

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 1005

(Senator Elfreth, *et al.*) (Chair, Joint Committee on
Pensions)

Budget and Taxation

Appropriations

State Retirement and Pension System - Divestment From Russia

This emergency bill requires the Board of Trustees of the State Retirement and Pension System (SRPS) to (1) review its investment holdings in specified accounts to determine the extent to which those funds are invested in specified Russian businesses and (2) take divestment action with respect to investments in specified Russian businesses, subject to specified conditions and exceptions. By April 1 and October 1 of each year, the SRPS board must report to specified committees of the General Assembly on its divestment actions and related topics.

Fiscal Summary

State Effect: The State Retirement Agency (SRA) can implement the bill's requirements with existing resources. Divestment actions are not expected to have a material effect on SRPS assets, as discussed below. Therefore, the bill has no discernible effect on State pension liabilities or contribution rates.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

“Russia” means the government of Russia or of the Russian Federation. It includes all agencies, institutions, instrumentalities, and political subdivisions of Russia.

“Actively managed separate accounts” means accounts that are actively managed at the direction of the SRPS board and held in separate accounts. It does not include index funds or other commingled or passively managed funds. “Eligible accounts” means actively managed separate accounts.

“Russia-restricted investment” means an investment in a company (1) identified by the federal Office of Foreign Assets Control (OFAC) as a Russian entity with which transactions are prohibited by federal law; (2) owned, in whole or in part, by Russia; (3) controlled by a company that is owned, in whole or in part, by Russia; (4) incorporated in Russia; or (5) whose principal place of business is located in Russia, to the extent this determination can be made.

State Retirement and Pension System Board Responsibilities

The bill generally applies only to eligible accounts. The SRPS board must review its investment holdings in those accounts to determine the extent to which they are invested in Russia-restricted investments. It must take divestment action with regard to any current investments in Russia-restricted investments or Russian securities. It may not make any new investments in a Russia-restricted investment. The requirement to divest from those holdings does not apply to a company (1) that the U.S. government affirmatively declares to be excluded from federal sanctions and (2) whose divestment cannot be executed for at least fair market value.

Fiduciary Duties and Protections

The SRPS board must act in good faith to implement the bill in compliance with all applicable State and federal laws. The bill does not require the SRPS board to take action unless the board determines in good faith that the action is consistent with its fiduciary responsibilities. The SRPS board or any other fiduciary may not be held liable for any actions taken or decisions made in good faith to comply with the bill.

The bill does not apply if the U.S. government declares an end to financial sanctions against the Russian Federation related to its invasion of and violation of the sovereignty of Ukraine. Within six months after the end of U.S. sanctions, the SRPS board must recommend appropriate legislation to the Joint Committee on Pensions.

Current Law:

Fiduciary Duties

A fiduciary of the SRPS system is defined as (1) a member of the Board of Trustees; (2) a member of the Investment Committee or other specified committees; or (3) an employee

of SRA who exercises any discretionary authority or control over the management of the system or its assets.

A fiduciary must discharge his or her duties solely in the interest of the participants and:

- for the exclusive purposes of providing benefits to the participants and for reasonable expenses;
- with the care, skill, prudence, and diligence under circumstances, then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use;
- by diversifying investments so as to minimize the risk of large losses, unless it is clearly prudent not to do so; and
- in accordance with the laws, documents, and instruments governing the system.

Iran/Sudan Divestment

Chapter 342 of 2008 requires the SRPS board to notify any company whose shares are held in an actively traded separate account in its portfolio that is doing business in either Iran or Sudan that the board will divest all holdings in the company unless the company releases a plan to cease its business with Iran or Sudan within one year. Chapter 342 exempts from the divestment requirement any company that is excluded from U.S. government sanctions against Iran or Sudan and whose divestment cannot be executed for fair market value or greater. It requires the board to act in good faith and in a manner consistent with its fiduciary responsibilities in carrying out the divestment requirement.

Office of Foreign Assets Control

OFAC of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

State Fiscal Effect: As of January 31, 2022, shortly before Russia's invasion of Ukraine, SRA advises that the system's holdings in Russian businesses totaled \$197 million, or 0.3% of its total assets. As of March 8, 2022, the market value of those holdings has dropped to \$9.9 million. SRA advises that, due to the closure of Russian financial markets, it has had

only limited opportunities to divest its holdings, so most of the decline since January is attributable to the loss of value in its holdings rather than divestment from them.

Of the \$9.9 million in total system exposure, approximately \$7 million is directly held in eligible accounts. Of that amount, \$600,000 is held in OFAC-sanctioned companies (pending the reopening of Russian financial markets). Therefore, SRA anticipates only a negligible effect of divestment on its total assets; as a result, there is no discernible effect on State pension liabilities or contribution rates.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1482 (Delegate Lierman, *et al.*) - Appropriations.

Information Source(s): State Retirement Agency; Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2022
fnu2/ljm Third Reader - March 18, 2022

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510