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INVESTING IN S. AFRICA, U.S.S.R

House Bill 5091 as introduced
Sponsor: Rep. Richard Bandstra

Committee: Public Retirement

Senate Bill 792 as passed by the Senate
Sponsor: Senator Don Koivisto

Senate Bill 793 as passed by the Senate
Sponsor: Senator John Kelly

Senate Committee: Finance
House Committee: Public Retirement

First Analysis (10-21-93)

THE APPARENT PROBLEM:

While the Republic of South Africa is by no means the only racist or oppressive nation on earth, it was, until recently, the only one that dared to define itself as the embodiment of white supremacy. During the late 1970s and the 1980s, considerable controversy arose over the role that U.S. corporations played in the economy of the country. It was felt that the U.S. investment bolstered the apartheid system by strengthening the South African economy. In addition, human rights activists argued that it was unconscionable to obtain profits from business operations in a country where that profitability derived from economic factors, such as the artificially cheap labor that existed due to a repressive and discriminatory political system. Accordingly, many educational institutions, corporations, and public employee pension funds divested themselves of investments in South Africa and of U.S. companies that operated there. As part of this transnational effort, Michigan passed a series of divestiture laws, beginning in 1982. The 1982 legislation also prohibited public investments in corporations operating in the former Union of Soviet Socialist Republics [U.S.S.R.].

The provisions of Michigan's divestiture laws prohibited public educational institutions and public employee retirement systems from investing in organizations that operated in South Africa. The laws also provided that these restrictions would cease if full citizenship and equal political rights were granted all South Africans, regardless of race, and if legal restrictions no longer existed on the freedom of all South Africans to live, travel, and work in the country. Apartheid now appears to be unravelling. Democratic reforms in South Africa call for free elections in April, 1994, in which the black African majority will be able to vote for the first time; and Nelson Mandela, president of the African National Congress (ANC), has called for an end to the sanctions against his country. In October, 1993, the United Nation's General Assembly lifted economic sanctions. It is proposed that Michigan follow suit by nullifying its divestiture laws.

THE CONTENT OF THE BILLS:

House Bill 5091 and Senate Bills 792 and 793 would amend the Elliott-Larsen Civil Rights Act (MCL 37.2402), Public Act 314 of 1965 (MCL 38.1133b and c), which regulates the investment of the funds of public employee retirement systems, and Public Act 105 of 1855 (MCL 21.145), which provides for the deposit of state surplus funds into state financial institutions and for the reporting of certain information to the Federal Institutions Bureau (FIB), respectively.

The Elliott Larsen Civil Rights Act prohibits public educational institutions from, among other things, encouraging or condoning either 1) legally required discrimination against someone on the basis of race or color by knowingly investing in a U.S. firm or one of its subsidiaries or affiliates that operates in South Africa; and 2) religious or ethnic discrimination by knowingly investing in a U.S. company that operates in what was formerly known as the Union of Soviet Socialist Republics (U.S.S.R.). The act also requires the Department of Education to compile, from data obtained from the U.S. Department of Commerce, a current register of U.S. firms operating in South Africa and the former U.S.S.R., and to make this available, upon request, to a person, board or commission for a reasonable charge. House Bill 5091 would amend the act to delete all of these provisions and, thus, would allow educational institutions to invest in U.S. firms or their subsidiaries/affiliates that operated in South Africa or the former U.S.S.R.

Public Act 314 of 1965 regulates the investment of the funds of public employee retirement systems. Senate Bill 792 would delete from the act those provisions relating to investment of the funds in South Africa.

Public Act 105 of 1855 regulates the disposition of state surplus funds. Senate Bill 793 would amend the act to eliminate provisions that forbid the state treasurer from investing state surplus funds in a financial institution that maintains a loan to South Africa, a national corporation of South Africa, or a subsidiary or affiliate of a U.S. firm operating in South Africa.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have an undetermined impact on the funds of the employee retirement systems to which they would apply, and on the state's general fund. (10-19-93)

According to the Senate Fiscal Agency, it is also impossible to estimate the fiscal impact of Senate Bill 793. The agency reports that, while the current unstable economic and political situation in South Africa may limit current investment opportunities, these opportunities may improve as the situation becomes more stable. However, given the uncertainty about future investment opportunities, it is not possible to estimate the fiscal impact of the bill. (10-7-93)

ARGUMENTS:

For:

The bills would enable Michigan's public universities and retirement systems to again invest their money in the stock of Michigan companies, such as General Motors and Ford Motor Company, that operate in South Africa (or the former Soviet Union). While it is still unclear to many whether the economic sanctions placed on South Africa, the revolutionary uprisings, or the changing class stratification of Afrikaner society played the crucial factor in the demise of apartheid, Nelson Mandela, president of the African National Congress (ANC), believes that these sanctions "played a critical role in bringing us close to freedom day." Mr Mandela has also expressed his concern over the plight of the South African economy and his belief that proposed political solutions must be accompanied by a return of foreign investments, Accordingly, he has issued a statement calling for the lifting of the sanctions. The former U.S.S.R., on the other hand, has disintegrated into several independent republics which have been recognized by the United States government. It is generally agreed that U.S. investment in these new republics is vital if democracy is to succeed.

Against:

The bills are premature. No formal state policy has yet been formulated regarding support of the proposed African transitional government. In addition to endorsing the concept of legislation requiring divestiture by state-administered pension funds of securities of firms operating in South Africa, former Governor Blanchard announced a 10-point divestiture policy in August, 1985, stating that the state would not purchase finished products from South Africa; would not purchase goods or services from any firm that failed to certify that it didn't sell goods or services to the South African military, Department of Cooperation and Development, or national, provincial or local police or prison agencies, unless they were signatories of the Sullivan Principles; would not purchase products or services from U.S. or foreign firms controlled by South African firms; would cease doing business with any financial institution that underwrote or purchased any new securities issues for any agency of the South African government; and would cease doing business with any financial institution buying or selling Krugerrand gold coins. The laws also provided that these provisions would be suspended if the Michigan Civil Rights Commission determined by resolution and notified the fiduciaries of the retirement systems that two conditions had been met, and emphasized the state's support of the Sullivan Principles. The Sullivan Principles require nonsegregation in all eating, comfort, and work stations; equal and fair employment practices for all employees; equal pay for equal or comparable work; training programs to prepare a substantial number of blacks and other nonwhites in management and supervisory positions; and improving the quality of employees' lives outside of the work environment, such as in housing, transportation, schooling, recreation, and health facilities. The state needs to define its policy regarding these issues before economic sanctions are lifted.

Response:

House and Senate concurrent resolutions that would address the above issues have been proposed, and will be offered on the House floor.

POSITIONS:

The Michigan Bankers Association supports the bills. (10-20-93)

The Department of the Treasury supports the bills. (10-19-93)