

Date of Hearing: January 14, 2026

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT

Tina S. McKinnor, Chair

AB 1439 (Garcia) – As Amended March 24, 2025

SUBJECT: Public retirement systems: development projects: labor standards

SUMMARY: Establishes preconditions on public employee retirement system investments and financing of existing and new development projects in California, among other provisions. Specifically, **this bill**:

- 1) Establishes codified legislative findings and intent expressing that the development of projects in California that do not involve strong labor standards protections for workers is not in the public interest or the interests of the participants in and beneficiaries of public pension and retirement systems. Further establishes that the purpose of this proposed statute is to prohibit boards of public pension and retirement systems, consistent with, and not in violation of, their fiduciary responsibilities, from investing in California development projects that do not provide labor standards protections for workers.
- 2) Prohibits the board from making additional or new investments of public employee pension or retirement funds in development projects in California or provide financing for those projects, unless those projects include labor standards protections.
- 3) Defines the following terms:
 - a) “Board” to mean a retirement board of a public pension or retirement system, as specifically defined in the California Constitution.
 - b) “Labor standards protections” to mean:
 - (i) Construction work performed to carry out and maintain project development, subject to the same prevailing wage and apprenticeship standards that apply to projects under the Labor Code, as specified.
 - (ii) All construction and maintenance work for the development project will be performed only by contractors and subcontractors that have provided an enforceable commitment to use a skilled and trained workforce, as defined in the Public Contract Code, as specified, to perform all work that falls within the apprenticeable occupation in the building and construction trades. However, work covered by a project labor agreement (PLA) that requires the use of a skilled and trained workforce is exempted from this provision, and “PLA” is defined to mean a prehire collective bargaining agreement that establishes the terms and conditions of employment for a specific construction project or projects and is an agreement described in federal law, as provided.
 - (iii) The developer has provided commitments to provide labor peace during union organizing campaigns for workers who will be employed upon completion of the project.

EXISTING LAW:

- 1) Provides that California's public pension boards have plenary authority and fiduciary responsibility for [the] investment of monies and administration of the system. (Section 17, art. XVI, California Constitution (Cal. Const.).)
- 2) Reserves authority to the Legislature to, by statute, "continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board...." (Cal. Const., *id.*)
- 3) Requires pension board members to discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administrating the system...[and] the board to diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return unless under the circumstances it is clearly not prudent to do so. (Cal. Const. *id.*)
- 4) Establishes the Public Employees' Retirement Law, administered by CalPERS, to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitate may, without hardship or prejudice, be replaced by more capable employees, and to that end provide a retirement system consisting of retirement compensation and death benefits. (Section 20000 *et seq.*, Gov. Code).
- 5) Establishes the Teachers' Retirement Law, administered by CalSTRS, to provide a financially sound plan for the retirement, with adequate retirement allowances, of teachers in public schools of this state, teachers and schools supported by this state, and other persons employed in connection with the schools...." (Sections 22000 *et seq.*, Educ. Code.)
- 6) Establishes the County Employees Retirement Law of 1937, administered by 20 independent county employee retirement associations, to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefit as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of public service without prejudice and without inflicting hardship upon the employees removed. (Sections 31450 *et seq.*, Gov. Code.)
- 7) Encourages a public employee retirement system, as specified, to prioritize investment in in-state infrastructure projects over alternative out-of-state infrastructure projects, if the investments in the in-state projects are consistent with the board's fiduciary duties to minimize risk of loss and to maximize the rate of return, among other provisions. (Section 7514.2, Government (Gov.) Code.)
- 8) Provides for investments by a public retirement system in real property as follows:

- a) A public retirement system which has invested assets in real property and improvements for business or residential purposes for the production of income, must pay an annual fee to the city or county in whose jurisdiction the real property is located, among other specifications. However, while the governing bodies of local entities may adopt ordinances and regulations authorizing retirement systems to invest in real property subject to the aforementioned requirements, these provisions do not apply to any retirement system established by a local government entity if that entity is presently authorized by statute or ordinance to invest retirement assets in real property, and this particular provision does not apply to property owned by any state public retirement system. (Section 7510 (a), Gov. Code.)
- b) As to state public retirement systems, whenever such systems have invested assets in real property and improvements thereon for business or residential purposes for the production of income, and leases the property, existing law provides for possessory interests relating to the taxation and valuation of such property. (Section 7510 (b)(1) and (2), Gov. Code.)
- c) Investments by a state public retirement system in a legal entity that invests assets in real property and improvements thereon must not constitute an investment by the state public retirement system of assets in such things, and for this purpose, describes “legal entity” to include, but not limited to, partnership, joint venture, corporation, trust, or association, and the state public retirement system is deemed to be person for purposes of determining a change of ownership under existing law, as stated. (Section 7510 (b)(3) through (5).)
- d) Authorizes, but does not require, CalPERS, CalSTRS and CERL retirement boards to prioritize investment in an in-state infrastructure project over a comparable out-of-state project, among other provisions. (Section 7514.2, Gov. Code.)
- e) Defines “public works” to mean, among other things, “[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by a public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, “construction” includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including, but not limited to, inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, “installation” includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.” (Section 1720, Labor Code.)

Further “paid for in whole or in part out of public funds” means all of the following (Section 1720 (b), Labor Code):

- The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.
- Performance of construction work by the state or political subdivision in execution of the project.

- Transfer by the state or political subdivision of an asset of value for less than fair market price.
- Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.
- Money loaned by the state or political subdivision that is to be repaid on a contingent basis.
- Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

FISCAL EFFECT: Unknown. This bill is flagged as fiscal by Legislative Counsel.

COMMENTS:

Background

Supplemental information provided by the author regarding this bill states that, “[the California Public Employees’ Retirement System (CalPERS)] has a Responsible Contractor Policy (RCP) that is their attempt to ensure that contractors doing work on CalPERS-funded projects not only are good stewards of public employee members’ investments but that they treat workers on CalPERS projects with dignity. Unfortunately, the language in the recently updated RCP significantly lacks the necessary language to ensure adequate construction worker protections. The approved RCP has no real teeth to guarantee that prevailing wages are paid, that construction workers are properly trained, or that there is labor peace after construction. This allows CalPERS to actively invest in projects that allow worker exploitation and undermine the standards that labor have fought so hard to establish.”

Further, “[these] low-road employer violations create investment risks for CalPERS as an asset owner. Wage theft, health and safety issues, project delays, and construction defects may lead to fines and penalties by public agencies and litigation by workers and end users. These negative outcomes are financial risks that can eat away at a construction project’s investment returns and can be difficult to mitigate once the problem has been allowed to develop. CalPERS ultimately bears the risk of failure to deliver such projects on time, within budget, and in accordance with construction standards. When construction project managers do not consider the qualifications of potential contractors, they are choosing to favor low quality irresponsible contractors who submit the lowest cost construction bids.”

