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SB-252 Public retirement systems: fossil fuels: divestment. (2023-2024)

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AMENDED IN SENATE MAY 18, 2023

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CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

SENATE BILL**NO. 252**

**Introduced by Senators Gonzalez, Stern, and Wiener
(Coauthor: Senator Portantino)**

January 30, 2023

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

LEGISLATIVE COUNSEL'S DIGEST

SB 252, as amended, Gonzalez. Public retirement systems: fossil fuels: divestment.

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. These provisions qualify 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 the Public Employees' Retirement System and the State Teachers' Retirement System from making new investments or renewing existing investments of public employee retirement funds in a thermal coal company, as defined. Existing law requires the boards to liquidate investments in thermal coal companies on or before July 1, 2017, and requires 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. Existing law provides that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board's fiduciary responsibilities established in the California Constitution.

This bill would prohibit the boards of the Public Employees' Retirement System and the State Teachers' Retirement System from making new investments or renewing existing investments of public employee retirement funds in a fossil fuel company, as defined. The bill would require the boards to liquidate investments in a fossil fuel company on or before July 1, 2031. The bill would temporarily suspend the above-described

liquidation provision upon a good faith determination by the board that certain conditions materially impact normal market mechanisms for pricing assets, as specified, and would make this suspension provision inoperative on January 1, 2035. The bill would provide that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board's fiduciary responsibilities established in the California Constitution.

This bill would require the boards, commencing February 1, 2025, and annually thereafter, to file a report with the Legislature and the Governor, containing specified information, including a list of fossil fuel companies of which the board has 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 Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7513.76 is added to the Government Code, to read:

7513.76. (a) The Legislature finds and declares all of the following:

- (1) The combustion of coal, oil, and natural gas, known as fossil fuels, is the single largest contributor to global climate change.
- (2) Climate change affects all parts of the California economy and environment, and the Legislature has adopted numerous laws to mitigate greenhouse gas emissions and to adapt to a changing climate.
- (3) Fossil fuel companies' plans to expand production, public relations campaigns, and efforts to obstruct climate stabilization policies are incompatible with California's climate goals, and our obligation to current and future generations.
- (4) The production of fossil fuels and the effects of climate change resulting from the use of fossil fuels all lead to disproportionate adverse impacts on low-income communities and communities of color.
- (5) A transition away from fossil fuels to clean energy will create greater employment, support the economy, and improve public health.
- (6) The purpose of this section is to require the Public Employees' Retirement System and the State Teachers' Retirement System, consistent with, and not in violation of, their fiduciary responsibilities, to divest their holdings of fossil fuel company investments as one part of the state's broader efforts to decarbonize the California economy and to transition to clean, pollution-free energy resources.

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

- (1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.
- (2) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, or its subsidiary or affiliate, that exists for profitmaking purposes or to otherwise secure economic advantage.
- (3) "Investment" means the purchase, ownership, or control of publicly issued stock, corporate bonds, or other debt instruments issued by a company. "Investments" also includes purchase, ownership, or control of mutual funds and exchange-traded funds, unless the board is satisfied on reasonable grounds that a mutual fund or exchange-traded fund is unlikely to have in excess of 2 percent of its assets, averaged annually, directly or indirectly invested in fossil fuel companies.
- (4) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code.
- (5) "Fossil fuel" means petroleum oil, natural gas, and thermal coal. Thermal coal is coal used to generate electricity, such as that which is burned to create steam to run turbines. Thermal coal does not mean metallurgical coal or coking coal used to produce steel.
- (6) "Fossil fuel company" means one of the 200 largest publicly traded fossil fuel companies, as established by carbon content in the companies' proven oil, gas, and coal reserves.

(c) The board shall not make additional or new investments or renew existing investments of public employee retirement funds in a fossil fuel company.

(d) (1) The board shall liquidate investments in a fossil fuel company on or before July 1, 2031.

(2) Notwithstanding paragraph (1), this subdivision shall be suspended upon a good faith determination by the board that an act of God, war, or other unforeseeable event creates conditions that materially impact normal market mechanisms for pricing assets and shall only be reinstated upon a subsequent good faith finding of the board that market conditions have substantially returned to normal ex-ante. Upon such a finding, the board shall have six months to liquidate any remaining investments in a fossil fuel company.

(3) Paragraph (2) shall remain in effect only until January 1, 2035, and as of that date is inoperative.

(e) (1) Commencing February 1, 2025, and annually on February 1 thereafter, the board shall create a report that includes the following:

(A) A list of fossil fuel companies of which the board has liquidated its investments pursuant to subdivision (d).

(B) A list of fossil fuel companies with which the board still has not liquidated its investments.

(C) A list of fossil fuel companies of which the board has not liquidated its investments as a result of a determination made pursuant to subdivision (f) that 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 and the board's findings adopted in support of that determination.

(D) An analysis of methods and opportunities to rapidly and effectively reduce dependence on fossil fuels and transition to alternative energy sources in a realistic timeframe that avoids negatively contributing to economic conditions particularly damaging to public employee retirement funds and to overall net employment earnings of the state's workforce.

(2) The board shall submit the report to the Legislature, in compliance with Section 9795, and to the Governor, and shall post the report on the board's internet website.

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

SEC. 2. Section 16642 of the Government Code, as amended by Section 3 of Chapter 459 of the Statutes of 2019, is amended to read:

16642. (a) Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms as described in subdivision (d) of Section 7513.6, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Sections 7513.6, 7513.7, 7513.74, 7513.75, and 7513.76.

(b) This section shall remain in effect only until Section 7513.74 is repealed, and as of that date is repealed.

SEC. 3. Section 16642 of the Government Code, as added by Section 4 of Chapter 459 of the Statutes of 2019, is amended to read:

16642. (a) Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms

as described in subdivision (d) of Section 7513.6, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Sections 7513.6, 7513.7, 7513.75, and 7513.76.

(b) This section shall become operative upon the repeal of Section 7513.74.