Office of the Mayor

CONSENT CALENDAR
March 14, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author), Councilmember Hahn (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Subject: Support SB 252 – State Divestment from Fossil Fuels

RECOMMENDATION
Adopt a Resolution in support of SB 252 (Gonzalez), which would prohibit the Public Employees' Retirement System (CalPERS) and the State Teachers' Retirement System (CalSTRS) from investing in fossil fuel companies. Send a copy of the Resolution to Assemblymember Buffy Wicks, State Senators Nancy Skinner and Lena Gonzalez, Governor Gavin Newsom, CalPERS, and CalSTRS.

BACKGROUND
The impacts of human-caused climate change are becoming increasingly unavoidable. Without taking bold and immediate action to reduce our greenhouse gas emissions, the world will heat above 2C by 2100. Such an event would lead to vast ecological destruction and mass extinctions, in addition to increased drought and food crop failures that could destabilized human society, disproportionately impacting those living in poverty.

California has been a leader in addressing climate change. Under State law, California must procure 60% of all electricity from renewable resources by 2030, and be carbon-free by 2045. SB 32, approved in 2016, requires California's greenhouse gas emissions to be 40% below 1990 levels by 2030. State policies around climate change have been evolving based on the latest science, with an acceleration of these efforts necessary to address the projections in the latest report by the United Nations' Intergovernmental Panel on Climate Change (IPCC), which says that the only way to stay below 1.5C is to have carbon emissions peak in 2025, followed by a rapid decline and reaching net-zero by the middle of the century.

Locally, extensive work has been done to mitigate our impacts on the climate. There is a goal to reach net-zero carbon emissions by 2045 or earlier. Electrification policies and improvements to transportation infrastructure to encourage moving away from gasoline-powered vehicles have also been approved. Under the City of Berkeley's Investment Policy, there has been a divestment from publicly traded fossil fuel companies and banks that finance pipelines and fossil fuel infrastructure. The rational for this is the cost of the impacts of climate change outweigh any return on investment from such companies.

SB 1173, introduced by State Senator Lena Gonzalez, will help meet the State's climate action goals by prohibiting the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) from investing in fossil fuel companies. Additionally, divestment from such companies must be done by 2030. Currently, CalPERS and CalSTRS have approximately $11.5 billion invested in fossil fuel companies. This bill builds upon the work we have done locally to divest from fossil fuels.

In May 2022, Council unanimously approved Resolution No. #70,348-N.S. in support of SB 1173, which was a previous version of this bill. While that bill did pass the State Senate, the bill died after time ran out for a vote at the Assembly.

FINANCIAL IMPLICATIONS
None.

ENVIRONMENTAL SUSTAINABILITY
Ending reliance on fossil fuels is necessary for achieving Berkeley's Climate Action Plan and related environmental goals.

CONTACT PERSON
Mayor Jesse Arreguín 510-981-7100

Attachments:
1: Resolution
2: Text of SB 252
3: SB 252 Fact Sheet

RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF SB 252 – FOSSIL FUEL DIVESTMENT ACT

WHEREAS, anthropogenic climate change, through rising sea levels, drought, heat waves, extreme precipitation events and increased wildfires is observably affecting human wellbeing, ecosystems and biodiversity; and

WHEREAS, climate change is an issue of environmental justice, disproportionately affects Indigenous communities, communities of color, and low income communities due to historical oppression, inadequate political power and access to resources for prevention and relief; and

WHEREAS, the International Panel on Climate Change concluded in 2018 that we have 12 years to make dramatic cuts in the use of fossil fuels (coal, oil, gas and tar sands) if we are to keep warming to 1.5◦ C and avoid more catastrophic change; and

WHEREAS, the fossil fuel industry is the single most powerful obstacle to addressing climate change, using its immense lobbying power in Washington, D.C. and Sacramento to block climate legislation; and

WHEREAS, fossil fuel companies' own scientists knew as early as the 1970s that their products were causing climate change, but the companies kept it secret; and

WHEREAS, to effectively address climate change, most fossil fuel reserves must remain in the ground, never to be used. Such reserves held as investments are liable to become stranded assets. This makes fossil fuel stocks a risky investment; and

WHEREAS, a Corporate Knights study found that if CalPERS and CalSTRS had divested in 2010, by 2019 their assets would have increased by $11.9 and $5.5 billion, respectively.