As to the need for this bill, the supplemental information also states, “[while] CalPERS’ Board members and staff have a fiduciary duty to properly invest members’ contributions, there are several practical things that CalPERS can do to mitigate the risk associated with contractors not complying with the RCP and with drawn-out labor disputes at investment properties. [This bill] ensures contractors doing work on CalPERS-funded projects not only are good stewards of public employee members’ investments but that they treat workers on CalPERS projects with dignity, [by prohibiting] the Boards of public employee pension funds from making new or additional investments in projects unless [they include the prescribed provisions of this bill]. These... commonsense, pro-worker requirements will ensure that construction workers will be protected and provided with a living wage on projects, that they will be properly trained

California workers, and that workers employed *after* the construction project is completed will have a fair chance at being able to organize. All of these pro-worker requirements will also provide a measure of fiduciary protection for CalPERS members' investments."

Public Employee Pensions Systems are Legal Trusts. A Brief History Regarding Proposition 162 (General Election, November 1992) and the California Constitution

Among other things, *the California Constitution establishes sole and exclusive authority to pension system boards over the investments and administration of the system, and mandates fiduciary standards in the exercise of their duties.* (Emphasis.) While doing so, it also simultaneously reserves to the Legislature, authority to prohibit investments by statute, subject to the standards of fiduciary care, loyalty, and diversification of investments required of a retirement board. (Section 17, art. XVI, Cal. Const.)

Upon review of the "Findings and Declarations" of Proposition 162, commonly referred to as the "Pension Protection Act of 1992," it is clearly evidenced that what serves as its foundational impetus results from the Legislature and Governor "raiding" pension fund public employee monies to address a budgetary shortfall in the state budget. That measure's "Findings and Declarations" state, among other things, that "[political] meddling has driven the federal Social Security system to the brink of bankruptcy. To protect the financial security of retired Californians, politicians must be prevented from meddling in or looting pension funds." Further, "[to protect pension systems, retirement board trustees must be free from political meddling and intimidation." And, "[in] order to protect pension benefits and to avoid the prospect of higher taxes, the People must act now to shield the pension funds of this state from abuse, plunder, and political corruption."

Following actions by the Legislature and the Governor, Proposition 162 was adopted by voters and established public employee retirement systems in California as legal "trusts" in which public employee retirement fund monies are strictly to be used to provide retirement benefits for system members, and the decisions of pension fund boards must solely be based on administering the "trust" in a manner that exclusively benefits its members and their beneficiaries.¹ As stated, the purpose of that measure and its enshrinement in the constitution is to preclude political "meddling" or "interference" through external influence by the Legislature, Governor, and others over pension system board decisions regarding administration of those systems, investment of public employee monies for retirement purposes, and accessing pension system monies for other purposes.

The fiduciary duties established and imposed upon pension system boards by Proposition 162 are well-established, long-standing consistent with jurisprudence regarding such duties. As such, neither the Governor, the Legislature, the public, nor anyone else is burdened by the performance of, and adherence to, such legal duties and standards strictly owed to pension system members and their beneficiaries. Although the Legislature serves as a fiduciary with respect to the general safety, health, and welfare of the State and its public, it does not "stand in the shoes" of, or as, a fiduciary board member of a public employee pension system. This goes to follow that should a breach of fiduciary duty occur, legal liability attaches to, and is shouldered by, pension system board members.

¹ "Fiduciary Duty," Cornell Law School, Legal Information Institute

While the proposed codified legislative findings and declarations include a statement regarding pension system investments in construction projects without prevailing wage requirements not being in the financial interests of pension system members, such a statement could be construed as an attempt to establish a state policy and directive regarding the administrative and deliberative decision-making of public employee pension system boards; the establishment of an affirmative statutory mandate upon those boards when making certain investments (as opposed to prohibiting investments); and, to achieve its own objective. However, as previously discussed, as well as discussed throughout this writing, pension system boards expressly reserve the authority to make such determinations consistent with their fiduciary duties, and the Legislature's authority is deferential to those duties. Thus, public employee retirement system boards have plenary authority over investments of public employee monies.

This Bill is Expressly Clear that It Applies to Other Public Employee Pension Systems - Not Just CalPERS

It is noted that this proposed statute unambiguously states that, “[the] purpose of this section is to prohibit the boards of public pension and retirement systems....” In addition, the proposed statute defines “board” by incorporating subdivision (h) of art. XVI, Cal. Const., which defines “retirement board” to mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employee’s pension or retirement system; provided, however, that the term “retirement board” must not be interpreted to mean or include a governing body or board created after July 1, 1991, which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employee’s pension or retirement system. Further, the constitutional provision referenced by incorporation into this bill is limiting in its applicability to pension or retirement systems *created before July 1, 1991.* (*Emphasis.*) Here, it is important to note that the abundance of the state’s public employee retirement systems, associations, and various independent systems were created prior to that date. Thus, they are not excepted or excluded from the applicability of this bill.

While some may ponder, articulate by spoken or written communication, or presume that this bill is intended to apply to certain investments of only CalPERS, its provisions explicitly state otherwise.

It is further noted that the manner of how this bill proposes to achieve its objective may presume that CalPERS and other public employee retirement systems throughout California (state and local) administer their systems and investments in the same manner. However, such a presumption would be incorrect.

This Bill Proposes a One-Sized-Fits-All Approach. However, Public Employee Retirement Systems Are as Unique as Each Individual

As previously discussed, this bill applies to other California public employee retirement systems, not just CalPERS and their investments in California construction projects. In so doing, it presumes that all systems invest in such projects, similarly do so, or similarly have policies regarding such investments, among other pension system attributes.

Each pension system board has a fiduciary duty exclusively owed to its own members. Along with this duty and adherence to various relevant state and federal laws, they are identical. However, other material aspects of each of these systems are as different and unique as each person. They are governed differently (e.g. adhere to different state or local laws – public

employees' retirement law, county employees retirement law, teacher's retirement law, county ordinances etc.); their respective boards as well as each member thereof, have different perspectives; they administer their respective plans differently; their actuarial assumptions differ based on their perspectives and respective memberships; they do not have or hold the same level or type of investment asset; they invest differently (passive, active, or both); some or many investments types or asset classes they invest differ; some or many investments extend to public or private bond portfolios, public equity indices, or private equity, and they utilize different tools and expert advisors (internal and external) for prudent investment decision-making with different metrics for performance, among a host of other material differences.

To the extent that this bill proposes to apply a single standard that equally applies to them all – not just CalPERS – without regard to those variations or differences, at least and particularly, where some systems may not invest in construction projects, or that do not have an RCP or similar policy relating to construction projects, or invest passively v. actively, etc., it would require them to perform necessary fiduciary due diligence and expend funds to do so to be compliant with this bill for something that may not be necessary or applicable to them. In turn, the proposed statutory mandate coupled with efforts to be compliant may present a constitutional violation where they are mandated to “defray reasonable expenses of administering the system...,” where “administering the system” could be construed to mean “any” administrative activity that involves those steps necessary to ensure the administration and provision of retirement benefits consistent with constitutional and statutory requirements.

