

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE DRS15182-MM-67 (03/12)

Short Title: Iran Divestment Act.

(Public)

Sponsors: Senator Gunn (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE IRAN DIVESTMENT ACT.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 143C of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 6A.

7 "Iran Divestment Act.

8 "**§ 143C-6A-1. Article title.**

9 This Article may be cited as the "Iran Divestment Act of 2015."

10 "**§ 143C-6A-2. Findings.**

11 The General Assembly finds that:

- 12 (1) Congress and the President have determined that the illicit nuclear activities
13 of the Government of Iran, combined with its development of
14 unconventional weapons and ballistic missiles, and its support of
15 international terrorism, represent a serious threat to the security of the United
16 States, Israel, and other United States allies in Europe, the Middle East, and
17 around the world.
- 18 (2) The International Atomic Energy Agency has repeatedly called attention to
19 Iran's unlawful nuclear activities, and, as a result, the United Nations
20 Security Council has adopted a range of sanctions designed to encourage the
21 Government of Iran to cease those activities and comply with its obligations
22 under the Treaty on the Non-Proliferation of Nuclear Weapons.
- 23 (3) On July 1, 2010, President Barack Obama signed into law H.R. 2194, the
24 "Comprehensive Iran Sanctions, Accountability, and Divestment Act of
25 2010" (Public Law 111-195), which expressly authorizes states and local
26 governments to prevent investment in, including prohibiting entry into or
27 renewing contracts with, companies operating in Iran's energy sector with
28 investments that have the result of directly or indirectly supporting the
29 efforts of the Government of Iran to achieve nuclear weapons capability.
- 30 (4) The serious and urgent nature of the threat from Iran demands that states,
31 local governments, and private institutions work together with the federal
32 government and American allies to do everything possible diplomatically,
33 politically, and economically to prevent Iran from acquiring a nuclear
34 weapons capability.



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- 1 (5) Respect for human rights in Iran has steadily deteriorated as demonstrated
2 by transparently fraudulent elections and the brutal repression and murder,
3 arbitrary arrests, and show trials of peaceful dissidents.
4 (6) The concerns of the State of North Carolina regarding Iran are strictly the
5 result of the actions of the Government of Iran and should not be construed
6 as enmity towards the Iranian people.
7 (7) In order to effectively address the need for this State to respond to the
8 policies of Iran in a uniform fashion, prohibiting contracts with persons
9 engaged in investment activities in the energy sector of Iran must be
10 accomplished on a statewide basis.
11 (8) It is the intent of the General Assembly to fully implement the authority
12 granted under Section 202 of the Comprehensive Iran Sanctions,
13 Accountability, and Divestment Act of 2010 (Public Law 111-195).

14 **§ 143C-6A-3. Definitions.**

15 As used in this Article:

- 16 (1) "Energy sector of Iran" means activities to develop petroleum or natural gas
17 resources or nuclear power in Iran.
18 (2) "Financial institution" means the term as used in Section 14 of the Iran
19 Sanctions Act of 1996 (Public Law 104-172; 50 U.S.C. 1701 § note).
20 (3) "Investment" means a commitment or contribution of funds or property,
21 whatever the source, a loan or other extension of credit, and the entry into or
22 renewal of a contract for goods or services. It does not include indirect
23 beneficial ownership through index funds, commingled funds, limited
24 partnerships, derivative instruments, or the like.
25 (4) "Investment activities in Iran" means a person engages in investment
26 activities in Iran if:
27 a. The person provides goods or services of twenty million dollars
28 (\$20,000,000) or more in the energy sector of Iran, including a
29 person that provides oil or liquefied natural gas tankers, or products
30 used to construct or maintain pipelines used to transport oil or
31 liquefied natural gas, for the energy sector of Iran; or
32 b. The person is a financial institution that extends twenty million
33 dollars (\$20,000,000) or more in credit to another person, for 45 days
34 or more, if that person will use the credit to provide goods or services
35 in the energy sector in Iran and is identified on a list, created
36 pursuant to G.S. 143C-6A-6, as a person engaging in investment
37 activities in Iran as described in this section.
38 (5) "Iran" includes the Government of Iran and any agency or instrumentality of
39 Iran.
40 (6) "Person" means any of the following:
41 a. A natural person, corporation, company, limited liability company,
42 business association, partnership, society, trust, or any other
43 nongovernmental entity, organization, or group.
44 b. Any governmental entity or instrumentality of a government,
45 including a multilateral development institution, as defined in section
46 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. §
47 262r(c)(3)).
48 c. Any successor, subunit, parent entity, or subsidiary of, or any entity
49 under common ownership or control with, any entity described in
50 sub-subdivisions (a) and (b) of this subdivision.

1 (7) "State agency" means any board, commission, department, executive
2 department, officer, institution, and any political subdivision of the State.

3 **"§ 143C-6A-4. List of persons engaged in investment.**

4 (a) No more than 120 days after the effective date of this act, the Secretary of State
5 shall develop or contract to develop, using credible information available to the public, a list of
6 persons it determines engage in investment activities in Iran.

7 (b) The Secretary of State shall update the list every 180 days.

