

SECOND REGULAR SESSION

HOUSE BILL NO. 1869

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEATON.

4486H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 105, RSMo, by adding thereto one new section relating to public employee retirement systems.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 105, RSMo, is amended by adding thereto one new section, to be
2 known as section 105.693, to read as follows:

105.693. 1. As used in this section, the following terms mean:

2 (1) "Board", the governing board or decision-making body of a retirement
3 system that is authorized by law to administer the system;

4 (2) "Control":

5 (a) As such term is defined under the Investment Company Act of 1940 (15
6 U.S.C. 80a-2(a)); or

7 (b) Involvement in an entity's governance structure, monitoring, or internal
8 human resources decisions consistent with the objectives set out in the Opinion on
9 Strengthening the United Front Work of the Private Economy in the New Era issued by
10 the General Office of the Central Committee of the Chinese Communist Party (2020) or
11 a successor or similar document;

12 (3) "Divest", a sale, redemption, replacement, or any other activity that
13 terminates an investment;

14 (4) "Fund", the retirement benefit fund of a system;

15 (5) "Investment", any investment, as such term is defined under section 105.687,
16 that the board or system is authorized to make;

17 (6) "Person", an individual or entity;

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **(7) "Restricted entity", the following, including wholly owned subsidiaries,**
19 **majority-owned subsidiaries, parent companies, and affiliates that exist for profit-**
20 **making purposes:**

21 **(a) Any person, other than a U.S. person as defined under 15 CFR 772.1, that is**
22 **identified for the People's Republic of China on the Entity List (Supplement No. 4 to 15**
23 **CFR Part 744) as a person reasonably believed to be involved, or to pose a significant**
24 **risk of being or becoming involved, in activities contrary to the national security or**
25 **foreign policy interests of the United States until the End-User Review Committee of the**
26 **Bureau of Industry and Security in the United States Department of Commerce**
27 **determines that the person no longer meets that criteria and removes the person from**
28 **the list;**

29 **(b) Any person that:**

30 **a. The United States Secretary of Defense has listed as a Communist Chinese**
31 **military company operating directly or indirectly in the United States or in any of its**
32 **territories or possessions under Section 1237 of Pub. L. 105-261, as amended by Section**
33 **1233 of Pub. L. 106-398 and Section 1222 of Pub. L. 108-375, until such time as the**
34 **United States Secretary of Defense removes the person from such list;**

35 **b. The United States Secretary of Defense, in consultation with the United States**
36 **Secretary of the Treasury, determines is a Communist Chinese military company**
37 **operating directly or indirectly in the United States or in any of its territories or**
38 **possessions and therefore lists as such under Section 1237 of Pub. L. 105-261, as**
39 **amended by Section 1233 of Pub. L. 106-398 and Section 1222 of Pub. L. 108-375, until**
40 **such time as the United States Secretary of Defense removes the person from such list;**
41 **or**

42 **c. The United States Secretary of the Treasury publicly lists as meeting the**
43 **criteria in Section 1237(b)(4)(B) of Pub. L. 105-261, or publicly lists as a subsidiary of a**
44 **person already determined to be a Communist Chinese military company, until the**
45 **United States Secretary of the Treasury determines that the person no longer meets that**
46 **criteria and removes the person from such list;**

47 **(c) Any investment that is domiciled, issued, incorporated, or listed in the**
48 **People's Republic of China, other than a U.S. person or U.S. subsidiary as defined under**
49 **15 CFR 772.1, or that is publicly confirmed to be controlled by the People's Republic of**
50 **China, the Chinese Communist Party, or a provincial division, municipality,**
51 **governmental agency, sovereign wealth fund, or political instrumentality of the**
52 **People's Republic of China; or**

53 **(d) Any organization or citizen that is identified by the appropriate government**
54 **agencies to be required by the National Intelligence Law of the People's Republic of**

55 China (2017), as amended in 2018, or any successor to support, assist, and cooperate
56 with the state intelligence work of the People's Republic of China and keep the secrets of
57 the national intelligence work of the People's Republic of China;

58 (8) "Restricted investment product", an investment product that:

59 (a) Is managed by one or more persons:

60 a. That are not employed by the system; and

61 b. In which the system on behalf of the fund owns investments together with
62 investors other than the system; and

63 (b) Holds investments in a restricted entity;

64 (9) "System", any state or local public retirement system or plan established by
65 the state or any political subdivision or instrumentality of the state for the purpose of
66 providing plan benefits for elected or appointed public officials or employees of the state
67 or any political subdivision or instrumentality of the state.

