

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 252 (Gonzalez)
Version: January 30, 2023
Hearing Date: April 18, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Public retirement systems: fossil fuels: divestment

DIGEST

This bill prohibits the Board of the Public Employees' Retirement System (PERS) and the Teachers' Retirement Board of the State Teachers' Retirement System (STRS) from making any additional or new investments or renewing existing investments of public employee retirement funds in a fossil fuel company, and requires PERS and STRS to liquidate investments in a fossil fuel company on or before July 1, 2031, as provided.

EXECUTIVE SUMMARY

A worldwide movement of divestment from fossil fuels is currently underway, with roughly 1,500 institutions that hold over \$39 trillion in assets already committing to divestment, including the University of California and the California State University System. This bill seeks to have PERS and STRS follow suit by prohibiting the board of PERS and STRS from making any additional or new investments or renewing existing investments in a fossil fuel company, and requires them to liquidate investments in a fossil fuel company on or before July 1, 2030, as provided. The Legislature has passed bills to require PERS and STRS to divest from South Africa during Apartheid, from Sudan, Iran, and Turkey if a specified federal law is passed, and from coal. This bill is substantially similar to the author's SB 1173 (2022), which passed this Committee on a vote of 7 to 0, but was never set for a hearing in the Assembly.

The bill is sponsored by California Faculty Association and Fossil Free California. The bill is supported by numerous environmental, consumer, health, and religious organizations and various labor associations. The bill is opposed by PERS, STRS, some local governments, and associations representing the fossil fuel industry. The bill was voted out of the Senate Committee on Labor, Public Employment and Retirement on a vote of 4 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Grants the retirement board of a public employee retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the retirement fund and system. (Cal. Const., art. XVI, § 17.)
- 2) Provides that the Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to the Constitution. (Cal. Const., art. XVI, § 17 (g).)
- 3) Prohibits the retirement boards from making investments in certain countries, such as Sudan and Iran, and in thermal coal companies, as specified, subject to the boards' plenary authority and fiduciary responsibility for investment of moneys and administration of the systems. (Gov. Code § 7513.6, § 7513.7, § 7513.75.)
 - a) Prohibits the retirement boards from making investments in the government of Turkey upon passage of a federal law imposing sanctions on the government of Turkey for failure to officially acknowledge its responsibility for the Armenian Genocide. (Gov. Code § 7513.74.)

This bill:

- 1) Provides that the Legislature finds and declares all of the following:
 - a) the combustion of coal, oil, and natural gas, known as fossil fuels, is the single largest contributor to global climate change;
 - b) climate change affects all parts of the California economy and environment, and the Legislature has adopted numerous laws to mitigate greenhouse gas emissions and to adapt to a changing climate;
 - c) fossil fuel companies' plans to expand production, public relations campaigns, and efforts to obstruct climate stabilization policies are incompatible with California's climate goals, and our obligation to current and future generations;
 - d) the production of fossil fuels and the effects of climate change resulting from the use of fossil fuels all lead to disproportionate adverse impacts on low-income communities and communities of color;
 - e) a transition away from fossil fuels to clean energy will create greater employment, support the economy, and improve public health; and
 - f) the purpose of this section is to require the Public Employees' Retirement System and the State Teachers' Retirement System, consistent with, and not in violation of, their fiduciary responsibilities, to divest their holdings of fossil fuel company investments as one part of the state's broader efforts to

decarbonize the California economy and to transition to clean, pollution-free energy resources.

