From: London, Sarah [Sarah.London@vermont.gov]
Sent: Thursday, January 14, 2016 10:00 AM
To: Springer, Darren
CC: Allen, Susan; Coriell, Scott
Subject: RE: Divestment

Messages in to Donna. Assume you know all this but just FYI if helpful:

Language in CA law:
http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160SB185

(f) Nothing in this section shall require a board to take action as described in this section unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board described in Section 17 of Article XVI of the California Constitution.

Press:

http://freebeacon.com/issues/loopholes-in-california-divestment-law-leave-coal-holdings-intact/

Environmentalists are hailing a new law that supposedly requires the state's two largest pension funds to divest from coal companies, but a close read of the law reveals loopholes large enough to keep most of the funds' coal holdings untouched.

Gov. Jerry Brown (D) signed the bill, SB 185, last week. On its face, the new law requires the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) to divest from companies that mine for thermal coal.

Environmentalists hailed the law as a major victory in their ongoing fight to divest financial institutions from carbon-based energy sources.

"These are 2 of the 20 largest pension funds on earth—their divestment sends a powerful signal that the world's 8th largest economy can figure out where the future lies," said Bill McKibben, who leads the environmentalist group 350.org and has spearheaded divestment efforts around the country.

However, it is not clear that SB 185 will actually spur significant divestment of the pension funds' coal holdings due to little-noticed language tucked away in the legislation.

The law requires the two pension funds to liquidate coal investments by July 2017. But it offers some caveats.

The law specifies that the funds should only divest from coal if "the action is consistent with the board's fiduciary responsibilities." In other words, if divesting conflicts with the funds' legal obligations to maximize returns for their investors, they needn't do so.

That is a major carve-out, since top executives at both CalPERS and CalSTRS have suggested or stated outright that divestment is a losing proposition financially.

“I’ve been involved in five divestments to this point for our fund,” CalSTRS chief investment officer Chris Ailman told the board in April. “All five of them we’ve lost money, and all five of them have not brought about social change.”

That fund’s chief executive said in 2013 that divestment “bears the risk of adversely affecting an investment portfolio and severs any chance to advance positive change through shareholder advocacy.”

Both CalSTRS and CalPERS have emphasized “engagement” with fossil fuel companies rather than divestment as a way to affect desired social or political change.

“When it comes to climate change and its risks, Calpers’ view is that the path to change lies in engaging energy companies, instead of divesting them. If we sell our shares then we lose our ability as shareowners to influence companies to act responsibly,” that fund’s CEO said in March.

Even if the funds determine that divestment is consistent with their fiduciary duties, it is not clear that SB 185 will force either fund to give up much in the way of coal holdings.

That is the result of another quirk in the language of the law, which defines a coal company as “a publicly traded company that generates 50 percent or more of its revenue from the mining of thermal coal.”

Many of the companies in CalSTRS’ and CalPERS’ portfolios that mine for coal are diversified energy companies that may not exceed that threshold, exempting them from the law’s divestment requirements.

Other divestment efforts have included similar carve-outs that left holdings in companies that produce coal energy untouched. Norway’s sovereign wealth fund set the revenue threshold at 30 percent. The Church of England’s is 50 percent.

“The pragmatic approach from investors has allowed them to land a symbolic blow against coal without having to risk dropping companies that make up a significant part of investment indexes,” Bloomberg reported in June.

According to the Sacramento Business Journal, SB 185 could affect CalPERS investments worth $57 million, or less than one fifth of its total value. For CalSTRS, the sum is even smaller: just $6.7 million, or 3 percent, of its $184 million portfolio could be affected by the measure.

As California pension funds have expressed doubts about the financial wisdom of divestment, they have also warned that efforts to “green” their portfolios pose major financial risks.

“We’re all familiar with the J-curve in private equity,” said CalPERS chief investment officer Joseph Dear in 2013. “Well, for CalPERS, clean-tech investing has got an L-curve for ‘lose.’”

“Our experience is this has been a noble way to lose money,” Dear said.

From: Springer, Darren
Sent: Thursday, January 14, 2016 8:35 AM
To: London, Sarah <Sarah.London@vermont.gov>
Cc: Allen, Susan <Susan.Allen@vermont.gov>; Coriell, Scott <Scott.Coriell@vermont.gov>
Subject: Re: Divestment

We would model on California which directed something like 18 month period of engagement with companies followed by divestment of any companies that get half or more of revenue from thermal coal (I.e. Coal mining, not burning). Would add same for Exxon. Would also have an out that delayed action if financially imprudent (need to look at CA definition on that).

Sent from my iPhone

On Jan 14, 2016, at 8:31 AM, London, Sarah <Sarah.London@vermont.gov> wrote:

> Ok, yes I thought she was with treasurer on this but will confirm. All bill would do is direct pension board to drop all coal companies & only Exxon for oil, not co's that invest in those two things, correct?
>
> Sent from my iPhone
>
> On Jan 14, 2016, at 8:25 AM, Springer, Darren <Darren.Springer@vermont.gov> wrote:
>
>> Just FYI I hear she was not thrilled with gov announcement so opportunity to get back on good page on this one by asking for her help
>>
>> Sent from my iPhone
>>
>> On Jan 14, 2016, at 8:11 AM, Allen, Susan <Susan.Allen@vermont.gov> wrote:
>>
>>> I agree. If not Donna, we need someone. Donna would be amazing. Sarah, are you comfortable having that conversation with her? IT makes sense since she reached out to you … but I'm happy to do it if you'd rather.
>>>
>>> Sue
>>>
>>> **From:** Springer, Darren
>>> **Sent:** Thursday, January 14, 2016 8:04 AM
>>> **To:** London, Sarah <Sarah.London@vermont.gov>
>>> **Cc:** Allen, Susan <Susan.Allen@vermont.gov>; Coriell, Scott <Scott.Coriell@vermont.gov>
>>> **Subject:** Re: Divestment

You could say we are interested in drafting the bill with leg counsel and see if she is willing to support a drafting request.

We have several legislators in House and Senate who have expressed interest in drafting a version of this (in addition to bills that divest that already exist but are different than Gov proposal). But we have been waiting for leadership to let us know what most appropriate path is, whether that is using an existing vehicle or perhaps drafting a new bill or committee bill. We'd love to work with Donna to draft the Administration proposal.

Makes sense?

Sent from my iPhone

On Jan 14, 2016, at 7:56 AM, London, Sarah <Sarah.London@vermont.gov> wrote:

> I will advise there is no bill?
>
> Sent from my iPhone
>
> Begin forwarded message:
>
>> **From:** Donna Sweaney <DSWEANEY@leg.state.vt.us>
>> **Date:** January 13, 2016 at 10:33:30 PM EST
>> **To:** London Sarah <Sarah.London@state.vt.us>
>> **Subject: Divestment**
>>
>> Hi Sarah,
>> I am writing to request a copy of the bill that the administration is proposing for divestment of coal

and fossil fuels from the state's retirement portfolio. I have requests from folks who want to testify on the issue.
Your help would be most appreciated.
Thanks,
Donna

Donna Sweaney,
Representative,
Windsor 1
Chair, House Government Operations Committee
2 Runnemede Lane
Windsor, VT 05089
802-674-5175