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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2447 Session of  
2022

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INTRODUCED BY BENNINGHOFF, ARMANINI, BERNSTINE, R. BROWN,  
CAUSER, CIRESI, COOK, DeLUCA, DUNBAR, ECKER, FARRY, FREEMAN,  
GREINER, GROVE, HAMM, HENNESSEY, HERSHEY, JONES, KEEFER,  
KERWIN, M. MACKENZIE, R. MACKENZIE, MENTZER, MERCURI,  
MILLARD, MIZGORSKI, MOUL, NEILSON, O'NEAL, OBERLANDER,  
PICKETT, PISCIOTTANO, POLINCHOCK, RAPP, ROTHMAN, RYAN,  
SAYLOR, SCHMITT, SMITH, STAATS, STAMBAUGH, THOMAS AND  
TWARDZIK, MARCH 23, 2022

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 23, 2022

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AN ACT

1 Providing for divestiture by the State Treasurer, the State  
2 Employees' Retirement System and the Public School Employees'  
3 Retirement System of investments in companies doing business  
4 in Russia and Belarus.

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 Russia and  
9 Belarus 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.

1 "Belarus." The Republic of Belarus.

2 "Board." As defined in section 102 of the act of February 1,  
3 1974 (P.L.34, No.15), known as the Pennsylvania Municipal  
4 Retirement Law, 24 Pa.C.S. § 8102 (relating to definitions) or  
5 71 Pa.C.S. § 5102 (relating to definitions).

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

11 "Direct holdings." All securities of a company, the  
12 government of Russia or the government of Belarus that are held  
13 directly by the public fund.

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

16 "Government of Belarus." The government of Belarus and its  
17 political subdivisions and the instrumentalities and companies  
18 owned or controlled by the government of Belarus or its  
19 political subdivisions.

20 "Government of Russia." The government of Russia and its  
21 political subdivisions and the instrumentalities and companies  
22 owned or controlled by the government of Russia or its political  
23 subdivisions.

24 "Indemnatee." Each current or former board member, duly  
25 appointed designee of a board member, officer, employee,  
26 including, without limitation, the attorneys in the Office of  
27 Chief Counsel that serve a public fund, agent, research firm or  
28 investment manager of a public fund who was or is a party to, or  
29 is threatened to be made a party to or is otherwise involved in,  
30 any proceeding by reason of the fact that the person is or was a

1 board member, designee of a board member, officer, employee,  
2 agent, research firm or investment manager of a public fund.

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

7 "Public fund." Any of the following:

8 (1) The State Employees' Retirement Fund established  
9 pursuant to 71 Pa.C.S. Pt. XXV (relating to retirement for  
10 State employees and officers).

11 (2) The Public School Employees' Retirement Fund  
12 established pursuant to 24 Pa.C.S. Pt. IV (relating to  
13 retirement for school employees).

14 (3) The Pennsylvania Municipal Retirement Fund.

15 (4) Any Commonwealth fund of which the State Treasurer  
16 is the custodian.

17 "Russia." The Russian Federation.

18 "Sanctioned Belarusian company." Any foreign company that  
19 has been sanctioned under the authority of Exec. Order No.  
20 13405, 71 Fed. Reg. 35485 (June 16, 2006) or Exec. Order No.  
21 14038, 86 Fed. Reg. 43905 (Aug. 9, 2021).

22 "Sanctioned Russian company." Any foreign company that has  
23 been sanctioned under the authority of Exec. Order No. 14024, 86  
24 Fed. Reg. 20249 (Apr. 15, 2021), Exec. Order No. 14039, 86 Fed.  
25 Reg. 47205 (August 20, 2021) or Exec. Order No. 14066, 87 Fed.  
26 Reg. 13625 (March 8, 2022).

27 "Scrutinized company." A foreign company which is domiciled  
28 in or organized under the laws of Russia or Belarus. The term  
29 includes sanctioned Russian companies and sanctioned Belarusian  
30 companies.

1 Section 3. Identification of companies.

2 Within 14 days of the effective date of this section and no  
3 less frequently than every seven days thereafter until June 30,  
4 2023, and as frequently as deemed necessary by the State  
5 Treasurer or a board thereafter, a public fund shall make its  
6 best effort to identify all direct holdings, indirect holdings  
7 and alternative investments of securities of sanctioned Russian  
8 companies, sanctioned Belarusian companies, scrutinized  
9 companies, the government of Russia and the government of  
10 Belarus.

11 Section 4. Divestment.

12 (a) Initial divestment of direct holdings.--To the extent  
13 permitted under Federal law, the public fund shall sell, redeem,  
14 divest or withdraw from its direct holdings all securities of  
15 sanctioned Russian companies, sanctioned Belarusian companies,  
16 the government of Russia and the government of Belarus.

