



Office of the Mayor

CONSENT CALENDAR  
May 10, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Ben Bartlett,  
Councilmember Sophie Hahn, Councilmember Kate Harrison

Subject: Support SB 1173 – Divestment from Fossil Fuels

RECOMMENDATION

Adopt a Resolution in support of SB 1173 (Gonzalez), which would require the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) to divest from fossil fuel companies. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Lena Gonzalez, and Assemblymember Buffy Wicks.

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 2027. Currently, CalPERS and CalSTRS have almost \$9 billion invested in fossil fuel companies. This bill builds upon the work we have done locally to divest from fossil fuels.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 1173
- 3: SB 1173 Fact Sheet

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

IN SUPPORT OF SB 1173 – DIVESTMENT FROM FOSSIL FUELS

WHEREAS, California is susceptible to the consequences of climate change, with more drought, shrinking water supplies, rising sea levels, and larger and more frequent wildfires all likely to be experienced in the coming decades; and

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

WHEREAS, immediate action is need to keep the world from heating above 2C by 2100, which would result in to vast ecological destruction and mass extinctions, in addition to increased drought and food crop failures; and

WHEREAS, according to the latest report by the United Nations' Intergovernmental Panel on Climate Change (IPCC), 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; and

WHEREAS, California has several policies to address climate change, including reducing greenhouse gas emissions by 40% of 1990 levels by 2030 and becoming carbon free by 2045; and

WHEREAS, Berkeley has acted to mitigate our impacts on the climate, including a goal to reach net-zero carbon emissions by 2045 or earlier, and to encourage moving away from gasoline-powered vehicles, with transportation accounting for 60% of the city's greenhouse gas emissions; and

WHEREAS, 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; and

WHEREAS, currently, the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) have almost \$9 billion invested in fossil fuel companies; and

WHEREAS, a Corporate Knights study found if CalPERS and CalSTRS had divested in 2010 they would have gained \$11.9 and \$5.5 billion respectively by 2019; and

WHEREAS, SB 1173, 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 2027.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 1173.

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

AMENDED IN SENATE APRIL 6, 2022

**SENATE BILL**

**No. 1173**

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**Introduced by Senators Gonzalez and Wiener**

February 17, 2022

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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 1173, as amended, 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

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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, 2027. *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, 2024, 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:*

1 SECTION 1. Section 7513.76 is added to the Government  
2 Code, to read:  
3 7513.76. (a) The Legislature finds and declares all of the  
4 following:  
5 (1) The combustion of coal, oil, and natural gas, known as fossil  
6 fuels, is the single largest contributor to global climate change.  
7 (2) Climate change affects all parts of the California economy  
8 and environment, and the Legislature has adopted numerous laws  
9 to mitigate greenhouse gas emissions and to adapt to a changing  
10 climate.

1 (3) Fossil fuel companies' plans to expand production, public  
2 relations campaigns, and efforts to obstruct climate stabilization  
3 policies are incompatible with California's climate goals, and our  
4 obligation to current and future generations.

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

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

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

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

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

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

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

35 (4) "Public employee retirement funds" means the Public  
36 Employees' Retirement Fund described in Section 20062 of this  
37 code, and the Teachers' Retirement Fund described in Section  
38 22167 of the Education Code.

39 (5) "Fossil fuel" means petroleum oil, natural gas, and thermal  
40 coal. Thermal coal is coal used to generate electricity, such as that

1 which is burned to create steam to run turbines. Thermal coal does  
2 not mean metallurgical coal or coking coal used to produce steel.

3 (6) “Fossil fuel company” means one of the 200 largest publicly  
4 traded fossil fuel companies, as established by carbon content in  
5 the companies’ proven oil, gas, and coal reserves.

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

9 (d) (1) The board shall liquidate investments in a fossil fuel  
10 company on or before July 1, 2027.

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

20 (3) *Paragraph (2) shall remain in effect only until January 1,*  
21 *2035, and as of that date is inoperative.*

22 (e) (1) Commencing February 1, 2024, and annually on  
23 February 1 thereafter, the board shall create a report that includes  
24 the following:

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

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

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

36 (D) *An analysis of methods and opportunities to rapidly and*  
37 *effectively reduce dependence on fossil fuels and transition to*  
38 *alternative energy sources in a realistic timeframe that avoids*  
39 *negatively contributing to economic conditions particularly*



1 *damaging to public employee retirement funds and to overall net*  
2 *employment earnings of the state's workforce.*

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

6 (f) Nothing in this section shall require a board to take action  
7 as described in this section unless the board determines in good  
8 faith that the action described in this section is consistent with the  
9 fiduciary responsibilities of the board described in Section 17 of  
10 Article XVI of the California Constitution.

