

AMENDED IN ASSEMBLY APRIL 22, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2337

Introduced by Assembly Member Ammiano

February 19, 2010

An act to add Section 7513.75 to the Government Code, relating to investments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2337, as amended, Ammiano. Public retirement system: investments: predatory investment practices.

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 and Iran, as specified. Existing law also requires these retirement systems to sell or transfer any investments in a company with business operations in Sudan. Existing law requires these retirement systems to submit an annual report to the Legislature regarding any investments in a company with business operations in Sudan and the sale or transfer of those investments. Existing law requires the state to 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, these retirement systems by reason of any decision to restrict, reduce, or eliminate investments in Sudan, as specified.

This bill would additionally prohibit the ~~Public Employees' Retirement System and the State Teachers' Retirement System~~ *boards of public pension or retirement systems, as defined*, from investing public employee retirement funds in a company with business operations engaged in predatory investment practices that rely on, or result in, the displacement of persons residing in rent-regulated housing in order to generate profits to investors *and would require the boards to establish a policy in regard to investing in rent-regulated housing, 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 business operations engaged in predatory investment practices, as specified.~~ This bill would make related legislative findings and declarations.

This bill would require these boards to report to the Legislature ~~any investments in a company with specified business operations engaged in predatory investment practices and the sale or transfer of those investments, subject to the fiduciary duty of these boards,~~ *regarding real estate investments in rent-regulated housing and compliance with the provisions of the rent-regulated housing investment policy by January 1, 2012, and by January 1 of 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. (a) The Legislature finds and declares that
- 2 investments by public retirement boards in companies that engage
- 3 in predatory investment practices, which rely on, or result in, the
- 4 displacement of persons residing in rent-regulated housing in order
- 5 to generate profits to investors, are not only harmful to the persons
- 6 displaced by these practices but also to the entire community in
- 7 which those persons reside.
- 8 (b) The Legislature further finds and declares that it is in the
- 9 public's interest to enact legislation to prohibit the investment of
- 10 retirement funds in companies engaged in, or investing in
- 11 companies engaged in, predatory investment practices that result
- 12 in excessive rent increases imposed upon, or the eviction or
- 13 displacement of, persons residing in rent-regulated housing.

1 SEC. 2. Section 7513.75 is added to the Government Code, to
2 read:

3 7513.75. (a) As used in this section, the following definitions
4 shall apply:

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

8 (1) “Board” means the retirement board of a public pension
9 or retirement system, as defined in subdivision (h) of Section 17
10 of Article XVI of the California Constitution.

11 (2) “Company” means a sole proprietorship, organization,
12 association, corporation, partnership, venture, or other entity, its
13 subsidiary or affiliate that exists for profitmaking purposes or to
14 otherwise secure economic advantage.

15 (3) “Invest” or “investment” means the purchase, ownership,
16 or control of stock of a company, association, or corporation, the
17 capital stock of a mutual water company or corporation, corporate
18 bonds or other debt instruments issued by a company, or the
19 commitment of funds or other assets to a company, including a
20 loan or extension of credit to that company.

21 (4) “Predatory investment practices” means investments that
22 rely on, or result in, the displacement of persons residing in
23 rent-regulated housing in order to generate profits to investors.
24 “Predatory investment practices” shall not include investment in
25 strategies that create new, or redevelop existing, rent-regulated
26 housing units provided that the following minimum criteria are
27 met:

28 (A) Any rent-regulated housing units that are demolished as
29 part of the investment or project are replaced with new
30 rent-regulated housing units.

31 (B) Any person lawfully residing in rent-regulated units who is
32 displaced as a result of such strategies receives relocation benefits
33 in accordance with relocation requirements as mandated by the
34 local housing authority or by state or federal laws, if applicable.
35 However, in all cases, relocation benefits shall, at a minimum, be
36 equal to benefits required under the federal Uniform Relocation
37 Assistance and Real Property Acquisition Act.

38 (C) Displaced tenants shall have the right to return to the
39 replaced, rent-regulated housing at rents not to exceed their rents
40 prior to displacement.

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

5 ~~(6) “Substantial action” means curtailing business operations~~
6 ~~with a company that engages in predatory investment practices.~~

7 ~~(b) The board shall develop and implement, on or before June~~
8 ~~30, 2011, and thereafter maintain, a policy containing the following~~
9 ~~requirements:~~

10 ~~(b)~~

11 ~~(1) The board shall not invest public employee retirement funds~~
12 ~~in a company that engages in predatory investment practices as~~
13 ~~identified by the board through, as the board deems appropriate,~~
14 ~~publicly available information including, but not limited to,~~
15 ~~information provided by nonprofit and other organizations and~~
16 ~~government entities, or meets any of the following criteria:~~

17 ~~(1)~~

18 ~~(A) The company invested in, or is engaged in business~~
19 ~~operations with, entities engaged in investment or lending practices~~
20 ~~that resulted in excessive rent increases imposed on, or the eviction~~
21 ~~or displacement of, persons residing in rent-regulated housing.~~

22 ~~(2)~~

23 ~~(B) The company has demonstrated complicity with business~~
24 ~~operations that are engaged in investment or lending practices that~~
25 ~~resulted in excessive rent increases imposed on, or the eviction or~~
26 ~~displacement of, persons residing in rent-regulated housing.~~

