

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1353

Introduced by Senator Pan

February 19, 2016

An act to amend ~~Section 22601~~ *Sections 7513.6 and 7513.75* of the ~~Education~~ *Government Code*, relating to ~~teachers'~~ retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 1353, as amended, Pan. ~~State teachers' retirement. 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 the boards of administration of the Public Employees' Retirement System and the State Teachers' Retirement System from investing, as specified, in Sudan and in thermal coal companies, subject to the boards' plenary authority and fiduciary responsibility for investment of moneys and administration of the systems. Existing law requires the boards to provide reports to the Legislature in regard to their actions in connection with these provisions.

This bill would provide, in connection with the prohibitions described above, that a board determination that an action fails to satisfy constitutional fiduciary responsibilities requires a recorded rollcall vote of the full board, following a presentation and discussion of findings

in an open session during a properly noticed public hearing, as specified. The bill would also require that proposed findings be made public 72 hours before board consideration and that the findings and any public comments regarding adopted findings and determinations be included in the required reports to the Legislature.

~~Existing law, the Teachers' Retirement Law, establishes the State Teachers' Retirement System (STRS) and creates the Defined Benefit Program of the State Teachers' Retirement Plan, which provides a defined benefit to members of the program, based on final compensation, credited service, and age at retirement, subject to certain variations. Existing law prohibits a person serving as an exchange teacher or sojourn teacher from out of state from being members of the plan.~~

~~The bill would make nonsubstantive changes in the provisions described above relating to an exchange teacher or sojourn teacher.~~

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

3 7513.6. (a) As used in this section, the following definitions
4 shall apply:

5 (1) "Active business operations" means a company engaged in
6 business operations that provide revenue to the government of
7 Sudan or a company engaged in oil-related activities.

8 (2) "Board" means the Board of Administration of the Public
9 Employees' Retirement System or the Teachers' Retirement Board
10 of the State Teachers' Retirement System, as applicable.

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

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

1 laws of or has its principal place of business in the Republic of the
2 Sudan.

3 (5) “Government of Sudan” means the government of Sudan
4 or its instrumentalities.

5 (6) “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 Sudan,
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 (7) “Military equipment” means weapons, arms, or military
13 defense supplies.

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

18 (9) “Public employee retirement funds” means the Public
19 Employees’ Retirement Fund described in Section 20062 of this
20 code, and the Teachers’ Retirement Fund described in Section
21 22167 of the Education Code.

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

24 (11) “Substantial action” means a boycott of the government
25 of Sudan, curtailing business in Sudan until that time described in
26 subdivision (m), selling company assets, equipment, or real and
27 personal property located in Sudan, or undertaking significant
28 humanitarian efforts in the eastern, southern, or western regions
29 of Sudan.

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

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

38 (1) The company is engaged in active business operations in
39 Sudan. If that company is not engaged in oil-related activities, that

1 company also lacks significant business operations in the eastern,
2 southern, and western regions of Sudan.

3 (2) Either of the following apply:

4 (A) The company is engaged in oil-related activities or energy
5 or power-related operations, or contracts with another company
6 with business operations in the oil, energy, and power sectors of
7 Sudan, and the company failed to take substantial action related
8 to the government of Sudan because of the Darfur genocide.

9 (B) The company has demonstrated complicity in the Darfur
10 genocide.

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

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

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

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

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

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

37 (e) (1) The board shall determine, by the next applicable board
38 meeting and based on the information and reports described in
39 subdivision (d), if a company meets the criteria described in
40 subdivision (b) or (c). If the board plans to invest or has

1 investments in a company that meets the criteria described in
2 subdivision (b) or (c), that planned or existing investment shall be
3 subject to subdivisions (g) and (h).

4 (2) Investments of the board in a company that does not meet
5 the criteria described in subdivision (b) or (c) or does not have
6 active business operations in Sudan are not subject to subdivision
7 (h), provided that the company does not subsequently meet the
8 criteria described in subdivision (b) or (c) or engage in active
9 business operations. The board shall identify the reasons why that
10 company does not satisfy the criteria described in subdivision (b)
11 or (c) or does not engage in active business operations in the report
12 to the Legislature described in subdivision (i).