68 2. After August 28, 2024, a system shall not knowingly invest in a restricted
69 entity or a restricted investment product and shall divest any investment that the system
70 has on behalf of a fund in accordance with this section.

71 3. Before December 1, 2024, and at least annually on or before December first of
72 each subsequent year, the board shall make a good faith effort to identify all restricted
73 entities and restricted investment products in which the system holds an investment.
74 The board may use an independent research firm to assist the board.

75 4. If the board determines after a review under subsection 3 of this section that
76 the system has investments in a restricted entity or a restricted investment product, the
77 board shall establish a plan to divest the investment and complete the divestment as
78 soon as financially prudent. However, the investment shall be divested not later than the
79 following:

80 (1) At least fifty percent of the investment shall be removed from a fund's assets
81 within three years after the board determines that the investment is in a restricted entity
82 or restricted investment product;

83 (2) At least seventy-five percent of the investment shall be removed from a
84 fund's assets within four years after the board determines that the investment is in a
85 restricted entity or restricted investment product; and

86 (3) One hundred percent of the investment shall be removed from a fund's assets
87 within five years after the board determines that the investment is in a restricted entity
88 or restricted investment product.

89 5. The board shall determine whether to cease or defer divestment in the entity
90 or product initiated under this section and resume investment in the entity or product

91 **during any period in which the entity or product has not returned to being a restricted**
92 **entity or restricted investment product if any of the following conditions are met:**

93 **(1) The United States Secretary of State has issued a determination that the**
94 **People's Republic of China is in compliance with each of the following:**

95 **(a) The December 19, 1984, Joint Declaration of the Government of the United**
96 **Kingdom of Great Britain and Northern Ireland and the Government of the People's**
97 **Republic of China on the Question of Hong Kong;**

98 **(b) The Basic Law of the Hong Kong Special Administrative Region of the**
99 **People's Republic of China;**

100 **(c) The Uyghur Human Rights Policy Act of 2020;**

101 **(d) The December 10, 1948, Universal Declaration of Human Rights; and**

102 **(e) The December 19, 1966, International Covenant on Civil and Political**
103 **Rights;**

104 **(2) The entity or product meets or exceeds the rules and standards of the Public**
105 **Company Accounting Oversight Board and the Sarbanes-Oxley Act of 2002 (Pub. L.**
106 **107-204); or**

107 **(3) The board determines that a fund has holdings in a passively managed**
108 **commingled fund that includes a restricted entity and the estimated cost of divestment**
109 **of the commingled fund is greater than ten percent of the total value of the restricted**
110 **entities held in the commingled fund.**

111 **6. (1) On or before December 31, 2024, and annually on or before December**
112 **thirty-first of each subsequent year, the board shall submit a report to the general**
113 **assembly.**

114 **(2) The report shall include at least the following information, as of the date of**
115 **the report:**

116 **(a) A copy of the restricted entity list;**

117 **(b) All publicly traded securities sold, redeemed, divested, or withdrawn in**
118 **compliance with this section;**

119 **(c) All commingled funds that are exempted from divestment under subsections**
120 **5 and 9 of this section; and**

121 **(d) Any progress made under subsection 5 of this section.**

122 **7. With respect to actions taken in compliance with this section, including all**
123 **good faith determinations regarding restricted entities and restricted investment**
124 **products, the board and the system are exempt from any conflicting statutory or**
125 **common law obligations, including any obligations with respect to choice of asset**
126 **managers, investment fiduciaries, investment funds, or investments for fund investment**
127 **portfolios.**

128 **8. The state and any political subdivision of the state; its officers, agents, and**
129 **employees; and the board and employees of a system shall be immune from civil liability**
130 **for any act or omission related to the removal of an asset from a fund under this section**
131 **and are entitled to indemnification from the system for all losses, costs, and expenses,**
132 **including reasonable attorney's fees, associated with defending against any claim or suit**
133 **relating to an act authorized under section.**

134 **9. (1) Except as provided under subdivision (2) of this subsection, the divestment**
135 **requirements of this section do not apply to existing investments in private market**
136 **funds.**

137 **(2) The requirements of subsection 2 of this section shall apply to existing**
138 **investments in private market funds.**

139 **(3) Notwithstanding any provision to the contrary, subdivision (9) of subsection 1**
140 **of this section and subsection 2 of this subsection do not apply to indirect holdings in**
141 **actively managed investment funds.**

142 **(4) If a manager or investment fiduciary creates a similar actively managed**
143 **investment fund without the restricted entities, the board shall replace all applicable**
144 **investments with investment in the similar actively managed investment fund in a**
145 **period consistent with prudent investing standards.**

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