- 2) Prohibits the board of PERS and STRS from making any additional or new investments or renewing existing investments of public employee retirement funds in a fossil fuel company, and requires PERS and STRS to liquidate investments in a fossil fuel company on or before July 1, 2030.
- 3) Provides that the board of PERS and STRS is not required to take action unless the board determines in good faith that the action is consistent with the fiduciary responsibilities of the board described in Section 17 of Article XVI of the California Constitution.
- 4) Requires PERS and STRS to submit an annual report to the Legislature, beginning on February 1, 2025, that includes all of the following:
 - a) a list of fossil fuel companies of which the board has liquidated its investments;
 - b) a list of fossil fuel companies with which the board still has not liquidated its investments; and
 - c) a list of fossil fuel companies of which the board has not liquidated its investments as a result of a determination made pursuant to Section 17 of Article XVI of the California Constitution and the board's findings adopted in support of that determination.
- 5) Defines the following terms:
 - a) "board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable;
 - b) "company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, or its subsidiary or affiliate, that exists for profitmaking purposes or to otherwise secure economic advantage;
 - c) "investment" means the purchase, ownership, or control of publicly issued stock, corporate bonds, or other debt instruments issued by a company, and also includes purchase, ownership, or control of mutual funds and exchange-traded funds, unless the board is satisfied on reasonable grounds that a mutual fund or exchange-traded fund is unlikely to have in excess of 2 percent of its assets, averaged annually, directly or indirectly invested in fossil fuel companies;
 - d) "public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code;
 - e) "fossil fuel" means petroleum oil, natural gas, and thermal coal. Thermal coal is coal used to generate electricity, such as that which is burned to create

- steam to run turbines. Thermal coal does not mean metallurgical coal or coking coal used to produce steel; and
- f) “fossil fuel company” means one of the 200 largest publicly traded fossil fuel companies, as established by carbon content in the companies’ proven oil, gas, and coal reserves.

COMMENTS

1. Stated need for the bill

The author writes:

California is a world-leader in combating the causes of climate change, and has set meaningful goals to help prevent climate-related environmental destruction and protect low-income communities that are overburdened by the impacts of climate change. Despite these forward-thinking actions, California’s multi-billion dollar retirement pension systems are actively investing over \$15 billion directly into the world’s largest fossil fuel companies, including billions in Exxon, Saudi Aramco, China Petroleum & Chemical, and millions more in Canadian tar sands extraction, and South African coal mining conglomerates.

SB 252 gives CalPERS and CalSTRS a 7 to 12 year off ramp to end this contradictory and incongruous investment policy, which positions the State as a leader in the fight against climate change, while simultaneously investing billions in the companies that drive this climate crisis.

SB 252 seizes the momentum of the worldwide divestment movement and joins an estimated 1,500 institutions with over \$39 trillion in assets that have already committed to divest from fossil fuels, including the University of California, the California State University, the State and City of New York, the State of Maine, the Vatican, and the province of Quebec.

The global divestment movement works and can even have positive financial returns for pension funds. California has already directed our state’s pensions systems to divest from some thermal coal companies, Sudan, and Iran; and CalPERS and CalSTRS have independently chosen to divest from tobacco companies, gun manufacturers, and private prisons. All of these active divestments have resulted in a positive financial return for the funds, with the exception of tobacco. Divesting from thermal coal companies resulted in over a \$500 million gain for the funds, and studies have shown that the pension funds could have made billions more if they had divested from fossil fuels a decade ago.

2. Background

The Senate Committee on Labor, Public Employment and Retirement analyzed the bill's effect on the fiduciary duty of the Board of PERS and STRS and concluded:

This bill is likely to conflict with the pension board's fiduciary duty because it interferes with the board's professional investment judgement for objectives that are unrelated to the purpose of the pension plan and the beneficiaries' exclusive interest. Moreover, it does so in a manner that is unlikely to achieve its objectives because there continues to exist substantial market support for energy companies, both domestically and internationally. Thus, other institutional investors will likely supplant any divestment by CalSTRS and CalPERS.

