

AMENDED IN ASSEMBLY MARCH 28, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

ASSEMBLY BILL

No. 946

**Introduced by Assembly Member Members Ting and
Gonzalez Fletcher
(Coauthor: Assembly Member Eduardo Garcia)**

February 16, 2017

An act to amend Section 20150 of the Government Code, relating to public employees' retirement, 16642 of, and to add Section 7513.77 to, the Government Code, relating to state public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 946, as amended, Ting. ~~Public Employees' Retirement System.~~ *State public retirement systems: divestiture: border wall construction companies.*

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 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, the energy sector of Iran, and thermal coal companies, subject to specified requirements, limitations, and procedures.

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 border wall construction company, as defined. The bill would require the boards to liquidate investments in

a border wall construction company within 12 months of the company contracting or subcontracting to provide work or material for a border wall, as defined. The bill would require the boards, in making a determination to liquidate investments, to constructively engage with a border wall construction company to establish whether the company is transitioning its business model away from activities related to a border wall. 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. The bill would make related legislative findings and declarations.

This bill would require, on or before January 1, 2019, that these boards file reports with the Legislature and the Governor, containing specified information, including a list of companies of which they have 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.

~~Existing law, the Public Employees’ Retirement Law, establishes the Public Employees’ Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. PERS is governed by its board of administration, and members or employees of the board are prohibited from, among other things, having an interest in investments or profits accruing from them.~~

~~This bill would make nonsubstantive changes in the provisions regulating the interests of members and employees of the board.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-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) The United States was founded on the principles of freedom*
- 4 *and opportunity, a refuge for the oppressed, the persecuted, and*
- 5 *those looking for a better life.*
- 6 *(b) Immigrants have always played an integral part in American*
- 7 *and Californian history.*

1 (c) California’s diversity is a great source of innovation and
2 industry, making California one of the largest economies in the
3 world and an economic engine for the United States.

4 (d) Immigrants are vital to many of California’s industries such
5 as technology, health care, agriculture, construction, hospitality,
6 and domestic services. Immigrants also represent a large
7 percentage of California’s new small business owners and create
8 economic prosperity and needed jobs for everyone.

9 (e) During the 2016 United States presidential campaign,
10 then-candidate Donald J. Trump promised to build a wall along
11 the border between the United States and Mexico and to make
12 Mexico pay for the wall.

13 (f) Furthermore, then-candidate Trump made numerous
14 prejudiced assertions regarding Mexicans and people of Mexican
15 heritage, including calling Mexicans rapists and “bad hombres.”

16 (g) On January 25, 2017, President Trump signed the Border
17 Security and Immigration Enforcement Improvements executive
18 order, which directed the Secretary of Homeland Security to
19 “immediately plan, design, and construct a physical wall along
20 the southern border” and to identify and allocate funding sources
21 for the construction of the border wall.

22 (h) The Assembly and the Senate have expressed their opposition
23 to President Trump’s proposed immigration policies, including
24 the border wall, by approving in 2017, House Resolution 4, House
25 Resolution 15, Senate Resolution 7, and Senate Resolution 16.

26 SEC. 2. Section 7513.77 is added to the Government Code, to
27 read:

28 7513.77. (a) This section shall be known, and may be cited,
29 as the Resist the Wall Act.

30 (b) As used in this section:

31 (1) “Board” means the Board of Administration of the Public
32 Employees’ Retirement System or the Teachers’ Retirement Board
33 of the State Teachers’ Retirement System, as applicable.

34 (2) “Border wall construction company” means any company
35 that contracts or subcontracts to build, maintain, or provide
36 material for President Trump’s Border Wall.

37 (3) “Company” means a sole proprietorship, organization,
38 association, corporation, partnership, venture, or other entity, or
39 its subsidiary or affiliate, that exists for profit-making purposes
40 or to otherwise secure economic advantage.

1 (4) “Investment” means the purchase, ownership, or control of
2 publicly issued stock, corporate bonds, or other debt instruments
3 issued by a company.

4 (5) “President Trump’s Border Wall” means any physical wall
5 or barrier constructed along the border between the United States
6 and Mexico, consistent with President Trump’s campaign promises
7 to build a border wall or President Trump’s executive order
8 “Border Security and Immigration Enforcement Improvements”
9 signed January 25, 2017, regardless of whether the wall or barrier
10 is paid for by the United States government, the Mexican
11 government, increased trade tariffs, or any combination of those
12 funds.

13 (6) “Public employee retirement funds” means the Public
14 Employees’ Retirement Fund described in Section 20062 of this
15 code, and the Teachers’ Retirement Fund described in Section
16 22167 of the Education Code.

17 (c) The board shall not make additional or new investments or
18 renew existing investments of public employee retirement funds in
19 a border wall construction company.

20 (d) The board shall liquidate investments in any border wall
21 construction company within 12 months of the company contracting
22 or subcontracting to provide work or material for President
23 Trump’s Border Wall. In making a determination to liquidate
24 investments, the board shall constructively engage with a border
25 wall construction company to establish whether the company is
26 transitioning its business model away from building, maintaining,
27 or providing material for President Trump’s Border Wall.

28 (e) On or before January 1, 2019, the board shall file a report
29 with the Legislature, in compliance with Section 9795, and the
30 Governor, with information on any investment actions related to
31 border wall construction companies, which shall include the
32 following:

33 (1) A list of border wall construction companies from which the
34 board has liquidated its investments pursuant to subdivision (d).

35 (2) A list of companies with which the board engaged pursuant
36 to subdivision (d), with supporting documentation to substantiate
37 the board’s determination.

38 (3) A list of border wall construction companies from which the
39 board has not liquidated its investments as a result of a
40 determination made pursuant to subdivision (f) that a sale or

1 *transfer of investments is inconsistent with the fiduciary*
2 *responsibilities of the board as described in Section 17 of Article*
3 *XVI of the California Constitution and the board's findings adopted*
4 *in support of that determination.*

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

10 SEC. 3. *Section 16642 of the Government Code is amended to*
11 *read:*

12 16642. Present, future, and former board members of the Public
13 Employees' Retirement System or the State Teachers' Retirement
14 System, jointly and individually, state officers and employees,
15 research firms described in subdivision (d) of Section 7513.6, and
16 investment managers under contract with the Public Employees'
17 Retirement System or the State Teachers' Retirement System shall
18 be indemnified from the General Fund and held harmless by the
19 State of California from all claims, demands, suits, actions,
20 damages, judgments, costs, charges and expenses, including court
21 costs and attorney's fees, and against all liability, losses, and
22 damages of any nature whatsoever that these present, future, or
23 former board members, officers, employees, research firms as
24 described in subdivision (d) of Section 7513.6, or contract
25 investment managers shall or may at any time sustain by reason
26 of any decision to restrict, reduce, or eliminate investments
27 pursuant to Sections 7513.6, 7513.7, ~~and 7513.75~~; 7513.75, and
28 7513.77.

29 ~~SECTION 1. Section 20150 of the Government Code is~~
30 ~~amended to read:~~

31 ~~20150. A board member or employee of the board shall not,~~
32 ~~directly or indirectly:~~

33 ~~(a) Have an interest in the making of an investment or in the~~
34 ~~gains or profits accruing from them.~~

35 ~~(b) For himself or herself or as an agent or partner of others,~~
36 ~~borrow funds or deposits of this system nor use those funds or~~
37 ~~deposits except to make current and necessary payments authorized~~
38 ~~by the board.~~

- 1 ~~(e) Become an indorser, surety, or obligor on investments by~~
- 2 ~~the board.~~

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