WHEREAS, independent studies by financial consulting firms BlackRock and Meketa have found that divestment reduces risk and improves rather than weakens investment returns; and

WHEREAS, divestment from specific segments or business operations by CalPERS and CalSTRS is already standard practice and is specifically allowed by the California Constitution; and

WHEREAS, the “engagement” strategy preferred by CalPERS and CalSTRS has been largely ineffective in moving fossil fuel companies away from fossil fuel exploration, extraction and distribution; and

WHEREAS, divestment means selling directly held or commingled assets including fossil fuel public equities and corporate bonds; and

WHEREAS, SB 252, introduced by State Senator Lena Gonzalez, will help meet the State’s climate action goals by prohibiting CalPERS and CalSTRS from investing in fossil fuel companies and to divest from such companies by 2030.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 252.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Assemblymember Buffy Wicks, State Senators Nancy Skinner and Lena Gonzalez, Governor Gavin Newsom, CalPERS, and CalSTRS.

SENATE BILL No. 252

Introduced by Senators Gonzalez, Stern, and Wiener

January 30, 2023

An act to amend Section 16642 of, and to add Section 7513.76 to, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 252, as introduced, Gonzalez. Public retirement systems: fossil fuels: divestment.

The California Constitution grants the retirement board of a public employee retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the retirement fund and system. These provisions qualify this grant of powers by reserving to the Legislature the authority to prohibit investments if it is in the public interest and the prohibition satisfies standards of fiduciary care and loyalty required of a retirement board.

Existing law prohibits the boards of the Public Employees' Retirement System and the State Teachers' Retirement System from making new investments or renewing existing investments of public employee retirement funds in a thermal coal company, as defined. Existing law requires the boards to liquidate investments in thermal coal companies on or before July 1, 2017, and requires the boards, in making a determination to liquidate investments, to constructively engage with thermal coal companies to establish whether the companies are transitioning their business models to adapt to clean energy generation. Existing law provides that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board's fiduciary responsibilities established in the California Constitution.

This bill would prohibit the boards of the Public Employees' Retirement System and the State Teachers' Retirement System from making new investments or renewing existing investments of public employee retirement funds in a fossil fuel company, as defined. The bill would require the boards to liquidate investments in a fossil fuel company on or before July 1, 2030. The bill would temporarily suspend the above-described liquidation provision upon a good faith determination by the board that certain conditions materially impact normal market mechanisms for pricing assets, as specified, and would make this suspension provision inoperative on January 1, 2035. The bill would provide that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board's fiduciary responsibilities established in the California Constitution.

This bill would require the boards, commencing February 1, 2025, and annually thereafter, to file a report with the Legislature and the Governor, containing specified information, including a list of fossil fuel companies of which the board has liquidated their investments. The bill would provide that board members and other officers and employees shall be held harmless and be eligible for indemnification in connection with actions taken pursuant to the bill's requirements, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7513.76 is added to the Government Code, to read:

7513.76. (a) The Legislature finds and declares all of the following:

(1) The combustion of coal, oil, and natural gas, known as fossil fuels, is the single largest contributor to global climate change.

(2) Climate change affects all parts of the California economy and environment, and the Legislature has adopted numerous laws to mitigate greenhouse gas emissions and to adapt to a changing climate.

(3) Fossil fuel companies' plans to expand production, public relations campaigns, and efforts to obstruct climate stabilization

policies are incompatible with California's climate goals, and our obligation to current and future generations.

(4) The production of fossil fuels and the effects of climate change resulting from the use of fossil fuels all lead to disproportionate adverse impacts on low-income communities and communities of color.

(5) A transition away from fossil fuels to clean energy will create greater employment, support the economy, and improve public health.

(6) The purpose of this section is to require the Public Employees' Retirement System and the State Teachers' Retirement System, consistent with, and not in violation of, their fiduciary responsibilities, to divest their holdings of fossil fuel company investments as one part of the state's broader efforts to decarbonize the California economy and to transition to clean, pollution-free energy resources.

(b) As used in this section, the following definitions apply:

(1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, or its subsidiary or affiliate, that exists for profitmaking purposes or to otherwise secure economic advantage.

