
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1141 Session of
2024

INTRODUCED BY MASTRIANO, ROTHMAN, PHILLIPS-HILL, ARGALL, MILLER
AND DUSH, APRIL 5, 2024

REFERRED TO FINANCE, APRIL 5, 2024

AN ACT

1 Providing for divestiture by the State Treasurer, the State
2 Employees' Retirement System, the Public School Employees'
3 Retirement System and the Pennsylvania Municipal Retirement
4 System of investments in assets relating to China.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the China
9 Divestiture Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Alternative investments." An investment in a private equity
15 fund, private debt fund, venture fund, real estate fund, hedge
16 fund or absolute return fund.

17 "Board." Any of the following:

18 (1) The Pennsylvania Municipal Retirement Board.

19 (2) The Public School Employees' Retirement Board.

1 (3) The State Employees' Retirement Board.

2 "China." The People's Republic of China.

3 "Company." Any sole proprietorship, organization,
4 association, corporation, partnership, joint venture, limited
5 partnership, limited liability partnership, limited liability
6 company or other entity or business association that exists for
7 the purpose of making a profit.

8 "Direct holdings." All securities of a company or the
9 government of China that are held directly by the public fund.

10 "Foreign company." Any entity which is not organized under
11 the laws of the United States.

12 "Government of China." The government of China and its
13 political subdivisions and the instrumentalities and companies
14 owned or controlled by the government of China or its political
15 subdivisions.

16 "Indemnitee." Each current or former board member, duly
17 appointed designee of a board member, officer, employee,
18 including, without limitation, the attorneys in the Office of
19 Chief Counsel that serve a public fund, agent, research firm or
20 investment manager of a public fund who was or is a party to, or
21 is threatened to be made a party to or is otherwise involved in,
22 any proceeding by reason of the fact that the person is or was a
23 board member, designee of a board member, officer, employee,
24 agent, research firm or investment manager of a public fund.

25 "Indirect holdings." All securities held in an account or
26 fund such as a mutual fund managed by one or more persons not
27 employed by a public fund, in which the public fund owns shares
28 or interests together with other investors.

29 "Public fund." Any of the following:

30 (1) The State Employees' Retirement Fund established

1 under 71 Pa.C.S. Pt. XXV (relating to retirement for State
2 employees and officers).

3 (2) The Public School Employees' Retirement Fund
4 established under 24 Pa.C.S. Pt. IV (relating to retirement
5 for school employees).

6 (3) The Pennsylvania Municipal Retirement Fund.

7 (4) Any Commonwealth fund of which the State Treasurer
8 is the custodian.

9 "Sanctioned Chinese company." Any foreign company that has
10 been sanctioned under the authority of Presidential Executive
11 Order 14032 (June 3, 2021), published at 86 Fed. Reg. 107, 30145
12 (June 7, 2021).

13 "Scrutinized company." A foreign company which is domiciled
14 in or organized under the laws of China. The term includes
15 sanctioned Chinese companies.

16 Section 3. Identification.

17 Within 30 days of the effective date of this section and no
18 less frequently as deemed necessary by the State Treasurer or a
19 board thereafter, a public fund shall make its best effort to
20 identify all direct holdings, indirect holdings and alternative
21 investments of scrutinized companies and the government of
22 China.

23 Section 4. Divestment.

24 (a) Initial divestment of direct holdings.--A public fund
25 shall sell, redeem, divest or withdraw from its direct holdings
26 all securities of the government of China.

27 (b) Additional divestment.--Beginning on the effective date
28 of this subsection, a public fund shall sell, redeem, divest or
29 withdraw from the following:

30 (1) A scrutinized company in which the public fund has

1 direct holdings.

2 (2) A scrutinized company in which the public fund has
3 indirect holdings and alternative investments.

4 (3) Securities of the government of China in which the
5 public fund has indirect holdings and alternative
6 investments.

7 (c) Prohibition.--A public fund may not acquire direct
8 holdings, indirect holdings or alternative investments of
9 scrutinized companies or the government of China.

10 (d) Deadline.--The following apply:

11 (1) All investments referenced in subsections (a) and
12 (b) must be divested not later than the following:

13 (i) At least 50% of the investment shall be removed
14 from a public fund's assets within three years after the
15 effective date of this subparagraph.

16 (ii) At least 75% of the investment shall be removed
17 from a public fund's assets within five years of the
18 effective date of this subparagraph.

19 (iii) One hundred percent of the investment shall be
20 removed from a public fund's assets within 10 years of
21 the effective date of this subparagraph.