17 (b) Subsequent divestment of direct holdings.--Upon the  
18 determination that a foreign company meets the criteria as a  
19 sanctioned Russian company or a sanctioned Belarusian company  
20 after the effective date of this section, to the extent  
21 permitted under Federal law, the public fund shall sell, redeem,  
22 divest or withdraw from its direct holdings all securities of  
23 sanctioned Russian companies and sanctioned Belarusian  
24 companies.

25 (c) Additional divestment.--Beginning on the effective date  
26 of this subsection, to the extent permitted under Federal law, a  
27 public fund shall divest from the following:

28 (1) Scrutinized companies, other than sanctioned Russian  
29 companies and sanctioned Belarusian companies, in which the  
30 public fund has direct holdings.

1           (2) Scrutinized companies in which the public fund has  
2 indirect holdings and alternative investments.

3           (3) Securities of the government of Russia and the  
4 government of Belarus in which the public fund has indirect  
5 holdings and alternate investments.

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

10 Section 5. Reporting.

11           (a) Report to Federal Government.--Within 30 days of the  
12 effective date of this section, administrators of a public fund  
13 shall file a written report to the United States Attorney  
14 General, the Treasurer of the United States and the Director of  
15 the Office of Foreign Assets Control of the United States  
16 Department of the Treasury detailing the requirements contained  
17 in this act.

18           (b) Duty of public fund.--A public fund shall, within three  
19 months of the effective date of this section and not less than  
20 once per year thereafter, provide a report to the Governor, the  
21 President pro tempore of the Senate, the Speaker of the House of  
22 Representatives and each member of the boards of the  
23 Pennsylvania Municipal Retirement System, the State Employees'  
24 Retirement System and Public School Employees' Retirement  
25 System. The report shall include the items required under  
26 subsection (c). The report shall be made available to the  
27 public.

28           (c) Contents.--The report under subsection (b) shall include  
29 all of the following:

30           (1) A list of all scrutinized companies in which the

1 public fund has direct holdings, indirect holdings and  
2 alternative investments.

3 (2) All investments sold, redeemed, divested or  
4 withdrawn in compliance with section 4(a) and (b), the costs  
5 and expenses of such transfers and a determination of net  
6 gain or loss on account of such transactions incurred in  
7 compliance with the provisions of this act.

8 (3) All investments sold, redeemed, divested or  
9 withdrawn in compliance with section 4(c).

10 (4) All prohibited investments under section 4(d).

11 Section 6. Expiration.

12 A public fund shall have no obligations under this act with  
13 respect to foreign companies which are domiciled in or organized  
14 under the laws of Russia or Belarus, the government of Russia or  
15 the government of Belarus upon the occurrence of any of the  
16 following:

17 (1) Except for sanctioned Russian companies and  
18 sanctioned Belarusian companies, the company is no longer a  
19 foreign company which is domiciled in or organized under the  
20 laws of Russia or Belarus.

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

25 Section 7. Conflict with other laws.

26 (a) Compliance.--Except as otherwise provided under  
27 subsection (b), a public fund may perform any action necessary  
28 to comply with this act, notwithstanding the provisions of any  
29 other law, including, but not limited to, any fiduciary or  
30 prudent investing responsibilities as prescribed in 20 Pa.C.S. §

1 7302 (relating to authorized investments; in general), 24  
2 Pa.C.S. § 8521 (relating to management of fund and accounts), 71  
3 Pa.C.S. § 5931 (relating to management of fund and accounts) and  
4 section 110 of the act of February 1, 1974 (P.L.34, No.15),  
5 known as the Pennsylvania Municipal Retirement Law, and any  
6 obligations of a public fund with respect to choice of asset  
7 managers, investment funds or investments for the public fund's  
8 securities portfolios.

9 (b) Applicable standard.--Divestment under section 4(c)  
10 shall be made in accordance with any applicable fiduciary or  
11 prudent investing responsibilities as prescribed under 20  
12 Pa.C.S. § 7302, 24 Pa.C.S. § 8521 and 71 Pa.C.S. § 5931, section  
13 110 of the Pennsylvania Municipal Retirement Law and any  
14 obligations of a public fund with respect to choice of asset  
15 managers, investment funds or investments for the public fund's  
16 securities portfolios.