Equally, this bill may be construed to disregard without question, the prudent necessity for balance relating to labor equity and prudence in investment decision-making on investments in construction projects in a manner that would enable or avail the best opportunities for pension systems to earn anticipated investment returns that must strictly inure to benefit pension system members. A positive return on an investment is superior to a loss on the investment, and an increase in the positive return on the investment is superior – even though several other factors exist that increase risk to achieve a greater return. Several of these are discussed further below.

Labor Standards Provisions Currently Exist in CalPERS' (and CalSTRS') Respective Responsible Contractor Policies

Notwithstanding a plain reading of the express provisions of the proposed statute, when applying what may be a leading focus on CalPERS and CalSTRS, the following discussion is limited to those two public employee pension systems sans delving into other public employee retirement system segments throughout the state or their practices.

Since the 1990s, CalPERS' RCP has supported fair market wages in addition to benefits and training based on local conditions for workers employed by contractors and subcontractors, subject to fiduciary principles that require competitive returns on its real estate and infrastructure investments.

According to CalPERS' internet website, the RCP demonstrates its support of human capital management by promoting the use of responsible contractors who offer fair wages and benefits, where it believes that an adequately compensated and trained worker delivers a higher quality product and service. Further, its RCP contains principles that (1) apply to contracts over \$100,000 for real estate and infrastructure investments in which it owns more than 50 percent; (2) establishes a duty of loyalty and prudence for CalPERS and its managers; (3) establishes a

competitive bidding requirement for RCP managers; (4) requires observance of state, local, and national laws; and, (5) establishes delegation requirements for RCP managers.²

Within its RCP, all managers, delegates and the contractors they hire, while performing services with respect to CalPERS' RCP investments, must observe all local, state, and national laws (including those pertaining to applicable licensing, permitting, insurance, tax withholding, minimum wage, and health and occupational safety). Inclusive of this policy, managers must notify a national contact at trade/service unions, if the manager is expanding RCP investments into new areas so that trade/service unions can provide the manager contact information of local trade councils and union halls in the market where expansion is occurring. As to "fair wage," "fair benefits," and "training," CalPERS' RCP specifically avoids a narrow definition of these terms stating that doing so might not be practical in all markets, and does not require a "prevailing wage," as defined by government surveys, because the policy looks to local practices concerning type of trade and type of project recognizing that practices and labor market conditions vary across the country where flexibility in its implementation is important. The policy includes provisions for transition, monitoring, and enforcement.

In lieu of a "prevailing wage" standard, CalPERS' RCP requires a broad outreach and competitive bidding program premised on the availability of a list of responsible contractors in every market where CalPERS directly owns a property. CalPERS does not depend solely on managers and delegates for gathering and analyzing information to identify and hire responsible contractors, and invites various local trades to suggest contractors that, in their own view, qualify as responsible contractors, from which the sources of this information include local building and service trade councils, builders, associations, and governments.

It is noted that this policy and its considerations, according to CalPERS, are consistent with its investment beliefs that, necessarily, are subject to fiduciary principles and where its RCP is applied without significant adverse effect on investment returns, access to investment opportunities, or cost impacts.³

Simultaneously, CalSTRS' RCP expressly "... supports and encourages fair wages and fair benefits for workers employed by its contractors and subcontractors, subject to fiduciary principles concerning duties of loyalty and prudence...," which require competitive returns on its investments.

CalSTRS' RCP defines a "responsible contractor" as contractor or subcontractor who pays workers a "fair wage" and "fair benefit" as evidenced by payroll and employee records. Such pay and benefits include employer-paid family health care coverage, pension benefits, and apprenticeship programs. Like CalPERS' RCP, "fair wage" and "fair benefit" depends on the wages and benefits paid on comparable investment projects based on local market factors (e.g., nature of project, i.e., residential, commercial, public, or private), comparable job or trade classification, and scope and complexity of the services provided. Additionally, and also like CalPERS, CalSTRS' RCP makes clear that contractors and subcontractors must abide by local,

² "Responsible Contractor Program," CalPERS. Visit: <https://www.calpers.ca.gov/investments/sustainable-investments-progam/human-capital/responsible-contractor-program>.

³ "CalPERS Statement of Investment Policy for Responsible Contractor Program," eff. July 1, 2015. Visit: <https://www.calpers.ca.gov/documents/policy-responsible-contractor-2015/download?inline>, and "5. Action Agenda Item," CalPERS Investment Committee Agenda – March 17, 2025. Visit: <https://www.calpers.ca.gov/about/board/board-meetings/invest-202503>.

state, and national laws, and trade or service unions: i) must be asked to deliver a list of names and phone numbers of responsible contractors for delivery to a property manager; ii) refer interested and qualified responsible contractors to the property manager; and, iii) provide technical input as appropriate.

CalSTRS' RCP further details that its RCP also avoids a narrow definition of "fair wage," fair benefits," and "training" where such narrow definitions might not be practical in all markets. It further does not require "prevailing wage," as defined by government surveys. Rather, as a matter of practicality and prudence, it looks to local practices recognizing that local practices and labor market conditions vary across the country. Such implementational flexibility is important towards achieving positive investment returns towards the board fulfilling its mandated constitutional fiduciary duty that is owed exclusively to its members.⁴

The Restriction Proposed by this Bill May Result in Financial Losses Relating to Existing Construction Projects

It is acknowledged that the objectives to require labor standards protections for workers relating to construction workers may, indeed, be deemed a laudable objective, and is but one among a number of various other possible methods of supporting that objective *and* the financial interests in retirement of public employee pension system members and their beneficiaries with respect to minimizing risk of loss and maximizing investment returns relating to construction projects.

The Cal. Const. also expressly provides, "[the] members of the retirement board of a public pension or retirement system must diversify the investments of the system to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so." As the aged prudent investor maxim states, "never put all of your eggs in one basket." Where the provisions of this bill could result in increased risk of loss or actual loss because of its proposed preconditions on investments and financing of existing and new development projects, it could be construed as placing limits or restraints on investing affecting the mandatory fiduciary investment diversification requirement.

To the extent that this bill is enacted and restricts by prohibiting retirement or pension system investments from making additional investments in existing California construction projects that are yet to be completed, the proposed restriction on additional investments prescribed by this bill may result in financial losses. As a result, the original or enabling investment may yield significantly less, less-than de minimus, or no rate of return, or a loss in comparison to the assumed rate of investment return anticipated or projected based on a prudent investment risk assessment at the outset of the original or enabling investment determination and actual investment. Because of the proposed preconditions, this may amount to an investment loss analogous to an unrecoverable financial construction "pit," so to speak, that would not inure to benefit members and beneficiaries of the system,⁵ which could serve to their financial detriment,

⁴ "California State Teachers' Retirement System Responsible Contractor Policy." February 6, 2015. Visit <https://www.calstrs.com/files/cb0622548/ResponsibleContractorPolicy.pdf>

⁵ It is acknowledged that risk is an inherent investing attribute. A strategy to address that risk involves and includes, among a host of other prudent investor considerations, assessing the risk (including level of risk), adjusting for such risk, and assuming a reasonable rate of return on the investment given the risk. As with an abundance of investments, the assumption of a reasonable rate of return may not actually be realized, and an investment in real estate or infrastructure may not necessarily yield the assumed rate or return, if any, due to other events or factors,

and where the effectuation and implementation of this proposed statute could serve as the impetus for litigation by negatively affected public employee pension system members based on claims of breach of fiduciary duty by the retirement board.

