

TO: Virgil Smith

FROM: Chris Root and David Wiley
(for the strategy group that met on March 6)

RE: Comments on draft divestment legislation

DATE: March 7, 1985.

We are basing our comments on the bill labeled "CIVIL RIGHTS: General discrimination ..." and numbered 00582'85, CFH. The bill on the legislative pension fund should then be written to conform to this.

1. Make certain that all four of the pension funds are covered by the first bill. The note at the top of the bill as now written mentions only "state employees" and "public school employees." (See also line 15, page 2)
2. Broaden the application of the bill to cover firms operating in Namibia (which South Africa is illegally occupying) as well as the Republic of South Africa itself. On line 6, add "or Namibia" after "the Republic of South Africa." Make same change on line 9.
3. Make the ban on new investment in corporations effective immediately rather than at a certain date in the future. A policy of prudent divestment certainly would not begin with making any additional investments after the divestment law goes into effect. On lines 9-10, delete "July 1, 1986" and replace it with "the effective date of this section."
4. An implementation period of five years would end on approximately January 1, 1991, not July 4, 1991. Make this change on lines 9-10.
5. Specify a phased divestment plan, but also ensure that the bulk of divestment is not left until the end of the period. Add new subsection (C) after line 10:
 "(C) The divestiture required by Subsection (B) shall be completed at a rate of not less than twenty (20) percent of these investments per year.
6. We note that this bill covers only those companies that make direct investments in South Africa, and does not cover other types of financial or economic ties with South Africa. You may wish to consider adding investments in banks that make loans to South Africa. This does require a more complicated implementation procedure, since there is no authoritative list of such banks. If you wish to make this addition, you can refer to the law passed in the District of Columbia. See especially Section 4, subsections (c) and (D) (on page 8).
7. Make certain that subsidiaries and affiliates are covered. On lines 6 and 9 after "an organization operating" add "either itself or a subsidiary or affiliate."

8. Broaden the sources of information on corporations from which pension funds must divest. As it now stands, the Department of Civil Rights refers only to the list of U.S. companies operating in South Africa compiled by the U.S. embassy in South Africa and distributed by the U.S. Commerce Department (pursuant to Section 402 of the Elliott-Larsen Civil Rights Act). This list is inadequate in at least the following ways: (a) it does not include corporations operating in Namibia; (b) it includes only U.S. firms and their subsidiaries and not any foreign-based firms; and (c) we do not know the criteria the embassy will use on such questions as whether the U.S. firm must have a controlling interest in an operation in South Africa. (This latter issue is relevant to the case of Ford Motor Company, which recently sold a 60-percent interest in its South African operation to a South African firm. We would not want Ford to be excluded from the mandated divestment.)

To correct this problem, refer to the District of Columbia law, Section 5 (page 10). Using it as a model we could amend the 00582'85 Michigan draft bill as follows:

At the end of line 22 add "The Department of Civil Rights shall consult the most recent annual report of the U.S. Consulate General of Johannesburg, entitled "American Firms, Subsidiaries and Affiliates - South Africa," and publications of the United Nations and other reliable sources in the preparation of the register."

We want to make one additional comment about the language in the bill marked "RETIREMENT: Legislative" in case any wording is taken from this bill to edit the one on which we have made comments. It is important not to use language on line 22 that reads "and controlled by a United States firm." This language would exclude Ford Motor Company (see discussion in point 8 above).

cc: Perry Bullard

Civil rights; general discrimination; state employees and public school employees retirement funds; prohibit investments in organizations operating in the Republic of South Africa.

CIVIL RIGHTS: General discrimination; STATE: Funds;
RETIREMENT: State employees; RETIREMENT: Public school employees

↑
add other pension
funds to be covered.
(state police (?), etc.)

A bill to amend Act No. 314 of the Public Acts of 1965,
entitled as amended

"An act to authorize the investment of assets of public employee retirement systems or plans created and established by the state or any political subdivision; to provide for the payment of certain costs and investment expenses; to authorize investment in variable rate interest loans; to define and limit the investments which may be made by an investment fiduciary with the assets of a public employee retirement system; and to impose duties on an investment fiduciary,"

as amended, being sections 38.1132 to 38.1140h of the Michigan
Compiled Laws, by adding section 13a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Section 1. Act No. 314 of the Public Acts of 1965, as
- 2 amended, being sections 38.1132 to 38.1140h of the Michigan
- 3 Compiled Laws, is amended by adding section 13a to read as
- 4 follows:

1 SEC. 13A. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
 2 ACT, A PUBLIC EMPLOYEE RETIREMENT SYSTEM SHALL NOT ENCOURAGE OR
 3 CONDONE LEGALLY REQUIRED DISCRIMINATION AGAINST AN INDIVIDUAL ON
 4 THE BASIS OF RACE OR COLOR BY DOING EITHER OF THE FOLLOWING:

5 (A) KNOWINGLY MAKING A NEW INVESTMENT OF ASSETS IN AN ORGA-
 6 NIZATION OPERATING IN THE REPUBLIC OF SOUTH AFRICA ^{OR NAMIBIA} AFTER JULY 1,
 7 1986. THE EFFECTIVE DATE OF THIS SECTION.

8 (B) MAINTAINING AN EXISTING INVESTMENT OF ASSETS IN AN ORGA-
 9 NIZATION OPERATING IN THE REPUBLIC OF SOUTH AFRICA ^{OR NAMIBIA} AFTER JULY 1,
 10 1991. (C)

11 (2) SUBJECT TO THE FIDUCIARY DUTIES IMPOSED IN THIS ACT, THE
 12 PROCEEDS OF A SALE OF ASSETS REQUIRED UNDER THIS SECTION SHALL BE
 13 INVESTED, INsofar AS POSSIBLE, IN ENTITIES OR PROPERTIES THAT DO
 14 BUSINESS IN OR ARE LOCATED IN THIS STATE.

15 (3) A PUBLIC EMPLOYEE RETIREMENT SYSTEM SHALL BE CONSIDERED
 16 IN COMPLIANCE WITH THIS SECTION IF THE PUBLIC EMPLOYEE RETIREMENT
 17 SYSTEM HAS NOT MADE OR MAINTAINED AN INVESTMENT IN AN ORGANI-
 18 ZATION THAT IS LISTED IN THE REGISTER OF ORGANIZATIONS OPERATING
 19 IN THE REPUBLIC OF SOUTH AFRICA, AS PREPARED BY THE DEPARTMENT OF
 20 CIVIL RIGHTS PURSUANT TO SECTION 402 OF THE ELLIOTT-LARSEN CIVIL
 21 RIGHTS ACT, ACT NO. 453 OF THE PUBLIC ACTS OF 1976, BEING
 22 SECTION 37.2402 OF THE MICHIGAN COMPILED LAWS. The Department of Civil Rights
 shall consult the most recent annual report of the U.S. Consulate General of Johannes-
 burg, entitled "American Firms, Subsidiaries and Affiliates - South Africa," and
 publications of the United Nations and other reliable sources in the preparation of
 the register.

→ (C) The divestiture required by Subsection (B) shall be completed at a rate of not
 less than twenty (20) percent of these investments per year.