

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35473-MD-74 (1/4)

Short Title: Iran Divestment Act.

(Public)

Sponsors: Senator Pittenger.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR HOW THE STATE TREASURER SHALL ADDRESS
CERTAIN STATE INVESTMENTS RELATING TO IRAN.

The General Assembly of North Carolina enacts:

SECTION 1. Short title. – This act shall be known and may be cited as the
"Iran Divestment Act."

SECTION 2. Legislative findings. –

(1) The Securities and Exchange Commission has determined that
business activities in foreign states, such as Iran, that sponsor terrorism
and that are subject to sanctions by the United States, may materially
harm the share value of foreign companies. Shares in these foreign
companies may be held in the portfolio of the Public Fund, as that term
is defined in this act.

(2) Publicly traded companies in the United States are substantially
restricted in doing business in, or with, foreign states such as Iran, that
the United States has identified as sponsoring terrorism.

(3) On behalf of the citizens of North Carolina, funds in the Public Fund
are currently invested in publicly traded foreign companies that may
be at risk due to business ties with foreign states, such as Iran, that
sponsor terrorism and are involved in the proliferation of weapons of
mass destruction.

(4) Investments in publicly traded foreign companies that have business
operations in or with foreign states such as Iran are liable for sanctions
under United States law and risk the pensions of the dedicated public
employees of this State.

(5) Excluding companies with business activities in foreign states, such as
Iran, that sponsor terrorism and divesting from public portfolios will

1 help protect the Public Fund from investment losses related to these
2 business activities and may improve the investment performance of the
3 Public Fund.

4 (6) Public Law 104-172, as renewed and amended in 2001 and 2006,
5 specifically provides for sanctions to be imposed on any entity that has
6 invested at least twenty million dollars (\$20,000,000) in any year since
7 1996 to develop petroleum or natural gas resources of Iran.

8 (7) It is unconscionable for this State to invest in foreign companies with
9 business activities benefiting foreign states such as Iran that commit
10 egregious violations of human rights and sponsor terrorism.

11 (8) It is the government of Iran, and not the people of Iran, that is
12 responsible for Iran's support of terrorism and that commits egregious
13 violations of human rights under which its own citizens are required to
14 live.

15 **SECTION 3.** Definitions. – As used in this act, the following definitions

16 apply:

17 (1) "Active business operations." – All business operations that are not
18 inactive business operations.

19 (2) "Business operations." – Engaging in commerce in any form in Iran,
20 including by acquiring, developing, maintaining, owning, selling,
21 possessing, leasing, or operating equipment, facilities, personnel,
22 products, services, personal property, real property, or any other
23 apparatus of business or commerce.

24 (3) "Company." – Any sole proprietorship, organization, association,
25 corporation, partnership, joint venture, limited partnership, limited
26 liability partnership, limited liability company, or other entity or
27 business association, including all wholly-owned subsidiaries,
28 majority-owned subsidiaries, parent companies, or affiliates of such
29 entities or business associations, that exists for profit-making purposes.

30 (4) "Complicit in prohibited activities." – A company is complicit in
31 prohibited activities if it has done any of the following within the
32 preceding 24 months:

33 a. Invested in, or engaged in business operations with, entities in
34 the defense or nuclear sectors of Iran.

35 b. Invested in, or engaged in business operations with, entities
36 involved in the development of petroleum or natural gas
37 resources of Iran, and is subject to sanctions under Public Law
38 104-172, as renewed and amended in 2001 and 2006.

39 c. Demonstrated complicity with an Iranian organization that has
40 been labeled a terrorist organization by the United States
41 government.

42 (5) "Direct holdings." – All securities of a company held directly by the
43 Public Fund or in an account or fund in which the Public Fund owns
44 all shares or interests.