27 ~~(c) On or before June 30, 2011, the board shall determine which~~
28 ~~companies are subject to divestment.~~

29 ~~(d) After the determination described in subdivision (c), the~~
30 ~~board shall determine, by the next applicable board meeting, if a~~
31 ~~company engages in predatory investment practices as described~~
32 ~~in subdivision (b). If the board plans to invest or has investments~~
33 ~~in a company that meets the criteria described in subdivision (b),~~
34 ~~that planned or existing investment shall be subject to subdivisions~~
35 ~~(g) and (h).~~

36 ~~(e) Investments of the board in a company that does not meet~~
37 ~~the criteria described in subdivision (b) are not subject to~~
38 ~~subdivision (h) if the company does not subsequently meet the~~
39 ~~criteria described in subdivision (b). The board shall identify the~~
40 ~~reasons why that company does not satisfy the criteria described~~

1 in subdivision (b) in the report to the Legislature described in
2 subdivision (i):

3 (f) (1) Notwithstanding subdivisions (d) and (e), if the board's
4 investment in a company described in subdivision (b) is limited
5 to investment via an externally and actively managed commingled
6 fund, the board shall contact that fund manager in writing and
7 request that the fund manager remove that company from the fund.
8 On or before June 30, 2011, if the fund or account manager creates
9 a fund or account devoid of companies described in subdivision
10 (b), the transfer of board investments from the prior fund or account
11 to the fund or account devoid of companies that engage in
12 predatory investment practices shall be deemed to satisfy
13 subdivision (h):

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

25 (3)

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

36 (g) Except as described in subdivisions (e) and (f), the board,
37 in the board's capacity of shareholder or investor, shall notify any
38 company described in subdivision (d) that the company is subject
39 to subdivision (h) and permit that company to respond to the board.
40 The board shall request that the company take substantial action,

1 no later than 90 days from the date the board notified the company
2 under this subdivision. If the board determines that a company has
3 taken substantial action or has made sufficient progress towards
4 substantial action before the expiration of that 90-day period, that
5 company shall not be subject to subdivision (h). The board shall,
6 at intervals not to exceed 90 days, continue to monitor and review
7 the progress of the company until that company has taken
8 substantial action. A company that fails to complete substantial
9 action within one year from the date of the initial notice by the
10 board shall be subject to subdivision (h).

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

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

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

23 (i) On or before January 1, 2012, 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 a company
31 described in paragraph (1).

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

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

1 ~~(5) Any information described in subdivisions (d) and (e).~~

2 ~~(6) A detailed summary of investments that were transferred to~~
3 ~~funds or accounts devoid of companies with business operations~~
4 ~~that involve predatory investment practices as described in~~
5 ~~subdivision (f).~~

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

9 ~~(j) If the board voluntarily sells or transfers all of its investments~~
10 ~~in a company engaged in predatory investment practices, this~~
11 ~~section shall not apply except that the board shall file a report with~~
12 ~~the Legislature related to that company as described in subdivision~~
13 ~~(i), paragraph (1).~~

14 *(3) The board shall direct staff to review investments made*
15 *before the effective date of the policy to determine appropriate*
16 *implementation of the policy relating to existing investments. Staff*
17 *shall make a report to the board regarding existing investments*
18 *that appear inconsistent with the objectives of this policy. The*
19 *report shall describe the impacts, and anticipated impacts, of those*
20 *investments on tenants living in rent-regulated housing, and set*
21 *forth a recommended strategy to address and mitigate these*
22 *impacts consistent with the board's fiduciary duties. Thereafter,*
23 *staff shall prepare an annual report to the board regarding real*
24 *estate investments in rent-regulated housing and compliance with*
25 *this policy. The annual report shall be provided to the Legislature*
26 *on or before January 1, 2012, and on or before January 1 of every*
27 *year thereafter. Any report filed pursuant to this paragraph shall*
28 *comply with Section 9795 of the Government Code.*

29 *(4) Any investment proposal submitted to the pension fund, or*
30 *its agents, that involves the acquisition of occupied, rent-regulated*
31 *housing shall include a statement from the applicant stating that*
32 *the applicant has reviewed the pension fund's policy on real estate*
33 *investment strategies impacting rent-regulated housing units, and*
34 *either the proposed investment strategy does not rely on or result*
35 *in eliminating rent-regulated housing units, converting those units*
36 *to market rate units, or raising rents above regulated levels as*
37 *determined by the appropriate governing authority, or the proposed*
38 *investment does not meet the criteria set forth in subparagraph*
39 *(A) of paragraph (1).*

1 (5) *If, after the effective date of this policy, an investment*
2 *manager makes investments that are materially inconsistent with*
3 *this section, the pension fund shall not use that manager for any*
4 *new investments.*

5 (6) *The pension fund shall adopt a complaint procedure that*
6 *can be used by tenants occupying rent-regulated properties that*
7 *are acquired with an investment from the pension fund. Nonprofit*
8 *organizations may also utilize the complaint procedure for alleged*
9 *violations of this policy.*

10 (7) *The pension fund shall require that any investment partner*
11 *acquiring rent-regulated property notify tenants living in the*
12 *property of the existence of this policy and the complaint procedure*
13 *regarding alleged violations of this policy.*

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