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HOUSE BILL NO. 1460

Offered January 15, 2008

A BILL to govern the Virginia Retirement System's investments in certain companies related to state sponsors of terrorism.

Patrons—Moran and Sickles

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. § 1. Definitions.

As used in this act, the following definitions shall apply:

"Active business operations" means all business operations that are not inactive business operations.

"Business operations" means engaging in commerce in any form in a state sponsor of terrorism, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

"Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

"Complicit" means taking actions during any preceding 20-month period that have directly supported or promoted the current regime in a state sponsor of terrorism, including, but not limited to, preventing such state's victimized population from communicating with each other, encouraging such state's citizens and others to commit or support terrorist acts, actively working to deny, cover up, or alter the record on human rights abuses in a state sponsor of terrorism, providing weapons or materials to be used in the production of nuclear weapons or other weapons of mass destruction, or other similar actions.

"Direct holdings" in a company means all securities of that company held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

"Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

"Indirect holdings" in a company means all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this act.

"Military equipment" means weapons, arms, military supplies, and equipment that may readily be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services sold or provided directly or indirectly to the current regime in a state sponsor of terrorism.

"Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

"Power production activities" means any business operation that involves a project by an entity commissioned by the government of a state sponsor of terrorism whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

"Public fund" means the assets of the Virginia Retirement System or the Board of Trustees of that system.

"Scrutinized company" means any company that meets the criteria in subdivision 1, 2, or 3 below:

1. The company has business operations that involve contracts with or provision of supplies or services to:

(a) The government of a state sponsor of terrorism;

(b) Companies in which the government of a state sponsor of terrorism has any direct or indirect equity share; or

(c) *State sponsor of terrorism-commissioned consortiums or projects.*

2. *The company is complicit with a state sponsor of terrorism as defined above.*

3. *The company supplies military equipment to the government of a state sponsor of terrorism.*

Notwithstanding anything herein to the contrary, a social development company that is not complicit in a state sponsor of terrorism shall not be considered a scrutinized company.

"Social development company" means a company whose primary purpose in a state sponsor of terrorism is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are not oil-related or power production activities.

"State sponsor of terrorism" means a country or countries determined by the Secretary of State of the United States to have repeatedly provided support for acts of international terrorism, which country or countries have been designated pursuant to (i) § 6(j) of the Export Administration Act, (ii) § 40 of the Arms Export Control Act, or (iii) § 620A of the Foreign Assistance Act.

"Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations; undertaking significant humanitarian efforts on behalf of one or more marginalized populations of a state sponsor of terrorism; or, through engagement with the government of the state sponsor of terrorism, materially improving conditions for the victimized population in such state.

§ 2. Identification of companies.

Within 90 days following passage of this Act, the public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts shall include, as appropriate:

1. Reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies with business operations in a state sponsor of terrorism, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

2. Contacting asset managers contracted by the public fund that invest in companies with business operations in a state sponsor of terrorism; and

3. Contacting other institutional investors that have divested from and/or engaged with companies that have business operations in a state sponsor of terrorism.

By the first meeting of the public fund following the 90-day period described in this section, the public fund shall assemble all scrutinized companies identified into a "scrutinized companies list."

The public fund shall update the scrutinized companies list on a semi-annual basis based on evolving information from, among other sources, those listed in this section.

§ 3. Required actions.

The public fund shall adhere to the following procedures for companies on the scrutinized companies list:

A. Engagement.

1. The public fund shall immediately determine the companies on the scrutinized companies list in which the public fund owns direct or indirect holdings.

2. For each company identified in subdivision 1 with only inactive business operations, the public fund shall send a written notice informing the company of this Act and encouraging it to continue to refrain from initiating active business operations in the state sponsor of terrorism until it is able to avoid scrutinized business operations. The public fund shall continue such correspondence on a semi-annual basis.

3. For each company newly identified in subdivision 1 with active business operations, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund. The notice shall offer the company the opportunity to clarify its state sponsor of terrorism-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the public fund.

4. If, within 90 days following the public fund's first engagement with a company pursuant to subdivision 3, that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and the provisions of this section shall cease to apply to it unless it resumes scrutinized business operations. If, within 90 days following the public fund's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to all provisions relating thereto.