13 (f) (1) Notwithstanding subdivision (e), if the board's
14 investment in a company described in subdivision (b) or (c) is
15 limited to investment via an externally and actively managed
16 commingled fund, the board shall contact that fund manager in
17 writing and request that the fund manager remove that company
18 from the fund as described in subdivision (h). On or before June
19 30, 2007, if the fund or account manager creates a fund or account
20 devoid of companies described in subdivision (b) or (c), the transfer
21 of board investments from the prior fund or account to the fund
22 or account devoid of companies with business operations in Sudan
23 shall be deemed to satisfy subdivision (h).

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

36 (3) The board shall make a good faith effort to identify any
37 private equity investments that involve companies described in
38 subdivision (b) or (c) or are linked to the government of Sudan. If
39 the board determines that a private equity investment clearly
40 involves a company described in subdivision (b) or (c) or is linked

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

9 (g) Except as described in subdivision (f) or paragraph (2) of
10 subdivision (e), the board, in the board's capacity of shareholder
11 or investor, shall notify any company described in paragraph (1)
12 of subdivision (e) that the company is subject to subdivision (h)
13 and permit that company to respond to the information and reports
14 described in subdivision (d). The board shall request that the
15 company take substantial action no later than 90 days from the
16 date the board notified the company under this subdivision. If the
17 board determines that a company has taken substantial action or
18 has made sufficient progress towards substantial action before the
19 expiration of that 90-day period, that company shall not be subject
20 to subdivision (h). The board shall, at intervals not to exceed 90
21 days, continue to monitor and review the progress of the company
22 until that company has taken substantial action in Sudan. A
23 company that fails to complete substantial action or continue to
24 make sufficient progress towards substantial action by the next
25 time interval shall be subject to subdivision (h).

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

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

31 (2) The board shall liquidate the investments of the board in
32 that company no later than 18 months after this subdivision applies
33 to that company. The board shall liquidate those investments in a
34 manner to address the need for companies to take substantial action
35 in Sudan and consistent with the board's fiduciary responsibilities
36 as described in Section 17 of Article XVI of the California
37 Constitution.

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

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

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

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

10 (4) If the board has not completely reduced its investments in
11 a company that satisfies the criteria in subdivision (b) or (c), when
12 the board anticipates that the board will reduce all investments in
13 that company or the reasons why a sale or transfer of investments
14 is inconsistent with the fiduciary responsibilities of the board as
15 described in Section 17 of Article XVI of the California
16 Constitution.

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

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

21 (j) If the board voluntarily sells or transfers all of its investments
22 in a company with business operations in Sudan, this section shall
23 not apply except that the board shall file a report with the
24 Legislature related to that company as described in subdivision
25 (i).

26 (k) (1) Nothing in this section shall require the board to take
27 action as described in this section unless the board determines, in
28 good faith, that the action described in this section is consistent
29 with the fiduciary responsibilities of the board as described in
30 Section 17 of Article XVI of the California Constitution.

31 (2) *A determination that an action described in this section*
32 *would fail to satisfy the fiduciary responsibilities of the board as*
33 *described in Section 17 of Article XVI of the California Constitution*
34 *shall require a recorded rollcall vote of the full board, following*
35 *a presentation and discussion of findings in open session, during*
36 *a properly noticed public hearing of the full board. All proposed*
37 *findings of the board shall be made public 72 hours before they*
38 *are considered by the board. The findings and any public comments*
39 *regarding the adopted findings and determinations made pursuant*

1 to this paragraph shall be included in the report to the Legislature
2 required by subdivision (i).

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

4 (1) Investments in a company that is primarily engaged in
5 supplying goods or services intended to relieve human suffering
6 in Sudan.

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

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

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

14 (1) The government of Sudan halts the genocide in Darfur for
15 12 months as determined by both the Department of State and the
16 Congress of the United States.

