COMMISSION ON GOVERNMENT FORECASTING AND ACCOUNTABILITY

PENSION IMPACT NOTE

95TH GENERAL ASSEMBLY

BILL NO: **SB 1169, as engrossed** April 18, 2007

SPONSOR (S): Collins, J. - Meeks, et al (Miller)

SYSTEM(S): General Provisions Article

FISCAL IMPACT: SB 1169, as engrossed, may have a fiscal impact, but the impact cannot be determined. If Illinois public pension funds and retirement systems have to divest certain assets and reinvest the proceeds in other assets, there may be a fiscal impact due to a change in asset allocation. Asset allocation affects a system's or fund's long-term investment returns. If asset allocation must change significantly, the impact of SB 1169, as engrossed, may be significant.

SUBJECT MATTER: SB 1169, as engrossed, amends the General Provisions Article of the Pension Code to add certain prohibited transactions relating to the investment of or deposit in entities doing business in or with the government of Sudan.

FISCAL IMPACT: SB 1169, as engrossed, may have a fiscal impact, but the impact cannot be determined. If Illinois public pension funds and retirement systems have to divest certain assets and reinvest the proceeds in other assets, there may be a fiscal impact due to a change in asset allocation. Asset allocation affects a system's or fund's long-term investment returns. If asset allocation must change significantly, the impact of SB 1169, as engrossed, may be significant.

COMMENTS:

Forbidden Entities
Currently, the General Provisions Article of the Pension Code contains a list of prohibited transactions for the Boards of Trustees of each public pension fund and retirement system. Most of these prohibited transactions are aimed at preventing Board members from misusing the assets of the fund or system.

SB 1169, as engrossed, adds a section to the General Provisions Article to add certain prohibited transactions. Effectively, the bill provides that Illinois public pension funds or retirement systems may not invest funds with a company or investment firm unless that company or firm certifies that it has not invested in a "forbidden entity," defined as:

(1) a political unit and subdivision of the Republic of Sudan;

(2) any company that is wholly or partially managed or controlled by the government of the Republic of the Sudan and any of its agencies;

(3) any company that is established or organized under the laws of the Sudan or whose principal place of business is in the Republic of Sudan;

(4) any company identified by the Office of Foreign Assets Control in the United States Department of the Treausry as sponsoring terrorist activities, or sanctioned for any violation of any United States rules and restrictions relating to the Republic of the Sudan;

(5) any publicly traded company identified by an independent researching firm that specializes in global security risk and that has been retained by a certifying company that owns or controls property or assets located in, provides goods or services in the Republic of Sudan.

Private Market Funds as Forbidden Entities

SB 1169, as engrossed, adds "private market funds" to the list of forbidden entities. Private market funds are defined as private equity funds, venture capital funds, real estate or other investment vehicles not publicly traded. SB 1169, as engrossed, requires that private market funds must provide a retirement system with an affidavit sworn under oath in which an expressly authorized officer of the company avers that the fund does not own or control any property or asset located in the Republic of Sudan and did not transact commercial business in the Republic of Sudan. The private market fund must also certify that, other than direct investments in UN-sanctioned Non-Government Organizations, the private market fund has no direct or indirect investment in any company organized under the laws of the Republic of Sudan.

Divestment from Private Market Funds

SB 1169, as engrossed, stipulates that if a private market fund fails to provide the affidavit or certification as stipulated above, the retirement system, local pension fund, or large Article 3 or 4 pension fund shall divest or attempt in good faith to divest its interest in the fund within 90 days, provided that the Board of the retirement system confirms, through resolution, that the divestment does not have a material and adverse impact on the retirement system or pension fund. The retirement system, local pension fund, or large Article 3 or 4 pension fund shall immediately notify the State Board of Investment, which shall immediately notify all retirement systems, local pension funds, and large Article 3 or 4 pension funds established under the Pension Code, whereupon those pension funds shall not enter into any agreement under which the pension funds directly or indirectly invest in that private market fund.

Prohibited Transactions

SB 1169, as engrossed, prohibits a retirement system, local pension fund, or large Article 3 or 4 pension fund from transferring or disbursing funds to any entity unless a certifying company certifies to the pension fund that 100% of the pension fund's assets are not and have not been invested or reinvested in any forbidden entity any time 4 months after the effective date. The certifying company is required to make the foregoing certification to State-funded retirement systems, local pension funds, and large Article 3 or 4 pension funds 6 months after the effective date, and, for large Article 3 or 4 pension funds, every six months thereafter; for State and locally-funded retirement systems, the certification must be made annually after the initial certification.

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