House Legislative Analysis Section
Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

Senate Bill 171 as passed by the Senate
First Analysis (6-16-88)

Sponsor: Senator Dan L. DeGrow
Senate Committee: Judiciary
House Committee: Judiciary

THE APPARENT PROBLEM:

Considerable controversy exists over the role U.S. corporations play in the economy of the Republic of South Africa, a country that promotes the principle of white supremacy through its laws and social structure (commonly referred to as "apartheid"). Some people believe that American investment bolsters the apartheid system by strengthening the South African economy. Furthermore, they argue that it is unconscionable to obtain profits from business operations in a country where that profitability derives from economic factors, such as artificially cheap labor, that exist in large part due to a repressive and discriminatory political system. Opponents of the South African government have argued that ostracism of the country, through economic sanctions and otherwise, could be an effective way of bringing about change from the outside. According to many, a step that Michigan could take in this direction would be to prohibit public employee retirement systems from making or maintaining investments in firms operating in South Africa.

THE CONTENT OF THE BILL:

The bill would amend Public Act 314 of 1965, which regulates the investment of the funds of public employee retirement systems, to forbid new investment by the legislative retirement system, the fire and police retirement system, the judges' retirement system, the probate judges' retirement system, or the state police retirement system in a national corporation of South Africa or a United States company doing business in South Africa. (A companion measure, House Bill 4395, would affect the public school employees' and the state employees' retirement systems.)

Existing investments would have to be divested according to the following schedule: 40 percent within two years after the bill's effective date; 60 percent within three years; 80 percent within four years; and 100 percent within five years after the bill's effective date. The state treasurer could extend deadlines for a particular retirement system by up to one year if he or she determined that divestment would jeopardize the fiscal integrity of the assets of that retirement system.

The bill would apply only until the state treasurer determined and notified the investment fiduciaries that both of the following existed:

- full citizenship and equal political rights regarding national policy had been granted and were in effect for all South African people, regardless of race.
- legal restrictions on the freedom of all South Africans to live, travel, and work anywhere in their country no longer existed. The treasurer would have to develop and maintain a register of United States companies that had an investment in South Africa (imports and exports would be excluded from the bill's definition of investment), or a franchise, licensing agreement, or management agreement with an individual or company located in South Africa. The treasurer would provide the register to each retirement system board at least annually and whenever a change was made in the register. He or she also would notify a board of any investments that the retirement system had in a company included in the register.

Not less than 90 days before the register was provided to the retirement systems' boards, the treasurer would provide the legislature and the chief executive officer of each company in the register the following information: notice that the company was being placed on the register; the reason for that placement; the current value of system assets invested in the company; and any other information that the treasurer considered necessary or appropriate.

The treasurer also would report annually to the legislature as prescribed by the bill. The investment fiduciary of each retirement system would annually report to the governor and the legislature any gains or losses in the value of the system's investment portfolio and its investment performance attributable to the divestment process. Any gains resulting from divestment would have to be recorded annually and used to compensate for any losses or diminution in value that resulted from the process in subsequent years.

The bill would take effect January 1, 1989. Its enactment would not be contingent on the enactment of any other bill.

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BACKGROUND INFORMATION:

Previous Divestment Measures. House Bills 4770 and 4771 of 1985-86 would have adopted divestment measures similar to those in Senate Bill 171 and House Bill 4395. House Bill 4395 and Senate Bill 171 differ from the 1985 bills in that they cover all public employee pension systems rather than only the State Employees' Retirement System and the Michigan Public School Employees' Retirement System. House Bills 4770 and 4771 passed the House and were reported from the Senate Committee on Economic Development, Travel, and Tourism, but never passed the Senate. The bills were on the Senate calendar when the 1985-86 legislative session ended.

In 1985, the governor appointed an implementation commission to study the effects of selling state pension fund investments in firms that operated in South Africa. The commission reported that, at that time, a five-year divestiture process would cost about $23 million and that a seven-year schedule would reduce initial transaction costs by 44 percent, bringing the total cost of divestiture down to approximately $16.4 million over seven years. The commission also recommended "back-weighting" the divestment process. ("Back-weighting" refers to a schedule whereby divestiture is weighted toward the later years of

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the schedule.) The Senate Committee on Economic Development, Trade, and Tourism incorporated the back-weighted concept into House Bills 4770 and 4771 of 1985-86.