22 (2) An administrator of a public fund shall use the
23 administrator's best efforts to liquidate the assets listed
24 in subsection (b) (2) and (3) over unspecified periods of time
25 in a manner that does not result in significant adverse
26 economic harm to the public fund since these assets are
27 invested in partnerships and other investment vehicles that
28 make these assets illiquid and typically represent long-term
29 public fund investment holdings.

30 Section 5. Reporting.

1 (a) Duty of public fund.--A public fund shall, within three
2 months of the effective date of this subsection and not less
3 than once per year thereafter, provide a report with the content
4 under subsection (b) to the Governor, the President pro tempore
5 of the Senate, the Speaker of the House of Representatives and
6 each member of the boards of the Pennsylvania Municipal
7 Retirement System, the State Employees' Retirement System and
8 the Public School Employees' Retirement System. The report shall
9 include the items required under subsection (b). The public
10 funds may file a joint report under this subsection. The report
11 shall be made available to the public.

12 (b) Contents.--The report under subsection (a) shall include
13 all of the following:

14 (1) A list of all scrutinized companies in which the
15 public fund has direct holdings, indirect holdings and
16 alternative investments.

17 (2) All investments sold, redeemed, divested or
18 withdrawn in compliance with section 4(a), the costs and
19 expenses of the transfers and a determination of net gain or
20 loss on account of the transactions incurred in compliance
21 with the provisions of this act, which shall be determined in
22 accordance with section 9.

23 (3) All investments sold, redeemed, divested or
24 withdrawn in compliance with section 4(b).

25 (4) All prohibited investments under section 4(c).

26 Section 6. Expiration.

27 A public fund shall have no obligations under this act with
28 respect to foreign companies which are domiciled in or organized
29 under the laws of China or the government of China upon the
30 occurrence of any of the following:

1 (1) The company is no longer a foreign company which is
2 domiciled in or organized under the laws of China.

3 (2) The President or Congress of the United States,
4 through executive order or legislation, declares that
5 mandatory divestment of the type provided for in this act
6 interferes with the conduct of United States foreign policy.

7 Section 7. Conflict with other laws.

8 (a) Compliance.--Except as otherwise provided under
9 subsection (b), a public fund may perform any action necessary
10 to comply with this act, notwithstanding the provisions of any
11 other law, including, but not limited to, any fiduciary or
12 prudent investing responsibilities as prescribed in 20 Pa.C.S. §
13 7302 (relating to authorized investments; in general), 24
14 Pa.C.S. § 8521 (relating to management of fund and accounts), 71
15 Pa.C.S. § 5931 (relating to management of fund and accounts) and
16 section 110 of the act of February 1, 1974 (P.L.34, No.15),
17 known as the Pennsylvania Municipal Retirement Law, and any
18 obligations of a public fund with respect to choice of asset
19 managers, investment funds or investments for the public fund's
20 securities portfolios.

21 (b) Applicable standard.--Divestment under section 4(b)
22 shall be made in accordance with any applicable fiduciary or
23 prudent investing responsibilities as prescribed under 20
24 Pa.C.S. § 7302, 24 Pa.C.S. § 8521 and 71 Pa.C.S. § 5931, section
25 110 of the Pennsylvania Municipal Retirement Law and any
26 obligations of a public fund with respect to choice of asset
27 managers, investment funds or investments for the public fund's
28 securities portfolios.

29 Section 8. Indemnification.

30 (a) General rule.--Each indemnitee shall be indemnified and

1 held harmless by the Commonwealth for all good faith actions
2 taken by the indemnitee and for all good faith failures to take
3 action, regardless of the date of any action or failure to take
4 action, in connection with attempts to comply with any
5 investment limitations imposed by statute against all expense,
6 liability and loss, including, without limitation, attorney
7 fees, judgments, fines, taxes, penalties and amounts paid or to
8 be paid in settlements reasonably incurred or suffered by the
9 indemnitee in connection with any proceeding.

10 (b) Advance payment.--The right to indemnification provided
11 under this section shall include the right to have the expenses
12 reasonably incurred by the indemnitee in defending any
13 proceeding paid by the Commonwealth in advance of the final
14 disposition of the proceeding upon the receipt by the
15 Commonwealth of a written undertaking by the indemnitee to
16 refund the amounts so advanced if it is ultimately determined
17 that the indemnitee is not entitled to indemnification under
18 this section.

19 (c) Persons entitled.--Indemnification under this section
20 shall continue as to an indemnitee who has ceased to be a board
21 member, designee of a board member, officer or employee of a
22 public fund and shall inure to the benefit of the person's legal
23 representatives, heirs, executors and administrators.

