

STATE OF NEW YORK

8271

2021-2022 Regular Sessions

IN ASSEMBLY

August 25, 2021

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law and the state finance law, in relation to limitations on investments of public pension funds and state contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 423 of the retirement and social security law, as
2 amended by chapter 770 of the laws of 1970, is amended to read as
3 follows:

4 § 423. Investments. [~~a-~~] 1. On and after April first, nineteen
5 hundred sixty-seven, the comptroller shall invest the available monies
6 of the common retirement fund in any investments and securities author-
7 ized by law for each retirement system and shall hold such investments
8 in his or her name as trustee of such fund, notwithstanding any other
9 provision of this chapter. Participating interests in such investments
10 shall be credited to each retirement system in the manner and at the
11 time specified in [~~paragraph~~] subdivision two of section four hundred
12 twenty-two of this article.

13 [~~b-~~] 2. (a) To assist in the management of the monies of the common
14 retirement fund, the comptroller shall appoint an investment advisory
15 committee consisting of not less than seven members who shall serve for
16 his or her term of office. A vacancy occurring from any cause other than
17 expiration of term shall be filled by the comptroller for the remainder
18 of the term. Each member of the committee shall be experienced in the
19 field of investments and shall have served, or shall be serving, as a
20 senior officer or member of the board of an insurance company, banking
21 corporation or other financial or investment organization authorized to
22 do business in the state of New York. The committee shall advise the
23 comptroller on investment policies relating to the monies of the common
24 retirement fund and shall review, from time to time, the investment

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

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1 portfolio of the fund and make such recommendations as may be deemed
2 necessary.

3 (b) The comptroller shall appoint a separate mortgage advisory commit-
4 tee, with the advice and consent of the investment advisory committee,
5 to review proposed mortgage and real estate investments by the common
6 retirement fund. In making investments, as authorized by law, the comp-
7 troller shall be guided by policies established by each committee from
8 time to time; and, in the event the mortgage advisory committee disap-
9 proves a proposed mortgage or real estate investment, such shall not be
10 made.

11 (c) No officer or employee of any state department or agency shall be
12 eligible for membership on either committee. Each committee shall
13 convene periodically on call of the comptroller, or on call of the
14 chairman. The members of each committee shall be entitled to reimburse-
15 ment for their actual and necessary expenses but shall receive no
16 compensation for their services.

17 3. Notwithstanding any provision of law to the contrary, the comp-
18 troller shall not directly invest the available monies of the common
19 retirement fund in any stocks, securities, equities, assets or other
20 obligations of any corporation or company, or any subsidiary, affiliate
21 or parent of any corporation or company, engaged in the boycott of Isra-
22 el, including Iran-restricted companies and Sudan-restricted companies.
23 The comptroller shall, in accordance with sound investment criteria and
24 consistent with his or her fiduciary obligations, divest any such
25 stocks, securities, equities, assets or other obligations in accordance
26 with section four hundred twenty-three-d of this article.

27 § 2. The retirement and social security law is amended by adding a new
28 section 423-d to read as follows:

29 § 423-d. Prohibited transactions; companies that boycott Israel, Iran-
30 restricted companies and Sudan-restricted companies. 1. Definitions.
31 For the purposes of this section the following terms shall have the
32 following meanings:

33 a. "boycott Israel" shall mean engaging in actions that are poli-
34 tically motivated and are intended to penalize, inflict economic harm
35 on, or otherwise limit commercial relations with the state of Israel or
36 corporations or companies based in the state of Israel;

37 b. "direct investment" shall mean ownership of an individual stock,
38 security, equity, asset, or other obligation of a corporation or compa-
39 ny;

40 c. "exclusion list" shall mean the list created pursuant to paragraph
41 a of subdivision two of this section;

42 d. "indirect investment" shall mean all securities of a corporation or
43 company which are held in an account or fund managed by one or more
44 persons not employed by the employees' retirement system, in which such
45 retirement system owns shares or interests together with other investors
46 not subject to the provisions of this section;

