BILL NUMBER: SB 1173 (Gonzalez) as introduced February 17, 2022

SUMMARY

SB 1173 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, 2027. Commencing February 1, 2024, SB 1173 also requires an annual report to be submitted to the Legislature and Governor with specified information. It also indemnifies present, former and future board members, officers and employees of and investment managers under contract with those retirement systems for actions related to the bill.

BOARD POSITION

Oppose. 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.

REASON FOR THE BILL

As stated in the findings and declarations of the bill, the combustion of coal, oil and natural gas, known as fossil fuels, is the single largest contributor to global climate change, and it affects all parts of the California economy and environment. In addition, the purpose is to require CalSTRS and CalPERS to divest their holdings of fossil fuel company investments as part of the state's broader efforts to decarbonize the California economy and to transition to clean, pollution-free energy resources.

ANALYSIS

Existing Law:

Under the provisions of Section 17 of Article XVI of the California Constitution, as amended by Proposition 162 of 1992, the CalSTRS board has plenary authority and fiduciary responsibility over the investment of retirement plan assets and is required to discharge its duties solely in the interests of its members and beneficiaries for the exclusive purpose of providing benefits. The board must invest the assets of the plan with the care, skill and diligence of a prudent person engaged in a similar enterprise so as to maximize the investment gains and minimize the risk of loss. When considering investments, the preservation of principal and maximization of income is the primary and underlying criteria for the selection and retention of securities. The Constitution states, however, that the Legislature may by statute prohibit certain investments by a retirement board when it is in the public interest to do so and provided the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board.

This Bill:

Specifically, SB 1173:

- Among other terms, defines “fossil fuel company” as one of the 200 largest publicly traded fossil fuel companies, as established by carbon content in the companies’ proven oil, gas and coal reserves.
- Prohibits the board from making additional or new investments or renewing existing investments in a fossil fuel company.
- Requires the board to liquidate investments in a fossil fuel company on or before July 1, 2027.
- Requires the board to submit an annual report to the Legislature and the Governor and to post the report on the board’s website commencing February 1, 2024, listing the fossil fuel companies from which the board has liquidated its investments, the fossil fuel companies from which the board still has not liquidated its investments, and the fossil fuel companies from which the board has not liquidated its investments because to do so would be inconsistent with its fiduciary responsibilities.
- Indemnifies present, former and future board members, officers and employees of and investment managers under contract with CalSTRS for actions related to this bill.
- Specifies that this bill does not require the board to take any action unless the board determines the action to be consistent with its fiduciary responsibilities under Section 17 of Article XVI of the California Constitution.

The board's policy is to oppose legislation that restricts its ability to invest in specific areas because, as described in its divestment policy, such restrictions could impair the board’s ability to exercise its fiduciary obligation to act exclusively for the benefit of the retirement plan members and beneficiaries. Divestment carries the risk of adversely affecting an investment portfolio. This is especially concerning as investment returns affect the CalSTRS Funding Plan (AB 1469–Bonta), which placed CalSTRS on a trajectory toward full funding.

CalSTRS shares the sense of urgency regarding climate change and is focused on understanding and responding to the risks it presents, both to the CalSTRS Investment Portfolio and to sustainable economic growth. Divestment is a blunt instrument and a last resort action that can have a lasting negative impact on the health of the Teachers’ Retirement Fund, while also severely limiting CalSTRS’ ability to shape corporate behavior for long-term sustainable growth. If CalSTRS divests of a company and some other entity acquires those shares, CalSTRS no longer has a seat at the table and cannot influence change in that company.

By requiring both CalSTRS and CalPERS to divest from fossil fuel companies, SB 1173 would severely hinder the future success of institutional investor collaborations to effect meaningful change in the fossil fuel industry. Had such measures already been in place, the recently successful efforts to hold the ExxonMobil board accountable and elect new climate-conscious board members would have been much less likely. As the demand for energy continues to grow, it is important that long-term investors, such as CalSTRS, actively engage fossil fuel companies and the sectors that currently rely on fossil fuels, such as utilities and transportation, to transition their business models to cleaner forms of energy and to minimize the environmental impacts of their operations and products. It is not plausible to meet the world’s growing energy demand immediately from renewable sources.