17 (2) The United States revokes its current sanctions against
18 Sudan.

19 *SEC. 2. Section 7513.75 of the Government Code is amended*
20 *to read:*

21 7513.75. (a) The Legislature finds and declares all of the
22 following:

23 (1) The combustion of coal resources is the single largest
24 contributor to global climate change in the United States.

25 (2) Climate change affects all parts of the California economy
26 and environment, and the Legislature has adopted numerous laws
27 to mitigate greenhouse gas emissions and to adapt to a changing
28 climate.

29 (3) The purpose of this section is to require the Public
30 Employees' Retirement System and the State Teachers' Retirement
31 System, consistent with, and not in violation of, their fiduciary
32 responsibilities, to divest their holding of thermal coal power as
33 one part of the state's broader efforts to decarbonize the California
34 economy and to transition to clean, pollution free energy resources.

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

36 (1) "Board" means the Board of Administration of the Public
37 Employees' Retirement System or the Teachers' Retirement Board
38 of the State Teachers' Retirement System, as applicable.

39 (2) "Company" means a sole proprietorship, organization,
40 association, corporation, partnership, venture, or other entity, or

1 its subsidiary or affiliate, that exists for profit-making purposes or
2 to otherwise secure economic advantage.

3 (3) “Investment” means the purchase, ownership, or control of
4 publicly issued stock, corporate bonds, or other debt instruments
5 issued by a company.

6 (4) “Public employee retirement funds” means the Public
7 Employees’ Retirement Fund described in Section 20062 of this
8 code, and the Teachers’ Retirement Fund described in Section
9 22167 of the Education Code.

10 (5) “Thermal coal” means coal used to generate electricity, such
11 as that which is burned to create steam to run turbines. Thermal
12 coal does not mean metallurgical coal or coking coal used to
13 produce steel.

14 (6) “Thermal coal company” means a publicly traded company
15 that generates 50 percent or more of its revenue from the mining
16 of thermal coal, as determined by the board.

17 (c) The board shall not make additional or new investments or
18 renew existing investments of public employee retirement funds
19 in a thermal coal company.

20 (d) The board shall liquidate investments in a thermal coal
21 company on or before July 1, 2017. In making a determination to
22 liquidate investments, the board shall constructively engage with
23 a thermal coal company to establish whether the company is
24 transitioning its business model to adapt to clean energy generation,
25 such as through a decrease in its reliance on thermal coal as a
26 revenue source.

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

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

32 (2) A list of companies with which the board engaged pursuant
33 to subdivision (d) that the board established were transitioning to
34 clean energy generation, with supporting documentation to
35 substantiate the board’s determination.

36 (3) A list of thermal coal companies of which the board has not
37 liquidated its investments as a result of a determination made
38 pursuant to subdivision (f) that a sale or transfer of investments is
39 inconsistent with the fiduciary responsibilities of the board as
40 described in Section 17 of Article XVI of the California

1 Constitution and the board's findings adopted in support of that
2 determination.

3 (f) (1) Nothing in this section shall require a board to take
4 action as described in this section unless the board determines in
5 good faith that the action described in this section is consistent
6 with the fiduciary responsibilities of the board described in Section
7 17 of Article XVI of the California Constitution.

8 (2) *A determination that an action described in this section
9 would fail to satisfy the fiduciary responsibilities of the board as
10 described in Section 17 of Article XVI of the California Constitution
11 shall require a recorded rollcall vote of the full board, following
12 a presentation and discussion of findings in open session, during
13 a properly noticed public hearing of the full board. All proposed
14 findings of the board shall be made public 72 hours before they
15 are considered by the board. The findings and any public comments
16 regarding the adopted findings and determinations made pursuant
17 to this paragraph shall be included in the report to the Legislature
18 required by subdivision (e).*

19 ~~SECTION 1. Section 22601 of the Education Code is amended~~
20 ~~to read:~~

21 ~~22601. A person serving as an exchange teacher or sojourn~~
22 ~~teacher from outside of this state is excluded from membership in~~
23 ~~the plan.~~