

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 761**

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**Introduced by Assembly Member Dickinson**

February 21, 2013

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An act to add Section 7513.4 to the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 761, as amended, Dickinson. Public retirement systems: investments.

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 boards of 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.

This bill would additionally prohibit the Public Employees' Retirement System and the California State Teachers' Retirement System from investing public employee retirement funds in a company with business operations that are described as the ~~manufacture, sale, marketing, or distribution~~ *manufacture* of firearms or ammunition, 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 these business operations.

This bill would require these boards to report to the Legislature any investments in a company with these business operations and the sale or transfer of those investments, subject to the fiduciary duty of these boards, by January 1, 2015, and 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. The Legislature finds and declares all of the  
 2 following:  
 3 (a) According to the Office of the Attorney General,  
 4 approximately 2,900 persons were hospitalized in 2011 due to  
 5 injuries from a firearm, and approximately 2,800 persons were  
 6 killed by firearms either by homicide, suicide, or accident.  
 7 (b) Statistics compiled by the Federal Bureau of Investigation  
 8 (FBI) demonstrate that firearms are overwhelmingly the most  
 9 common weapon used in California homicides.  
 10 (c) According to the FBI, while California ranks 30th in gun  
 11 deaths per capita, California had the highest number of total gun  
 12 deaths out of any state last year, accounting for 68 percent of all  
 13 gun murders in the United States.  
 14 (d) Approximately 600,000 guns are sold by dealers every year  
 15 in California, a sharp increase over time compared to 200,000 per  
 16 year in 2002.  
 17 (e) Comprehensive surveys of gun violence from 2011 have  
 18 shown that firearms play a major role in violent crime in California.  
 19 (f) Notwithstanding the fact that California has made significant  
 20 strides to reduce gun violence, guns continue to be a major threat  
 21 to public health and safety.  
 22 (g) Numerous gun violence prevention groups, including The  
 23 Brady Campaign to End Gun Violence and The Law Center to  
 24 Prevent Gun Violence have praised California’s record of  
 25 developing innovative solutions to gun violence which serve as  
 26 models for other states and for the federal government.  
 27 (h) The Legislature therefore finds that the divestment of public  
 28 employee retirement funds from companies that ~~manufacture, sell,~~  
 29 ~~market, or distribute~~ *manufacture* guns and ammunition *for a*  
 30 *recipient other than the United States military* is in the public

1 interest of the state, for the preservation of the public peace, health,  
2 or safety.

3 SEC. 2. Section 7513.4 is added to the Government Code, to  
4 read:

5 7513.4. (a) As used in this section, the following definitions  
6 shall apply:

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

10 (2) "Business operations" means ~~manufacturing, selling,~~  
11 ~~marketing, or distributing~~ *manufacturing* firearms or ammunition  
12 *for a recipient other than the United States military.*

13 (3) "Company" means a sole proprietorship, organization,  
14 association, corporation, partnership, venture, or other entity, its  
15 subsidiary or affiliate that exists for profitmaking purposes or to  
16 otherwise secure economic advantage.

17 (4) "Invest" or "investment" means the purchase, ownership,  
18 or control of stock of a company, association, or corporation or  
19 corporate bonds issued by a company which manufactures, sells,  
20 markets, or distributes firearms or ammunition.

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

25 (6) "Substantial action" means selling assets, equipment, or real  
26 and personal property of a company that manufactures, sells,  
27 markets, or distributes firearms or ammunition.

28 (b) The board shall not invest public employee retirement funds  
29 in a company that has business operations as described in paragraph  
30 (2) of subdivision (a) as identified by the board through any source  
31 of public information, as the board deems appropriate, including,  
32 but not limited to, information provided by nonprofit and other  
33 organizations and government entities.

34 (c) Annually, on or before June 30, the board shall review its  
35 investment portfolio and determine which companies are subject  
36 to divestment.

37 (d) (1) If the board's investment in a company described in  
38 subdivision (b) is limited to an investment via an externally and  
39 actively managed commingled fund, the board shall contact that  
40 fund manager in writing and request that the fund manager remove

1 that company from the fund as described in subdivision (f). On or  
2 before June 30, if the fund or account manager creates a fund or  
3 account devoid of companies described in subdivision (b), the  
4 transfer of board investments from the prior fund or account to the  
5 fund or account devoid of companies with business operations as  
6 described in paragraph (2) of subdivision (a) shall be deemed to  
7 satisfy subdivision (f).

8 (2) If the board's investment in a company described in  
9 subdivision (b) is limited to an alternative fund or account, the  
10 alternative fund or account manager creates an actively managed  
11 commingled fund that excludes companies described in subdivision  
12 (b), and the new fund or account is deemed to be financially  
13 equivalent to the existing fund or account, the transfer of board  
14 investments from the existing fund or account to the new fund or  
15 account shall be deemed to satisfy subdivision (f). If the board  
16 determines that the new fund or account is not financially  
17 equivalent to the existing fund, the board shall include the reasons  
18 for that determination in the report described in subdivision (g).