Finally, if a public employee retirement system is prohibited from making additional or new investments in a California construction project in which it has already invested, and such investments are made by contract, i.e., a legal, binding, and enforceable agreement between parties, questions exist – albeit, arguably, whether this bill could be construed to impair the obligations of contract contrary to Section 1, Art. IX, Cal. Const., if passed,⁶ or be in violation of the Contract Clause of the United States Constitution (Art. I, Section 10, Clause 1).⁷

Questions Exist as to Whether this Bill is Permissible Given the Legislature's Limited Constitutional Authority Regarding Public Employee Retirement System Investments, and Whether This "Bill" is the Appropriate Legislative Vehicle to Accomplish its Objective

To the extent that this bill requires, or results in, a public employee retirement or pension system board having to take certain administrative action to develop, implement, or modify a policy that affects its investment strategy relating to construction projects to be compliant with these provisions such that would enable it to continue to make such investments, the bill could be construed to attempt to affirmatively impose preconditions on pension system investments via legislative mandate in a manner by which ongoing or future pension system board investment decisions would be made with respect to such projects. This also may incentivize "legislative/political meddling" relating to other investments where the purposes of Proposition 162 limited such activities by the Legislature. This goes to go follow a reasonable presumption that, if the proponents of Proposition 162 and voters wanted the Legislature to have authority beyond what is explicitly provided for in the Cal. Const. (*id.*), i.e., "prohibit" certain investments...." Proposition 162 would or could have included such provisions and authority, but do not. Where the Cal. Const. expressly reserves authority to the Legislature to "prohibit" certain investments by statute where it is in the public interest to do so, it neither explicitly or impliedly grants the Legislature authority to establish preconditions on making investments, or continuing existing investments (e.g., requiring what a board must consider or do regarding retirement system investment decisions or actual investments). "The voters enacted Prop. 162 to preclude the legislative and executive branches from "raiding" pension funds to balance the state budget. Prop. 162 removed the Legislature's authority to meddle in the board's investment decisions and it established that the board's primary obligation was to its members and beneficiaries." (*Board of Retirement v. Santa Barbara County Grand Jury* (58 Cal. App.4th 1185) re: "plenary authority," *inter alia*.) Again, such authority is strictly limited to "prohibiting" certain investments. Thus, the imposition of a statutory mandate that proposes preconditions on making additional or new investments could be construed as an attempt to statutorily, rather than constitutionally, expand the Legislature's express, but limited authority, contrary to the explicit right granted that is simultaneously deferential to public employee

regardless of public policy, including what is proposed by this bill. Ex: "CalPERS failed to fill Sacramento's 'hole in the ground' " The Sacramento Bee, April 15, 2022.

⁶ Although "if passed" is explicitly stated in the Cal. Const. (*id.*), that phrasing could refer to action by the Legislature on a bill, and not specific action of a committee of the Legislature.

⁷ While the U.S. Const. (*id.*) prohibits the States from impairing the obligation of contracts, the U.S. Supreme Court has interpreted the clause to limit a state's power to enact legislation that: (1) breaches or modifies its own contracts; or, (2) regulates contracts between private parties. *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 266-67, and *U.S. Trust Co.* 431 U.S. at 17.

pension boards' fiduciary authorities and duties. In other words, the proposed statute could be construed to direct or place preconditions, qualifiers or criteria that must be satisfied or used by boards when considering or making investment decisions (including on existing investments), rather than strictly prohibiting "whom" or "what" may not (or no longer) be invested.⁸

Although Section 7513.77 (d) of this bill is consistent with that deference, historically, that proviso is a requirement for inclusion for purposes of constitutional alignment and consistency. As such, it should not serve as factor for reliance upon, or as a supportive means to justify, a bill affecting public employee retirement system investments (e.g., "... the bill says that [they] don't have to do this if.... So, if they determine that it's not consistent with their fiduciary duties, they don't have to do it. Its fine."). Here, it is important to note while such views may be expressed, this requirement also could serve as the impetus for litigation against a board by a disagreeable party should the board determine, based on its constitutional plenary authority and fiduciary obligations to its members, not to implement the proposed statute. Litigation of this kind likely would entail a considerable judicial review of the reason(s) for the board's determination and exercise of that authority, and a party will not be satisfied with the judicial decision.

Because of the explicit provisions in the Cal. Const. (*id.*), this "bill" potentially could be construed as an overreach of the Legislature's authority and therefore, deemed as unconstitutional, impermissible, and contrary to a system's fiduciary analyses and duties necessary for speculative investment determination/decision-making or actual investing consistent with their constitutional authority regarding those activities. Given that a potential constitutional conflict may occur or exist with respect to the effect that this bill may have on requiring that preconditions be satisfied that may affirmatively intrude upon the deliberative decision-making authority of retirement boards, questions exist as to whether this proposed statutory "bill," instead of a "constitutional amendment," is the appropriate legislative vehicle form to accomplish its objective. Another statutory example that demonstrates deference by the Legislature to the fiduciary duties of public employee retirement system boards is Section 7510 (b)(3) through (5), Gov. Code, where public employee pension systems are "encouraged" – not required – regarding certain investment priorities.

In sum, should the Legislature want increased authority relating to pension system investments rather than its limited prohibiting authority, Section 17, art. XVI, Cal. Const. must be amended via a "constitutional amendment" that is adopted by voters. Because there exists an abundance of historically consistent judicial decisions regarding trusts and fiduciary duties, a legal balancing test of that increased authority would be necessary given the "trust" status of public employee retirement systems and the fiduciary status and obligations of the boards.

Questions Exist as to Whether This Bill May Apply a "Public Works Standard/Prevailing Wage Laws" to Public Employee Monies Held in Trust, Administered, and Invested Exclusively for their Retirement - That Are Not Public Funds

Commonly and generally, "public funds" is defined as money that has been collected by government, usually through taxation or fees levied, for use towards the common public good. Although the source of many of California's public employees' income is derived from the public through government taxation or fees levied, when public employees have lawfully worked, earned and been paid wages for that work, the source of those funds cease to continue to

⁸ Cal. Const. *id.*

be “public funds” and become the personal/private property of a public employee. Even when a portion of those earnings coupled with contributions from their employer are made to a public employee retirement system fund where they are held in trust and invested exclusively by such systems that strictly inure to benefit the public employees, those monies still are not public funds. Such funds are not the property of government or the retirement system that administers and invests such funds on their behalf.⁹ Otherwise, as an analogy of sorts, how could the Legislature, Governor, or public be entitled or permitted to dictate or control how a public employee expends, saves, or invests their earnings for their retirement merely because such earnings are derived from a public fund source? This follows the historical reason(s) why Section 17, art. XVI, Cal. Const. exists. Although investment of public employee monies for their retirement by a public employee retirement system board may directly or indirectly benefit the common good of the public, the actual and paramount purpose of such investments and the purposes for which such systems exist, is to benefit the retirement system members, which is not analogous to governmental authority to appropriate “public funds” directly from government treasuries for the common good of the public.

