

AMENDED IN SENATE MARCH 25, 2015

SENATE BILL

No. 185

Introduced by Senator De León

February 9, 2015

An act to ~~add Article 5 (commencing with Section 7524) to Chapter 21 of Division 7 of Title 1 of~~ *amend Section 16642 of, and to add Section 7513.75 to,* the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 185, as amended, De León. Public retirement systems: Public Divestiture of Thermal Coal Companies Act.

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 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, as specified, and requires these retirement systems to liquidate any investments in a company with business operations in Sudan. Existing law also prohibits these retirement systems from investing in a company that has specified investments 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.

This bill would ~~create the Public Divestiture of Thermal Coal Companies Act and require~~ *prohibit* the boards of the Public Employees' Retirement System and the State Teachers' Retirement System to ~~divest~~

~~the from making new investments or renewing existing investments of public employee retirement funds of any investments in a thermal coal company, as defined, and prohibit additional or new investments or the renewal of existing investments in a thermal coal company defined. This bill would also require the boards to liquidate the investments of the board in a thermal coal company, as specified. This bill would require these actions to be undertaken consistently with the board's fiduciary responsibilities specified in the California Constitution: in thermal coal companies on or before July 1, 2017, and would require the boards, in making a determination to liquidate investments, to constructively engage with thermal coal companies to establish whether the companies are transitioning their business models to adapt to clean energy generation. The bill would require the boards, in consultation with the Secretary of the California Environmental Protection Agency, to make a comprehensive assessment of the feasibility and implications of divesting the retirement system funds of additional fossil fuel investments, such as natural gas and petroleum. The bill would provide that it does not require a board to take any action if the board determines and adopts findings that the action would violate the board's fiduciary responsibilities established in the constitution. The bill would make related legislative findings and declarations.~~

This bill would require, on or before January 1, ~~2017, 2018~~, these boards to file a report to the Legislature and the Governor, containing specified information, including a list of ~~investments and~~ companies of which ~~it has divested~~ *they have liquidated their investments. The bill would provide that board members and other officers and employees shall be held harmless and be eligible for indemnification in connection with actions taken pursuant to the bill's requirements, as specified.*

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.** *Section 7513.75 is added to the Government Code,*
- 2 *to read:*
- 3 7513.75. (a) *The Legislature finds and declares all of the*
- 4 *following:*
- 5 (1) *The combustion of coal resources is the single largest*
- 6 *contributor to global climate change in the United States.*

1 (2) *Climate change affects all parts of the California economy*
2 *and environment, and the Legislature has adopted numerous laws*
3 *to mitigate greenhouse gas emissions and to adapt to a changing*
4 *climate.*

5 (3) *The purpose of this article is to require the Public*
6 *Employees' Retirement System and the State Teachers' Retirement*
7 *System, consistent with, and not in violation of, their fiduciary*
8 *responsibilities, to divest their holding of thermal coal power as*
9 *one part of the state's broader efforts to decarbonize the California*
10 *economy and to transition to clean, pollution free energy resources.*

11 (b) *As used in this section, the following definitions apply:*

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

15 (2) *"Company" means a sole proprietorship, organization,*
16 *association, corporation, partnership, venture, or other entity, or*
17 *its subsidiary or affiliate, that exists for profit-making purposes*
18 *or to otherwise secure economic advantage.*

19 (3) *"Investment" means the purchase, ownership, or control of*
20 *publicly issued stock, corporate bonds, or other debt instruments*
21 *issued by a company.*

22 (4) *"Public employee retirement funds" means the Public*
23 *Employees' Retirement Fund described in Section 20062 of this*
24 *code, and the Teachers' Retirement Fund described in Section*
25 *22167 of the Education Code.*

26 (5) *"Thermal coal" means coal used to generate electricity,*
27 *such as that which is burned to create steam to run turbines.*
28 *Thermal coal does not mean metallurgical coal or coking coal*
29 *used to produce steel.*

30 (6) *"Thermal coal company" means a publicly traded company*
31 *that generates 50 percent or more of its revenue from the mining*
32 *of thermal coal, as determined by the board.*

33 (c) *The board shall not make additional or new investments or*
34 *renew existing investments of public employee retirement funds in*
35 *a thermal coal company.*

36 (d) *The board shall liquidate investments in a thermal coal*
37 *company on or before July 1, 2017. In making a determination to*
38 *liquidate investments, the board shall constructively engage with*
39 *a thermal coal company to establish whether the company is*
40 *transitioning its business model to adapt to clean energy*

1 generation, such as through a decrease in its reliance on thermal
2 coal as a revenue source.

3 (e) On or before January 1, 2018, the board shall file a report
4 with the Legislature, in compliance with Section 9795, and the
5 Governor, which shall include the following:

6 (1) A list of thermal coal companies of which the board has
7 liquidated its investments pursuant to subdivision (d).

8 (2) A list of companies with which the board engaged pursuant
9 to subdivision (d) that the board established were transitioning to
10 clean energy generation, with supporting documentation to
11 substantiate the board's determination.

12 (3) A list of thermal coal companies of which the board has not
13 liquidated its investments as a result of a determination made
14 pursuant to subdivision (g) that a sale or transfer of investments
15 is inconsistent with the fiduciary responsibilities of the board as
16 described in Section 17 of Article XVI of the California Constitution
17 and the board's findings adopted in support of that determination.

18 (f) In consultation with the Secretary of the California
19 Environmental Protection Agency, the board shall make a
20 comprehensive assessment of the feasibility of divesting the public
21 employee retirement funds of additional fossil fuel investments,
22 such as natural gas and petroleum, and its implications for the
23 funds. A summary of this assessment shall be included in the report
24 required by subdivision (e).