The bill, instead of resulting in reduced carbon emissions, will undercut pension funds' substantial engagement programs with energy companies to convert those companies' energy production towards carbon-free sources. Instead, this bill will help replace climate conscientious investors with shareholders who will not pressure fossil fuel companies' management to transform to meet climate control and energy transition challenges.¹

The author and supporters of the bill counter this by pointing to the fact that roughly 1,500 institutions have committed to divesting from fossil fuels and that these institutions represent nearly \$40.51 trillion worth of assets.² In addition, Governor Newsom in his Executive Order N-19-19 ordered that the state government "redouble its efforts to reduce greenhouse gas emissions and mitigate the impacts of climate change" by leveraging the state's \$700 billion investment portfolio to advance California's climate leadership through a framework that, among other things, provides a timeline and criteria to shift investments to, among others, carbon-negative, carbon-neutral, climate resilient, and clean energy technologies.³ The executive order specifically stated that the framework should align with the fiduciary responsibilities of PERS and STRS. The author and supporters also note that many of the teachers and state employees whose retirement futures are invested by PERS and STRS have passed resolutions calling for the divestment of fossil fuels, including the California Faculty Association, the California Federation of Teachers, associations representing higher education faculty, academic senates at California State University and the University of California, and the Faculty Association of California Community Colleges.

¹ Sen. Com. on Lab., Employment and Retirement, Analysis of Sen. Bill No. 252 (2023-2024 Reg. Sess.) as introduced Jan. 30, 2023 at pg. 3.

² Global Fossil Fuel Divestment Commitments Data Base available at <https://divestmentdatabase.org/> (as of Mar. 13, 2023).

³ Governor's Exec. Order No. N-19-19 (Sept. 20, 2019).

3. The bill does not run afoul of the California Constitution

The California Constitution provides that the Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to the Constitution. (Cal. Const., art. XVI, § 17 (g)). While this bill does require the termination of investments of public employee retirement funds in a fossil fuel company, the bill also contains a provision that states nothing in the bill requires the board of PERS or STRS to take action unless the board determines in good faith that the action is consistent with the fiduciary responsibilities of the board described in Section 17 of Article XVI of the California Constitution.

4. Proposed amendment

This bill is substantially similar to the author's SB 1173 (2022). That bill passed this Committee with an amendment that made the timeline for divestment by PERS and STRS to be seven years from enactment of the bill – July 1, 2030 – instead of four years, as the introduced version of that bill would have required. This bill would provide for divestment within six years of enactment of the bill – July 1, 2030. The author may wish to amend the bill to require divestment within seven years of enactment of the bill, which would be July 1, 2031.

The specific amendments is as follows:

On page 4, in line 8, strike out "2030." and insert:

2031.

5. Statements in support

A coalition of associations representing educators, including the California Faculty Association who is a sponsor of the bill, and the California Nurses Association write in support:

Californians, along with states and nations around the globe, are facing the real and immediate threats of climate change and its ever-growing impacts on our health, safety, environment and our ability to pass on a livable planet to future generations.

California has been a world leader in taking steps to combat the causes of climate change, have set historic carbon reduction goals and taken meaningful actions to help prevent environmental destruction and protect communities who bear the overwhelming brunt of carbon emissions. Despite these forward-thinking actions,

California's multi-billion-dollar retirement pension funds are actively investing billions of dollars in the very fossil fuel companies that are causing climate change.

CalPERS and CalSTRS, which invest the pension funds of state employees and teachers, have an investing power of \$440 billion and \$302 billion, respectively. A recent report estimates that out of these funds, CalPERS invests \$5.5 billion in fossil fuel companies and CalSTRS invests \$3.4 billion.

With the explosion of investment and development in carbon-free technologies, and consumer choice and governmental regulation driving markets away from fossil fuels, it has become clear that the fossil fuel industry may be a risky and myopic financial investment. Major investment management firms, BlackRock and Meketa, have concluded that divestment from fossil fuels actually improves, not weakens, investment returns. A further study has shown that if CalPERS and CalSTRS had divested from fossil fuels in 2010 they would have gained \$11.9 billion and \$5.5 billion respectively in returns by 2019. (footnotes omitted)

Fossil Free California, another sponsor of the bill, writes:

The climate crisis affects all of us, but is especially harmful to young people and to the low income communities of color where most oil and gas infrastructure is located and to indigenous communities. For example, backyard oil drilling in small Central Valley towns as well as Los Angeles poisons the air and water of residents while oil refineries in the San Francisco East Bay have caused repeated fires and explosions, and subjected local communities to unhealthy levels of air pollution and health-related stress.

