

Introduced by Senator Anderson

February 18, 2011

An act to amend Section 7513.7 of the Government Code, relating to investments.

LEGISLATIVE COUNSEL'S DIGEST

SB 903, as introduced, Anderson. Public retirement systems: investments: Iran.

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.

The California Public Divest from Iran Act prohibits the Public Employees' Retirement System and the State Teachers' Retirement System from investing public employee retirement funds in a company with business operations in Iran that is invested in or engaged in business operations with entities in the defense or nuclear sectors of Iran, or the company is invested or engaged in business operations with entities involved in the development of petroleum or natural gas resources of Iran, and that company is subject to sanctions under federal law, as specified, or the company is engaged in business operations with an Iranian organization that has been labeled as a terrorist organization by the United States government. Existing law requires 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 in Iran, until Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide support for acts of international terrorism and the President of the United

States determines and certifies that Iran has ceased its efforts to design, develop, manufacture, or acquire a nuclear explosive device or related materials and technology, as specified.

Existing law provides that nothing in those provisions requires the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System to take action as described in those provisions unless the board determines, in good faith, that the action is consistent with the fiduciary responsibilities of the board as described in a specified provision of the California Constitution.

This bill would instead provide that nothing in those provisions requires either board to take action described in this section if the board determines, in good faith, that the action would be a breach of the fiduciary responsibilities of the board as described in the provision of the California Constitution. The bill would require that any determination that an action would be a breach of fiduciary duty be made in a public hearing of the full board after proper public notice and an opportunity for public comment.

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 7513.7 of the Government Code is
2 amended to read:
3 7513.7. (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 (2) "Business operations" means maintaining, selling, or leasing
9 equipment, facilities, personnel, or any other apparatus of business
10 or commerce in Iran, including the ownership or possession of real
11 or personal property located in Iran.
12 (3) "Company" means a sole proprietorship, organization,
13 association, corporation, partnership, venture, or other entity, its
14 subsidiary or affiliate that exists for profitmaking purposes or to
15 otherwise secure economic advantage. "Company" also means a
16 company owned or controlled, either directly or indirectly, by the
17 government of Iran, that is established or organized under the laws

1 of or has its principal place of business in the Islamic Republic of
2 Iran.

3 (4) “Government of Iran” means the government of Iran or its
4 instrumentalities or political subdivisions. “Government of Iran”
5 also means an individual, company, or public agency located in
6 Iran that provides material or financial support to the Islamic
7 Republic of Iran.

8 (5) “Invest” or “investment” means the purchase, ownership,
9 or control of stock of a company, association, or corporation, the
10 capital stock of a mutual water company or corporation, bonds
11 issued by the government or a political subdivision of Iran,
12 corporate bonds or other debt instruments issued by a company,
13 or the commitment of funds or other assets to a company, including
14 a loan or extension of credit to that company.

15 (6) “Iran” means the Islamic Republic of Iran or a territory under
16 the administration or control of Iran.

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

19 (8) “Public employee retirement funds” means the Public
20 Employees’ Retirement Fund described in Section 20062 of this
21 code, and the Teachers’ Retirement Fund described in Section
22 22167 of the Education Code.

23 (9) “Substantial action” means a boycott of the government of
24 Iran, curtailing business in Iran until that time described in
25 subdivision (m), or selling company assets, equipment, or real and
26 personal property located in Iran.

27 (b) The board shall not invest public employee retirement funds
28 in a company which has business operations in Iran as identified
29 by the board through, as the board deems appropriate, publicly
30 available information including, but not limited to, information
31 provided by nonprofit and other organizations and government
32 entities, that meets either of the following criteria:

33 (1) The company (A) is invested in or engaged in business
34 operations with entities in the defense or nuclear sectors of Iran
35 or (B) is invested in or engaged in business operations with entities
36 involved in the development of petroleum or natural gas resources
37 of Iran, and that company is subject to sanctions under Public Law
38 104-172, as renewed and amended in 2001 and 2006.

1 (2) The company has demonstrated complicity with an Iranian
2 organization that has been labeled as a terrorist organization by
3 the United States government.

4 (c) On or before June 30, 2008, the board shall determine which
5 companies are subject to divestment.

