

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 companies 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; 2017-193, s. 3.1.)

§ 147-86.57. Definitions.

As used in this Article:

- (1) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations.
- (1a) "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 beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like.
- (4) "Investment activities in Iran" means a company engages in investment activities in Iran if:
 - a. The company 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 company 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 company is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another company, for 45 days or more, if (i) the financial institution knows, or reasonably should know, that company will use the credit to provide goods or services in the energy sector in Iran, and (ii) the company receiving credit is identified on a list created pursuant to G.S. 147-86.60 as a company 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; 2017-193, s. 3.2; 2018-84, s. 4(a).)

§ 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 company engaging in investment activities in Iran. At a minimum, the policy shall provide:

- (1) List of restricted companies. – Within 120 days of adoption of the policy, the State Treasurer shall develop and make publically available, a list of companies it determines engage in investment activities in Iran. The State Treasurer shall use any other state lists of restricted companies pursuant to similar laws and any federal information or guidance on companies engaged in investment activities in Iran and any other credible information provided by nonprofit organizations, research firms, governmental entities, and generally public information. The State Treasurer shall make every effort to avoid erroneously including a company on the list. The State Treasurer shall update the list annually. Before finalizing an initial list or an updated list, the State Treasurer must do all of the following before a company is included on the list:
 - a. Provide 90 days' written notice of the State Treasurer's intent to include the company on the list. The notice shall inform the company that inclusion on the list would make the company ineligible for State investment and may affect the company's ability to conduct other business with the State and its subdivisions. The notice shall specify that the company may be removed from the list if it ceases its investment activities in Iran.
 - b. The State Treasurer shall provide a company with an opportunity to comment in writing that it is not engaged in investment activities in Iran. If the company demonstrates to the State Treasurer that the company is not engaged in investment activities in Iran, the company 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 company that is identified on a list created pursuant to subdivision (1) of this section as a company engaging in investment activities in Iran.
- (3) Existing investments. – Any existing investment with a company that is identified on a list created pursuant to subdivision (1) of this section as a company engaging in investment activities in Iran must be divested within 180 days of being placed on the list created pursuant to subdivision (1) of this section.
- (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 company engaged in investment activities in Iran if:

- a. The company 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; 2017-193, s. 3.3.)

§ 147-86.59: Repealed by Session Laws 2017-193, s. 3.4, effective October 1, 2017.

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

(a) A company that is identified on a list created by the State Treasurer pursuant to G.S. 147-86.58 as a company 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 company that is ineligible to contract with the State or any political subdivision of the State is void ab initio.

(c) Existing contracts with companies 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; 2017-193, s. 3.5.)

§ 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) Companies engaged in substantial positive action. – Notwithstanding any other provision of this Article, a company engaged in investment activities in Iran may not be placed on the list developed pursuant to G.S. 147-86.58(1) if the State Treasurer determines, using U.S. government statements and any other credible information available to the public, that the company'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 company 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 companies. The State Treasurer shall update the list annually. 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 company 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; 2017-193, s. 3.6.)

§ 147-86.62. Report; application.

The State Treasurer shall report to the Joint Legislative Commission on Governmental Operations annually by October 1 on information regarding investments sold, redeemed, divested, or withdrawn in compliance with this Article. (2015-118, s. 1; 2017-193, s. 3.7.)

§ 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 company 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 company 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; 2017-193, s. 3.8.)

§ 147-86.64: Reserved for future codification purposes.

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