CalSTRS and CalPERS have almost \$11 billion invested in fossil fuel producers. A Corporate Knights study found that between 2009 and 2019 if CalPERS and CalSTRS had divested they would have gained \$11.9 and \$5.5 billion respectively. During the past seven years, the fossil fuel sector had the highest risk of all sectors, and was the only sector to lose value. Divestment is entirely consistent with CalSTRS' and CalPERS' missions and fiduciary duties.

6. Statements in opposition

The California Public Employees' Retirement System (PERS) writes in opposition:

SB 252 imposes a divestment mandate on the CalPERS Board which compromises CalPERS' investment strategies by eliminating a specific industry from the investment opportunity set and reducing diversification, which may have a detrimental effect on investment returns over the long term. This imposes financial risks on CalPERS' members and employers which increases risk to the system. Preliminary analysis indicates that CalPERS would need to divest from

approximately \$9.4 billion in holdings, which would impose \$75-\$125 million in transaction costs.

Today, the focus is on fossil fuels, but tomorrow it may be social media platforms, vehicle manufacturers, or the meat industry. Regardless of the relative impact on the fund's investment portfolio, each divestment proposal signed into law weakens CalPERS' ability to be a responsible fiduciary by limiting investment opportunities, decreasing diversification, limiting returns, and increasing risk to the investment portfolio.

A divestment mandate represents a relatively static investment decision that unfolds comparatively slowly on a timetable of its own and within view of other investors, hampering the ability of CalPERS' investment staff to reevaluate and reinvest as market conditions warrant. The ultimate effect of divestment mandates is they create increasing economic inefficiencies that compound and damage the ability of the overall System to meet its obligations to its members.

The Teachers' Retirement Board of the State Teachers' Retirement System (STRS) writes in opposition:

SB 252 prohibits the CalSTRS and CalPERS boards from making additional or new investments or renewing existing investments in a fossil fuel company, as defined, and requires divestment from such investments by July 1, 2030.

The board's policy is to oppose legislation that restricts or infringes on the plenary authority of the board to administer the retirement plans as provided in Section 17 of Article XVI of the California State Constitution. It is also the board's policy to oppose legislation that infringes on the investment authority of the board or is inconsistent with the investment policy adopted by the board as presented in the CalSTRS Investment Policy and Management Plan.

By requiring the largest public pension funds in the United States to divest from fossil fuel companies, this bill would severely hinder the future success of institutional investor collaborations to effect meaningful change in the fossil fuel industry. In addition, by limiting engagement and requiring divestment, this bill would ignore CalSTRS' exposure to the broader economy and undermine efforts to reduce emissions and transition to a low-carbon world. The risks associated with climate change cannot simply be divested away.

SUPPORT

California Faculty Association (sponsor)

Fossil Free California (sponsor)

Active San Gabriel Valley

AFSCME CA
AFT 1521 E Board (LACCD)
Alameda County Democratic Party
Albany Teachers Association
Alliance of Nurses for Healthy Environments
Ban Single Use Plastic
Bay Area System Change Not Climate Change
Black Women for Wellness
Board of Supervisors for The City and County of San Francisco
Breast Cancer Action
California Climate Voters
California Environmental Voters
California Faculty Association
California Federation of Teachers
California Interfaith Power and Light
California Nurses Association
California Nurses for Environmental Health and Justice
California State University Long Beach
California Public Interest Research Group (CALPIRG)
Cascadia Climate Action Now
Center for Biological Diversity
Center for Community Energy
Center on Race, Poverty and the Environment
Central Valley Air Quality Coalition
Change Begins With Me (Indivisible)
City of Berkeley
Clean Earth 4 Kids
Cleaneearth4kids.org
Climate Action CA
Climate Action Campaign
Climate Action Campaign of the Humboldt Unitarian Universalist Fellowship
Climate Action Now UCLA!
Climate Crisis Action Team, Unitarian Universalist Church of Davis
Climate Equity Policy Center
Climate First: Replacing Oil & Gas
Climate Hawks Vote
Climate Health Now
Climate Organizing Hub
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley
Coastside Jewish Community
Congregation Shir Ami Dayenu Circle
Consumer Watchdog
Converging Storms Action Network