17 Section 8. Indemnification.

18 (a) General rule.--Each indemnitee shall be indemnified and  
19 held harmless by the Commonwealth for all good faith actions  
20 taken by the indemnitee and for all good faith failures to take  
21 action, regardless of the date of any such action or failure to  
22 take action, in connection with attempts to comply with any  
23 investment limitations imposed by statute against all expense,  
24 liability and loss, including, without limitation, attorney  
25 fees, judgments, fines, taxes, penalties and amounts paid or to  
26 be paid in settlements reasonably incurred or suffered by the  
27 indemnitee in connection with any proceeding.

28 (b) Advance payment.--The right to indemnification provided  
29 under this section shall include the right to have the expenses  
30 reasonably incurred by the indemnitee in defending any

1 proceeding paid by the Commonwealth in advance of the final  
2 disposition of the proceeding upon the receipt by the  
3 Commonwealth of a written undertaking by the indemnitee to  
4 refund the amounts so advanced if it is ultimately determined  
5 that the indemnitee is not entitled to indemnification under  
6 this section.

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

12 (d) Reimbursement to public funds.--To the extent that the  
13 Commonwealth does not make any indemnification payments,  
14 including any advancement of legal fees and expenses, within 30  
15 days of demand therefor, a public fund shall make such payment  
16 and the Commonwealth shall reimburse the public fund.

17 (e) Construction.--The repeal, expiration or amendment of  
18 any provision of this section shall not limit the rights of any  
19 indemnitee to indemnification, including advancement of  
20 expenses, with respect to any action or failure to act occurring  
21 prior to the effective date of such repeal or amendment.

22 Section 9. Fund reimbursement.

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

27 (1) The public fund shall submit to the Secretary of the  
28 Budget an itemization of the amount necessary to be  
29 appropriated by the General Assembly to reimburse the public  
30 fund for their net losses, costs and expenses incurred as a



1 result of compliance with the provisions of section 4(a) and  
2 (b) in the previous fiscal year. This paragraph shall only  
3 apply to net losses, costs and expenses relating to a first  
4 year in which a company meets the requirements criteria as a  
5 sanctioned Russian company or a sanctioned Belarusian  
6 company. To the extent the public fund experiences net gains  
7 as a result of compliance with the provisions of section 4(a)  
8 and (b) in a fiscal year, the net gains shall be used to  
9 offset any reported costs or expenses incurred by the public  
10 fund.

11 (2) In consultation with each public fund, the Secretary  
12 of the Budget shall annually establish a uniform method for  
13 the determination of gains and losses under paragraph (1).  
14 The method shall be used by each public fund in making a  
15 claim for reimbursement under this section. The budget  
16 submission shall be on a form and in a manner determined by  
17 the Secretary of the Budget, including net losses, along with  
18 an itemized accounting of all costs and expenses claimed by  
19 the public fund. Budget submission shall occur no later than  
20 November 1 following the fiscal year in which the net losses,  
21 costs and expenses were incurred.

22 (3) Upon appropriation by the General Assembly to  
23 provide for the obligations of the Commonwealth, the amount  
24 shall be paid by the State Treasurer through the Department  
25 of Revenue into the public fund within 90 days of receipt of  
26 the requisition presented by the public fund.

27 Section 10. Defined contribution plans.

28 (a) State Employees' Defined Contribution Plan and  
29 Commonwealth's Deferred Compensation Plan.--The provisions and  
30 restrictions of this act shall not apply to the State Employees'

1 Defined Contribution Plan established under 71 Pa.C.S. Pt. XXV  
2 (relating to retirement for State employees and officers), known  
3 as the State Employees' Retirement Code, the Commonwealth's  
4 Deferred Compensation Plan established under section VIII.2 of  
5 the act of March 30, 1811 (P.L.145, No.99), referred to as the  
6 Settlement of Public Accounts Act, or to the individual  
7 investment accounts or the funds and investments therein of the  
8 participants of the plans, but the State Employees' Retirement  
9 Board is authorized to offer to the participants of the plans  
10 investment vehicles that would be permitted under this act.

11 (b) School Employees' Defined Contribution Plan.--The  
12 provisions and restrictions of this act shall not apply to the  
13 School Employees' Defined Contribution Plan established under 24  
14 Pa.C.S. Ch. 84 (relating to School Employees' Defined  
15 Contribution Plan) or to the individual investment accounts or  
16 the funds and investments therein of the participants of the  
17 plan, but the Public School Employees' Retirement Board is  
18 authorized to offer to the participants of the plan investment  
19 vehicles that would be permitted under this act.

20 Section 11. Severability.

21 If any provision of this act or its application to any person  
22 or circumstances is held invalid, the invalidity shall not  
23 affect other provisions or applications of this act that can be  
24 given effect without the invalid provision or application.

25 Section 12. Effective date.

26 This act shall take effect immediately.