- 1 (6) "Government of Iran." – The government of Iran or its
2 instrumentalities or political subdivisions. This term also includes any
3 individual, company, or public agency located in Iran that provides
4 material or financial support to the Islamic Republic of Iran.
- 5 (7) "Inactive business operations." – The mere continued holding of
6 renewal of rights to property previously operated for the purpose of
7 generating revenues but not presently deployed for such purpose.
- 8 (8) "Indirect holdings." – All securities of a company held in an account or
9 fund, such as a mutual fund, managed by one or more persons not
10 employed by the Public Fund, in which the Public Fund owns shares
11 or interests together with other investors not subject to the provisions
12 of this act.
- 13 (9) "Iran." – The Islamic Republic of Iran or any territory under its
14 administration or control.
- 15 (10) "Military equipment." – Weapons, arms, military supplies, and
16 equipment that readily may be used for military purposes, including,
17 but not limited to, radar systems or military-grade transport vehicles;
18 or supplies or services sold or provided directly or indirectly to any
19 force actively participating in armed conflict in Iran.
- 20 (11) "Mineral extraction activities." – Includes exploring, extracting,
21 processing, transporting, or wholesale selling or trading of elemental
22 minerals or associated metal alloys or oxides (ore), including gold,
23 copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten,
24 uranium, and zinc, as well as facilitating such activities, including by
25 providing supplies or services in support of such activities.
- 26 (12) "Oil-related activities." – Includes owning rights to oil block;
27 exporting, extracting, producing, refining, processing, exploring for,
28 transporting, selling, or trading of oil; constructing, maintaining, or
29 operating a pipeline, refinery, or other oil-field infrastructure; and
30 facilitating such activities, including by providing supplies or services
31 in support of such activities. The mere retail sale of gasoline and
32 related consumer products shall not be considered oil-related activities.
- 33 (13) "Power production activities." – Any business operation that involves
34 a project commissioned by the Government of Iran whose purpose is
35 to facilitate power generation and delivery, including, but not limited
36 to, establishing power-generating plants or hydroelectric dams, selling
37 or installing components for the project, providing service contracts
38 related to the installation or maintenance of the project, as well as
39 facilitating such activities, including by providing supplies or services
40 in support of such activities.
- 41 (14) "Public Fund." – Any funds held by the State Treasurer to the credit
42 of:
- 43 a. The Teachers' and State Employees' Retirement System.
44 b. The Consolidated Judicial Retirement System.

- 1 c. The Firemen's and Rescue Workers' Pension Fund.
2 d. The Local Governmental Employees' Retirement System.
3 e. The Legislative Retirement System.
4 f. The Legislative Retirement Fund.
5 g. The North Carolina National Guard Pension Fund.
- 6 (15) "Scrutinized business operations." – Business operations that have
7 resulted in a company becoming a scrutinized company.
- 8 (16) "Scrutinized company." – Any company that meets the criteria in
9 sub-subdivision a., b., or c. below:
- 10 a. The company has business operations that involve contracts
11 with, or provision of supplies or services to, the Government of
12 Iran, to companies in which the Government of Iran has any
13 direct or indirect equity share, Government of
14 Iran-commissioned consortiums or projects, or to companies
15 involved in Government of Iran-commissioned consortiums or
16 projects; and more than ten percent (10%) of the company's
17 revenues or assets linked to Iran involve oil-related activities,
18 power production activities, or mineral extraction activities and
19 the company has failed to take substantial action.
- 20 b. The company is complicit in prohibited activities.
- 21 c. The company supplies military equipment within Iran, unless it
22 clearly shows that the military equipment cannot be used to
23 facilitate offensive military actions in Iran or the company
24 implements rigorous and verifiable safeguards to prevent use of
25 that equipment by forces actively participating in armed
26 conflict, for example, through post-sale tracking of such
27 equipment by the company, certification from a reputable and
28 objective third party that such equipment is not being used by a
29 party participating in armed conflict in Iran, or sale of such
30 equipment solely to any internationally recognized
31 peacekeeping force or humanitarian organization.
- 32 Notwithstanding anything in this act to the contrary, a social
33 development company which is not complicit in prohibited activities
34 shall not be considered a scrutinized company.
- 35 (17) "Social development company." – A company whose primary purpose
36 in Iran is to provide humanitarian goods or services, including
37 medicine or medical equipment, agricultural supplies or infrastructure,
38 educational opportunities, journalism-related activities, information or
39 information materials, spiritual-related activities, services of a purely
40 clerical or reporting nature, food, clothing, or general consumer goods
41 that are unrelated to oil-related activities, mineral extraction activities,
42 or power production activities.

- 1 (18) "Substantial action." – Adopting, publicizing, and implementing a
2 formal plan to cease scrutinized business operations within one year
3 and to refrain from any such new business operations.

