



Senate Fiscal Agency
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Senate Bill 846 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bill 847 (Substitute S-2 as reported)
Senate Bills 848 and 849 (as reported without amendment)
Senate Bill 850 (Substitute S-1 as reported by the Committee of the Whole)
Senate Bills 851 through 856 (as reported without amendment)
Sponsor: Senator Cameron S. Brown (S.B. 846 & 847)
Senator John Pappageorge (S.B. 848)
Senator Randy Richardville (S.B. 849)
Senator Dennis Olshove (S.B. 850)
Senator Valde Garcia (S.B. 851 & 852)
Senator Hansen Clarke (S.B. 853)
Senator Tupac A. Hunter (S.B. 854)
Senator Buzz Thomas (S.B. 855)
Senator Mark C. Jansen (S.B. 856)

Committee: Homeland Security and Emerging Technologies

CONTENT

Senate Bill 846 (S-2) would create the "Divestment from Terror Act" to do the following:

- Require a fiduciary (e.g., the State Treasurer or applicable board with respect to various funds and retirement systems, or a community college board) to make its best efforts to identify all companies in which it had holdings that did business with or were located in a "state sponsor of terror" ("scrutinized companies") and create a list of those companies.
- Require a fiduciary immediately to remove from the list any company wrongfully identified as a scrutinized company.
- Within 15 months, require a fiduciary to sell, redeem, divest, or withdraw all of the securities of a company that continued to have scrutinized active "business operations" (engaging in commerce with a state sponsor of terror).
- Except for indirect holdings in actively managed investment funds, prohibit a fiduciary from acquiring securities of companies on its list that had active business operations.
- Require a fiduciary to perform due diligence to prevent investment in any private equity fund invested in a scrutinized company with active business operations in a state sponsor of terror.
- If the manager of a publicly traded, actively managed fund in a fiduciary's portfolio created a similar fund not associated with scrutinized active business operations, encourage the fiduciary to replace its existing investments with investments in the new fund.
- Require the Department of Treasury to collect and publish on its website information regarding investments under the proposed Act, as well as the progress made in preventing new investment in scrutinized companies with active business operations in a state sponsor of terror and replacing existing investments.
- Exempt a fiduciary from any statutory or common law obligation that conflicted with the proposed Act.
- Provide immunity from liability for action taken to comply with the proposed Act.
- Require a fiduciary to follow the divestment criteria contained in Sections 13c and 13d of the Public Employee Retirement System Investment Act (which House Bills 4854 and 4903 would add, respectively) if a scrutinized company did business with the government of Sudan or Iran.

"State sponsor of terror" would mean any country determined by the U.S. Secretary of State to have repeatedly provided support for acts of international terrorism. If a state sponsor of terror were any of the following countries, the provisions of the proposed Act would apply beginning on the following dates:

- Syrian, January 1, 2010.
- North Korea, January 1, 2011.
- Cuba, January 1, 2012.
- Any other country, 12 months following the determination by the U.S. Secretary of State.

The bill is tie-barred to House Bills 4854 and 4903, which would add to the Public Employee Retirement System Investment Act similar divestment requirements pertaining specifically to Sudan and Iran.

Senate Bills 847 (S-2) through 856 would amend various statutes to require the applicable investment fiduciary to comply with the proposed Divestment from Terror Act in making investments.

Senate Bill 847 (S-2) would amend the Public Employee Retirement System Investment Act with regard to the tier 1 retirement plans available under the State Employees' Retirement Act and the Judges Retirement Act, the State Police Retirement System, and the Public School Employees Retirement System. Senate Bill 848 would amend Public Act 9 of the Extra Session of 1946, which governs the Veterans' Trust Fund. Senate Bill 849 would amend the Natural Resources and Environmental Protection Act with regard to the Environmental Protection Fund. Senate Bill 850 (S-1) would amend the Community Colleges Act. Senate Bill 851 would amend the Michigan Strategic Fund Act. Senate Bill 852 would amend the Michigan Trust Fund Act with regard to the 21st Century Jobs Trust Fund. Senate Bill 853 would amend Public Act 249 of 1982, which governs the Children's Trust Fund. Senate Bill 854 would amend Public Act 105 of 1855, which governs the use and investment of surplus funds in the State Treasury. Senate Bill 855 would amend the Lottery Act with regard to the State Lottery Fund. Senate Bill 856 would amend the Michigan Education Trust Act.

Senate Bills 847 (S-2) through 856 are tie-barred to Senate Bill 846.

MCL 38.1133 (S.B. 847)
MCL 35.605 (S.B. 848)
Proposed MCL 324.503b (S.B. 849)
MCL 389.124 & 389.142 (S.B. 850)
Proposed MCL 125.2007a (S.B. 851)
MCL 12.257 (S.B. 852)
MCL 21.171 (S.B. 853)
Proposed MCL 21.145 (S.B. 854)
MCL 432.41 (S.B. 855)
MCL 390.1429 & 390.1431 (S.B. 856)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills and Senate Joint Resolution J would have an indeterminate fiscal impact on State and local units of government. The Department of Treasury has explored the impact of these proposals with respect to its investments, which would not include all of the entities in the resolution and bills. For the Department's investments alone, Treasury has estimated that it would cost approximately \$30,000 per year per country to ensure compliance with the proposed restrictions. That amount would cover the cost of hiring a private company to monitor compliance, and would be ongoing. There also could be additional up-front transaction costs to comply with these restrictions. The amount of those costs could be slightly lower for countries where the State has comparatively smaller investments. The

Department has identified several countries that qualify as state sponsors of terror, including Sudan, Iran, North Korea, Syria, and Cuba, though that list is subject to change.

The fiscal impact on universities, community colleges, local units of government, and other public bodies is difficult to determine, as it would depend on the amount each entity has invested in relevant companies.

The joint resolution would require that each public body report to the Department annually. While the resolution does not specify the Department's responsibility, if the Department of Treasury were charged with establishing a list of companies for each country and assisting public bodies with compliance, the Department would incur significant additional costs.

While it is difficult to quantify the precise fiscal impact of these bills on State and local government and other public bodies, it could be substantial. The Department of Treasury has indicated that not only would there be immediate transaction costs involved in the divestiture, there also would be compliance costs going forward as well. According to the Department, transaction costs could be considerable, particularly because the affected funds often invest in indices and mutual funds that contain many companies, which would make singling out individual companies more difficult. In addition to these more measurable costs, the Department predicts that the lost opportunity costs of prohibited investments could be high as well, thereby affecting the overall value of State investments; however, these potential costs or gains could only be determined retrospectively.

As of September 30, 2006, the State Employees' Retirement System, Public School Employees' Retirement System, State Police Retirement System, and Judges Retirement System had combined total assets of approximately \$64 billion.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.