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BAR SOUTH AFRICAN INVESTMENTS

House Bill 4395 as introduced
Sponsor: Rep. Virgil Smith

House Bill 4396 as introduced
Sponsor: Rep. Perry Bullard

Committee: Civil Rights
First Analysis (5-7-87)

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). The system demands discrimination against non- whites to keep them politically disenfranchised and economically disadvantaged. According to information from the Investor Responsibility Research Center, there are approximately 300 American companies operating in South Africa (while thousands more are involved through agents and distributors) with an aggregate investment estimated at approximately $2.3 billion. Some people believe that this 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 black labor) which exist in large part due to a repressive and discriminatory political system. South Africa is particularly the object of outrage because the conspicuous lack of freedom there for the 85 percent of the population which is non-white is the result of years of calculated and deliberate legislation enacted by the representatives of the 15 percent of the population which is white. 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. The state of Michigan already prohibits educational institutions from making or maintaining investments in firms operating in South Africa. Another 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 BILLS:

House Bill 4395 would amend Public Act 314 of 1965, which regulates the investment of the funds of public employee retirement systems, to forbid any investment by the public school employees retirement system or the state employees retirement system in a national corporation of South Africa or in a U.S. firm operating in the Republic of South Africa. Current investments would be ordered divested according to a schedule that would require that a minimum of 40 percent of such assets be divested within 24 months after the bill's enactment; the remaining assets would have to be divested over the next three years. The bill would not alter the existing fiduciary or statutory obligation on the investment of pension fund assets. It states that its intent is to seek a rate of return sufficient to fund the payment of what is commonly referred to as the "thirteenth check". The state treasurer would be required to annually report to the governor and legislature any changes in the value of the portfolio or its investment performance which were attributable to the divestment process. Any gains resulting from the divestment process would be recorded annually and would be used to compensate for any losses or diminution in value which resulted from the process in subsequent years. Reductions in the value of the portfolio or its investment performance which could not be offset by gains from previous years would be compensated by appropriations from the general fund to the level at which it would have been in the absence of the divestment process.

The retirement system would be considered in compliance with this requirement if it maintained no holdings in those organizations listed by the Department of Civil Rights in the register of organizations operating in South Africa.

The provisions of the bill would be suspended if the Michigan Civil Rights Commission determined by resolution and notified the fiduciaries of the retirement systems that two conditions had been met. The provisions would be rendered null if full citizenship and equal political rights were granted and in effect for all South Africans regardless of race and if legal restrictions no longer existed on the freedom of all South Africans to live, travel, and work in the country.

MCL 38.1133a.

House Bill 4396 would also amend Public Act 314 to forbid any investment by the legislative retirement system, the firemen and policemen retirement system, the judges retirement system, the probate judges retirement system, and the state police retirement system in South Africa or in organizations operating in the Republic of South Africa. Existing investments would be ordered divested according to a schedule requiring that a minimum of 40 percent of assets be divested within 24 months after the bill's enactment; the remaining assets would have to be divested over the next three years.

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MCL 38.1133b

OVER

FISCAL IMPLICATIONS:

According to the Department of Treasury, the bills have no fiscal implications to the state. (5-6-87)

BACKGROUND INFORMATION:

- The House of Representatives adopted very similar divestment bills in December, 1985. House Bills 4395 and 4396 differ from these in that they cover all public employee pension systems rather than only those of state employees, public school employees, and legislators. Across the country, 19 states and more than 80 cities and counties have adopted South African divestment laws. New Jersey and California, whose pension systems are comparable in size or larger than that of Michigan, have passed total divestment laws. Massachusetts has adopted a total divestment law. Michigan itself has two South African economic sanctions laws: a 1980 law prohibiting deposits of excess state funds in banks making loans to South Africa, and a 1982 law requiring that public colleges and universities divest from all companies doing business in South Africa. Divestment bills have been introduced in other states.
- The Sullivan Principles are followed by many American companies doing business in South Africa. These principles require: non-segregation 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 non-whites 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.
- Governor Blanchard announced a 10-point divestiture policy in August, 1985. The policy stated that the state of Michigan would not purchase finished products from South Africa; would not purchase goods or services from any firm which fails to certify that it didn't sell goods or services to the South Africa military, Department of Cooperation and Development, or national, provincial or local police or prison agencies unless they were signatories of the Sullivan Principles; would not purchase products or services for U.S. or foreign firms controlled by South African firms; would cease doing business with any financial institution which underwrites or purchases any new securities issues for any agency of the South African government; and would cease doing business with any financial institution buying or selling Krugerrand gold coins. Further, the policy endorsed the concept of legislation requiring phased divestiture by state-administered pension funds of securities of firms operating or investing in South Africa. The policy also stated that Governor Blanchard would propose legislation directing state-owned securities which carry voting rights to vote in favor of withdrawal of the corporation from South Africa, and also legislation directing the state to divest, after a reasonable notice period, all securities in corporations selling goods or services to the South African military, Department of Cooperation and Development, or national, provincial or local police or prison agencies. Points nine and ten of the policy named an Implementation Commission to report the best means of implementing these policies, and urged enactment of House Resolution 1460, the Anti-Apartheid Act of 1985, respectively. The commission reported in 1985 that a five-year divestiture process would cost about $23 million, and recommended the "back-weighted" approach to divestment, whereby divestiture is weighted toward the later years of the schedule. Governor Blanchard also directed that the state retain the services of consultants to analyze state pension fund investments and illustrate means of protecting the security of pensioners while implementing phased divestiture.

