

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 977
103RD GENERAL ASSEMBLY

2068H.02C

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 105, RSMo, by adding thereto one new section relating to divestment of certain investments of 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 system that is**
3 **authorized by law to administer the system;**

4 **(2) "Control":**

5 **(a) The same meaning as such term is defined in the Investment Company Act of**
6 **1940, 15 U.S.C. Section 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 in 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 the term "U.S. person" is defined in
22 15 CFR 772.1, that is identified for the People's Republic of China on the Entity List,
23 Supplement No. 4 to 15 CFR 744, as a person reasonably believed to be involved, or to
24 pose a significant risk of being or becoming involved, in activities contrary to the
25 national security or foreign policy interests of the United States until the End-User
26 Review Committee of the Bureau of Industry and Security in the United States
27 Department of Commerce determines that the person no longer meets that criteria and
28 removes the person from 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 the Strom Thurmond National Defense
33 Authorization Act of Fiscal Year 1999, P.L. 105-261, as amended by Section 1233 of P.L.
34 106-398 and Section 1222 of P.L. 108-375, 50 U.S.C. Section 1701 note, until such time as
35 the United States Secretary of Defense removes the person from such list;

36 b. The United States Secretary of Defense, in consultation with the United States
37 Secretary of the Treasury, determines is a Communist Chinese military company
38 operating directly or indirectly in the United States or in any of its territories or
39 possessions and therefore lists as such under Section 1237 of the Strom Thurmond
40 National Defense Authorization Act of Fiscal Year 1999, P.L. 105-261, as amended by
41 Section 1233 of P.L. 106-398 and Section 1222 of P.L. 108-375, 50 U.S.C. Section 1701
42 note, until such time as the United States Secretary of Defense removes the person from
43 such list; or

44 c. The United States Secretary of the Treasury publicly lists as meeting the
45 criteria in Section 1237(b)(4)(B) of the Strom Thurmond National Defense
46 Authorization Act of Fiscal Year 1999, P.L. 105-261, as amended by Section 1222 of
47 P.L. 108-375, 50 U.S.C. Section 1701 note, or publicly lists as a subsidiary of a person
48 already determined to be a Communist Chinese military company, until the United
49 States Secretary of the Treasury determines that the person no longer meets that criteria
50 and removes the person from such list;

51 (c) Any organization or citizen that is identified by the appropriate government
52 agencies to be required by the National Intelligence Law of the People's Republic of
53 China (2017), as amended in 2018, or any successor to support, assist, and cooperate

54 with the state intelligence work of the People's Republic of China and keep the secrets of
55 the national intelligence work of the People's Republic of China; or

56 (d) Any person that is listed on the Specially Designated Nationals and Blocked
57 Persons List published by the Office of Foreign Assets Control of United States
58 Department of the Treasury;

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

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

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

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

64 (b) Holds investments in a restricted entity;

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

69 2. After August 28, 2025, a system shall not knowingly invest in a restricted
70 entity or a restricted investment product and shall divest any investment that the system
71 has on behalf of a fund in accordance with this section.

72 3. Before December 1, 2025, and at least annually on or before December first of
73 each subsequent year, the board shall make a good faith effort to identify all restricted
74 entities and restricted investment products in which the system holds an investment.
75 The board may use an independent research firm to assist the board.

76 4. (1) If the board determines after a review under subsection 3 of this section
77 that the system has investments in a restricted entity or a restricted investment product,
78 the board shall establish a plan to divest the investment and complete the divestment as
79 soon as financially prudent. Except as provided in subdivision (2) of this subsection, the
80 investment shall be divested no later than August 28, 2026.

81 (2) The investment may be divested after August 28, 2026, but shall be divested
82 no later than August 28, 2028, if the board finds that the following conditions exist:

83 (a) The divestment of the investment by August 28, 2026, would result in the
84 system incurring aggregate transaction costs in excess of five hundred thousand dollars;

85 (b) The selling of global public equity interests would result in a loss on
86 secondary markets; or

87 (c) The divestment of the investment by August 28, 2026, would otherwise fail to
88 comply with federal or state law or other legal obligations.

89 5. Prior to divesting any commingled fund required by this section in which the
90 divestment would result in a realized loss, the staff of the system shall notify the board

91 and if, within two business days, a majority of the trustees of the board object, no
92 further action shall be taken until a special or regular meeting of the board.

93 6. The board shall determine whether to cease or defer divestment in the entity
94 or product initiated under this section and resume investment in the entity or product
95 during any period in which the entity or product has not returned to being a restricted
96 entity or restricted investment product if any of the following conditions are met:

97 (1) The entity or product meets or exceeds the rules and standards of the Public
98 Company Accounting Oversight Board and the Sarbanes-Oxley Act of 2002, P.L. 107-
99 204, 116 Stat. 745; or

100 (2) The board determines that a fund has holdings in a passively managed
101 commingled fund that includes a restricted entity and the estimated cost of divestment
102 of the commingled fund is greater than ten percent of the total value of the restricted
103 entities held in the commingled fund.

104 7. (1) On or before December 31, 2025, and annually on or before December
105 thirty-first of each subsequent year, the board shall submit a report to the general
106 assembly.

107 (2) The report shall include at least the following information, as of the date of
108 the report:

109 (a) A copy of the restricted entity list;

110 (b) All publicly traded securities sold, redeemed, divested, or withdrawn in
111 compliance with this section;

112 (c) All commingled funds that are exempted from divestment under subsection 5
113 or 6 of this section; and

114 (d) Any progress made under subsection 6 of this section.

115 8. With respect to actions taken in compliance with this section, including all
116 good faith determinations regarding restricted entities and restricted investment
117 products, the board and the system are exempt from any conflicting statutory or
118 common law obligations, including any obligations with respect to choice of asset
119 managers, investment fiduciaries, investment funds, or investments for fund investment
120 portfolios.

121 9. The state and any political subdivision of the state; its officers, agents, and
122 employees; and the board and employees of a system shall be immune from civil liability
123 for any act or omission related to the removal of an asset from a fund under this section
124 and are entitled to indemnification from the system for all losses, costs, and expenses,
125 including reasonable attorney's fees, associated with defending against any claim or suit
126 relating to an act authorized under section.

127 **10. (1) Notwithstanding any provision of law to the contrary, the provisions of**
128 **this section do not apply to investments in private market funds.**

129 **(2) Notwithstanding any provision of law to the contrary, the provisions of this**
130 **section do not apply to indirect holdings in actively managed investment funds.**

131 **(3) If a manager or investment fiduciary creates a similar actively managed**
132 **investment fund without the restricted entities, the board shall replace all applicable**
133 **investments with the investments in the similar actively managed investment fund**
134 **within a period consistent with prudent investing standards.**

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