47 e. "Iran-restricted company" shall mean a corporation or company: (i)
48 engaged in business operations involving contracts with, or the
49 provision of supplies or services to, the government of Iran; (ii) in
50 which the government of Iran has any direct or indirect equity share; or
51 (iii) involved in a project or consortium commissioned by the government
52 of Iran; and:

53 (1) more than ten percent of revenue produced in or assets located in
54 Iran involve oil-related activities or mineral-extraction activities;

55 (2) less than seventy-five percent of revenue produced in or assets
56 located in Iran involve contracts with, or provisions of oil-related or

1 mineral-extraction products or services to, the government of Iran, or a
2 project or consortium created exclusively by such government; and

3 (3) such company, project or consortium invests twenty million dollars
4 or more in any one year period, that directly or significantly contrib-
5 utes to the enhancement of Iran's ability to develop petroleum
6 resources.

7 f. "Sudan-restricted company" shall mean a corporation or company: (i)
8 engaged in business operations involving contracts with, or the
9 provision of supplies or services to, the government of Sudan; (ii) in
10 which the government of Sudan has any direct or indirect equity share;
11 (iii) involved in a project or consortium commissioned by the government
12 of Sudan; (iv) wholly or partially managed or controlled by the govern-
13 ment of Sudan; (v) identified by the federal office of foreign assets
14 control as sponsoring terrorist activities in Sudan; and (vi) that is
15 established or organized under the laws of Sudan or whose principal
16 place of business is in Sudan.

17 2. Exclusion list. a. Within six months of the effective date of this
18 section, the comptroller shall create an exclusion list of all Iran-res-
19 tricted companies, Sudan-restricted companies and companies that boycott
20 Israel in which stocks, securities, equities, assets or other obli-
21 gations the common retirement fund has any moneys or assets directly
22 invested.

23 b. Upon completion, such exclusion list shall be made publicly avail-
24 able and a copy shall be sent to the governor, the temporary president
25 of the senate and the speaker of the assembly.

26 c. The comptroller shall submit notification to any corporation or
27 company that has been included in the exclusion list, informing them of
28 their inclusion, as well as the requirements of subdivisions three and
29 five of this section.

30 d. No later than one year after the completion of the exclusion list,
31 and no less frequently than quarterly thereafter, the comptroller shall
32 update the exclusion list to remove any corporation or company that is
33 no longer an Iran-restricted company, Sudan-restricted company or a
34 company that boycotts Israel and shall add any corporation or company
35 necessary to comply with paragraph a of this subdivision, with the
36 exception of such corporations or companies removed from the exclusion
37 list pursuant to paragraph b of subdivision four of this section.

38 3. Removal from the exclusion list. a. At any time following the
39 publication of the exclusion list, any corporation or company included
40 in such exclusion list may submit to the comptroller a request for
41 removal on the basis of clear and convincing evidence that they are not
42 currently an Iran-restricted company, Sudan-restricted company or a
43 company that boycotts Israel, as such terms are defined in subdivision
44 one of this section.

45 b. Upon satisfaction that a corporation or company has met the
46 requirements of paragraph a of this subdivision, the comptroller shall
47 remove such corporation or company from the exclusion list and shall
48 provide a written explanation for such removal to the governor, the
49 temporary president of the senate and the speaker of the assembly.

50 4. Determination of divestment. a. Within one year from the completion
51 of the exclusion list the comptroller shall, in accordance with sound
52 investment criteria and consistent with his or her fiduciary obli-
53 gations, determine whether divestment from any corporation or company on
54 the exclusion list pursuant to subdivision five of this section complies
55 with his or her fiduciary obligations.

1 b. If the comptroller determines that divestment from any corporation
2 or company on the exclusion list does not comply with his or her fiduci-
3 ary obligations, that corporation or company shall be removed from the
4 exclusion list.

5 c. Subject to the comptroller's discretion, but no later than three
6 years from the effective date of this section, and every three years
7 thereafter, any corporations or companies removed from the exclusion
8 list pursuant to paragraph b of this subdivision shall be returned to
9 the exclusion list, subject to a new determination issued at that time
10 pursuant to paragraph a of this subdivision.