Preventing such engagements is just one way SB 1173 would undercut CalSTRS' efforts to influence the broad market to make transformational changes needed to achieve a net zero emissions world. CalSTRS would also be required to acquire expertise and develop methodologies for determining the carbon content for every company in its portfolio, constantly monitor these companies and make all necessary transactions in order to avoid investing in the largest 200, which would change at any given moment. Not only would such an exercise be shortsighted, but it would also be resource intensive and, thus, limit staff's ability to implement every other aspect of CalSTRS' Net Zero Pledge.

For example, while the burning of coal, natural gas and oil for electricity and heat is the largest single source of global greenhouse gas emissions, representing 25% of emissions, another 24% comes from agriculture, forestry and other land uses. CalSTRS' net zero commitment takes a comprehensive view of how climate change is impacting multiple sectors. A narrow focus on the fossil fuel industry only captures a portion of the much larger carbon emissions challenge and detracts from developing a broader understanding of how the low-carbon transition affects the global economy and the CalSTRS' investment universe.

As with all other laws that restrict CalSTRS' investment authority, SB 1173 provides that, per the California Constitution, the board shall not be required to take action unless the board determines in good faith that the action is consistent with its fiduciary responsibilities. Accordingly, and consistent with its divestment policy, CalSTRS has responded to previously enacted bills by rigorously evaluating *all* relevant factors and only divesting after determining that retaining the asset would pose an economic risk or was de minimis to the plan. CalSTRS has also initiated the divestment policy in the absence of legislation, most notably regarding tobacco. Similarly, CalSTRS only divested when, after a thorough financial analysis considering *all* factors, such an action was deemed to be consistent with its fiduciary responsibilities.

By preventing CalSTRS from investing in 200 companies based *solely* on the carbon content in their proven fossil fuel reserves, SB 1173, however, would be significantly more challenging than all previous divestment measures. Such an arbitrary requirement, which lacks investment or financial rigor to the individual investment, would likely infringe upon the board's constitutionally enshrined fiduciary duties to administer the plan exclusively for the benefit of members and beneficiaries with the care, skill and diligence of a prudent person. As a long-term investor, CalSTRS must weigh *all* relevant considerations through the lens of economic risk to minimize the risk of loss and to maximize the rate of return. As a result, SB 1173 would place the CalSTRS board under a tremendous amount of pressure to ignore its own divestment policy and its own fiduciary responsibilities.

Finally, CalSTRS follows an investment strategy, adopted by the board, of diversification and passive index management that does not generally exclude or include any investments in companies, industries or geographic areas. SB 1173 would require CalSTRS to actively exclude new, additional or renewed investments in fossil fuel companies, reducing the diversification of the portfolio, increasing risk, and creating opportunity costs as well as costs to customize benchmark indices. While a specific investment restriction may be intended to address a concern associated with only a fraction of the portfolio, there can be cumulative effects from multiple investment restrictions that may even require the board to reevaluate its assumed investment return and lead to contribution rate increases.

LEGISLATIVE HISTORY

SB 185 (De León, Chapter 605, Statutes of 2015) required the CalSTRS and CalPERS boards to engage with thermal coal companies, as defined, and to divest the public employee retirement funds of any investments in thermal coal companies and prohibited additional or new investments or the renewal of existing investments in thermal coal companies.

PROGRAM BACKGROUND

ESG Policy

CalSTRS has its own well-established and longstanding process for thoroughly vetting the environmental, social and governance (ESG) risks of potential investments. The board adopted its Statement of Investment Responsibility in 1978, making CalSTRS an industry leader as one of the first pension funds to adopt a written policy to navigate these complex issues. As a key component of that process, the board has developed a list of risk factors as part of its Investment Policy for Mitigating ESG Risks. The ESG Risk Factors help the board to identify and evaluate investment risks relating to the existence of certain conditions, such as recognition of the rule of law, shareholder rights, human rights, the environment, acts of terrorism and other unsustainable practices and governance crises with the potential to hurt long-term profits.

Divestment Policy

In addition to the CalSTRS ESG policy, the board has adopted a Divestment Policy, focusing on engagement, to respond to external or internal initiatives to divest of specific companies or industries. In accordance with this policy, CalSTRS has historically taken the position that active and direct engagement is the best way to resolve issues. Divestment bears the risk of adversely affecting an investment portfolio and severs any chance to advance positive change through shareholder advocacy. Meetings with shareowners and senior management, or the board of directors, are generally more effective in bringing about change in a corporation. Under the policy, the board will only consider divestment after all efforts at engagement have failed, and only then in cases where at least one of the ESG Risk Factors is violated over a sustained timeframe to the extent that it becomes an economic risk to the fund, creates a potential for material loss of revenue and weakens the trust of a significant portion of CalSTRS members. Finally, the Divestment Policy sets forth that the board will only instruct staff to divest of a security when it determines that continuing to hold a security is imprudent and inconsistent with its fiduciary duty.