4 **SECTION 4.(a)** Identification of companies. – Within 90 days of this act
5 becoming effective, the State Treasurer shall attempt to identify all scrutinized
6 companies in which the Public Fund has direct or indirect holdings or could possibly
7 have such holdings in the future. These efforts shall include, as appropriate:

- 8 (1) Reviewing and relying on, as appropriate in the State Treasurer's
9 judgment, publicly available information regarding companies with
10 business operations in Iran, including information provided by
11 nonprofit organizations, research firms, international organizations,
12 and government entities.
- 13 (2) Contacting asset managers contracted by the Public Fund that invest in
14 companies with business operations in Iran.
- 15 (3) Contacting other institutional investors that have divested from or
16 engaged with companies that have business operations in Iran.

17 **SECTION 4.(b)** Within 120 days of this act becoming effective, the State
18 Treasurer shall assemble all scrutinized companies identified into a "Scrutinized
19 Companies List."

20 **SECTION 4.(c)** The State Treasurer shall update the Scrutinized Companies
21 List quarterly based on evolving information from, among other sources, those listed in
22 subsection (a) of this section.

23 **SECTION 5.(a)** Required actions. – General. – The State Treasurer shall
24 adhere to the procedures relating to companies on the Scrutinized Companies List as
25 provided in this section.

26 **SECTION 5.(b)** Engagement. –

- 27 (1) As soon as the Scrutinized Companies List is prepared, the State
28 Treasurer shall immediately determine the companies on the
29 Scrutinized Companies List in which the Public Fund owns direct or
30 indirect holdings.
- 31 (2) For each company identified pursuant to subdivision (1) of this
32 subsection with only inactive business operations, the State Treasurer
33 shall send a written notice informing the company of this act and
34 encouraging it to continue to refrain from initiating active business
35 operations in Iran until it is able to avoid scrutinized business
36 operations. The State Treasurer shall continue such correspondence on
37 a semiannual basis.
- 38 (3) For each company newly identified in subdivision (1) of this
39 subsection with active business operations, the State Treasurer shall
40 send a written notice informing the company of its scrutinized
41 company status and that it may become subject to divestment by the
42 Public Fund. The notice shall offer the company the opportunity to
43 clarify its Iran-related activities and shall encourage the company,
44 within 90 days, to either cease its scrutinized business operations or

1 convert such operations to inactive business operations in order to
2 avoid qualifying for divestment by the Public Fund.

- 3 (4) If, within 90 days following the State Treasurer's first engagement
4 with a company pursuant to subdivision (3) of this subsection that
5 company ceases scrutinized business operations, the company shall be
6 removed from the Scrutinized Companies List and the provisions of
7 this section shall cease to apply to it unless it resumes scrutinized
8 business operations. If, within 90 days following the State Treasurer's
9 first engagement, the company converts its scrutinized active business
10 operations to inactive business operations, the company shall be
11 subject to all provisions relating thereto.

12 **SECTION 5.(c) Divestment. –**

- 13 (1) If, after 90 days following the State Treasurer's first engagement with a
14 company pursuant to subdivision (3) of subsection (b) of this section,
15 the company continues to have scrutinized active business operations,
16 and only while such company continues to have scrutinized active
17 business operations, the Public Fund shall sell, redeem, divest, or
18 withdraw all publicly traded securities of the company within 15
19 months after the company's most recent appearance on the Scrutinized
20 Companies List.

- 21 (2) If a company that ceased scrutinized active business operations
22 following engagement pursuant to subdivision (3) of subsection (b) of
23 this section resumes such operations, subdivision (1) of this subsection
24 shall immediately apply, and the Public Fund shall send a written
25 notice to the company. The company shall also be immediately
26 reintroduced onto the Scrutinized Companies List.

27 **SECTION 5.(d) Prohibition. –** At no time shall the Public Fund acquire
28 securities of companies on the Scrutinized Companies List that have active business
29 operations, except as provided in subsections (e) and (f) of this section.

30 **SECTION 5.(e) Exemption. –** No company which the United States
31 Government affirmatively declares to be excluded from its present or any future federal
32 sanctions regime relating to Iran shall be subject to divestment or investment prohibition
33 pursuant to subsections (c) and (d) of this section.

34 **SECTION 5.(f) Excluded securities. –** Notwithstanding anything in this act
35 to the contrary, subsections (c) and (d) of this section shall not apply to indirect holdings
36 in actively managed investment funds. The State Treasurer shall, however, submit
37 letters to the managers of such investment funds containing companies with scrutinized
38 active business operations requesting that they consider removing such companies from
39 the fund or create a similar actively managed fund with indirect holdings devoid of such
40 companies. If the manager creates a similar fund, the Public Fund shall replace all
41 applicable investments with investments in the similar fund in an expedited time frame
42 consistent with prudent investing standards. For the purposes of this section, "private
43 equity" funds shall be deemed to be actively managed investment funds.