19 (3) The board shall make a good faith effort to identify any  
20 private equity investments that involve companies described in  
21 subdivision (b). If the board determines that a private equity  
22 investment clearly involves a company described in subdivision  
23 (b), the board shall consider, at its discretion, if those private equity  
24 investments shall be subject to subdivision (f). If the board  
25 determines that a private equity investment clearly involves a  
26 company described in subdivision (b), and the board does not take  
27 action as described in subdivision (f), the board shall include the  
28 reasons for its decision in the report described in subdivision (g).

29 (e) The board, in the board's capacity of shareholder or investor,  
30 shall notify any company described in subdivision (d) that the  
31 company is subject to subdivision (f) and permit that company to  
32 respond to the board. The board shall request that the company  
33 take substantial action no later than 90 days from the date the board  
34 notified the company pursuant to this subdivision. If the board  
35 determines based on credible information available to the public  
36 that a company has taken substantial action or has made sufficient  
37 progress toward substantial action before the expiration of that  
38 90-day period, that company shall not be subject to an action  
39 described in subdivision (f). The board shall, at intervals not to  
40 exceed 90 days, continue to monitor and review the progress of

1 the company until that company has taken substantial action. Any  
2 determination made at each 90-day interval that a company has  
3 taken substantial action shall be supported by findings adopted by  
4 a roll-call vote of the board following a presentation and discussion  
5 of the findings in open session, during a properly noticed public  
6 hearing of the full board. All proposed findings of the board shall  
7 be made public 72 hours before they are considered by the board,  
8 and the board shall maintain a list of interested parties who shall  
9 be notified of the proposed findings 72 hours before the board's  
10 consideration. The findings and any public comments regarding  
11 the adopted findings and determinations made pursuant to this  
12 subdivision shall be included in the report to the Legislature  
13 required by subdivision (g). A company that fails to complete  
14 substantial action within one year from the date of the initial notice  
15 by the board shall be subject to the actions described in subdivision  
16 (f).

17 (f) If a company described in subdivision (d) fails to complete  
18 substantial action by the time described in subdivision (e), the  
19 board shall take the following actions:

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

22 (2) The board shall liquidate the investments of the board in  
23 that company no later than 18 months after this subdivision applies  
24 to that company. The board shall liquidate those investments in a  
25 manner consistent with the board's fiduciary responsibilities as  
26 described in Section 17 of Article XVI of the California  
27 Constitution.

28 (g) On or before January 1, 2015, and every year thereafter, the  
29 board shall file a report with the Legislature. The report shall  
30 describe the following:

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

35 (2) A detailed summary of the business operations of each  
36 company identified in paragraph (1).

37 (3) Whether the board has reduced its investments in a company  
38 with business operations that satisfy the criteria in subdivision (b).

39 (4) If the board has not completely reduced its investments in  
40 a company with business operations that satisfy the criteria in

1 subdivision (b), a timeline for when the board anticipates that the  
2 board will reduce all investments in that company or adopt the  
3 findings in support of a determination made pursuant to subdivision  
4 (h) pertaining to why a sale or transfer of investments is  
5 inconsistent with the fiduciary responsibilities of the board as  
6 described in Section 17 of Article XVI of the California  
7 Constitution.

8 (5) A detailed summary of investments that were transferred to  
9 funds or accounts devoid of companies with business operations  
10 as described in subdivision (b).

11 (6) An annual calculation of any costs or investment losses or  
12 other financial results incurred in compliance with this section.

13 (h) Nothing in this section shall require the board to take action  
14 as described in this section if the board determines, and adopts  
15 findings, in good faith and based on credible information available  
16 to the public, that the action described in this section would fail  
17 to satisfy the fiduciary responsibilities of the board as described  
18 in Section 17 of Article XVI of the California Constitution. Any  
19 adopted findings shall demonstrate how divestment disadvantages  
20 the fund and that any feasible investment alternatives would yield  
21 a lower rate of return with commensurate degrees of risk, or create  
22 a higher degree of risk with commensurate rates of return.  
23 Notwithstanding any other law, any determination that an action  
24 would fail to satisfy the fiduciary responsibilities of the board as  
25 described in Section 17 of Article XVI of the California  
26 Constitution shall require a recorded roll-call vote of the full board,  
27 following a presentation and discussion of the findings in open  
28 session, during a properly noticed public hearing of the full board.  
29 All proposed findings of the board shall be made public 72 hours  
30 before they are considered by the board, and the board shall  
31 maintain a list of interested parties who shall be notified of the  
32 proposed findings 72 hours before board consideration. The  
33 findings and any public comments regarding the adopted findings  
34 and determinations made pursuant to this subdivision shall be  
35 included in the report to the Legislature required by subdivision  
36 (g).

37 (i) The report shall be submitted in compliance with Section  
38 9795.

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