The Sullivan Principles. The Sullivan Principles are adhered to by many American companies doing business in South Africa. These principles require: nonsegregation in all eating, comfort, and work stations; equal and fair employment practices for all employees; equal pay for equal or comparable work; training programs to prepare a substantial number of blacks and other nonwhites in management and supervisory positions; and improving the quality of employees' lives outside of the work environment, such as in housing, transportation, schooling, recreation, and health facilities.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have an undetermined impact on the funds of the employee retirement systems to which it would apply, and on the state's general fund. (6-7-88)

ARGUMENTS:

For:

United States businesses supply vital goods to the government of South Africa, thereby assisting the government in continuing its apartheid practices. Withdrawing technical and financial assistance would hamper the South African government's ability to carry out its policies and would destabilize the economy. Direct U.S. investment in South Africa is concentrated in strategically important sectors of the economy, and U.S. companies control much of the nation's computer, oil, and auto markets. All the companies in these sectors lend critical support to the South African government and its military and police apparatus. The police use commercial cars and trucks to make pass law arrests, maintain surveillance of black political groups, and remove unwanted Africans to homelands. Many U.S. firms are designated "key points," which means that in the event of civil unrest they must follow orders of the South African Defense Force These are only a few examples of how U.S. firms operating in South Africa support the apartheid system. The bill would require action aimed at upsetting this economic network.

For:

The bill would express the legislature's opposition to apartheid. Its measures are consistent with federal and state policy of encouraging respect for human rights around the world. To allow continued involvement in the South African economy under the rationale that change can be implemented from within is a self-serving argument that strains the credibility the state's policy on human rights. Further, should the situation in South Africa improve and all citizens receive full citizenship and equal political rights, and if restrictions on travel, work, and living conditions were lifted, the bill would no longer be in force.

Against:

It is true that the apartheid system violates many standards of human rights that Americans feel must be upheld. The bill, however would pursue this ideal by discriminating against retirees. The public pension funds would be used as an instrument for making a political statement. The investment performance of the funds (and the retirees who benefit from them) would be left to suffer the financial consequences. Other avenues for fighting apartheid should be pursued; divestment of pension funds' assets would be economically detrimental.

Response: Divestment in firms operating in South Africa may prove to be an economically prudent step. Considering the mounting unrest in South Africa and the political backlash against the country's policies, from both domestic and international sources, it may be wise to divest now in order to avoid future losses. If the volatile situation in South Africa continues on its present course, corporations might be nationalized as a precaution against revolution or counterrevolution. In that event, public pension funds that had assets invested in those companies could suffer heavy losses. Given the riskiness of South African investment, divestment should be pursued. In addition, the experience of educational institutions, cities, and other states has shown that prudent divestment can be carried out without harming the value of investment portfolios.

Against:

The bills would fail to distinguish between companies that have agreed to the Sullivan Principles and those that have not. Companies that have adopted the Sullivan Principles have been addressing fair employment practices in South Africa and are bringing about change in the political structure. Without the presence of these companies, blacks would be the hardest hit as the economy worsened.

Response: The Sullivan Principles are ineffective, as they only address fair employment practices in the workplace. They do not address the social and political consequences of apartheid that are causing the problems in South Africa. Also, only a portion of U.S. corporations have implemented the Sullivan Principles in their companies. Further, Rev. Sullivan himself set a deadline of May 31, 1987, for the evolution of the Sullivan Principles' influence on the abolition of apartheid. Since that date, even he has supported the use of sanctions such as divestiture. As for the argument that withdrawal of U.S. corporations would hurt blacks the most, the work force of U.S. corporations is composed of 98 percent white persons, one percent Indian and colored workers, and only 0.4 percent black workers. Twenty-six million black people in South Africa live under harsh conditions because of the apartheid system. The small number who might lose their jobs is negligible compared with the 22 million who live under modern-day slavery. Further, U.S. corporations, many of which have operated in South Africa for decades, are not effective in changing the political structure. The apartheid system is as oppressive now as it has ever been; if U.S. corporations are attempting to influence the demise of that system by continuing to operate in South Africa, then their results have been dubious at best. Finally, in the last two years many American corporations have decided to pull out of South Africa rather than help to sustain that country's oppressive policies.

Against:

Divestment of pension funds' assets committed to corporations operating in South Africa would be ineffective. When stocks are sold, they are not simply "dumped;" rather, someone else buys them. Neither the corporations nor the South African government would suffer from such an occurrence. Selling the stocks held by Michigan's public pension funds, contrary to common perceptions, would not adversely affect the South African economy.

Response: More than an economic concern, divestment is a moral imperative. South Africa is particularly the object of outrage because the conspicuous lack of freedom there for the 85 percent of the population that is nonwhite is the result of years of calculated legislation enacted by the representatives of the 15 percent of the population that is white. It is unconscionable for the state to profit from

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investments in corporations that operate in a nation whose laws demand discrimination against nonwhites to keep them politically disenfranchised and economically disadvantaged.

Against:

The situation in South Africa is a foreign policy matter. It is inappropriate for the legislature to mandate provisions to deal with foreign affairs. To enable the federal government to establish consistent foreign policies, matters such as sending signals or statements to governments of other countries should be left to the jurisdiction of the federal government.

Response: Certain aspects of the situation in South Africa are indeed foreign policy matters, but the question of proper avenues for investment of Michigan's public pension funds is certainly an issue to be resolved by the Michigan legislature.

POSITIONS:

The Department of Treasury supports the bill. (6-15-88)

The American Civil Liberties Union of Michigan supports the bill. (6-15-88)

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