(3) "Investment" means the purchase, ownership, or control of publicly issued stock, corporate bonds, or other debt instruments issued by a company. "Investments" also includes purchase, ownership, or control of mutual funds and exchange-traded funds, unless the board is satisfied on reasonable grounds that a mutual fund or exchange-traded fund is unlikely to have in excess of 2 percent of its assets, averaged annually, directly or indirectly invested in fossil fuel companies.

(4) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(5) "Fossil fuel" means petroleum oil, natural gas, and thermal coal. Thermal coal is coal used to generate electricity, such as that which is burned to create steam to run turbines. Thermal coal does not mean metallurgical coal or coking coal used to produce steel.

(6) "Fossil fuel company" means one of the 200 largest publicly traded fossil fuel companies, as established by carbon content in the companies' proven oil, gas, and coal reserves.

(c) The board shall not make additional or new investments or renew existing investments of public employee retirement funds in a fossil fuel company.

(d) (1) The board shall liquidate investments in a fossil fuel company on or before July 1, 2030.

(2) Notwithstanding paragraph (1), this subdivision shall be suspended upon a good faith determination by the board that an act of God, war, or other unforeseeable event creates conditions that materially impact normal market mechanisms for pricing assets and shall only be reinstated upon a subsequent good faith finding of the board that market conditions have substantially returned to normal ex-ante. Upon such a finding, the board shall have six months to liquidate any remaining investments in a fossil fuel company.

(3) Paragraph (2) shall remain in effect only until January 1, 2035, and as of that date is inoperative.

(e) (1) Commencing February 1, 2025, and annually on February 1 thereafter, the board shall create a report that includes the following:

(A) A list of fossil fuel companies of which the board has liquidated its investments pursuant to subdivision (d).

(B) A list of fossil fuel companies with which the board still has not liquidated its investments.

(C) A list of fossil fuel companies of which the board has not liquidated its investments as a result of a determination made pursuant to subdivision (f) that a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution and the board's findings adopted in support of that determination.

(D) An analysis of methods and opportunities to rapidly and effectively reduce dependence on fossil fuels and transition to alternative energy sources in a realistic timeframe that avoids negatively contributing to economic conditions particularly damaging to public employee retirement funds and to overall net employment earnings of the state's workforce.

(2) The board shall submit the report to the Legislature, in compliance with Section 9795, and to the Governor, and shall post the report on the board's internet website.

(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.

SEC. 2. Section 16642 of the Government Code, as amended by Section 3 of Chapter 459 of the Statutes of 2019, is amended to read:

16642. (a) Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms as described in subdivision (d) of Section 7513.6, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Sections 7513.6, 7513.7, 7513.74,~~ and 7513.75.~~ *7513.75, and 7513.76.*

(b) This section shall remain in effect only until Section 7513.74 is repealed, and as of that date is repealed.

SEC. 3. Section 16642 of the Government Code, as added by Section 4 of Chapter 459 of the Statutes of 2019, is amended to read:

16642. (a) Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms as described in subdivision (d) of Section 7513.6, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Sections 7513.6, 7513.7~~, and 7513.75.~~ *7513.75, and 7513.76.*

(b) This section shall become operative upon the repeal of Section 7513.74.

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SB 252 (Gonzalez) – Fossil Fuel Divestment Act

SUMMARY

Senate Bill (SB) 252 will prohibit the California Public Employees Retirement System (CalPERS) and the California State Teachers Retirement System (CalSTRS) from investing in fossil fuel companies, and provide they divest any current holdings in these companies by 2030, with an additional 5-year off-ramp should the funds encounter specified market conditions.

EXISTING LAW

SB 185 (De Leon, Chapter 605, Statutes of 2015) required CalPERS and CalSTRS to divest their investments in thermal coal companies, which has resulted in a positive $598 million return to the CalPERS fund.

California Constitution Article 16, Section 17 – establishes that: "the Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board."

BACKGROUND/PROBLEM

Californians, along with states and nations around the globe, are facing the real and immediate threats of climate change and its ever-growing impacts on our health, safety, environment, and our ability to pass on a livable planet to future generations.

California has been a world leader in taking steps to combat the causes of climate change, setting historic carbon reduction goals, and taking meaningful actions to help prevent environmental destruction and protect communities who bear the overwhelming brunt of carbon emissions.

Despite these forward-thinking actions, California's multi-billion dollar retirement pension funds are actively investing billions of dollars in the very fossil fuel companies that are the primary cause of climate change.

