An act to amend Section 16642 of, and to add Section 7513.76 to, the Government Code, relating to state public retirement systems.

LEGISLATIVE COUNSEL’S DIGEST

AB 33, as introduced, Bonta. State public retirement systems: divestiture from private prison 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 private prison company, as defined. This bill would require the boards to liquidate investments in private prison companies on or before July 1, 2020, and would require the boards, in making a determination to liquidate investments, to
constructively engage with private prison companies to establish whether the companies are transitioning their business models to another industry. 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 constitution. 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. The bill would make related legislative findings and declarations.


The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:
(1) The Trump Administration has introduced cruel immigration policies separating innocent children from their families.
(2) Thousands of adults and children have been detained in two for-profit, private prison facilities operating outside of San Antonio, Texas.
(3) In November, 2018, the board of the California State Teachers' Retirement System (CalSTRS) voted to withdraw $12.1 million invested in the two largest for-profit, private prison companies.
(4) In taking this action, CalSTRS joins other large United States public pension funds that are divesting from for-profit, private prison companies, including funds in Illinois, New Jersey, New York, and Pennsylvania.
(5) Private prison companies have incentives to maximize their profits and to minimize their costs, including the important costs of investments in programs, services, and rehabilitation efforts for inmates. These companies have a duty to shareholders, not to California.

(b) As one part of the state’s broader efforts to redirect the criminal justice system to value and prioritize effective prison rehabilitation programs, this measure would require boards of administration of the Public Employees’ Retirement System and
CalSTRS, consistent with their fiduciary responsibilities, to divest their holdings of private prison companies.

SEC. 2. Section 7513.76 is added to the Government Code, to read:

7513.76. (a) As used in this section:

(1) “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.

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

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

(4) “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.

(5) “Private prison company” means a company that generates the majority of its revenue from operating, managing, or contracting as a prison or detention center.

(b) The board shall not make additional or new investments or renew existing investments of public employee retirement funds in a private prison company.

(c) The board shall liquidate investments in a private prison company on or before July 1, 2020. In making a determination to liquidate investments, the board shall constructively engage with the private prison company to establish if the company is transitioning its business model to another industry.

(d) Nothing in this section shall require a board to take action unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board described in Section 17 of Article XVI of the California Constitution.

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

16642. Present, future, and former board members of the Public Employees’ Retirement System or the State Teachers’ Retirement System, jointly and individually, state officers and employees,
research firms described in subdivision (d) of Section 7513.6, and
investment managers under contract with the Public Employees’
Retirement System or the State Teachers’ Retirement System shall
be indemnified from the General Fund and held harmless by the
State of California from all claims, demands, suits, actions,
damages, judgments, costs, charges and expenses, including court
costs and attorney’s fees, and against all liability, losses, and
damages of any nature whatsoever that these present, future, or
former board members, officers, employees, research firms as
described in subdivision (d) of Section 7513.6, or contract
investment managers shall or may at any time sustain by reason
of any decision to restrict, reduce, or eliminate investments
pursuant to Sections 7513.6, 7513.7, and 7513.75, 7513.75, and
7513.76.