

July 23, 2018

SENATE BILL NO. 1914

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1914 with my recommendations for reconsideration.

In September 2017, Hurricane Maria devastated the island of Puerto Rico. I witnessed the tragedy firsthand while visiting Governor Rosselló less than three months after the hurricane struck. Upon returning from my visit, I knew I had to do more to help those who remained on the island and the estimated 30,000 evacuees who have relocated to New Jersey since the hurricane.

Last February, I convened the Commission on Puerto Rico Relief to examine ways in which the State could utilize its resources to assist Puerto Ricans who have been impacted by the storm. The Commission, comprised of business, civic, and religious leaders, is working to identify ways in which New Jersey can ensure that our fellow Americans are not taken advantage of while they try to regain their financial footing. Among other efforts, the Commission actively engaged the State Investment Council ("Council") when it was revealed that State pension assets were invested in mortgage companies that were pursuing foreclosures of Puerto Rican properties in the wake of the storm. Due in large part to the Commission's advocacy, the Council acted quickly to begin negotiating with the lenders, who ultimately agreed to abide by the terms of the Federal Housing Administration's foreclosure moratorium.

This bill would take a slightly different approach by mandating divestiture of all State pension and annuity fund holdings in entities that pursue home mortgage foreclosures in Puerto Rico. I commend the sponsors for their passionate advocacy on this issue and wholeheartedly support an aggressive response to any company that attempts to prey upon devastated families and hinder the island's

recovery efforts. However, while I agree that divestiture is an appropriate penalty in certain instances - particularly when the investment at issue is liquid in nature - I do not believe that it should be the only available response when companies in which the State has invested pension funds behave poorly. The Council's success in convincing lenders to suspend foreclosure proceedings on the island demonstrates that a more effective approach would provide the Council with a variety of options to identify and correct the offending behavior, when appropriate, prior to divestiture.

I am therefore recommending revisions that would formally institute an Environmental, Social, and Governance ("ESG") policy. An ESG policy will empower the Council to use a number of negotiating tools to influence a company's behavior. It also allows the Council to regularly review the decisions made by the institutions in which it is invested, and consider retaliatory actions across several channels, including direct engagement, horizontal engagement with fellow shareholders, proxy voting, and divestment, where appropriate.

Consideration of ESG factors can also drive wise investment decisions by helping to identify both higher-yielding investment opportunities and those investments that should be avoided due to long-term risks. Several states have already adopted these policies to drive investment decisions, including California, Maine, New York, Florida and North Carolina. In these states, the ESG policy has positively changed business practices and allowed for more robust engagement between the state and the investment community.

At the same time, mandating divestiture exposes the State to significant costs and legal risks. The State has spent more than \$23 million monitoring the divestiture of holdings as a result of recent statutory mandates to divest pension system assets from companies

that do business with Iran and companies that boycott Israel and Israeli businesses. At least two companies have also threatened legal action following the Council's divestment decisions. ESG is not only wise policy, it also makes financial sense.

Accordingly, I herewith return Senate Bill No. 1914 and recommend that it be amended as follows:

- Page 2, Section 1, Line 14: After "invested" insert "by the Director of the Division of Investment"
- Page 2, Section 1, Line 24: Delete "to divest" and insert "concerning"
- Page 2, Section 1, Line 25: After "section" insert ", including, but not limited to, the direct engagement with appropriate parties, coordination with fellow shareholders, proxy voting, or the sale, redemption, divestment or withdrawal from an investment"
- Page 2, Section 1, Line 27: After "imprudent" insert "sale, redemption, withdrawal or"
- Page 2 Section 1, Line 27: After "such" insert "sale, redemption, withdrawal or"
- Page 2, Section 1, Line 27: Before "shall" insert ", where appropriate,"
- Page 2, Section 1, Line 29: After "bill)." insert "Prior to any sale, redemption, divestment, or withdrawal of an investment, the director shall notify the entity that it is ineligible for investment pursuant to this act, P.L. , c. (C.) (pending before the Legislature as this bill), and inform the entity of the appeal process."
- Page 2, Section 1, Line 34: After "all" insert "actions taken related to"
- Page 2, Section 1, Line 35: Delete "month" and insert "quarter"
- Page 2, Section 1, Line 36: After "all" insert "actions taken related to"
- Page 2, Section 1, Line 36: Delete "divested"
- Page 2, Section 1, Line 37: Delete "until the divestment is completed"

Page 3, Section 2, Line 5:

After "immediately" insert
", and shall expire one
year after the expiration
of the federally announced
mortgage foreclosure
moratorium in a
Presidentially-Declared
Major Disaster Area
impacted by Hurricane Maria
and any extensions thereof"

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Kate E. McDonnell

Deputy Chief Counsel to the Governor