B. Divestment.

1. If, after 90 days following the public fund's first engagement with a company pursuant to subdivision A 3, the company continues to have scrutinized active business operations, and only while

such company continues to have scrutinized active business operations, the public fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except as provided below, according to the following schedule: (i) at least 50 percent of such assets shall be removed from the public fund's assets under management by nine months after the company's most recent appearance on the scrutinized companies list, and (ii) 100 percent of such assets shall be removed from the public fund's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

2. If a company that ceased scrutinized active business operations following engagement pursuant to subdivision A 3 resumes such operations, the provisions of subdivision 1 shall immediately apply, and the public fund shall send a written notice to the company. The company shall also be immediately reintroduced onto the scrutinized companies list.

C. Prohibition.

At no time shall the public fund acquire securities of companies on the scrutinized companies list that have active business operations, except as provided in subsections D and E.

D. Exemption.

No company that the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to a state sponsor of terrorism shall be subject to divestment or investment prohibition pursuant to subsections B and C.

E. Excluded securities.

Notwithstanding anything herein to the contrary, subsections B and C shall not apply to indirect holdings in actively managed investment funds. The public fund shall, however, submit letters to the managers of such investment funds containing companies with scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund with indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards. For the purposes of this section, "private equity" funds shall be deemed to be actively managed investment funds.

§ 4. Reporting.

A. The public fund shall file a publicly available report to the General Assembly and Attorney General that includes the scrutinized companies list within 30 days after the list is created.

B. Annually thereafter, the public fund shall file a publicly available report to the General Assembly and Attorney General and send a copy of that report to the United States Department of State that includes:

1. A summary of correspondence with companies engaged by the public fund under subdivisions A 2 and A 3 of § 3;

2. All investments sold, redeemed, divested, or withdrawn in compliance with subdivision B 1 of § 3;

3. All prohibited investments under subsection C of § 3; and

4. Any progress made under subsection E of § 3.

§ 5. Provisions for expiration of Act.

This Act shall expire if the Congress or President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this Act interferes with the conduct of United States foreign policy.

§ 6. Other legal obligations.

All actions taken in compliance with this Act, including all good faith determinations regarding companies as required by this Act, shall be deemed within the standard of care outlined by the prudent person rule, and the public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the public fund's securities portfolios.

§ 7. Reinvestment in certain companies with scrutinized active business operations.

Notwithstanding anything herein to the contrary, the public fund shall be permitted to cease divesting from certain scrutinized companies pursuant to subsection B of § 3 and/or reinvest in certain scrutinized companies from which it divested pursuant to subsection B of § 3 if clear and convincing evidence shows that the value for all assets under management by the public fund becomes equal to or less than 99.50 percent (50 basis points) of the hypothetical value of all assets under management by the public fund assuming no divestment for any company had occurred under subsection B of § 3. Cessation of divestment, reinvestment, and/or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence. For any cessation of divestment, reinvestment, and/or subsequent ongoing investment authorized by this section, the public fund shall provide a written report to the General Assembly and Attorney General in advance of initial reinvestment, updated semi-annually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions

182 *to cease divestment, reinvest, and/or remain invested in companies with scrutinized active business*
183 *operations. This section has no application to reinvestment in companies on the grounds that they have*
184 *ceased to have scrutinized active business operations.*

185 *§ 8. Immunity.*

186 *With respect to all actions taken in good faith compliance with this act, a public fund, its board of*
187 *directors, individual board members, agents, trustees, officers, employees, custodians, and fiduciaries*
188 *shall be immune from any liability.*

189 *§ 9. Severability.*

190 *If any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of this*
191 *legislation or the application thereof to any person or circumstance is found to be invalid, illegal,*
192 *unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this*
193 *legislation shall remain effective and functional notwithstanding such invalidity, illegality,*
194 *unenforceability, or unconstitutionality. The General Assembly hereby declares that it would have passed*
195 *this legislation, and each provision, section, subsection, sentence, clause, phrase or word thereof,*
196 *irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses,*
197 *phrases, or words be declared invalid, illegal, unenforceable, or unconstitutional, including, but not*
198 *limited to, each of the engagement, divestment, and prohibition provisions of this legislation.*