This bill proposes a definition for “labor standards protection,” and this definition explicitly states and includes, “[construction] work performed to carry out and maintain project development, subject to the same prevailing wage and apprenticeship standards that apply to projects under the Labor Code, as specified. In this definition, two separate Codes of law are incorporated by reference.¹⁰ As to the subject of this specific discussion, Section 1720 *et seq.* of the Labor Code specifically relates to “public works,” and Section 2600 *et seq.* of the Public Contract Code specifically relates to skilled and trained workforce requirements (e.g., apprenticeships and apprenticeable occupations). Commonly, the referenced sections of the Labor Code are referred to as “prevailing wage laws.”

According to the California Department of Industrial Relations “public works in general means (1) construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds, which can include (2) preconstruction and post-construction activities related to a public works project; and (3) refers to Section 1720.¹¹

Because public employee retirement systems previously were not viewed or treated as legal trusts prior to voter passage of Proposition 162 and its enshrinement into the Cal. Const., the Legislature and the Governor sought to, and did, use such funds for public purposes, as previously discussed. Following passage of that measure, neither the Legislature, Governor, nor the public can claim, access, or use those monies, or direct them to be used in a manner contrary to the explicit purposes and directives within the Cal. Const. (*id.*) and related statutes, absent voter adoption or passage of a constitutional amendment that grants such authority.

For practical intents regarding public employee monies invested, including in construction projects, the investments may be considered private money investment, although a government entity – a public employee retirement system as an institutional investor – is responsible for, and solely burdened by, fiduciary standards and obligations relating to such investments on behalf of their public employee members and beneficiaries.

⁹ Provided that public funds were not obtained, gained, or paid by mistake or fraud. Public funds obtained, gained, or paid by mistake or fraud may be recovered by government.

¹⁰ Section 1720, Labor Code and Chapter 2.9 of Part 1 of Div. 1, Public Contract Code.

¹¹ “Public Works.” California Department of Industrial Relations. Visit: dir.ca.gov/public-works/publiworks.html.

Because this bill attempts to apply a “public works standard” that largely, if not exclusively, relies or depends upon the use of “public funds” for construction and related ancillary projects to nonpublic monies, it may be construed to impermissibly require and apply that standard in a manner that is inconsistent with the legal obligations imposed on retirement system boards in the Cal. Const. and other existing statutes; thereby, potentially extending such authority and use (e.g., legislative/“political meddling” or abuse) of these monies for, or relating to, other public purposes besides the retirement of public employee retirement system members, as previously discussed.

Further Section 1720 (b) of the Labor Code expressly identifies “paid for in whole or in part out of public funds.” Based on the specific elements relating to this phrase within the statutory definition of “public works,” public employee monies remitted by the employee, their employer, and exclusively administered, held in trust, and invested for their retirement benefit by a public employee retirement system constitutionally and statutorily charged with such authority is neither similar or equal to monies levied by government taxation, deposited in a government treasury, and subsequently appropriated by government for the common public good. While public employee pension systems are state or local public entities, monies held in trust and invested by them for the exclusive benefit of their members for their retirement benefit may not be sufficient to trigger the applicability of the remaining elements of the definition of this phrase defined in statute. As such, questions exist as to the appropriateness of this bill with respect to its requirements relating to public employee monies that are personal/private property that are not appropriated by government for common public good purposes.

“The overall purpose and object of California’s prevailing wage law, i.e. Sections 1720 et seq. Labor Code, is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees....”
(*Southern Cal. Labor Mgmt. Operating Eng’rs Contract Compliance Commission v. Aubry* (54 Cal. App.4th 783).) (Emphasis added.)

If public monies lawfully earned by, and paid to, a public employee then contributed and deposited into a public employee retirement system fund, and administered and invested exclusively for their retirement on their behalf were to be construed as “public funds,” this could raise substantive questions regarding the practical, legal, and operative intent, meaning and effect of Section 17, art. XVI, (*id.*), and the fiduciary obligations exclusively owed by public employee retirement system boards to their members. For example, to whom would the board owe a legal duty (e.g., Retirement system members? Non-retirement system members who work on construction or development projects in which the system has invested? The public, in general? All of them or combination of them?) Regarding public contracts and the purpose of competitive bidding, “[t]he competitive bidding laws for public contracts were enacted *for the benefit of the public*, not for the benefit or enrichment of bidders, and should so be construed and administered as to accomplish such purpose fairly and reasonable *with sole reference to the public interest.*” (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 388 P.3d 800.) (Emphasis added.)

Historically, wages are also considered costs that can increase; thereby, reducing an investment return (or profit, in the case of private for-profit business). This proposed statute would impose prevailing wage and apprenticeship requirements on the investment of public employee monies invested exclusively for their retirement in construction projects that could affect speculative investment assumptions v. actual investment performance (e.g., returns realized) that, in turn, could affect public employee retirement system members and their future retirement security, as well as the budgets of public employers with respect to employer contributions that must be remitted to the systems.

Finally, it is noted that this specific discussion does not fully consider or discuss the sections of the Public Contract Code incorporated by reference in this bill. This is because that incorporation addresses skilled and trained workforce requirements of a public entity when contracting on a project. The prior discussion that provides information regarding CalPERS' and CalSTRS' respective RCPs includes elements providing for certain labor standards and requirements relating to the participation of local trades groups, including a skilled workforce, when those systems consider or make certain investments. Historically, various trade groups administer, utilize, and recruit workers from work (apprenticeship) programs to perform work provided for within the Public Contract Code.

This Bill Is Premature Pending the Completion of Necessary Fiduciary Due Diligence and May Be Unnecessary After the Performance of Such Due Diligence

The committee is informed that, in addition to the entirety of this discussion, and in following the lead of the author specifically identifying CalPERS investments in California construct projects as the target of this proposed statute, on March 17, 2025, the Chair of CalPERS' Investment Committee directed CalPERS staff to perform a cost and scope analysis of a market study of prevailing wage and labor peace agreements for its RCP following efforts by the sponsor of this bill requesting the CalPERS board to modify its RCP in a manner similar to, or consistent with, the provisions of this bill. CalPERS performed an extensive review of its RCP, including a diligence and engagement process to determine if there were areas of the RCP that should be updated.