1 **SECTION 6.** Reporting. – The State Treasurer shall annually file a publicly
2 available report to the General Assembly that includes the Scrutinized Companies List.
3 This report shall include all of the following:

- 4 (1) A summary of correspondence with companies engaged by the Public
5 Fund under subdivisions (2) and (3) of subsection (b) of Section 5 of
6 this act.
- 7 (2) All investments sold, redeemed, divested, or withdrawn in compliance
8 with subsection (c) of Section 5 of this act.
- 9 (3) All prohibited investments under subsection (d) of Section 5 of this
10 act.
- 11 (4) Any progress made under subsection (f) of Section 5 of this act.

12 **SECTION 7.** Expiration of this act. – This act expires upon the occurrence
13 of any of the following:

- 14 (1) The United States revoking all sanctions imposed against the
15 Government of Iran.
- 16 (2) The Congress or President of the United States declaring that the
17 Government of Iran has honored its commitments to cease efforts to
18 develop or otherwise acquire nuclear reactors and declaring that the
19 Government of Iran does not support international terrorist
20 organizations.
- 21 (3) The Congress or President of the United States, through legislation or
22 executive order, declaring that mandatory divestment of the type
23 provided for in this act interferes with the conduct of United States
24 foreign policy.

25 **SECTION 8.** Other legal obligations. – With respect to actions taken in
26 compliance with this act, including all good faith determinations regarding companies
27 as required by this act, the Public Fund shall be exempt from any conflicting statutory or
28 common law obligations, including any such obligations in respect to choice of asset
29 managers, investment funds, or investments for the Public Fund's securities portfolios.

30 **SECTION 9.** Reinvestment in certain companies with scrutinized active
31 business operations. – Notwithstanding anything in this act, the Public Fund is permitted
32 to cease divesting from certain scrutinized companies of this act, and to reinvest in
33 certain scrutinized companies from which it divested pursuant to subsection (c) of
34 Section 5 of this act, if clear and convincing evidence shows that the value for all assets
35 under management by the Public Fund becomes equal to or less than ninety-nine and
36 fifty-hundredths percent (99.50%) (50 basis points) of the hypothetical value of all
37 assets under management by the Public Fund assuming no divestment for any company
38 had occurred under subsection (c) of Section 5 of this act. Cessation of divestment,
39 reinvestment, or any subsequent ongoing investment authorized by this section shall be
40 strictly limited to the minimum steps necessary to avoid the contingency set forth in the
41 preceding sentence. For any cessation of divestment, reinvestment, and/or subsequent
42 ongoing investment authorized by this section, the State Treasurer shall provide a
43 written report to the General Assembly in advance of initial reinvestment, updated
44 semiannually thereafter as applicable, setting forth the reasons and justification,

1 supported by clear and convincing evidence, for its decisions to cease divestment, to
2 reinvest, or to remain invested in companies with scrutinized active business operations.
3 This section has no application to reinvestment in companies on the ground that they
4 have ceased to have scrutinized active business operations.

5 **SECTION 10.** Enforcement. – The Attorney General is charged with
6 enforcing the provisions of this act and, through any lawful designee, may bring such
7 actions in court as are necessary to do so.

8 **SECTION 11.** Severability. – If any one or more provision, section,
9 subsection, sentence, clause, phrase, or word of this legislation or the application thereof
10 to any person or circumstance is found to be invalid, illegal, unenforceable, or
11 unconstitutional, the same is hereby declared to be severable, and the balance of this
12 legislation shall remain effective and functional notwithstanding the invalidity,
13 illegality, unenforceability, or unconstitutionality. The General Assembly declares that
14 it would have passed this legislation, and each provision, section, subsection, sentence,
15 clause, phrase, or word thereof, irrespective of the fact that any one or more provision,
16 section, subsection, sentence, clause, phrase, or word be declared invalid, illegal,
17 unenforceable, or unconstitutional, including, but not limited to, each of the
18 engagement, divestment, and prohibition provisions of this legislation.

19 **SECTION 12.** This act is effective when it becomes law.