

HB3428



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3428

by Rep. Elizabeth Hernandez

SYNOPSIS AS INTRODUCED:

40 ILCS 5/1-110.16

Amends the General Provisions Article of the Illinois Pension Code. Requires the Illinois Investment Policy Board to make its best efforts to identify all for-profit companies that contract to shelter migrant children and include those companies in the list of restricted companies for purposes of investment distributed to each retirement system and the Illinois State Board of Investment. Effective immediately.

LRB101 11065 RPS 56269 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

A BILL FOR

1 AN ACT concerning public employee benefits.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Pension Code is amended by changing
5 Section 1-110.16 as follows:

6 (40 ILCS 5/1-110.16)

7 Sec. 1-110.16. Transactions prohibited by retirement
8 systems; companies that boycott Israel, for-profit companies
9 that contract to shelter migrant children, Iran-restricted
10 companies, Sudan-restricted companies, and expatriated
11 entities.

12 (a) As used in this Section:

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

19 "Company" means any sole proprietorship, organization,
20 association, corporation, partnership, joint venture,
21 limited partnership, limited liability partnership,
22 limited liability company, or other entity or business
23 association, including all wholly owned subsidiaries,

1 majority-owned subsidiaries, parent companies, or
2 affiliates of those entities or business associations,
3 that exist for the purpose of making profit.

4 "Contract to shelter migrant children" means entering
5 into a contract with the federal government to shelter
6 migrant children under the federal Unaccompanied Alien
7 Children Program or a substantially similar federal
8 program.

9 "Illinois Investment Policy Board" means the board
10 established under subsection (b) of this Section.

11 "Direct holdings" in a company means all publicly
12 traded securities of that company that are held directly by
13 the retirement system in an actively managed account or
14 fund in which the retirement system owns all shares or
15 interests.

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

18 "Indirect holdings" in a company means all securities
19 of that company that are held in an account or fund, such
20 as a mutual fund, managed by one or more persons not
21 employed by the retirement system, in which the retirement
22 system owns shares or interests together with other
23 investors not subject to the provisions of this Section or
24 that are held in an index fund.

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

1 "Private market fund" means any private equity fund,
2 private equity funds of funds, venture capital fund, hedge
3 fund, hedge fund of funds, real estate fund, or other
4 investment vehicle that is not publicly traded.

5 "Restricted companies" means companies that boycott
6 Israel, for-profit companies that contract to shelter
7 migrant children, Iran-restricted companies,
8 Sudan-restricted companies, and expatriated entities.

9 "Retirement system" means a retirement system
10 established under Article 2, 14, 15, 16, or 18 of this Code
11 or the Illinois State Board of Investment.

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

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

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

23 (d) By April 1, 2016, the Illinois Investment Policy Board
24 shall make its best efforts to identify all Iran-restricted
25 companies, Sudan-restricted companies, and companies that
26 boycott Israel and assemble those identified companies into a

1 list of restricted companies, to be distributed to each
2 retirement system.

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

5 (1) reviewing and relying on publicly available
6 information regarding Iran-restricted companies,
7 Sudan-restricted companies, and companies that boycott
8 Israel, including information provided by nonprofit
9 organizations, research firms, and government entities;

10 (2) contacting asset managers contracted by the
11 retirement systems that invest in Iran-restricted
12 companies, Sudan-restricted companies, and companies that
13 boycott Israel;

14 (3) contacting other institutional investors that have
15 divested from or engaged with Iran-restricted companies,
16 Sudan-restricted companies, and companies that boycott
17 Israel; and

18 (4) retaining an independent research firm to identify
19 Iran-restricted companies, Sudan-restricted companies, and
20 companies that boycott Israel.

21 The Illinois Investment Policy Board shall review the list
22 of restricted companies on a quarterly basis based on evolving
23 information from, among other sources, those listed in this
24 subsection (d) and distribute any updates to the list of
25 restricted companies to the retirement systems and the State
26 Treasurer.

1 By April 1, 2018, the Illinois Investment Policy Board
2 shall make its best efforts to identify all expatriated
3 entities and include those companies in the list of restricted
4 companies distributed to each retirement system and the State
5 Treasurer. These efforts shall include the following, as
6 appropriate in the Illinois Investment Policy Board's
7 judgment:

8 (1) reviewing and relying on publicly available
9 information regarding expatriated entities, including
10 information provided by nonprofit organizations, research
11 firms, and government entities;

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

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

16 (4) retaining an independent research firm to identify
17 expatriated entities.

