

Article 6E.

Iran Divestment Act.

§ 147-86.55. Article title.

This Article may be cited as the "Iran Divestment Act of 2015. (2015-118, s. 1.)

§ 147-86.56. Findings.

The General Assembly finds that:

- (1) Congress and the President have determined that the illicit nuclear activities of the Government of Iran, combined with its development of unconventional weapons and ballistic missiles and its support of international terrorism, represent a serious threat to the security of the United States, Israel, and other United States allies in Europe, the Middle East, and around the world.
- (2) The International Atomic Energy Agency has repeatedly called attention to Iran's unlawful nuclear activities, and, as a result, the United Nations Security Council has adopted a range of sanctions designed to encourage the Government of Iran to cease those activities and comply with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons.
- (3) On July 1, 2010, President Barack Obama signed into law H.R. 2194, the "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010" (Public Law 111-195), which expressly authorizes states and local governments to prevent investment in, including prohibiting entry into or renewing contracts with, companies operating in Iran's energy sector with investments that have the result of directly or indirectly supporting the efforts of the Government of Iran to achieve nuclear weapons capability.
- (4) The serious and urgent nature of the threat from Iran demands that states, local governments, and private institutions work together with the federal government and American allies to do everything possible diplomatically, politically, and economically to prevent Iran from acquiring nuclear weapons capability.
- (5) Respect for human rights in Iran has steadily deteriorated as demonstrated by transparently fraudulent elections and the brutal repression and murder, arbitrary arrests, and show trials of peaceful dissidents.
- (6) The concerns of the State regarding Iran are strictly the result of the actions of the Government of Iran and should not be construed as enmity towards the Iranian people.
- (7) In order to effectively address the need for this State to respond to the policies of Iran in a uniform fashion, prohibiting contracts with persons engaged in investment activities in the energy sector of Iran must be accomplished on a statewide basis.
- (8) It is the intent of the General Assembly to fully implement the authority granted under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195). (2015-118, s. 1.)

§ 147-86.57. Definitions.

As used in this Article:

- (1) "Energy sector of Iran" means activities to develop petroleum or natural gas resources or nuclear power in Iran.
- (2) "Financial institution" means the term as used in Section 14 of the Iran Sanctions Act of 1996, as amended (Public Law 104-172; 50 U.S.C. 1701 § note).
- (3) "Investment" means a commitment or contribution of funds or property, whatever the source, a loan or other extension of credit, and the entry into or renewal of a contract for goods or services. It does not include indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like.
- (4) "Investment activities in Iran" means a person engages in investment activities in Iran if:
 - a. The person provides goods or services of twenty million dollars (\$20,000,000) or more within any 12-month period in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
 - b. The person is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if (i) the financial institution knows, or reasonably should know, that person will use the credit to provide goods or services in the energy sector in Iran, and (ii) the person receiving credit is identified on a list created pursuant to G.S. 147-86.60 as a person engaging in investment activities in Iran as described in this section.
- (5) "Iran" includes the Government of Iran and any agency or instrumentality of Iran.
- (6) "Person" means any of the following:
 - a. A natural person, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group.
 - b. Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. § 262r(c)(3)).
 - c. Any successor, parent entity owning more than 20%, or majority-owned subunit or subsidiary of any entity described in sub-subdivisions (a) and (b) of this subdivision.
- (7) "State agency" means any board, commission, department, executive department, officer, institution, and any political subdivision of the State. (2015-118, s. 1.)

§ 147-86.58. Prohibitions on State investment.

No more than 30 days after October 1, 2015, the State Treasurer shall adopt a policy prohibiting the North Carolina Retirement Systems or the Department of the State Treasurer from investing funds with a person engaging in investment activities in Iran. At a minimum, the policy shall provide:

- (1) List of persons engaged in investment. – Within 120 days of adoption of the policy, the State Treasurer shall develop and make publically available, using federal sanctions lists and any other credible information available to the public, a list of persons it determines engage in investment activities in Iran. The State Treasurer shall make every effort to avoid erroneously including a person on the list. The State Treasurer shall update the list every 180 days. Before finalizing an initial list or an updated list, the State Treasurer must do all of the following before a person is included on the list:
 - a. Provide 90 days' written notice of the State Treasurer's intent to include the person on the list. The notice shall inform the person that inclusion on the list would make the person ineligible for State investment and may affect the person's ability to conduct other business with the State and its subdivisions. The notice shall specify that the person, if it ceases its engagement in investment activities in Iran, may be removed from the list.
 - b. The State Treasurer shall provide a person with an opportunity to comment in writing that it is not engaged in investment activities in Iran. If the person demonstrates to the State Treasurer that the person is not engaged in investment activities in Iran, the person shall not be included on the list.
- (2) Investments prohibited. – Neither the North Carolina Retirement Systems nor the State Treasurer may invest funds with a person that is identified on a list created pursuant to subdivision (1) of this section as a person engaging in investment activities in Iran.
- (3) Existing investments. – Any existing investment with a person that is identified on a list created pursuant to subdivision (1) of this section as a person engaging in investment activities in Iran must be divested within 180 days of the adoption of the policy.
- (4) Fiduciary duties. – Nothing in the policy or in this Article shall require the North Carolina Retirement Systems or the State Treasurer to take action unless it is determined by the State Treasurer, in good faith, that the action is consistent with the fiduciary responsibilities of the Retirement Systems and the State Treasurer.
- (5) Exceptions. – Notwithstanding the policy, an investment may be made in a person engaged in investment activities in Iran if:
 - a. The person is eligible to contract with the State under the exception in G.S. 147-86.61.
 - b. The State Treasurer makes a good-faith determination, on a case-by-case basis, that the investments are necessary to perform its functions. (2015-118, s. 1.)