24 (d) Reimbursement to public funds.--To the extent that the
25 Commonwealth does not make any indemnification payments,
26 including any advancement of legal fees and expenses, within 30
27 days of demand therefor, a public fund shall make such payment
28 and the Commonwealth shall reimburse the public fund.

29 (e) Construction.--The repeal, expiration or amendment of
30 any provision of this section shall not limit the rights of any

1 indemnitee to indemnification, including advancement of
2 expenses, with respect to any action or failure to act occurring
3 prior to the effective date of a repeal or amendment.

4 Section 9. Fund reimbursement.

5 The Commonwealth shall reimburse each public fund for the
6 public fund's net losses, costs and expenses incurred as a
7 result of compliance with the provisions of this act. The
8 reimbursements shall occur in the following manner:

9 (1) The public fund shall submit to the Secretary of the
10 Budget an itemization of the amount necessary to be
11 appropriated by the General Assembly to reimburse the public
12 fund for their net losses, costs and expenses incurred as a
13 result of compliance with the provisions of section 4(a) in
14 the previous fiscal year. This paragraph shall only apply to
15 net losses, costs and expenses incurred after the effective
16 date of this paragraph and relating to a first year after
17 sale, redemption, divestiture or withdrawal under section
18 4(a). To the extent the public fund experiences net gains as
19 a result of compliance with the provisions of section 4(a) in
20 a fiscal year, the net gains shall be used to offset any
21 reported costs or expenses incurred by the public fund.

22 (2) In consultation with each public fund, the Secretary
23 of the Budget shall annually establish a uniform method for
24 the determination of gains and losses under paragraph (1).
25 The method shall be used by each public fund in making a
26 claim for reimbursement under this section. The budget
27 submission shall be on a form and in a manner determined by
28 the Secretary of the Budget, including net losses, along with
29 an itemized accounting of all costs and expenses claimed by
30 the public fund. Budget submission shall occur no later than

1 November 1 following the fiscal year in which the net losses,
2 costs and expenses were incurred.

3 (3) Upon appropriation by the General Assembly to
4 provide for the obligations of the Commonwealth, the amount
5 shall be paid by the State Treasurer through the Department
6 of Revenue into the public fund within 90 days of receipt of
7 the requisition presented by the public fund.

8 Section 10. Nonapplicability.

9 (a) State Employees' Defined Contribution Plan and
10 Commonwealth's Deferred Compensation Plan.--The provisions and
11 restrictions of this act shall not apply to the State Employees'
12 Defined Contribution Plan established under 71 Pa.C.S. Pt. XXV
13 (relating to retirement for State employees and officers), known
14 as the State Employees' Retirement Code, the Commonwealth's
15 Deferred Compensation Plan established under section VIII.2 of
16 the act of March 30, 1811 (P.L.145, No.99), referred to as the
17 Settlement of Public Accounts Act, or to the individual
18 investment accounts or the funds and investments therein of the
19 participants of the plans, but the State Employees' Retirement
20 Board is authorized to offer to the participants of the plans
21 investment vehicles that would be permitted under this act.

22 (b) School Employees' Defined Contribution Plan.--The
23 provisions and restrictions of this act shall not apply to the
24 School Employees' Defined Contribution Plan established under 24
25 Pa.C.S. Ch. 84 (relating to School Employees' Defined
26 Contribution Plan) or to the individual investment accounts or
27 the funds and investments therein of the participants of the
28 plan, but the Public School Employees' Retirement Board is
29 authorized to offer to the participants of the plan investment
30 vehicles that would be permitted under this act.

1 (c) Tuition Account Guaranteed Savings Program, Tuition
2 Account Investment Program and Pennsylvania ABLE Savings
3 Program.--The provisions and restrictions of this act shall not
4 apply to the Tuition Account Guaranteed Savings Program or the
5 Tuition Account Investment Program established under the act of
6 April 3, 1992 (P.L.28, No.11), known as the Tuition Account
7 Programs and College Savings Bond Act or the Pennsylvania ABLE
8 Savings Program established under the act of April 18, 2016
9 (P.L.128, No.17), known as the Pennsylvania ABLE Act.

10 Section 11. Severability.

11 If any provision of this act or its application to any person
12 or circumstances is held invalid, the invalidity shall not
13 affect other provisions or applications of this act that can be
14 given effect without the invalid provision or application.

15 Section 12. Effective date.

16 This act shall take effect immediately.