

**BILL NUMBER: AB 20 (Kalra) as amended April 24, 2017**

**SUMMARY**

AB 20 requires the CalSTRS and CalPERS boards to report, on or before April 1, 2018, to the Legislature and the Governor regarding investments in, and engagement with, companies constructing, or funding the construction of, the Dakota Access Pipeline. The bill also requires the CalSTRS and CalPERS boards to consider factors related to tribal sovereignty and indigenous tribal rights when selecting or rejecting investments.

**BOARD POSITION**

**Oppose, unless amended,** to remove the requirement that the board include factors related to tribal sovereignty and indigenous tribal rights in its investment decisions. The board's policy is to oppose legislation that restricts the investment authority of the board or is inconsistent with the investment policy adopted by the board as presented in the CalSTRS Investment Policy and Management Plan.

**REASON FOR THE BILL**

Several Native American tribal nations and environmental groups have expressed concern and protested against the Dakota Access Pipeline, citing concerns about negative impacts to the environment, including potential contamination of water sources, and other adverse impacts to the reservation of Sioux tribes that are in close proximity to the pipeline's route.

**SUMMARY OF AMENDMENTS**

The April 17 and 24, 2017, amendments:

- Remove the prohibition on the CalSTRS and CalPERS boards from making additional investments or renewing existing investments, on or after January 1, 2018, in a company constructing, or funding the construction of, the Dakota Access Pipeline.
- Remove the requirement that the boards liquidate their investments in such companies on or before July 1, 2018.
- Require the boards to report, on or before April 1, 2018, to the Legislature and the Governor regarding investments in, and engagement with, such companies.
- Require the boards, on or before April 1, 2018, to include factors related to tribal sovereignty and indigenous tribal rights in the board's consideration of environmental, social and governance issues when selecting or rejecting investments.
- Make various changes to the findings and declarations in the bill.

**ANALYSIS**

**Existing Law:**

Under the provisions of Section 17 of Article XVI of the California Constitution, as amended by Proposition 162 of 1992, the CalSTRS board has plenary authority and

fiduciary responsibility over the investment of retirement plan assets and is required to discharge its duties solely in the interests of the members and beneficiaries for the exclusive purpose of providing benefits. The board must invest the assets of the plan with the care, skill and diligence of a prudent person engaged in a similar enterprise so as to maximize the investments and minimize the risk of loss. When considering investments, the preservation of principal and maximization of income is the primary and underlying criteria for the selection and retention of securities. The Constitution states, however, that the Legislature may by statute prohibit certain investments by a retirement board when it is in the public interest to do so and provided the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board.

**This Bill:**

Specifically, AB 20:

- Requires the CalSTRS and CalPERS boards to file a report with the Legislature and the Governor on or before April 1, 2018, that includes:
  - A list of investments in companies constructing, or funding the construction of, the Dakota Access Pipeline.
  - A subset of that list of companies with which the board has constructively engaged, including:
    - A detailed description of the board and its staff's engagement with each company, including the number of engagement interactions with each company.
    - A detailed description of the results of the engagement, including agreements reached between the board and the company.
    - An evaluation as to the efficacy of the engagement, including whether the engagement resulted in a change of action by the investing firm or company with which funds were invested.
- Requires the CalSTRS and CalPERS boards, on or before April 1, 2018, to include factors related to tribal sovereignty and indigenous tribal rights in the board's consideration of environmental, social and governance issues when selecting or rejecting investments.

AB 20 limits the constitutional mandate that the board invest consistent with its fiduciary responsibility by requiring it to include factors related to tribal sovereignty and indigenous tribal rights in its investment decisions. While the board maintains its [Investment Policy for Mitigating ESG Risks](#), adding a specific mandate to include specific factors in selecting or rejecting investments infringes on the board's authority to discharge its fiduciary duties with "due care." This represents an unreasonable and unnecessary infringement on the board's investment authority and fiduciary responsibility. This is especially concerning as investment returns affect the 2014 funding plan (AB 1469–Bonta), which placed CalSTRS on a trajectory toward full funding.

In accordance with its divestment policy, CalSTRS has historically advocated that active and direct engagement is the best way to resolve issues. A report to the Legislature on CalSTRS engagement with companies involved with the Dakota Access Pipeline would

demonstrate what types of efforts have taken place and what the outcomes of those efforts are.

## LEGISLATIVE HISTORY

SB 185 (De León, Chapter 605, Statutes of 2015) required the CalSTRS and CalPERS boards to engage with thermal coal companies, as defined, and to divest the public employee retirement funds of any investments in thermal coal companies and prohibited additional or new investments or the renewal of existing investments in thermal coal companies.

SR 18 (Leno, Adopted, 2013), in response to the Russian government taking an aggressive course of action to pass laws targeting the lesbian, gay, bisexual and transgender (LGBT) community, strongly encouraged CalSTRS and CalPERS, whenever feasible and consistent with their fiduciary responsibilities, to cease making direct investments in Russia and to encourage companies in which employee retirement funds are invested and that are doing business in Russia not to take actions that promote or otherwise enable human rights violations in Russia.

## PROGRAM BACKGROUND

### ESG Policy

CalSTRS has its own well-established and longstanding process for thoroughly vetting the environmental, social and governance risks of potential investments. The board adopted its Statement of Investment Responsibility in 1978, making CalSTRS an industry leader as one of the first pension funds to adopt a written policy to navigate these complex issues. In its latest incarnation, the board developed a list of 21 Risk Factors as part of its [Investment Policy for Mitigating ESG Risks](#). The 21 Risk Factors help the board to identify and evaluate investment risks relating to the existence of certain conditions, such as recognition of the rule of law, shareholder rights, human rights, the environment, acts of terrorism and other unsustainable practices and governance crises with the potential to hurt long-term profits.

### Divestment Policy

In addition to the CalSTRS ESG policy, the board has adopted a [divestment policy](#), focusing on engagement, to respond to external or internal initiatives to divest of specific companies or industries. In accordance with this policy, CalSTRS has historically taken the position that active and direct engagement is the best way to resolve issues. Face-to-face meetings with shareowners and senior management, or the board of directors, are generally more effective in bringing about change in a corporation than divestment.

### Dakota Access Pipeline

The Dakota Access Pipeline is an underground oil pipeline project that covers a distance of nearly 1,200 miles, stretching from shale oil fields in northwest North Dakota to an oil tank farm in southern Illinois. Several Native American tribal nations and environmental groups have expressed concern and protested against the pipeline, citing concerns about negative impacts to the environment, including potential contamination of water sources, and other adverse impacts to the reservation of Sioux tribes that are

in close proximity to the pipeline's route. The U.S. Army Corps of Engineers, after initially denying, approved an easement in early 2017, and construction of the pipeline has now been completed.

## **FISCAL IMPACT**

Program Cost – None.

Administrative Costs/Savings – Approximately \$50,000 for travel and staff time for further engagement and to complete the report.

## **SUPPORT**

California Nurses Association  
California Teachers Association  
National Association of Social Workers, California Chapter

## **OPPOSITION**

CalSTRS (oppose, unless amended)  
California Special Districts Association (introduced version)  
California Police Chiefs Association, Inc. (introduced version)  
National Federation of Independent Business (introduced version)  
School Employers Association of California (introduced version)

## **ARGUMENTS**

- Pro: Could add to the perception that CalSTRS is addressing issues associated with climate change.
- Con: May infringe upon the investment authority of the board.  
May reduce the investable universe and adversely affect portfolio performance.

## **LEGISLATIVE STAFF CONTACT**

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