

Legislative Analysis



RETIREMENT SYSTEMS: DIVESTITURE OF INVESTMENTS RELATED TO SUDAN

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House Bill 4854

Sponsor: Rep. Alma Wheeler Smith

Committee: Government Operations

Complete to 7-23-07

A SUMMARY OF HOUSE BILL 4854 AS INTRODUCED 5-29-07

The bill would amend the Public Employee Retirement System Investment Act (MCL 38.1133c) to require a retirement system to engage in a number of activities related to assets invested in companies with certain specified business relationships with Sudan. These companies are referred to as "scrutinized companies."

Scrutinized companies are those (1) that have business operations that involve contracts with or the provision of supplies or services to the government of Sudan, companies in which the government of Sudan has a direct or indirect equity share, projects commissioned by the government of Sudan, and companies involved in certain oil-related and mineral extraction activities and power production activities; (2) that are complicit in the Darfur genocide; or (3) that supply military equipment within Sudan (unless a company can show the equipment cannot be used for offensive military actions or the company implements rigorous and verifiable safeguards to prevent use of the equipment by forces participating in armed conflict).

The bill ultimately would require a state retirement system to sell, redeem, divest, or withdraw all publicly traded securities of a company actively involved with the Sudan, with 50 percent of assets under management to be divested within nine months and 100 percent of assets under management to be divested within 15 months.

Further, under the bill, at no time could a retirement system acquire securities of companies on its scrutinized companies list that have active business operations.

Retirement Systems. The bill would apply to the Michigan Legislative Retirement System, the Fire Fighters and Police Officers Retirement System, the Judges Retirement System, the State Employees Retirement System, and the Public School Employees Retirement System.

Exempt Companies. The divesture and investment provisions would not apply to a "social development company," which is defined as a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information materials, spiritual-related activities, or food, clothing, or

general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

Further, the divestiture and investment provisions would not apply to a company that the United States government affirmatively declares to be excluded from its present or future federal sanctions regime related to Sudan. Those provisions would also not apply to indirect holdings in actively managed investment funds (e.g., mutual funds), although a retirement system would be required to attempt to persuade them to remove scrutinized companies from their funds.

Scrutinized Companies List. Within 90 days after the effective date of the bill, a retirement system would have to make its best efforts to identify all scrutinized companies in which it has direct or indirect holdings or could have in the future. Such efforts would have to include one or more of the following: relying on public available information (from nonprofits, research firms, and government entities); contacting contracted asset managers that invest in companies with business operations in Sudan; and contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

By its first meeting after the 90-day period, the retirement system would have to assemble all scrutinized companies identified into a scrutinized companies list. The retirement system would be required to update the list on a quarterly basis based on evolving information.

Procedure in Dealing with Scrutinized Companies. A retirement system would have to adhere to all the following procedures for scrutinized companies on the list:

- ** Immediately determine the companies in which the retirement system owns direct or indirect holdings.

- ** For each company identified with only inactive business operations, send a written notice informing the company of the new act and encouraging it to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations. The Retirement System would continue the correspondence on a semiannual basis.

- ** For each company newly identified with active business operations, send a written notice informing the company of its scrutinized company status and that it could become subject to divestment by the retirement system. The notice would offer the company the opportunity to clarify its Sudan-related activities and would encourage it to either cease its scrutinized business operations or convert such operations to inactive business operations, within 90 days, in order to avoid qualifying for divestment.

- ** If, within 90 days following the retirement system's first engagement with a company, it ceases scrutinized business operations, then the company would be removed from the list and the bill would not apply to it unless the company resumed scrutinized

business operations. If, within 90 days following the retirement system's first engagement, the company converts its scrutinized active business operations to inactive business operations, it would also be removed from the list.

** If, after 90 days following the retirement system's first engagement with the company it continues to have scrutinized active business operations, and only while it continues to have active business operations, the retirement system could sell, redeem, divest, or withdraw all publicly traded securities of the company as follows: 50 percent of the assets would be removed from the system's assets under management within nine months after the company's most recent appearance on the list and 100 percent would be removed from the retirement system's assets under management within 15 months after the company's most recent appearance on the list.

** A retirement system would also have to submit letters to the managers of actively managed investment funds containing companies with scrutinized active business operations requesting they consider removing identified companies from the fund or create a similar actively managed fund with indirect holdings devoid of identified companies. If the manager creates a similar fund, the retirement system would replace all applicable investment with investments in the similar fund in an expedited time frame consistent with prudent investing standards.

Report to the Legislature. The retirement system would have to file a publicly available report 30 days after the list is created to the Legislature and Attorney General that includes the scrutinized companies. Thereafter, a system would have to annually file a publicly available report and send a copy of that report to the United States Presidential Special Envoy to Sudan that includes a summary of correspondence with companies engaged by the retirement system; all investments sold, redeemed, divested, or withdrawn; all prohibited investments; and any progress made with actively managed investment funds.

End of Act's Effectiveness. The bill's provisions would be in effect until the first occurrence of the following: (1) the United States Congress or the President of the United States declares that the Darfur genocide has been halted for at least twelve months; (2) the U.S. revokes all sanctions imposed against the government of Sudan; (3) the Congress or President declares the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access to deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or (4) the Congress or President declares, through legislation or executive order, that mandatory divestment (as provided in the act) interferes with the conduct of U.S. foreign policy.

Exemption from Obligations for Compliance with Bill. A retirement system, with respect to actions taken in compliance with the bill, would be exempt from any conflicting statutory or common law obligations, including any obligations in respect to choice of

asset managers, investment funds, or investments for the retirement system's security portfolios with the act.

Cessation of Divesting; Reinvesting. A retirement system would be permitted to cease divesting from certain scrutinized companies and to reinvest in certain scrutinized companies from which it had divested if clear and convincing evidence shows that the value of all assets under management by the retirement system becomes equal or less than 99.5 percent of the hypothetical value of all assets under management by the retirement system assuming no divestment for any company had occurred. Cessation of divestment, reinvestment, and any ongoing authorized investment would be strictly limited to the minimum steps necessary to avoid the contingency established in the bill. For any cessation of divestment, reinvestment, and subsequent ongoing investment, the retirement system would be required to report in writing to the Legislature and the Attorney General in advance of initial reinvestment, updated semiannually, setting forth the reasons and justification, supported by clear and convincing evidence, for its decision to cease divestment, reinvestment, or remain investment with companies with scrutinized active business operations.

Enforcement by Attorney General. The Attorney General would enforce the provisions of the bill and could, through any lawful designee, bring such actions in court as necessary to do so.

Severability. The bill contains a severability clause that says: "If any provision, section, subsection, sentence, clause, phrase, or word of this legislation or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality."

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.