25 (g) This section does not require the board to take any action
26 if the board determines and adopts findings, in good faith and
27 based on publicly available information, that the action would
28 violate the board's fiduciary responsibilities described in Section
29 17 of Article XVI of the California Constitution.

30 SEC. 2. Section 16642 of the Government Code is amended to
31 read:

32 16642. Present, future, and former board members of the Public
33 Employees' Retirement System or the State Teachers' Retirement
34 System, jointly and individually, state officers and employees,
35 research firms described in subdivision (d) of Section 7513.6, and
36 investment managers under contract with the Public Employees'
37 Retirement System or the State Teachers' Retirement System shall
38 be indemnified from the General Fund and held harmless by the
39 State of California from all claims, demands, suits, actions,
40 damages, judgments, costs, charges and expenses, including court

1 costs and attorney’s fees, and against all liability, losses, and
2 damages of any nature whatsoever that these present, future, or
3 former board members, officers, employees, research firms as
4 described in subdivision (d) of Section 7513.6, or contract
5 investment managers shall or may at any time sustain by reason
6 of any decision to restrict, reduce, or eliminate investments
7 pursuant to Sections ~~7513.6 and 7513.7~~ 7513.6, 7513.7, and
8 7513.75.

9 SECTION 1. ~~Article 5 (commencing with Section 7524) is~~
10 ~~added to Chapter 21 of Division 7 of Title 1 of the Government~~
11 ~~Code, to read:~~

12
13 ~~Article 5. Public Divestiture of Thermal Coal Companies Act~~

14
15 ~~7524. This article may be known and cited as the Public~~
16 ~~Divestiture of Thermal Coal Companies Act.~~

17 ~~7524.1. The Legislature finds and declares all of the following:~~

18 ~~(a) The combustion of coal resources is the single largest~~
19 ~~contributor to global climate change in the United States.~~

20 ~~(b) Climate change affects all parts of the California economy~~
21 ~~and environment, and the Legislature has adopted numerous laws~~
22 ~~to mitigate greenhouse gas emissions and to adapt to a changing~~
23 ~~climate.~~

24 ~~(c) The purpose of this article is to require the Public~~
25 ~~Employees’ Retirement System and the State Teachers’ Retirement~~
26 ~~System, consistent with, and not in violation of, their fiduciary~~
27 ~~responsibilities, to divest their holding of thermal coal power as~~
28 ~~one part of the state’s broader efforts to decarbonize the California~~
29 ~~economy and to transition to clean, pollution free energy resources.~~

30 ~~7524.2. For purposes of this article, the following definitions~~
31 ~~shall apply:~~

32 ~~(a) “Board” means the Board of Administration of the Public~~
33 ~~Employees’ Retirement System or the Teachers’ Retirement Board~~
34 ~~of the State Teachers’ Retirement System, as applicable.~~

35 ~~(b) “Company” means a sole proprietorship, organization,~~
36 ~~association, corporation, partnership, venture, or other entity, or~~
37 ~~its subsidiary or affiliate that exists for profit making purposes or~~
38 ~~to otherwise secure economic advantage.~~

39 ~~(c) “Investment” means the purchase, ownership, or control of~~
40 ~~stock of a company, association, or corporation, corporate bonds~~

1 or other debt instruments issued by a company, or the commitment
2 of funds or other assets to a company, including a loan or extension
3 of credit to that company.

4 ~~(d) “Public employee retirement funds” means the Public~~
5 ~~Employees’ Retirement Fund described in Section 20062 of this~~
6 ~~code, and the Teachers’ Retirement Fund described in Section~~
7 ~~22167 of the Education Code.~~

8 ~~(e) “Thermal coal company” means a company engaged in the~~
9 ~~combustion of coal as determined by the board using Bloomberg~~
10 ~~Global Coal Index, Carbon Tracker, and Energy Transition~~
11 ~~Advisors Indices.~~

12 ~~7524.3. Consistent with the board’s fiduciary responsibilities~~
13 ~~as described in Section 17 of Article XVI of the California~~
14 ~~Constitution, and by the earliest feasible date after the enactment~~
15 ~~of this article, the board shall undertake all of the following:~~

16 ~~(a) The board, shall divest the public employee retirement funds~~
17 ~~of any investments in a thermal coal company.~~

18 ~~(b) The board shall not make additional or new investments or~~
19 ~~renew existing investments in a thermal coal company.~~

20 ~~(c) The board shall liquidate the investments of the board in a~~
21 ~~thermal coal company no later than eighteen months after this~~
22 ~~article applies to that company.~~

23 ~~7524.4. On or before January 1, 2017, the board shall file a~~
24 ~~report with the Legislature, in compliance with Section 9795, and~~
25 ~~the Governor on the following:~~

26 ~~(a) Actions it has taken to implement this article, including a~~
27 ~~list of investments and companies of which it has divested.~~

28 ~~(b) Recommendations to ensure the board is able to act~~
29 ~~consistent with its fiduciary responsibilities as described in Section~~
30 ~~17 of Article XVI of the California Constitution.~~

31 ~~(c) In consultation with the Secretary of the California~~
32 ~~Environmental Protection Agency, a comprehensive assessment~~
33 ~~of the feasibility of divesting the public employee retirement funds~~
34 ~~of additional fossil fuel investments such as natural gas and~~
35 ~~petroleum and its implications for the fund.~~

36 ~~7524.5. Nothing in this article shall require a board to take~~
37 ~~action as described in this section unless the board determines, in~~
38 ~~good faith, that the action described in this section is consistent~~
39 ~~with the fiduciary responsibilities of the board as described in~~
40 ~~Section 17 of Article XVI of the California Constitution.~~

O