18 By July 1, 2020, the Illinois Investment Policy Board shall
19 make its best efforts to identify all for-profit companies that
20 contract to shelter migrant children and include those
21 companies in the list of restricted companies distributed to
22 each retirement system. These efforts shall include the
23 following, as appropriate in the Illinois Investment Policy
24 Board's judgment:

25 (1) reviewing and relying on publicly available
26 information regarding for-profit companies that contract

1 to shelter migrant children, including information
2 provided by nonprofit organizations, research firms, and
3 government entities;

4 (2) contacting asset managers contracted by the
5 retirement systems that invest in for-profit companies
6 that contract to shelter migrant children;

7 (3) contacting other institutional investors that have
8 divested from or engaged with for-profit companies that
9 contract to shelter migrant children; and

10 (4) retaining an independent research firm to identify
11 for-profit companies that contract to shelter migrant
12 children.

13 (e) The Illinois Investment Policy Board shall adhere to
14 the following procedures for companies on the list of
15 restricted companies:

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

21 (2) If, following the Illinois Investment Policy
22 Board's engagement pursuant to this subsection (e) with a
23 restricted company, that company ceases activity that
24 designates the company to be an Iran-restricted company, a
25 Sudan-restricted company, a company that boycotts Israel,
26 or an expatriated entity, the company shall be removed from

1 the list of restricted companies and the provisions of this
2 Section shall cease to apply to it unless it resumes such
3 activities.

4 (f) Except as provided in subsection (f-1) of this Section
5 the retirement system shall adhere to the following procedures
6 for companies on the list of restricted companies:

7 (1) The retirement system shall identify those
8 companies on the list of restricted companies in which the
9 retirement system owns direct holdings and indirect
10 holdings.

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

18 (3) The retirement system may not acquire securities of
19 restricted companies.

20 (4) The provisions of this subsection (f) do not apply
21 to the retirement system's indirect holdings or private
22 market funds. The Illinois Investment Policy Board shall
23 submit letters to the managers of those investment funds
24 containing restricted companies requesting that they
25 consider removing the companies from the fund or create a
26 similar actively managed fund having indirect holdings

1 devoid of the companies. If the manager creates a similar
2 fund, the retirement system shall replace all applicable
3 investments with investments in the similar fund in an
4 expedited timeframe consistent with prudent investing
5 standards.

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

9 (1) To the extent that the retirement system believes
10 that shareholder activism would be more impactful than
11 divestment, the retirement system shall have the authority
12 to engage with a restricted company prior to divesting.

13 (2) Subject to any applicable State or Federal laws,
14 methods of shareholder activism utilized by the retirement
15 system may include, but are not limited to, bringing
16 shareholder resolutions and proxy voting on shareholder
17 resolutions.

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

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

24 (g) Upon request, and by April 1 of each year, each
25 retirement system shall provide the Illinois Investment Policy
26 Board with information regarding investments sold, redeemed,

1 divested, or withdrawn in compliance with this Section.

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

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

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

26 (k) It is not the intent of the General Assembly in

1 enacting this amendatory Act of the 99th General Assembly to
2 cause divestiture from any company based in the United States
3 of America. The Illinois Investment Policy Board shall consider
4 this intent when developing or reviewing the list of restricted
5 companies.

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

12 ~~(m) If any provision of Public Act 100-551 ~~this amendatory~~
13 ~~Act of the 100th General Assembly~~ or its application to any
14 person or circumstance is held invalid, the invalidity of that
15 provision or application does not affect other provisions or
16 applications of Public Act 100-551 ~~this amendatory Act of the~~
17 ~~100th General Assembly~~ that can be given effect without the
18 invalid provision or application.~~

19 If any provision of this amendatory Act of the 101st
20 General Assembly or its application to any person or
21 circumstance is held invalid, the invalidity of that provision
22 or application does not affect other provisions or applications
23 of this amendatory Act of the 101st General Assembly that can
24 be given effect without the invalid provision or application.

25 (Source: P.A. 99-128, eff. 7-23-15; 100-551, eff. 1-1-18.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.