Coupled with the efforts of the sponsor of this bill and its engagement of this subject with the CalPERS Board, in June 2025, the CalPERS Board adopted the performance of a market study regarding the financial impact of prevailing wage and labor peace agreements for real estate and infrastructure investments. The purpose of the market study is to "investigate how mandating prevailing wage requirements and labor peace agreements would affect the financial performance of real estate and infrastructure investments..., and "...will address the financial impact of these labor practices, analyze their influence on projected costs, timeliness, risk, and ultimately, investment returns." This fiduciary due diligence task is to assist the Board with determining whether it is prudent to mandate one or both labor practices into its RCP. What this bill proposes is, among other things, what the CalPERS board is currently working to assess via necessary fiduciary due diligence prior to an administrative action, if any.

Because of the complexities involving the subject of this bill, its potential to usurp or circumvent the performance and completion of that prudent and necessary fiduciary due diligence, and the potential impacts that it may have on CalPERS' investment risk assessments, speculative investment assumptions, actual investments and return on investments, potential retirement risks to CalPERS members, potential increased future costs to employers, and requirement to maintain

its fiduciary duty strictly owed to its members and their beneficiaries, the necessity and utmost importance of this due diligence will take time for its completion and must not be expedited or prejudged to a certain outcome or determination. Pending the outcome of the results of that study, this bill is premature at this time and may interfere with those prudent and necessary fiduciary due diligence efforts. Further, the outcome of that due diligence would not subsequently require statutory action as the Board may, pursuant to its constitutional and other statutory authorities regarding system administration, investments, and continuing work with the sponsors of this bill, implement changes to its RCP as it deems appropriate without the need for statutory action or mandate. In short, because the respective boards have authority to establish such policies, they may modify those policies as they deem appropriate in a manner that is consistent with their legal obligations to their respective members without statutory interference. Similar action also may be performed by the CalSTRS Teachers' Retirement Board relating to its RCP, and all other systems affected by this bill.

Given what is considered and discussed in this writing, *in toto*, an important, necessary and prudent due diligence review must first be performed and completed to determine whether the twain shall or can meet.

Statement by the Author

As previously provided under "Background," the author states that, "[the recently approved] RCP has no real teeth to guarantee that prevailing wages are paid, that construction workers are properly trained, or that there is labor peace after construction. This allows CalPERS to actively invest in projects that allow worker exploitation and undermine the standards that labor have fought so hard to establish. [This bill] ensures contractors doing work on CalPERS-funded projects not only are good stewards of public employee members' investments but that they treat workers on CalPERS projects with dignity."

Comments by Supporters

Among other things, the *State Building and Construction Trades Council of California* states, "[while] CalPERS' Board members and staff have a fiduciary duty to properly invest members' contributions, there are several practical things that CalPERS can do to mitigate the risk associated with contractors not complying with the RCP and with drawn-out labor disputes at investment properties. Issues such as wage theft, health and safety violations, and poor-quality construction are not readily apparent during a construction project and largely come to light only after construction is complete because workers fear losing employment on the job if they report problems. These low-road employer violations create investment risks for CalPERS as an asset owner. Wage theft, health and safety issues, project delays, and construction defects may lead to fines and penalties by public agencies and litigation by workers and end users. These negative outcomes are financial risks that can eat away at a construction project's investment returns and can be difficult to mitigate once the problem has been allowed to develop. CalPERS ultimately bears the risk of failure to deliver such projects on time, within budget, and in accordance with construction standards. When construction project managers do not consider the qualifications of potential contractors, they are choosing to favor low quality irresponsible contractors who submit the lowest cost construction bids. [This bill] ensures contractors doing work on CalPERS-funded projects not only are good stewards of public employee members' investments but that they treat workers on CalPERS projects with dignity," and "...prohibits the Boards of public employee pension funds from making new or additional investments in projects unless construction

workers earn the prevailing wage, a certain percentage of construction workers are graduates of a state-approved apprenticeship program, and the developer has committed to provide labor peace for organizing campaigns for workers employed after project completion.”

Among other things, the *California Teamsters Public Affairs Council* states that, “[w]hile CalPERS’ board members and staff have a fiduciary duty to properly invest members’ contributions, there are several practical things that CalPERS can do to mitigate the risk associated with contractors not complying with the RCP and with drawn-out labor disputes at investment properties. Issues such as wage theft, health and safety violations, and poor-quality construction are not readily apparent during a construction project and largely come to light only after construction is complete because workers fear losing employment on the job if they report problems. These low-road employer violations create investment risks for CalPERS as an asset owner. Wage theft, health and safety issues, project delays, and construction defects may lead to fines and penalties by public agencies and litigation by workers and end users. These negative outcomes are financial risks that can eat away at construction project’s investment returns and can be difficult to mitigate once the problem has been allowed to develop. CalPERS ultimately bears the risk of failure to deliver such projects on time, within budget, and in accordance with construction standards. When construction project managers do not consider the qualifications of potential contractors, they choose to favor low quality irresponsible contractors who submit the lowest cost construction bids.”

The *California Federation of Labor Unions, AFL-CIO* states that, “[This bill] ensures that contractors doing work on CalPERS funded projects are good stewards of public employee members’ investments and that they treat workers on CalPERS projects with dignity. This bill prohibits public employee pension funds boards from making new or additional investments in projects unless construction workers earn the prevailing wage, a certain percentage of construction workers are graduates of a state-approved apprenticeship program, and the developer has committed to provide labor peace for organizing campaigns for workers employed after project completion. These three common-sense, pro-worker requirements will ensure that construction workers will be protected and provided with a living wage on projects, that they will be properly trained, and that workers employed after the construction project is completed will have a fair chance at organizing. These requirements will also provide a measure of fiduciary protection for CalPERS members’ investments as these projects are built on time, built efficiently, and built to last...,” among other remarks.

Among other things, *District Councils 16 and 36 of the Painting and Allied Trades* express that “CalPERS established the RCP during the 1990’s to support small business development, market competition, to control operating costs, and to provide fair market wages, benefits and training for workers employed by contractors/subcontractors on projects that CalPERS funds (subject to fiduciary principles that require a competitive return on the state’s real estate and infrastructure investments). The RCP policy demonstrates their support of human capital management by promoting the use of responsible contractors who offer fair wages and benefits. It is CalPERS’s stated belief that an adequately compensated and trained worker delivers a higher quality product and service. The RCP is CalPERS’ attempt to ensure that contractors doing work on CalPERS-funded projects not only are good stewards of public employee members’ investments but that they treat workers on CalPERS projects with dignity. However, the recently approved RCP has no real requirement that guarantees that prevailing wages are paid, that construction workers are properly trained, or that there is labor peace after construction. This allows CalPERS to actively

invest in projects that allow worker exploitation and undermine the standards we have fought so hard to establish.”

