

COMMISSION ON GOVERNMENT FORECASTING AND ACCOUNTABILITY

PENSION IMPACT NOTE

95TH GENERAL ASSEMBLY

ACT NO: **Public Act 95-0521 (SB 1169)** September 17, 2007

SPONSOR (S): Collins – Meeks, et al. (Miller – Harris, et al.)

SYSTEM(S): General Provisions Article

FISCAL IMPACT: P.A. 95-0521 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 P.A. 95-0521 may be significant.

SUBJECT MATTER: P.A. 95-0521 amends the Illinois Pension Code concerning prohibited investments. The Act changes the definition of "retirement system" to mean only the 5 State-funded retirement systems. In addition, the Act makes changes in the requirements for private market funds, and changes references from the State Board of Investment to the Department (the Public Pension Division of the Department of Financial and Professional Regulation). This Act also provides that, in order for an Illinois finance entity to be eligible for investment or deposit of retirement system or pension fund assets, the Illinois finance entity must annually certify that it complies with the requirements of the High Risk Home Loan Act.

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COMMENT:

Definition of "Retirement Systems"

P.A. 95-0521 amends the definition of "retirement systems" to mean only the State Employees' Retirement System of Illinois, the Judges Retirement System of Illinois, the General Assembly Retirement System, the State Universities Retirement System, and the Teachers' Retirement System of the State of Illinois, excluding all others.

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.

P.A. 95-0521 adds a section to the General Provisions Article to add certain prohibited transactions. Effectively, the Act 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, agency 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 political units and subdivisions;
- (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 Treasury 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 or any company located in the domicile of Sudan.
- (6) any private market fund that fails to satisfy certain requirements (See “Private Market Funds as Forbidden Entities” below).

Prohibited Transactions with Forbidden Entities

P.A. 95-0521 provides that a retirement system shall not transfer or disburse funds to, deposit into, acquire any bonds or commercial paper from, or otherwise loan to or invest in any entity unless a certifying company certifies to the retirement system that, (1) the certifying company has relied on information provided by an independent researching firm that specializes in global security risk and (2) 100% of the retirement’s system’s assets for which the certifying company provides services or advice are not and have not been invested or reinvested in any forbidden entity at any time after 4 months after the effective date.

Definition of “Certifying Company”

In the context of the foregoing section on prohibited transactions, P.A. 95-0521 defines “certifying company” as:

- (1) a company that directly provides asset management services or advice to a retirement system or;
- (2) directly authorized or requested by a retirement system (A) identifies particular investment options for consideration or approval; (B) chooses particular investment options; or (C) allocates particular amounts to be invested.

If no company meets the listed criteria, then a “certifying company” shall mean the retirement system officer who, as designated by the board, executes the investment decisions made by the board, or, in the alternative, the company that the board authorizes to complete the certification as the agent of that officer.

Forbidden Entity Divestiture Timeframe

P.A. 95-0521 provides that retirement funds shall not transfer or disburse funds, acquire any bonds, loan, or invest in any entity unless a certifying company certifies to the retirement system that, (1) the certifying company has relied on information provided by an independent researching firm that specializes in global security and (2) 100% of the retirement system's assets for which the certifying company provides services or advice have not been invested or reinvested in any forbidden entity at any time 4 months after this Act. The certifying company shall also make the certification required to a retirement system 6 months after the effective date of this Act and annually thereafter.

Private Market Funds as Forbidden Entities (Contracts in Effect Prior to Effective. Date)

P.A. 95-0521 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. P.A. 95-0521 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 not transact commercial business in the Republic of Sudan; or a certificate by an authorized officer of the private market fund must certify that the private market fund has no direct or indirect investment with any company, except with regard to Non-Government Organizations sanctioned by the United Nations.

Divestment from Private Market Funds

P.A. 95-0521 stipulates that if a private market fund fails to provide the affidavit or certification as stipulated above, the retirement system, 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, fund shall immediately notify the Public Pension Division of the Department of Financial and Professional Regulation, which shall immediately notify all retirement systems 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 unless that private market fund provides the required affidavit or certification.

Compliance With High Risk Home Loan Act

In order for an Illinois finance entity (essentially, any entity chartered under the Illinois Banking Act) to be eligible for investment or deposit of retirement system or pension fund assets, the Illinois finance entity must annually certify that it complies with the requirements of the High Risk Home Loan Act which generally protects borrowers who enter into high risk home loans from abuse that occurs when creditors and brokers are not sufficiently regulated.

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