6 (d) After the determination described in subdivision (c), the
7 board shall determine, by the next applicable board meeting, if a
8 company meets the criteria described in subdivision (b). If the
9 board plans to invest or has investments in a company that meets
10 the criteria described in subdivision (b), that planned or existing
11 investment shall be subject to subdivisions (g) and (h).

12 (e) Investments of the board in a company that does not meet
13 the criteria described in subdivision (b) are not subject to
14 subdivision (h) if the company does not subsequently meet the
15 criteria described in subdivision (b). The board shall identify the
16 reasons why that company does not satisfy the criteria described
17 in subdivision (b) in the report to the Legislature described in
18 subdivision (i).

19 (f) (1) Notwithstanding subdivisions (d) and (e), if the board's
20 investment in a company described in subdivision (b) is limited
21 to investment via an externally and actively managed commingled
22 fund, the board shall contact that fund manager in writing and
23 request that the fund manager remove that company from the fund
24 as described in subdivision (h). On or before June 30, 2008, if the
25 fund or account manager creates a fund or account devoid of
26 companies described in subdivision (b), the transfer of board
27 investments from the prior fund or account to the fund or account
28 devoid of companies with business operations in Iran shall be
29 deemed to satisfy subdivision (h).

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

1 (3) The board shall make a good faith effort to identify any
2 private equity investments that involve companies described in
3 subdivision (b), or are linked to the government of Iran. If the
4 board determines that a private equity investment clearly involves
5 a company described in subdivision (b), or is linked to the
6 government of Iran, the board shall consider, at its discretion, if
7 those private equity investments shall be subject to subdivision
8 (h). If the board determines that a private equity investment clearly
9 involves a company described in subdivision (b), or is linked to
10 the government of Iran and the board does not take action as
11 described in subdivision (h), the board shall include the reasons
12 for its decision in the report described in subdivision (i).

13 (g) Except as described in subdivisions (e) and (f), the board,
14 in the board's capacity of shareholder or investor, shall notify any
15 company described in subdivision (d) that the company is subject
16 to subdivision (h) and permit that company to respond to the board.
17 The board shall request that the company take substantial action
18 no later than 90 days from the date the board notified the company
19 under this subdivision. If the board determines that a company has
20 taken substantial action or has made sufficient progress towards
21 substantial action before the expiration of that 90-day period, that
22 company shall not be subject to subdivision (h). The board shall,
23 at intervals not to exceed 90 days, continue to monitor and review
24 the progress of the company until that company has taken
25 substantial action in Iran. A company that fails to complete
26 substantial action within one year from the date of the initial notice
27 by the board shall be subject to subdivision (h).

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

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

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

(i) On or before January 1, 2009, and every year thereafter, the board shall file a report with the Legislature. The report shall describe the following:

(1) A list of investments the board has in companies with business operations that satisfy the criteria in subdivision (b), including, but not limited to, the issuer, by name, of the stock, bonds, securities, and other evidence of indebtedness.

(2) A detailed summary of the business operations a company described in paragraph (1) has in Iran.

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

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

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

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

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

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

(k) Nothing in this section shall require the board to take action as described in this section ~~unless if~~ the board determines, in good faith, that the action described in this section ~~is consistent with~~ *would be a breach of* the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution. *Any determination that an action would be a breach of fiduciary duty shall be made in a public hearing of the full board after proper public notice and an opportunity for public comment.*

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

1 (1) Investments in a company that is primarily engaged in
2 supplying goods or services intended to relieve human suffering
3 in Iran.

4 (2) Investments in a company that promotes health, education,
5 or journalistic, religious, or welfare activities in Iran.

6 (3) Investments in a United States company that is authorized
7 by the federal government to have business operations in Iran.

8 (m) This section shall cease to be operative if both of the
9 following apply:

10 (1) Iran is removed from the United States Department of State's
11 list of countries that have been determined to repeatedly provide
12 support for acts of international terrorism.

13 (2) Pursuant to Public Law 104-172, as amended, the President
14 of the United States determines and certifies to the appropriate
15 committee of the Congress of the United States that Iran has ceased
16 its efforts to design, develop, manufacture, or acquire a nuclear
17 explosive device or related materials and technology.

18 (n) This section shall be known and may be cited as the
19 California Public Divest from Iran Act.