Cool Davis
Courage California
Courage Campaign
CTA Bat Caucus (CTA BadAss Teachers Association Caucus)
Dayenu: A Jewish Call to Climate Action
Democratic Party of Contra Costa County
Democrats of Rossmoor
Divest NJ Coalition
Duarte Unified Education Association
Earth Ethics, Inc.
Earth Care Alliance Sonoma Valley
Earth Guardians
Earth Guardians Bay Area Crew
East Valley Indivisibles
El Pueblo Para El Aire Y Agua Limpia De Kettleman City
Elders Climate Action, Norcal and Social Chapters
Environmental Working Group
Equity Transit
Extinction Rebellion San Francisco Bay Area
Faculty Association of California Community Colleges
Feminists in Action
Feminists in Action Los Angeles
Food and Water Watch
Fossil Free California
Fridays for Future Sacramento
Friends Committee on Legislation of California
Friends of the Earth
Green Team at Francis Parker School
Greenlining Institute
Ground Game LA
Harmony Union Teachers Association
Health Professionals for Equality and Community Empowerment
Healthy Environment for All Lives
Human Rights Working Group, First UU Society of SF
Humboldt Unitarian Universalist Fellowship's Climate Action Campaign
Indivisible CA: State Strong
Indivisible Sacramento
Indivisible San Francisco
Indivisible Yolo
Labor Network for Sustainability
Let's Green CA
Los Angeles Community College District
Maine Youth Action
Napa Climate Now!

Natural Resources Defense Council (NRDC)
North Bay Electric Auto Association
Oakland Education Association
Oil & Gas Action Network
Pacifica Climate Committee
Physicians for Social Responsibility San Francisco Bay
Pierce College Sustainability Committee
Protect Playa Now
Public Health Advisory Council, Climate Actions Campaign
Puvunga Wetlands Protectors
Queers 4 Climate
Regenerating Paradise
San Bernardino Valley Audubon Society
San Diego 350
San Diego Pediatricians for Clean Air
San Diego Physicians for Clean Air
San Fernando Valley Chapter of Climate Reality Project
San Francisco Bay Area Physicians for Social Responsibility
San Francisco Bay Physicians for Social Responsibility
San Francisco Baykeeper
San Francisco Board of Supervisors
Santa Barbara Standing Rock Coalition
Santa Cruz Climate Action Network
Saphron Initiative
Schools for Climate Action
See-la (social Eco Education-la)
Sierra Club California
Silicon Valley Youth Climate Action
SoCal 350 Climate Action
Social Compassion in Legislation
Social Eco Education Los Angeles
Sonoma Valley Earth Care Alliance
South Bay Progressive Alliance
Stand.earth
Sunflower Alliance
System Change Not Climate Change
The Climate Center
The Green Team at Francis Parker School
The Greenlining Institute
The Leap Institute
The River Project
Third Act
Third Act Educators
TIAA-Divest!

Town of Fairfax
Transition Sebastopol
Twin Hills Teachers Association
UC Green New Deal Coalition
United Educators of San Francisco
Youth vs. Apocalypse
Zero Waste
3 individuals
350 Bay Area Action
350 Chico
350 Conejo
350 East Bay
350 Humboldt
350 Humboldt: Grass Roots Climate Action
350 Marin
350 Sacramento
350 San Diego
350 South Bay LA
350 South Bay Los Angeles
350 Southland Legislative Alliance
350 Ventura County Climate Hub
1000 Grandmothers for Future Generations
1000 Grandmothers, Bay Area

OPPOSITION

Association of California Cities - Orange County
California Independent Petroleum Association
California Public Employees' Retirement System
California School Boards Association
California Special Districts Association
California State Teachers' Retirement System
City of Newport Beach
League of California Cities
Rural County Representatives
Western States Petroleum Association

RELATED LEGISLATION

Pending Legislation: None known

Prior Legislation: SB 1173 (Gonzalez, 2022) was substantially similar to this bill. The bill held on suspense in the Senate Appropriations Committee.