8 (c) Before finalizing an initial list or an updated list, the Secretary of State must do all
9 of the following before a person is included on the list:

10 (1) Provide 90 days' written notice of the Secretary of State's intent to include
11 the person on the list. The notice shall inform the person that inclusion on
12 the list would make the person ineligible to contract with the State. The
13 notice shall specify that the person, if it ceases its engagement in investment
14 activities in Iran, may be removed from the list.

15 (2) The Secretary of State shall provide a person with an opportunity to
16 comment in writing that it is not engaged in investment activities in Iran. If
17 the person demonstrates to the Secretary of State that the person is not
18 engaged in investment activities in Iran, the person shall not be included on
19 the list.

20 (d) The Secretary of State shall make every effort to avoid erroneously including a
21 person on the list.

22 **"§ 143C-6A-5. Certification required.**

23 (a) A State agency shall require a person that attempts to contract with the State or
24 political subdivision of the State, including a contract renewal or assumption, to certify, at the
25 time the bid is submitted or the contract is entered into, renewed, or assigned, that the person or
26 the assignee is not identified on a list created pursuant to G.S. 143C-6A-5. A State agency shall
27 include certification information in the procurement record.

28 (b) A person that contracts with the State or a political subdivision of the State,
29 including a contract renewal or assumption, shall not utilize, on the contract with the State
30 agency any subcontractor that is identified on a list created pursuant to G.S. 143C-6A-5.

31 (c) Upon receiving information that a person who has made the certification required by
32 subsection (a) of this section is in violation thereof, the State agency shall review such
33 information and offer the person an opportunity to respond. If the person fails to demonstrate
34 that it has ceased its engagement in the investment which is in violation of this act within 90
35 days after the determination of such violation, then the State agency shall take such action as
36 may be appropriate and provided for by law, rule, or contract.

37 **"§ 143C-6A-6. Restrictions on contracts with the State or subdivisions of the State.**

38 (a) A person that is identified on a list created pursuant to G.S. 143C-6A-4(a) as a
39 person engaging in investment activities in Iran is ineligible to contract with the State or any
40 political subdivision of the State.

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

43 **"§ 143C-6A-7. Prohibition on State investment.**

44 (a) Neither the North Carolina Retirement Systems or the State Treasurer may invest
45 funds with a person that is identified on a list created pursuant to G.S. 143C-6A-5 as a person
46 engaging in investment activities in Iran.

47 (b) Any existing investments in violation of subsection (a) of this section as of the
48 effective date of this act, must be divested within 120 days of the effective date of this act.

49 (c) Nothing in this section requires the North Carolina Retirement Systems or the State
50 Treasurer to take action unless it is determined, in good faith, that the action is consistent with

1 the fiduciary responsibilities of the Retirement Systems and the State Treasurer and there are
2 appropriated funds of the State to absorb the expenses necessary to implement this section.

3 **"§ 143C-6A-8. Exceptions.**

4 (a) G.S. 143C-6A-6 does not apply to contracts valued at one thousand dollars (\$1,000)
5 or less.

6 (b) Notwithstanding G.S. 143C-6A-6, a person engaged in investment activities in Iran
7 may contract with the State or a political subdivision of the State, on a case-by-case basis, if:

8 (1) The investment activities in Iran were made before the effective date of this
9 act, the investment activities in Iran have not been expanded or renewed
10 after the effective date of this act, and the person has adopted, publicized,
11 and is implementing a formal plan to cease the investment activities in Iran
12 and to refrain from engaging in any new investments in Iran; or

13 (2) The State agency makes a determination that the commodities or services are
14 necessary to perform its functions and that, absent such an exemption, the
15 State agency would be unable to obtain the commodities or services for
16 which the contract is offered. Such determination shall be entered into the
17 procurement record.

18 (c) Notwithstanding G.S. 143C-6A-7, an investment may be made in a person engaged
19 in investment activities in Iran, on a case-by-case basis, if:

20 (1) The investment activities in Iran were made before the effective date of this
21 act, the investment activities in Iran have not been expanded or renewed
22 after the effective date of this act, and the person has adopted, publicized,
23 and is implementing a formal plan to cease the investment activities in Iran
24 and to refrain from engaging in any new investments in Iran; or

25 (2) The investor makes a determination that the investments are necessary to
26 perform its functions.

27 **"§ 143C-6A-9. Report; application.**

28 (a) The Secretary of State shall report to the President Pro Tempore of the Senate, the
29 Speaker of the House of Representatives, and the Governor annually by October 1, on the
30 status of the federal "Comprehensive Iran Sanctions, Accountability, and Divestment Act of
31 2010" (Public Law 111-195), the "Iran Divestment Act of 2015," and any rules or regulations
32 adopted thereunder.

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

34 (1) the President or Congress of the United States, by means including, but not
35 limited to, legislation, executive order, or written certification, declares that
36 divestment of the type provided for in this Article interferes with the conduct
37 of United States foreign policy; or

38 (2) Congress revokes authority to divest in the manner provided for in this
39 Article."

40 **SECTION 2.** The Secretary of State shall submit to the Attorney General of the
41 United States a written notice describing this act within 30 days after the effective date of this
42 act.

43 **SECTION 3.** This act becomes effective October 1, 2015.