Net Zero Pledge

On September 1, 2021, the CalSTRS board adopted a Net Zero Pledge that commits to achieve a net zero portfolio by 2050 or sooner. CalSTRS recognizes the risks and opportunities presented by the foreseeable transition to a low-carbon economy, as well as the global acceleration towards alignment with the science-based emissions targets of the Paris Climate Agreement. The net zero portfolio emissions pledge is the continuation of CalSTRS' long history of climate risk integration into the investment portfolio. The pledge is the first part of a four-part implementation framework to chart the path to net zero, consistent with the United Nations' Race to Zero campaign. The second part of the implementation framework is to develop a Net Zero Action Plan that will establish a baseline and milestones for managing emissions-related risks, expand investments in low-carbon solutions, and drive ongoing engagement with companies in the portfolio to promote a responsible net zero transition. The third part will establish actions for the next year to ensure clear internal governance structures; appropriate methodologies and frameworks to support net zero commitments; portfolio emissions measurement; and interim goals. The fourth part will provide and encourage regular reporting on progress toward net zero investments.

CalSTRS Expands Investments in Climate Solutions
In March 2021, the CalSTRS board approved a new portfolio focused on sustainable and low-carbon investments to private assets. The portfolio will invest $1 billion to $2 billion into private markets in the first few years, initially focusing on affordable housing opportunities and low-carbon solutions relating to energy, technology-enabled resource efficiency, water and waste management, land and agriculture management, and food security. This action by the board builds on a long history by CalSTRS of investing in climate solutions in support of the global energy transition.

ExxonMobil Board
In December 2020, CalSTRS came out in support of Engine No. 1's campaign to elect new ExxonMobil board candidates with specific expertise for a decarbonizing world. On May 26, 2021, ExxonMobil elected three directors to the board, nominated by investment manager Engine No. 1. This resulted from a targeted approach to engagement that employs collaboration with our investment partners and influence as dependable long-term investors to reach our goal of net zero by 2050 or sooner.

Climate Action 100+ (CA100)
CalSTRS is a lead signatory of the Climate Action 100+ (CA100), an initiative of more than 600 investors with a goal to mitigate investment exposure to climate risk and secure ongoing sustainable returns for their beneficiaries. Since CA100 launched, 111 companies have set net zero commitments, which equates to over a quarter of the global greenhouse gas emissions today.

California Climate Investment Framework
On September 20, 2019, Governor Gavin Newsom issued Executive Order N-19-19, which directed the Department of Finance to develop a Climate Investment Framework in collaboration with CalSTRS, CalPERS and the University of California Retirement Program. The framework was published on September 24, 2020, and recommended the Governor create a climate risk disclosure working group, the state sign onto the Coalition for Climate Resilient Investment, and the state's pension funds invest additional funds in low-carbon strategies.

California Climate-related Risk Disclosure Advisory Group and State Steering Committee
CalSTRS is a participant in the California Climate-related Risk Disclosure Advisory Group and State Steering Committee, which are led by the Governor's Office of Planning and Research. The advisory group and committee are charged with developing recommendations for climate risk reporting in California.

Sustainability Accounting Standards Board
CalSTRS was an inaugural board member and continues to be a critical participant and supporter of the Sustainability Accounting Standards Board (SASB). SASB was formed to fill a void in corporate reporting to identify the financial impacts of sustainability issues. The work of SASB has pushed the market towards greater climate related disclosure. While these standards are voluntary, more than 50% of companies in the S&P Global 1200 use them. Recently, the International Financial Reporting Standards Foundation announced the creation of the

International Sustainability Standards Board (ISSB). The ISSB will integrate and build on the work of SASB in establishing globally required sustainability reporting standards.

Task Force on Climate-related Financial Disclosures (TCFD)
The Financial Stability Board created the TCFD in 2015, and the TCFD issued a report containing climate-related financial disclosure recommendations in 2017. The recommendations fall into four thematic areas: governance, strategy, risk management and metrics. As of 2020, more than 1,500 organizations have expressed support for the TCFD framework, and almost 60% of the 100 largest global public companies either support the TCFD, report in line with the TCFD recommendations or both. CalSTRS actively engages companies and regulators, including through collective engagement via the Climate Action 100+ group, to adopt the recommendations of the TCFD in order to help investors price climate risk and reward climate innovation.