CalPERS and CalSTRS, which invest the pension funds of state employees and teachers, have an investing power of $469 billion and $327 billion, respectively. Unfortunately, CalPERS estimates that they are currently investing $7.4 billion of these dollars in the 200 largest fossil fuel companies, and CalSTRS is investing in 174 fossil fuel companies with a combined market value of approximately $4.1 billion.

With the explosion of investment and development in carbon-free technologies, consumer pressure, and governmental regulation forcing a move away from fossil fuels, it has become clear that the fossil fuel industry may be a risky and myopic financial investment. In fact, data from the last four decades shows that in 1980, the fossil fuel industry claimed 29% of the S&P 500, whereas today, it only occupies 5.3%, the lowest level in more than 40 years.[1]

An estimated 1,500 institutions with over $39 trillion in assets have already taken action to end direct financial support of climate destruction by committing to some form of fossil fuel divestment, including the University of California, the California State University, the State and

[1] https://ieefa.org/resources/fossil-fuel-investments-looking-backwards-may-prove-costly-investors-todays-market

City of New York, the State of Maine, the Vatican, and the province of Quebec.[2]

In October of 2021, Netherland's ABP, the fifth largest public employee pension fund in the world with $600 billion in assets, announced it would divest its current $17.4 billion of fossil fuels investments by the first quarter of 2023, citing corporate engagement as an ineffective strategy to change fossil fuel behavior.[3] These investment numbers dwarf that of CalPERS and CalSTRS, and is following a divestment timeline of under two years.

Major investment management firms, BlackRock and Meketa, have independently concluded that funds can divest from fossil fuels without weakening investment returns.[4] A further study has shown that if CalPERS and CalSTRS had divested from fossil fuels in 2010, they would have gained $11.9 billion and $5.5 billion in returns by 2019.[5]

In fact, CalPERS and CalSTRS have taken on divestments that have resulted in positive returns for the funds. CalPERS's active divestment from Thermal Coal has resulted in $598 million in gains; divestment from Iran has resulted in $256 million in gains; and divestment from firearms manufacturers has resulted in $36 million in gains. Of CalPERS active divestments, only the divestment from tobacco companies has resulted in losses to the pension fund, and no one is arguing that CalPERS reinvest into such a dangerous product that runs afoul of the state's public interest.

The pension funds have already recognized the need to move investments out of dangerous carbon emitting companies. CalPERS and CalSTRS have committed to reach a goal of NetZero investments at some point over the next 27 years. And while CalSTRS has taken steps in the last year to invest some of its assets in low carbon indexes and establish a partial NetZero goal by 2030, it still retains the ability to invest directly into the largest fossil fuel companies, such as: Gazprom (Russia), Rosneft (Russia), LukOil (Russia), Aramco (Saudi Arabia), and the state-owned PetroChina.

[2] https://divestmentdatabase.org/
[3] https://apnews.com/article/climate-business-united-nations-netherlands-greenpeace-45f4a39e838667d032d2483956f01c9b
[4] https://ieefa.org/resources/major-investment-advisors-blackrock-and-meketa-provide-fiduciary-path-through-energy
[5] https://drive.google.com/file/d/1k27W2oTzaqueEZrvit4RLfve6pvakqMI/view

Many of the teachers and state employees whose retirement futures are invested by CalPERS and CalSTRS have passed resolutions calling for the divestment of fossil fuels, including the California Faculty Association, the California Federation of Teachers, associations representing higher education faculty, academic senates at California State University and the University of California, and local chapters of the California Teachers Association from Los Angeles to Oakland.

SOLUTION

SB 252 seizes the momentum of the worldwide divestment movement and continues the bold and progressive actions that California must take to address climate change. SB 252 ends the contradictory and incongruous actions that position the state as a leader in the fight against climate change, while simultaneously investing billions directly in the fossil fuel companies that are causing climate change.

Specifically, SB 252 will prohibit CalPERS and CalSTRS from making any new investments in the top 200 fossil fuel companies, and provides an off-ramp of 7 years to divest any current investments; with an additional 5-year off-ramp should the funds encounter specified market conditions.

Additionally, SB 252 will require CalPERS and CalSTRS to annually report on their divestment progress beginning in 2025.

SUPPORT

California Faculty Association (Sponsor)
Fossil Free California (Sponsor)

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