



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5574

Introduced 02/07/06, by Rep. Richard T. Bradley

SYNOPSIS AS INTRODUCED:

40 ILCS 5/1-110.5

Amends the Illinois Pension Code. Prohibits investments in any entity other than a qualified private market fund. Defines a qualified private market fund as a private market fund that will not knowingly invest assets of a retirement system or pension fund in any company that (i) has facilities or employees in the Republic of the Sudan or (ii) conducts a commercial business in the Republic of the Sudan. Effective immediately, but not earlier than January 27, 2006.

LRB094 15741 AMC 50954 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

1 AN ACT concerning public employee benefits.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Pension Code is amended by changing
5 Section 1-110.5 as follows:

6 (40 ILCS 5/1-110.5)

7 (For force and effect of certain provisions, see Section 90
8 of P.A. 94-79)

9 (This Section may contain text from a Public Act with a
10 delayed effective date)

11 Sec. 1-110.5. Certain prohibited transactions.

12 (a) A fiduciary of a retirement system or pension fund
13 established under this Code shall not transfer or disburse
14 funds to, deposit into, acquire any bonds or commercial paper
15 from, or otherwise loan to or invest in any entity other than a
16 qualified private market fund unless the company charged with
17 managing the assets of the retirement system or pension fund,
18 at no additional cost to the fiduciary, certifies to the
19 fiduciary, in the manner and form established by the Treasurer,
20 that:

21 (1) the fund managing company has not loaned to,
22 invested in, or otherwise transferred any of the retirement
23 system or pension fund's assets to a forbidden entity any
24 time after the effective date of this Act;

25 (2) at least 60% of the retirement system or pension
26 fund's assets are not invested in forbidden entities at any
27 time more than twelve months after the effective date of
28 this Act;

29 (3) at least 100% of the retirement system or pension
30 fund's assets are not invested in forbidden entities at any
31 time more than eighteen months after the effective date of
32 this Act.

1 (b) For purposes of this Section:

2 "Company" is any entity capable of affecting commerce,
3 including but not limited to (i) a government, government
4 agency, natural person, legal person, sole proprietorship,
5 partnership, firm, corporation, subsidiary, affiliate,
6 franchisor, franchisee, joint venture, trade association,
7 financial institution, utility, public franchise, provider of
8 financial services, trust, or enterprise; and (ii) any
9 association thereof.

10 "Forbidden entity" means any of the following:

11 (1) The government of the Republic of the Sudan and any
12 of its agencies, including but not limited to political
13 units and subdivisions;

14 (2) Any company that is wholly or partially managed or
15 controlled by the government of the Republic of the Sudan
16 and any of its agencies, including but not limited to
17 political units and subdivisions;

18 (3) Any company (i) that is established or organized
19 under the laws of the Republic of the Sudan; (ii) whose
20 principal place of business is in the Republic of the
21 Sudan;

22 (4) Any company (i) identified by the Office of Foreign
23 Assets Control in the United States Department of the
24 Treasury as sponsoring terrorist activities; or (ii)
25 fined, penalized, or sanctioned by the Office of Foreign
26 Assets Control in the United States Department of the
27 Treasury for any violation of any United States rules and
28 restrictions relating to the Republic of the Sudan that
29 occurred at any time following the effective date of this
30 Act; and

31 (5) Any publicly traded company who has been identified
32 by an independent researching firm that specializes in
33 global security risk as being a company that owns or
34 controls property or assets located in, has employees or
35 facilities located in, provides goods or services to,
36 obtain goods or services from, has distribution agreements

1 with, issue credits or loans to, purchase bonds or
2 commercial paper issued by, or invest in (i) the Republic
3 of the Sudan; or (ii) any company domiciled in the Republic
4 of the Sudan; and

5 (6) Any private market fund that is not a qualified
6 private market fund. ~~Any non publicly traded company that~~
7 ~~fails to submit to the fund managing company an affidavit~~
8 ~~sworn under oath in which an expressly authorized officer~~
9 ~~of the company avers that the company (i) does not own or~~
10 ~~control any property or asset located in the Republic of~~
11 ~~the Sudan; and (ii) did not transact commercial business in~~
12 ~~the Republic of the Sudan.~~

13 Notwithstanding the foregoing, the term "forbidden entity"
14 shall exclude companies, except agencies of the Republic of the
15 Sudan, who are certified as Non-Government Organizations by the
16 United Nations, or who engage solely in (i) the provision of
17 goods and services intended to relieve human suffering or to
18 promote welfare, health, religious and spiritual activities,
19 and education humanitarian purposes or otherwise; or (ii)
20 journalistic activities.

21 "Private market fund" means any private equity fund,
22 private equity fund-of-funds, venture capital fund, real
23 estate fund, or other non-publicly-traded company.

24 "Qualified private market fund" means any private market
25 fund in which a retirement system or pension fund established
26 under this Code:

27 (A) has made an investment prior to the effective date
28 of this amendatory Act of the 94th General Assembly so long
29 as the private market fund provides the retirement system
30 or pension fund with a written undertaking within 18 months
31 after the effective date of this amendatory Act that, to
32 the best of the private market fund's knowledge and based
33 upon due diligence and information received, the private
34 market fund has not transferred, loaned, or otherwise
35 invested and will not knowingly transfer, loan, or
36 otherwise invest any of the assets of the retirement system

1 or pension fund in any company that directly or through one
2 or more subsidiaries (i) has facilities or employees in the
3 Republic of the Sudan or (ii) conducts a commercial
4 business in the Republic of the Sudan; or

5 (B) makes an investment after the effective date of
6 this amendatory Act of the 94th General Assembly so long as
7 the private market fund agrees, through an enforceable
8 written agreement, that it will not knowingly transfer,
9 loan, or otherwise invest any of the assets of the
10 retirement system or pension fund in any company that
11 directly or through one or more subsidiaries (i) has
12 facilities or employees in the Republic of the Sudan or
13 (ii) conducts a commercial business in the Republic of the
14 Sudan or with companies whose principal place of business
15 is located in the Republic of the Sudan.

16 (c) In addition to any other penalties and remedies
17 available under the law of Illinois and the United States, any
18 transaction that violates the provisions of this Act shall be
19 void or voidable, at the sole discretion of the fiduciary.

20 (Source: P.A. 94-79, eff. 1-27-06; for force and effect of
21 certain provisions, see Section 90 of P.A. 94-79.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law, but not earlier than January 27, 2006.