11 5. Divestment. Within one year after the effective date of this
12 section, in accordance with sound investment criteria and consistent
13 with his or her fiduciary obligations, the comptroller shall: a. divest
14 the common retirement fund of any stocks, securities, equities, assets,
15 or other obligations of corporations or companies on the exclusion list
16 in which any moneys or assets of the common retirement fund are directly
17 invested;

18 b. cease new direct investments of any moneys or assets of the common
19 retirement fund in any stocks, securities, or other obligations of any
20 corporation or company that is an Iran-restricted company, Sudan-res-
21 tricted company or a company that boycotts Israel; and

22 c. ensure that no moneys or assets of the common retirement fund are
23 indirectly invested unless he or she is satisfied on reasonable grounds
24 that such indirect investment vehicle is unlikely to have in excess of
25 one-half of one percent of its assets, averaged annually, directly or
26 indirectly invested in an Iran-restricted company, Sudan-restricted
27 company or a company that boycotts Israel.

28 § 3. The state finance law is amended by adding a new section 139-m to
29 read as follows:

30 § 139-m. Disqualification to contract with state; companies that
31 boycott Israel, Iran-restricted companies and Sudan-restricted compa-
32 nies. 1. As used in this section, the following terms shall have the
33 following meanings:

34 a. "boycott Israel" shall mean engaging in actions that are poli-
35 tically motivated and are intended to penalize, inflict economic harm
36 on, or otherwise limit commercial relations with the state of Israel or
37 corporations or companies based in the state of Israel;

38 b. "Iran-restricted company" shall mean a corporation or company: (i)
39 engaged in business operations involving contracts with, or the
40 provision of supplies or services to, the government of Iran; (ii) in
41 which the government of Iran has any direct or indirect equity share; or
42 (iii) involved in a project or consortium commissioned by the government
43 of Iran; and:

44 (1) more than ten percent of revenue produced in or assets located in
45 Iran involve oil-related activities or mineral-extraction activities;

46 (2) less than seventy-five percent of revenue produced in or assets
47 located in Iran involve contracts with, or provisions of oil-related or
48 mineral-extraction products or services to, the government of Iran, or a
49 project or consortium created exclusively by such government; and

50 (3) such company, project or consortium invests twenty million dollars
51 or more in any one year period, that directly or significantly contrib-
52 utes to the enhancement of Iran's ability to develop petroleum
53 resources.

54 c. "Sudan-restricted company" shall mean a corporation or company: (i)
55 engaged in business operations involving contracts with, or the
56 provision of supplies or services to, the government of Sudan; (ii) in

1 which the government of Sudan has any direct or indirect equity share;
2 (iii) involved in a project or consortium commissioned by the government
3 of Sudan; (iv) wholly or partially managed or controlled by the govern-
4 ment of Sudan; (v) identified by the federal office of foreign assets
5 control as sponsoring terrorist activities in Sudan; and (vi) that is
6 established or organized under the laws of Sudan or whose principal
7 place of business is in Sudan.

8 2. Any firm, partnership or corporation that boycotts Israel, is an
9 Iran-restricted company or is a Sudan-restricted company, shall be
10 disqualified from thereafter selling to or submitting bids to or receiv-
11 ing awards from or entering into any contracts with the state or any
12 public department, agency or official thereof, for goods, work or
13 services.

14 3. When any firm, partnership or corporation submits a bid to enter
15 into any contract with the state or any public department, agency or
16 official thereof, for goods, work or services, the commissioner of taxa-
17 tion and finance shall, before accepting any bid from such firm, part-
18 nership or corporation, confirm that such firm, partnership or corpo-
19 ration is not a company that boycotts Israel, an Iran-restricted company
20 or a Sudan-restricted company. If the commissioner of taxation and
21 finance determines that such firm, partnership or corporation is a
22 company that boycotts Israel, an Iran-restricted company or a Sudan-res-
23 tricted company, then such company shall be prohibited from entering
24 into a contract with the state pursuant to subdivision one of this
25 section.

26 § 4. This act shall take effect immediately.