



Sen. Michael E. Hastings

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1 AMENDMENT TO SENATE BILL 1798

2 AMENDMENT NO. _____. Amend Senate Bill 1798 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Procurement Code is amended by
5 adding Sections 1-15.120 and 50-17 as follows:

6 (30 ILCS 500/1-15.120 new)

7 Sec. 1-15.120. Expatriated entity. "Expatriated entity"
8 means a foreign incorporated entity which is treated as an
9 inverted domestic corporation under subsection (b) of Section
10 835 of the Homeland Security Act of 2002, 6 U.S.C. 395(b), or
11 any subsidiary of such an entity. The federal regulations found
12 at 26 CFR 1.7874-3 may be used to determine when 6 U.S.C.
13 395(b) (3) applies.

14 (30 ILCS 500/50-17 new)

15 Sec. 50-17. Expatriated entities.

1 (a) Except as provided in subsection (b) of this Section,
2 no business or member of a unitary business group, as defined
3 in the Illinois Income Tax Act, shall submit a bid for or enter
4 into a contract with a State agency under this Code if that
5 business or any member of the unitary business group is an
6 expatriated entity.

7 (b) An expatriated entity or a member of a unitary business
8 group with an expatriated entity as a member may submit a bid
9 for or enter into a contract with a State agency under this
10 Code if the appropriate chief procurement officer determines
11 that either of the following apply:

12 (1) the contract is awarded as a sole source
13 procurement under Section 20-25 of this Code, provided that
14 the appropriate chief procurement officer (i) includes in
15 the notice of intent to enter into a sole source contract a
16 prominent statement that the intended sole source
17 contractor is an expatriated entity and (ii) holds a public
18 hearing at which the chief procurement officer and
19 purchasing agency present written justification for the
20 use of a sole source contract with an expatriated entity
21 and any member of the public may present testimony; or

22 (2) the purchase is of pharmaceutical products, drugs,
23 biologics, vaccines, medical supplies, or devices used to
24 provide medical and health care or treat disease or used in
25 medical or research diagnostic tests, and medical
26 nutritionals regulated by the Food and Drug Administration

1 under the Federal Food, Drug, and Cosmetic Act.

2 Section 10. The Illinois Pension Code is amended by
3 changing Section 1-110.16 as follows:

4 (40 ILCS 5/1-110.16)

5 Sec. 1-110.16. Transactions prohibited by retirement
6 systems; companies that boycott Israel, Iran-restricted
7 companies, ~~and~~ Sudan-restricted companies, and expatriated
8 entities.

9 (a) As used in this Section:

10 "Boycott Israel" means engaging in actions that are
11 politically motivated and are intended to penalize,
12 inflict economic harm on, or otherwise limit commercial
13 relations with the State of Israel or companies based in
14 the State of Israel or in territories controlled by the
15 State of Israel.

16 "Company" means any sole proprietorship, organization,
17 association, corporation, partnership, joint venture,
18 limited partnership, limited liability partnership,
19 limited liability company, or other entity or business
20 association, including all wholly owned subsidiaries,
21 majority-owned subsidiaries, parent companies, or
22 affiliates of those entities or business associations,
23 that exist for the purpose of making profit.

24 "Illinois Investment Policy Board" means the board

1 established under subsection (b) of this Section.

2 "Direct holdings" in a company means all publicly
3 traded securities of that company that are held directly by
4 the retirement system in an actively managed account or
5 fund in which the retirement system owns all shares or
6 interests.

7 "Expatriated entity" has the meaning ascribed to it in
8 Section 1-15.120 of the Illinois Procurement Code.

9 "Indirect holdings" in a company means all securities
10 of that company that are held in an account or fund, such
11 as a mutual fund, managed by one or more persons not
12 employed by the retirement system, in which the retirement
13 system owns shares or interests together with other
14 investors not subject to the provisions of this Section or
15 that are held in an index fund.

16 "Iran-restricted company" means a company that meets
17 the qualifications under Section 1-110.15 of this Code.

18 "Private market fund" means any private equity fund,
19 private equity funds of funds, venture capital fund, hedge
20 fund, hedge fund of funds, real estate fund, or other
21 investment vehicle that is not publicly traded.

