4 described in subdivision (d). The board shall request that the
5 company take substantial action no later than 90 days from the
6 date the board notified the company under this subdivision. If the
7 board determines that a company has taken substantial action or
8 has made sufficient progress towards substantial action before the
9 expiration of that 90-day period, that company shall not be subject
10 to subdivision (h). The board shall, at intervals not to exceed 90
11 days, continue to monitor and review the progress of the company
12 until that company has taken substantial action in Sudan. A
13 company that fails to complete substantial action or continue to
14 make sufficient progress towards substantial action by the next
15 time interval shall be subject to subdivision (h).

16 (h) If a company described in paragraph (1) of subdivision (e)
17 fails to complete substantial action by the time described in
18 subdivision (g), the 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 Sudan 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, 2008, 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 in Sudan, including, but not limited to, the
33 issuer, by name, of the stock, bonds, securities, and other evidence
34 of indebtedness.

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

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

1 ~~(4) If the board has not completely reduced its investments in~~
2 ~~a company that satisfies the criteria in subdivision (b) or (c), when~~
3 ~~the board anticipates that the board will reduce all investments in~~
4 ~~that company or the reasons why a sale or transfer of investments~~
5 ~~is inconsistent with the fiduciary responsibilities of the board as~~
6 ~~described in Section 17 of Article XVI of the California~~
7 ~~Constitution.~~

8 ~~(5) Any information described in subdivision (e):~~

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

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

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

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

23 ~~(1) Investments in a company that is primarily engaged in~~
24 ~~supplying goods or services intended to relieve human suffering~~
25 ~~in Sudan.~~

26 ~~(2) Investments in a company that promotes health, education,~~
27 ~~journalistic, or religious activities in or welfare in the western,~~
28 ~~eastern, or southern regions of Sudan.~~

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

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

33 ~~(1) The government of Sudan halts the genocide in Darfur for~~
34 ~~12 months as determined by both the Department of State and the~~
35 ~~Congress of the United States.~~

36 ~~(2) The United States revokes its current sanctions against~~
37 ~~Sudan.~~

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