§ 147-86.59. Certification required.

(a) A State agency shall require a person that attempts to contract with the State or political subdivision of the State, including a contract renewal or assumption, to certify, at the time the bid is submitted or the contract is entered into, renewed, or assigned, that the person or

the assignee is not identified on a list created by the State Treasurer pursuant to G.S. 147-86.58. A State agency shall include certification information in the procurement record.

(b) A person that contracts with the State or a political subdivision of the State, including a contract renewal or assumption, shall not utilize on the contract with the State agency any subcontractor that is identified on a list created pursuant to G.S. 147-86.58.

(c) Upon receiving information that a person who has made the certification required by subsection (a) of this section is in violation thereof, the State agency shall review the information and offer the person an opportunity to respond. If the person fails to demonstrate that the person should not have been identified on the list created pursuant to G.S. 147-86.58 within 90 days after the determination of the violation, then the State agency shall take action as may be appropriate and provided for by law, rule, or contract. (2015-118, s. 1.)

§ 147-86.60. Restrictions on contracts with the State or subdivisions of the State.

(a) A person that is identified on a list created by the State Treasurer pursuant to G.S. 147-86.58 as a person engaging in investment activities in Iran is ineligible to contract with the State or any political subdivision of the State.

(b) Any contract entered into with a person that is ineligible to contract with the State or any political subdivision of the State is void ab initio.

(c) Existing contracts with persons made ineligible to contract with the State or any political subdivision of the State under this Article shall be allowed to expire in accordance with the terms of the contract. (2015-118, s. 1.)

§ 147-86.61. Exceptions.

(a) G.S. 147-86.60 does not apply to contracts valued at one thousand dollars (\$1,000) or less.

(b) Persons engaged in substantial positive action. – Notwithstanding any other provision of this Article, a person engaged in investment activities in Iran may contract with the State or a political subdivision of the State if the State Treasurer determines, using U.S. government statements and any other credible information available to the public, that the person's investment activities in Iran were made before October 1, 2015, the investment activities in Iran have not been expanded or renewed after October 1, 2015, and the person has adopted, publicized, and is implementing a detailed plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran. The State Treasurer shall develop and make publically available a "Substantial Positive Action Exception List" of these persons. The State Treasurer shall update the list every 180 days. Once a person has not engaged in investment activities in Iran within the previous five years, the State Treasurer shall remove that person from the list created pursuant to G.S. 147-86.58.

(c) Necessary commodities or services. – Notwithstanding any other provision of this Article, a person engaged in investment activities in Iran may contract with the State or a political subdivision of the State, on a case-by-case basis, if the State agency or political subdivision makes a good-faith determination that the commodities or services are necessary to perform its functions and that, absent such an exemption, the State agency would be unable to obtain the commodities or services for which the contract is offered. The determination shall be entered into the procurement record. (2015-118, s. 1.)

§ 147-86.62. Report; application.

(a) The State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and the Governor annually by October 1 on the status of the federal "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010" (Public Law 111-195), the "Iran Divestment Act of 2015," and any rules or regulations adopted thereunder.

(b) The restrictions provided for in this Article apply only until:

- (1) The President or Congress of the United States, by means including, but not limited to, legislation, executive order, or written certification, declares that divestment of the type provided for in this Article interferes with the conduct of United States foreign policy; or with respect to restrictions on any particular investment activities in Iran, those activities have been specifically exempted from U.S. government sanctions by an affirmative declaration authorized by the Congress of the United States; or
- (2) Congress revokes authority to divest in the manner provided for in this Article. (2015-118, s. 1.)

§ 147-86.63. No private right of action.

(a) This Article does not create or authorize a private right of action to enforce the provisions of the Article.

(b) A person may challenge being included on the lists established in this Article using the procedures in Article 3 of Chapter 150B of the General Statutes, except that no person may file a contested case more than once every 365 days, and no attorneys' fees may be awarded under G.S. 150B-33(b)(11). (2015-118, s. 1.)

§ 147-86.64: Reserved for future codification purposes.

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