Comments by Opponents

The *California School Employees Association, AFL-CIO (CSEA)* states that, “[as] a matter of principle, CSEA is opposed to any legislative proposal that directs the CalPERS Board to make specific investment or divestment decisions. Doing so undermines the authority of the independent CalPERS Board to make investment decisions in the best interest of current members, retired public employees, and their beneficiaries. In addition, the Public Employees’ Retirement Fund (PERF) is not state General Fund monies, state budget reserves, or public taxpayer dollars. The PERF is deferred compensation for more than two million public employees. These public employees have contributed to the fund from their own paychecks for decades in order to find security and stability in retirement. The Legislature should not usurp the authority of public employees and their elected representatives on the CalPERS Board to direct investment standards and decisions because the Legislature does not feel the consequences of those decisions and is not held accountable for meeting an assumed rate of return. Classified school employees dedicate their careers to serving our public schools and students, often earning less than their counterparts in the private sector, with the promise of a secure pension waiting for them in retirement. School employees and other public employees vote to elect CalPERS Board Members based on which candidate they believe will best protect their retirements. By directing the CalPERS Board to take specific actions, including preventing investment absent certain conditions, the Legislature undermines the authority of CalPERS Board Members entrusted to protect beneficiaries’ financial futures. Legislative directives on investment strategies also impose financial risks on CalPERS’ members, employers, and the system overall. Over the short term, this may increase employer and employee contribution rates, equating to less take-home pay and less money to cover increasing healthcare costs at the bargaining table.”

On behalf of the 20 county employee retirement associations (CERL systems), the *State Association of County Retirement Systems* states, among other things, that “... the [requirements of this bill] would be interpreted broadly to include more than real-estate or infrastructure construction projects but also large corporate bond portfolios or private equity funds that finance business expansions and improvements including physical plants, warehouses, stores, and other facilities. This bill arguably could restrict investing in a passive public equity index (like the S&P 500) with hundreds of underlying assets traded in the stock market. Would holding shares of Target or Costco require the pension system to insist that any new retail stores in California be built with labor protection standards or would those retirement systems have to sell those shares? The 20 county retirement systems under the 1937 Act are varied in size, plan member demographics, investment portfolios and assets, but the one thing they have in common is that they use external investment managers to invest trust fund assets in large, diversified, pooled strategies. This is a cost-effective and efficient way to access institutional markets without the necessity of employing experts in active investing, and it satisfies the constitutional fiduciary duty to prudently manage the trust. Because retirement systems—particularly smaller local retirement systems—invest as limited partners that do not determine the assets of a pooled investment fund, they do not have the ability to influence or dictate how companies within those funds manage their construction projects. To comply with the bill’s requirements, the practical effect of this bill would be de-investment from companies involved in construction projects in California. Restricting investment opportunities would override the plenary authority of the

1937 Act system boards. Ultimately, these actions could hurt the asset base that funds our members' pensions, leading to higher contribution rates from government agencies."

A coalition of local government organizations representing various government interest, i.e., *cities, counties, special districts, rural and urban counties, respectively, and school business officials* state that, "California's public workforce deserves the retirement benefits they have been promised. Bills that limit pension fund investments not only risk future benefits, but they heighten pension costs for the public workforce, public employers, and taxpayers. [This bill] will establish a *de facto* divestment mechanism for a broad swath of public pension investments. While [this bill] nominally applies only to new investments, pension funds continually grow their stake in existing funds and individual investments – and often sell and repurchase investments to take advantage of market conditions. As funds grow, continual investments must be made to keep pace with investment policies and the prudent needs of the fund itself. In order to improve the funded status of our employees' pension funds and avoid financial shock to our systems and their members, it is critical that public pension systems have healthy investment returns. To make matters more concerning, we do not yet know the extent to which [this bill] could impact public pension funds. Currently, CalPERS is conducting a market study to evaluate potential impacts of adopting the standards proposed in [this bill]. One thing is certain: as collective investors of more than \$1 trillion, the last thing public pension systems need is policy that severely constrains the assets in which they may invest...," among other remarks.

A coalition of organizations representing *developers, affordable housing interests, building industry groups and others*, express that, "[this bill] would interfere with existing contractual provisions by which a public employee pension or retirement fund has agreed to provide funding for a project that does not include the labor standards outlined in this bill. Pension or retirement funds that have already promised funding would be exposed to significant legal liability since [this bill] would impair those existing contracts – an action that is prohibited by federal law. For some projects, these labor standards would be infeasible to implement due to a lack of skilled and trained workers in the region of the project. Additionally, the labor standards would add \$94,00 *[sic?]* on average to the cost of a home – reducing California's affordability. A \$1,000 increase in the cost of a home prices 8,905 California households out of the housing market, according to estimates from National Association of Home Builders for 2025. There are more Californian's that would be disadvantaged than would be benefited by this requirement. Pension funds, retirement funds, and developers enter into agreements based on the law that exists at the time of entering into their agreement. There is no reason to apply these restrictions retroactively. California continues to grapple with its housing crisis and [this bill] only worsens the problem the state has in meeting its housing needs by restricting funding resources."

Prior or Related Legislation

Senate Bill 252 (Gonzalez, 2023) proposed to restrict investments of the CalPERS and California State Teachers' Retirement System (CalSTRS) by requiring each to divest their investment holdings in fossil fuel companies, as defined and specified. This bill was not heard by the Assembly Committee on Public Employment and Retirement at the request of the author.

Senate Bill 1328 (McGuire, 2022) proposed to require CalPERS, CalSTRS, other state agencies, and the Treasurer to divest from Russia and Belarus, associated companies, and establishes the Russia Contracting Act, among other provisions. This bill was held in the Assembly Committee on Public Employment and Retirement.

Senate Bill 1173 (Gonzalez, 2022) was substantially similar to the current bill. This bill was held in the Assembly Committee on Public Employment and Retirement.

Senate Bill 457 (Portantino, 2021) would have required CalSTRS and CalPERS to offer to any school district or contracting city employer an investment portfolio option that does not contain investment vehicles issued or owned by the government of the Republic of Turkey. This bill was amended to address a different subject.

Assembly Bill 1019 (Holden, 2021) proposed an identical purpose to, and following, the enactment and chaptering of Assembly Bill 1320 (Nazarian, 2019) which prohibited certain investments by CalPERS and CalSTRS in Turkey regarding the Armenian Genocide. This bill was held in the Assembly Committee on Public Employment and Retirement without a hearing.

Assembly Bill 2780 (Holden, 2020) proposed an identical purpose to, and following, the enactment and chaptering of Assembly Bill 1320 (Nazarian, 2019) which prohibited certain investments by CalPERS and CalSTRS in Turkey regarding the Armenian Genocide, but also included Azerbaijan. This bill held in the held in the Assembly Committee on Public Employment and Retirement without a hearing.

Chapter 459, Statutes of 2019 (Assembly Bill 1320, Nazarian) requires CalPERS and CalSTRS to divest from Turkey upon the occurrence of certain specified concerted actions by the United States federal government, among other provisions.

Assembly Bill 33 (R. Bonta, 2019) requires CalPERS and CalSTRS to divest from private prison companies, from making new or renewing existing investments in such companies, and to constructively engage with private prison companies to establish whether the companies are transitioning their business model to another industry, among other provisions. This bill was held in the Assembly Committee on Public Employment and Retirement.

Chapter 731, Statutes of 2018 (Senate Bill 964, Allen) requires CalPERS and CalSTRS to analyze climate-related financial risk to the extent that the respective pension boards identify climate-related financial risk as a material risk to their respective funds.