Green Initiative Task Force and Annual Report
CalSTRS established an environmentally focused Green Initiative Task Force in 2007, which produces an annual report to highlight environmental-themed investments, corporate governance and other environmental risk management efforts. As part of assessing environmental risks, CalSTRS considers not only how a particular investment affects the environment but also how the environment affects a particular investment. CalSTRS works with its external managers to recognize and manage environmental risks and, where appropriate, directly engages with portfolio companies. CalSTRS also collaborates with other investors to broaden engagement reach whenever possible. CalSTRS routinely submits environment-related shareholder proposals to companies held in its public equity portfolio to raise their level of environmental risk awareness. Staff also considers and votes all environment-related proposals in a manner that aligns with CalSTRS' objectives of improving disclosure and mitigating risk.

The Cost of Divestment
Between June 2000 and January 2010, CalSTRS divested from tobacco companies in the system's passive portfolios by removing the sector from benchmarks, as required by board policy. As of June 30, 2021, CalSTRS had enacted both board-directed and legislated divestment efforts related to tobacco, Iran, firearms, thermal coal and private prisons. CalSTRS also divested from securities related to Sudan from October 2008 to February 2021. Staff estimates, since fully divesting tobacco in 2010, firearms in 2013, U.S. thermal coal in 2016, non-U.S. thermal coal in 2017 and private prisons in 2018, the CalSTRS Investment Portfolio, which is benchmarked against custom indexes that exclude those sectors, has underperformed standard indexes that include securities restricted by CalSTRS by 1.09%, which represents roughly $3.37 billion. Staff estimates the total compounded cost of all divestments, to date, and the prior restricting of tobacco under the prior benchmark modification policy is approximately $8.98 billion.

Thermal Coal Divestment
At its April 2015 meeting, the CalSTRS' Investment Committee initiated a 10-month research and engagement process that culminated in the divestment from thermal coal companies because divestment was consistent with CalSTRS' fiduciary responsibilities. The board determined that given the financial state of the industry, the movement of the regulatory landscape and coal's impact on the environment, its presence reflected a loss of value. Chapter 605, Statutes of 2015 (SB 185−De León), required the CalSTRS and CalPERS boards to engage with thermal coal companies, as defined, and to divest the public employee retirement funds of any investments in thermal coal companies and prohibited additional or new investments or the renewal of existing

investments in thermal coal companies. The bill defined “thermal coal company” as a publicly traded company that generates 50% or more of its revenue from the mining of thermal coal. Although the board's policy generally would be to oppose legislation that infringes on the investment authority of the board, the board held no position on this legislation due to its ongoing decision to divest from thermal coal companies. The board exercised its plenary authority and fiduciary responsibility to divest from companies that produce 50% or more of their revenue from the sale of thermal coal, in alignment with SB 185. Staff further lowered the revenue threshold to divest from companies that produce 25% or more of their revenue from the sale of thermal coal.

FISCAL IMPACT

Program Cost – CalSTRS must determine, as fiduciaries, the best approach to calculate its exposure to fossil fuel companies. To that end, the exposure was determined by including companies that have fossil fuel reserves for energy application and sales being more than 1% of revenue. CalSTRS invests in 174 companies with a combined market value of approximately $4.1 billion that meet this definition. Fossil fuel divestment, combined with existing CalSTRS divestments, would create roughly a 1% tracking error, or deviation from the benchmark. Potential costs resulting from tracking error place the CalSTRS Funding Plan at risk. Any resulting costs would increase the unfunded liability and also may result in an increase in the state’s contribution to the Defined Benefit Program.

Administrative Costs/Savings – An estimated $11.6 million resulting from transaction costs for liquidating securities, benchmark modification costs, additional costs related to external research services and staff resources for implementation. Ongoing compliance will also require reallocation of staff resources.

SUPPORT

California Faculty Association (Sponsor)
Fossil Free California (Sponsor)
Youth vs Apocalypse

OPPOSITION

CalSTRS

ARGUMENTS

Pro: May reduce the perception that CalSTRS is contributing to climate change by investing in fossil fuel companies.

Con: May infringe upon the investment authority of the board.

Reduces the investable universe, potentially adversely affecting portfolio performance and risk.

Undercuts CalSTRS’ efforts to influence the market in a way that accelerates the global transition to a low-carbon economy.

Limits future opportunities for meaningful institutional investor engagement by CalSTRS and CalPERS.

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