22 "Restricted companies" means companies that boycott
23 Israel, Iran-restricted companies, ~~and~~ Sudan-restricted
24 companies, and expatriated entities.

25 "Retirement system" means a retirement system
26 established under Article 2, 14, 15, 16, or 18 of this Code

1 or the Illinois State Board of Investment.

2 "Sudan-restricted company" means a company that meets
3 the qualifications under Section 1-110.6 of this Code.

4 (b) There shall be established an Illinois Investment
5 Policy Board. The Illinois Investment Policy Board shall
6 consist of 7 members. Each board of a pension fund or
7 investment board created under Article 15, 16, or 22A of this
8 Code shall appoint one member, and the Governor shall appoint 4
9 members.

10 (c) Notwithstanding any provision of law to the contrary,
11 beginning January 1, 2016, Sections 110.15 and 1-110.6 of this
12 Code shall be administered in accordance with this Section.

13 (d) By April 1, 2016, the Illinois Investment Policy Board
14 shall make its best efforts to identify all Iran-restricted
15 companies, Sudan-restricted companies, and companies that
16 boycott Israel and assemble those identified companies into a
17 list of restricted companies, to be distributed to each
18 retirement system.

19 These efforts shall include the following, as appropriate
20 in the Illinois Investment Policy Board's judgment:

21 (1) reviewing and relying on publicly available
22 information regarding Iran-restricted companies,
23 Sudan-restricted companies, and companies that boycott
24 Israel, including information provided by nonprofit
25 organizations, research firms, and government entities;

26 (2) contacting asset managers contracted by the

1 retirement systems that invest in Iran-restricted
2 companies, Sudan-restricted companies, and companies that
3 boycott Israel;

4 (3) contacting other institutional investors that have
5 divested from or engaged with Iran-restricted companies,
6 Sudan-restricted companies, and companies that boycott
7 Israel; and

8 (4) retaining an independent research firm to identify
9 Iran-restricted companies, Sudan-restricted companies, and
10 companies that boycott Israel.

11 The Illinois Investment Policy Board shall review the list
12 of restricted companies on a quarterly basis based on evolving
13 information from, among other sources, those listed in this
14 subsection (d) and distribute any updates to the list of
15 restricted companies to the retirement systems and the State
16 Treasurer.

17 By April 1, 2018, the Illinois Investment Policy Board
18 shall make its best efforts to identify all expatriated
19 entities and include those companies in the list of restricted
20 companies distributed to each retirement system and the State
21 Treasurer. These efforts shall include the following, as
22 appropriate in the Illinois Investment Policy Board's
23 judgment:

24 (1) reviewing and relying on publicly available
25 information regarding expatriated entities, including
26 information provided by nonprofit organizations, research

1 firms, and government entities;

2 (2) contacting asset managers contracted by the
3 retirement systems that invest in expatriated entities;

4 (3) contacting other institutional investors that have
5 divested from or engaged with expatriated entities; and

6 (4) retaining an independent research firm to identify
7 expatriated entities.

8 (e) The Illinois Investment Policy Board shall adhere to
9 the following procedures for companies on the list of
10 restricted companies:

11 (1) For each company newly identified in subsection
12 (d), the Illinois Investment Policy Board shall send a
13 written notice informing the company of its status and that
14 it may become subject to divestment or shareholder activism
15 by the retirement systems.

16 (2) If, following the Illinois Investment Policy
17 Board's engagement pursuant to this subsection (e) with a
18 restricted company, that company ceases activity that
19 designates the company to be an Iran-restricted company, a
20 Sudan-restricted company, ~~or~~ a company that boycotts
21 Israel, or an expatriated entity, the company shall be
22 removed from the list of restricted companies and the
23 provisions of this Section shall cease to apply to it
24 unless it resumes such activities.

25 (f) Except as provided in subsection (f-1) of this Section
26 the ~~The~~ retirement system shall adhere to the following

1 procedures for companies on the list of restricted companies:

2 (1) The retirement system shall identify those
3 companies on the list of restricted companies in which the
4 retirement system owns direct holdings and indirect
5 holdings.