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

14 16642. (a) Present, future, and former board members of the  
15 Public Employees' Retirement System or the State Teachers'  
16 Retirement System, jointly and individually, state officers and  
17 employees, research firms described in subdivision (d) of Section  
18 7513.6, and investment managers under contract with the Public  
19 Employees' Retirement System or the State Teachers' Retirement  
20 System shall be indemnified from the General Fund and held  
21 harmless by the State of California from all claims, demands, suits,  
22 actions, damages, judgments, costs, charges, and expenses,  
23 including court costs and attorney's fees, and against all liability,  
24 losses, and damages of any nature whatsoever that these present,  
25 future, or former board members, officers, employees, research  
26 firms as described in subdivision (d) of Section 7513.6, or contract  
27 investment managers shall or may at any time sustain by reason  
28 of any decision to restrict, reduce, or eliminate investments  
29 pursuant to Sections 7513.6, 7513.7, 7513.74, 7513.75, and  
30 7513.76.

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

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

36 16642. (a) Present, future, and former board members of the  
37 Public Employees' Retirement System or the State Teachers'  
38 Retirement System, jointly and individually, state officers and  
39 employees, research firms described in subdivision (d) of Section  
40 7513.6, and investment managers under contract with the Public

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1 Employees' Retirement System or the State Teachers' Retirement  
2 System shall be indemnified from the General Fund and held  
3 harmless by the State of California from all claims, demands, suits,  
4 actions, damages, judgments, costs, charges, and expenses,  
5 including court costs and attorney's fees, and against all liability,  
6 losses, and damages of any nature whatsoever that these present,  
7 future, or former board members, officers, employees, research  
8 firms as described in subdivision (d) of Section 7513.6, or contract  
9 investment managers shall or may at any time sustain by reason  
10 of any decision to restrict, reduce, or eliminate investments  
11 pursuant to Sections 7513.6, 7513.7, 7513.75, and 7513.76.

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

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## SB 1173 (Gonzalez) Fossil Fuel Divestment

### SUMMARY

Senate Bill (SB) 1173 will prohibit the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) from investing in fossil fuel companies, and require that they divest any current investments by 2027.

### 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, and have set historic carbon reduction goals and taken 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 causing 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. A recent report estimates that out of these funds CalPERS invests \$5.5 billion in fossil fuel companies and CalSTRS invests \$3.4 billion.<sup>1</sup>

governmental regulation driving markets away from fossil fuels, it has become clear that the fossil fuel industry may be a risky and myopic financial investment. Major investment management firms, BlackRock and Meketa, have concluded that divestment from fossil fuels actually improves, not weakens, investment returns.<sup>2</sup> A further study has shown that if CalPERS and CalSTRS had divested from fossil fuels in 2010 they would have gained \$11.9 and \$5.5 billion in returns by 2019.<sup>3</sup>

Many of the beneficiaries and union members whose retirement futures are invested by CalPERS and CalSTRS have passed resolutions calling for the divestment of fossil fuels, including the United Teachers of Los Angeles, the California Federation of Teachers, and the California Faculty Association.

An estimated 1,500 institutions with over \$39 trillion in assets have already committed to divestment, including the University of California, the California State University, the State and City of New York, the State of Maine, the Vatican, and the province of

Quebec.

The Legislature already began the work of divesting from dangerous carbon emitting companies through the passage of SB 185 (De Leon, Chapter 605, Statutes of 2015), which required CalPERS and CalSTRS to liquidate their investments in thermal coal companies. Further, Governor Newsom also recently issued an Executive Order on Climate Change (EO N-19-19) which called on CalPERS and CalSTRS to "leverage the state's \$700 billion investment portfolio to advance California's climate leadership."

<sup>1</sup><https://climatesafepensions.org/wp-content/uploads/2021/12/CSPN-The-Quiet-Culprit.pdf>

carbon-free technologies, and consumer choice and

<sup>2</sup><https://ieefa.org/major-investment-advisors-blackrock-and-meketa-provide-a-fiduciary-path-through-the-energy-transition/>

<sup>3</sup><https://drive.google.com/file/d/1k27W2oTzaqueEZrvit4RLfve6pvakqMI/view>

**SOLUTION**

SB 1173 seizes the momentum of the worldwide divestment movement and continues the bold and progressive actions that California must take to address climate change. SB 1173 ends the contradictory and incongruous policies that position the state as a leader in the fight against climate, while simultaneously investing billions in the fossil fuel companies that are causing climate change.

Specifically, SB 1173 will prohibit CalPERS and CalSTRS from investing in the top 200 fossil fuel companies, and require that they divest any current investments in those fossil fuel companies by 2027. Additionally, SB 1173 will require CalPERS and CalSTRS to annually report, beginning in 2024 on their divestment progress

**SUPPORT**

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

**CONTACT**

Trevor Taylor, Legislative Director  
(916) 651-4033  
Trevor.Taylor@sen.ca.gov