SB 1328 (McGuire, 2022) would have prohibited PERS and STRS from investing public employee retirement funds in companies engaged with business operations in Russia or Belarus or a company that supplies military equipment to Russia or Belarus, as provided. The bill is currently pending in the Senate Appropriations Committee. The bill died without a hearing in the Assembly Public Employment and Retirement Committee.

SB 457 (Portantino, 2021) would have required the boards of administration of PERS and STRS to provide employers that are school districts and cities that participate in the systems an option to elect an investment portfolio that does not contain investment vehicles that are issued or owned by the government of the Republic of Turkey. The bill was vetoed by the Governor.

AB 33 (Bonta, 2018) would have required PERS and STRS to divest from private prison companies, as provided. The bill died without a hearing in the Assembly Public Employment and Retirement Committee.

AB 20 (Kalra, Ch. 575, Stats. 2017) requires PERS and STRS to submit a report to the Legislature and Governor regarding investments in, and engagement activities with, companies constructing, or funding, the construction of the Dakota Access Pipeline.

AB 946 (Garcia, 2017) would have prohibited PERS and STRS from investing public employee retirement funds in companies engaged in business related to the border wall proposed by the Trump Administration. This bill died without a hearing in the Assembly Public Employees, Retirement, and Social Security Committee.

AB 1410 (Nazarian, 2015) would have prohibited PERS and STRS from investing public employee retirement funds in specified investments issued by, owned, controlled, or managed by the government of Turkey. This bill was held on suspense in the Assembly Appropriations Committee.

AB 1551 (Allen, 2015) would have required public retirement funds, on or after January 1, 2017, to make no additional investments or renew existing investments in business firms or financial institutions that engage in business practices in furtherance of the boycott of Israel, among other provisions. This bill was held in the Assembly.

AB 2650 (Nazarian, 2015) would have prohibited PERS and STRS from investing public employee retirement funds in specified investments issued by, owned, controlled, or managed by the government of Turkey. This bill was held in the Assembly.

SB 185 (De León, Ch. 605, Stats. 2015) prohibits PERS and STRS from investing public employee retirement funds in thermal coal companies, as specified.

AB 761 (Dickinson, 2013) would have prohibited PERS and STRS from investing in companies that manufacture firearms or ammunition for a recipient other than the U.S. military, subject to a process specified in the bill and consistent with previous divestment legislation, but subject to the board's fiduciary duties. This bill was held in the Assembly Appropriations Committee.

AB 221 (Anderson, Ch. 671, Stats. 2007) prohibits PERS and STRS from investing in companies that have specified energy or defense-related operations in Iran.

AB 2941 (Koretz, Ch. 442, Stats. 2006) prohibits PERS and STRS from investing public employee retirement funds in a company with business operations in Sudan, as specified.

AB 107 (Knox, 2000) would have prohibited new or additional investments in tobacco companies by PERS and STRS on and after January 1, 2001, and would have required divestment from existing investments by July 1, 2002. This bill was held on concurrence in the Assembly.

AB 2251, (Margolin, Ch. 1351, Stats. 1992) prohibits state trust fund and state money investments in business firms or financial institutions that engage in discriminatory business practices after January 1, 1994, relating to the Arab League's economic boycott of Israel.

AB 134 (Waters, Ch. 1254, Stats. 1986) prohibits the use of state trust funds or state monies to make additional or new investments, or renew existing investments in firms doing business with or in South Africa, as of January 1, 1987.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)