6 (2) The retirement system shall instruct its
7 investment advisors to sell, redeem, divest, or withdraw
8 all direct holdings of restricted companies from the
9 retirement system's assets under management in an orderly
10 and fiduciarily responsible manner within 12 months after
11 the company's most recent appearance on the list of
12 restricted companies.

13 (3) The retirement system may not acquire securities of
14 restricted companies.

15 (4) The provisions of this subsection (f) do not apply
16 to the retirement system's indirect holdings or private
17 market funds. The Illinois Investment Policy Board shall
18 submit letters to the managers of those investment funds
19 containing restricted companies requesting that they
20 consider removing the companies from the fund or create a
21 similar actively managed fund having indirect holdings
22 devoid of the companies. If the manager creates a similar
23 fund, the retirement system shall replace all applicable
24 investments with investments in the similar fund in an
25 expedited timeframe consistent with prudent investing
26 standards.

1 (f-1) The retirement system shall adhere to the following
2 procedures for restricted companies that are expatriated
3 entities:

4 (1) To the extent that the retirement system believes
5 that shareholder activism would be more impactful than
6 divestment, the retirement system shall have the authority
7 to engage with a restricted company prior to divesting.

8 (2) Subject to any applicable State or federal laws,
9 methods of shareholder activism utilized by the retirement
10 system may include, but are not limited to, bringing
11 shareholder resolutions and proxy voting on shareholder
12 resolutions.

13 (3) The retirement system shall report on its
14 shareholder activism and the outcome of such efforts to the
15 Illinois Investment Policy Board by April 1 of each year.

16 (4) If the engagement efforts of the retirement system
17 are unsuccessful, then it shall adhere to the procedures
18 under subsection (f) of this Section.

19 (g) Upon request, and by April 1 of each year ~~at least~~
20 ~~annually~~, each retirement system shall provide the Illinois
21 Investment Policy Board with information regarding investments
22 sold, redeemed, divested, or withdrawn in compliance with this
23 Section.

24 (h) Notwithstanding any provision of this Section to the
25 contrary, a retirement system may cease divesting from
26 companies pursuant to subsection (f) if clear and convincing

1 evidence shows that the value of investments in such companies
2 becomes equal to or less than 0.5% of the market value of all
3 assets under management by the retirement system. For any
4 cessation of divestment authorized by this subsection (h), the
5 retirement system shall provide a written notice to the
6 Illinois Investment Policy Board in advance of the cessation of
7 divestment, setting forth the reasons and justification,
8 supported by clear and convincing evidence, for its decision to
9 cease divestment under subsection (f).

10 (i) The cost associated with the activities of the Illinois
11 Investment Policy Board shall be borne by the boards of each
12 pension fund or investment board created under Article 15, 16,
13 or 22A of this Code.

14 (j) With respect to actions taken in compliance with this
15 Section, including all good-faith determinations regarding
16 companies as required by this Section, the retirement system
17 and Illinois Investment Policy Board are exempt from any
18 conflicting statutory or common law obligations, including any
19 fiduciary duties under this Article and any obligations with
20 respect to choice of asset managers, investment funds, or
21 investments for the retirement system's securities portfolios.

22 (k) It is not the intent of the General Assembly in
23 enacting this amendatory Act of the 99th General Assembly to
24 cause divestiture from any company based in the United States
25 of America. The Illinois Investment Policy Board shall consider
26 this intent when developing or reviewing the list of restricted

1 companies.

2 (1) If any provision of this amendatory Act of the 99th
3 General Assembly or its application to any person or
4 circumstance is held invalid, the invalidity of that provision
5 or application does not affect other provisions or applications
6 of this amendatory Act of the 99th General Assembly that can be
7 given effect without the invalid provision or application.

8 (m) If any provision of this amendatory Act of the 100th
9 General Assembly or its application to any person or
10 circumstance is held invalid, the invalidity of that provision
11 or application does not affect other provisions or applications
12 of this amendatory Act of the 100th General Assembly that can
13 be given effect without the invalid provision or application.

14 (Source: P.A. 99-128, eff. 7-23-15.)".