ARGUMENTS:

For:

United State businesses supply vital goods to the government of South Africa, thereby assisting the government to continue its apartheid practices. Withdrawing technical and financial assistance would hamper the government's ability to carry out its policies and destabilize the economy. Direct U.S. investment in South Africa is concentrated in strategically important sectors of the economy. U.S. companies control large percentages of the nations computer, oil and auto markets, which lend critical support to the South African government and its military and police apparatus. 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 bills require action aimed at upsetting this economic network.

For:

It is unconscionable to profit from investments in corporations that do business in a nation whose political and economic systems are essentially racist and whose way of life is dependent on the continued exploitation of the non-white majority. To allow continued involvement in the South African economy under the rationale that change can be brought about from within is a self-serving argument which strains the credibility of United States and Michigan 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 provisions of the bill would be suspended. Otherwise, the white minority must get the signal that, if it wants to enjoy a high standard of living, it must listen to the rest of the world.

For:

In the 1970's, U.S. companies in South Africa argued that there was no way they'd respond to calls to pull out of South Africa — other buyers would simply move in and take their place. Now there is world-wide outrage against South Africa's political system, increased economic pressure, and many companies have concluded that the apartheid system is politically and economically unstable and are withdrawing their operations. It is interesting to note that, where the South African government once relied on corporations to argue for them, they are now lobbying themselves. Their lobbying efforts, however, seem to concentrate on efforts to convince us that divestiture measures only hurt the people they are designed to protect — black South Africans — through loss of jobs. Some see a relationship between this viewpoint and that of white slaveowners in this country in its early history. Furthermore, their statements should be regarded with skepticism. They may report the results of a survey, for example, as evidence that black South Africans are against sanctions. However, the survey may have been worded: "If your job is in jeopardy, do you want divestiture?"

For:

There is now no realistic, logical reason not to divest of stocks in South African companies. The financial landscape has changed in the last few years and there are ample companies to invest in to make money for retirees. Not only can the state invest prudently, but, given the choice, it should prefer to not to invest in companies that are enmeshed in a political hotbed. South Africa is no longer a good investment choice.

MORE

Behind the blackout that South Africa has imposed on the media, its political structure is still intact and political pressure is unprecedented. In February the South African government announced that more than 13,000 people had been detained without charge for a month or more under the emergency rule imposed last June. Some of those detained were as young as 11 years old. Some see South Africa as a reckless military state. It has doubled its military budget and is attacking surrounding states. The U.N. Security Council passed a mandatory arms embargo against South Africa in 1977, and OPEC nations have attempted to end oil shipments to South Africa since 1974. By 1986, sanctions of varying strength had been imposed on South Africa by the U.S., Japan and Denmark as well as the European Economic Community, the Commonwealth Nations, and the Nonaligned Movement.

Against:

The bills fail to distinguish between companies that have agreed to the Sullivan Principles and those which have not. Those companies which espouse 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: In 1984, the Rev. Leon Sullivan, originator of the Sullivan principles, added to the principles a pledge that companies use their influence to support the ending of apartheid laws, and in July of 1986 he wrote to Senator Harry DeMaso, announcing his intention to abandon the fair employment approach: "As of May, 1985, I set a deadline, that in 24 months if apartheid is not actually and in fact statutorily abolished as a system, and Blacks do not have their free and equal political rights and full citizenship rights, I would call for the withdrawal of all American companies and a total economic embargo against South Africa by the United States."

Against:

Pension funds will inevitably suffer from divestiture because of diminished opportunities. There is no way to calculate losses, no way to figure the pluses and minuses. The funds to be appropriated to make up losses, should they occur, could get held up in the legislature each year.

POSITIONS:

The Department of Civil Rights supports the bills. (5-5-87)

The Department of Treasury supports the bills. (5-5-87)

The Michigan Education Association supports the bills. (5-5-87)

The American Civil Liberties Union supports the bills. (5-5-87)

The Retirement Coordinating Council supports the bills with language to protect pension funds. (5-5-87)