Senate Bill 459 (Portantino, 2017) would have required CalPERS to adopt an investment policy for retailers or wholesalers of banned weapons; engage those sellers; exercise proxy votes if engagement is unsuccessful; and, divest from those companies if engagement and the exercise of proxy votes are unsuccessful, among other provisions. This bill was held in the former Assembly Committee on Public Employees, Retirement and Social Security.

Chapter 575, Statutes of 2017 (Assembly Bill 20, Kalra) requires CalPERS and CalSTRS to report to the Legislature and the Governor, on or before April 1, 2018, information regarding investments in, and engagement with, companies constructing or funding the construction of the Dakota Access Pipeline.

Assembly Bill 946 (Ting, 2017) would have prohibited CalPERS and CalSTRS from investing public employee retirement funds in companies engaged in business related to the ‘border wall’ proposed by the Trump Administration. This bill was held in the former Assembly Committee on Public Employees, Retirement and Social Security.

Assembly Bill 1597 (Nazarian, 2017) would have prohibited CalPERS and CalSTRS from investing in any investment vehicle issued, owned, controlled, or managed by the government of Turkey. The Governor vetoed this bill stating in part that:

“The horror of the Armenian Genocide is something no Californian should ever forget. To that end, our school curriculum requires the study of the Armenian Genocide and this year I proclaimed April 24, 2018, as “Day of Remembrance of the Armenian Genocide.” In addition, the state extended the statutory deadline for genocide victims or their heirs to seek legal redress.

“While this subject is profoundly important, the bill as written is mostly symbolic. Moreover, I am reluctant to force yet another disinvestment measure on our already stressed pension systems.”

Assembly Bill 1551 (Allen, 2016) would have required public retirement funds, on or after January 1, 2017, to make no additional investments or renew existing investments in business firms or financial institutions that engage in business practices in furtherance of the boycott of Israel, among other provisions. This bill was held in the Assembly Committee on Rules.

Assembly Bill 2283 (I. Calderon, 2016) would have required CalPERS and CalSTRS to evaluate their investments in securitized home rental properties and ensure certain requirements were met, as specified, prior to investing or reinvesting in securitized home rental properties, among other provisions. This bill was held in the former Assembly Committee on Public Employees, Retirement, and Social Security.

Assembly Bill 2650 (Nazarian, 2016) would have prohibited CalPERS and CalSTRS from investing public employee retirement funds in specified investments issued by, owned, controlled, or managed by the government of Turkey. This bill was held in the Assembly Committee on Appropriations.

Assembly Bill 1410 (Nazarian, 2015) would have prohibited CalPERS and CalSTRS from investing public employee retirement funds in specified investments issued by, owned, controlled, or managed by the government of Turkey. This bill was held in the Assembly Committee on Appropriations.

Chapter 605, Statutes of 2015 (Senate Bill 185, De León) prohibits CalPERS and CalSTRS from investing public employee retirement funds in thermal coal companies, as specified, and among other provisions.

Assembly Bill 761 (Dickinson, 2013) would have prohibited CalPERS and CalSTRS from investing in companies that manufacture firearms or ammunition for a recipient other than the U.S. military, subject to a process specified in the bill and consistent with previous divestment legislation, but subject to the board's fiduciary duties. This bill was held in the Assembly Committee on Appropriations.

Senate Resolution 18 (Leno, 2013) encouraged CalPERS and CalSTRS, whenever feasible and consistent with their fiduciary responsibilities, to cease making direct investments in Russia and to encourage companies in which employee retirement funds are invested and that are doing

business in Russia not to take actions that promote or otherwise enable human rights violations in Russia. This resolution was adopted.

Chapter 441, Statutes of 2011 (Assembly Bill 1151, Feuer) amended the California Public Divest from Iran Act to, among other things, clarify that the boards of CalPERS and CalSTRS must divest pension funds, unless to do so would breach a fiduciary duty, among other provisions.

Senate Bill 903 (Anderson, 2011) would have amended the California Public Divest from Iran Act to clarify the criteria and process that the boards of CalPERS and CalSTRS must use to invest in Iran. This bill was held in the Assembly Committee on Appropriations.

Assembly Bill 2337 (Ammiano, 2010) would have prohibited CalPERS and CalSTRS from participating in predatory real estate investment practices related to rent-regulated housing that results in excessive rent increases, the displacement of tenants, or conversion of rent-regulated housing to market rate units. This bill was held in former Senate Committee on Public Employment and Retirement.

Chapter 671, Statutes of 2007 (Assembly Bill 221, Anderson) prohibits CalPERS and CalSTRS from investing in companies that have specified energy or defense-related operations in Iran.

Chapter 442, Statutes of 2006 (Assembly Bill 2941, Koretz) prohibits CalPERS and CalSTRS from investing public employee retirement funds in a company with business operations in Sudan, as specified.

Assembly Bill 107 (Knox, 2000) would have prohibited new or additional investments in tobacco companies by CalPERS and CalSTRS on and after January 1, 2001, and would have required divestment from existing investments by July 1, 2002. This bill was held in the former Assembly Committee on Public Employees, Retirement and Social Security on concurrence in Senate amendments.

Chapter 341, Statutes of 1999 (Senate Bill 105, Burton) requires CalPERS and CalSTRS to annually investigate the extent to which the U.S. and international corporations operating in Northern Ireland, in which they have invested, adhere to the MacBride Principles of nondiscrimination in employment, among other provisions.

Chapter 1351, Statutes of 1992 (Assembly Bill 2251, Margolin) prohibits state trust fund and state money investments in business firms or financial institutions that engage in discriminatory business practices after January 1, 1994, relating to the Arab League's economic boycott of Israel.

Chapter 1254, Statutes of 1986 (Assembly Bill 134, M. Waters) prohibits the use of state trust funds or state monies to make additional or new investments or renew existing investments in firms doing business with or in South Africa, as of January 1, 1987.

REGISTERED SUPPORT / OPPOSITION:

Support

State Building and Construction Trades Council of California (*Sponsor*)
California Federation of Labor Unions, AFL-CIO
California Federation of Teachers – A Union of Educators and Classified Professionals, AFT,
AFL-CIO
California-Nevada Conference of Operating Engineers, IUOE
California State Council of Laborers, Laborers' International Union of North America
California Teamsters Public Affairs Council
Painters and Allied Trades, District Council 16
Painters and Allied Trades, District Council 36

Opposition

Associated General Contractors, California Chapters
California Apartment Association
California Association of School Business Officials
California Building Industry Association
California Business Properties Association
California Council for Affordable Housing
California Housing Consortium
California School Employees Association, AFL-CIO
California Special Districts Association
California State Association of Counties
Commercial Real Estate Development Association, California Chapter
League of California Cities
Rural County Representatives of California
South Pasadena Residents for Responsible Growth
State Association of County Retirement Systems
Urban Counties of California

Analysis Prepared by: Michael Bolden / P. E. & R. / (916) 319-3957