

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 455
Commerce Committee Substitute Adopted 4/15/15

Short Title: Iran Divestment Act.

(Public)

Sponsors:

Referred to:

March 26, 2015

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 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 regarding Iran are strictly the result of the actions
5 of the Government of Iran and should not be construed as enmity towards
6 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. Prohibitions on State investment.**

4 No more than 30 days after the effective date of this act, the State Treasurer shall adopt a
5 policy prohibiting the North Carolina Retirement Systems or the Department of the State
6 Treasurer from investing funds with a person engaging in investment activities in Iran. At a
7 minimum the policy shall provide:

8 (1) List of persons engaged in investment. – Within 120 days of adoption of the
9 policy, the State Treasurer shall develop and make publically available a list
10 of persons it determines, using federal sanctions lists and any other credible
11 information available to the public, a list of persons it determines engage in
12 investment activities in Iran. The State Treasurer shall make every effort to
13 avoid erroneously including a person on the list. The State Treasurer shall
14 update the list every 180 days. Before finalizing an initial list or an updated
15 list, the State Treasurer must do all of the following before a person is
16 included on the list:

17 a. Provide 90 days' written notice of the State Treasurer's intent to
18 include the person on the list. The notice shall inform the person that
19 inclusion on the list would make the person ineligible for State
20 investment and may affect the person's ability to conduct other
21 business with the State and its subdivisions. The notice shall specify
22 that the person, if it ceases its engagement in investment activities in
23 Iran, may be removed from the list.

24 b. The State Treasurer shall provide a person with an opportunity to
25 comment in writing that it is not engaged in investment activities in
26 Iran. If the person demonstrates to the State Treasurer that the person
27 is not engaged in investment activities in Iran, the person shall not be
28 included on the list.

29 (2) Investments prohibited. – Neither the North Carolina Retirement Systems
30 nor the State Treasurer may invest funds with a person that is identified on a
31 list created pursuant to subdivision (1) of this section as a person engaging in
32 investment activities in Iran.

33 (3) Existing investments. – Any existing investment with a person that is
34 identified on a list created pursuant to subdivision (1) of this section as a
35 person engaging in investment activities in Iran must be divested within 180
36 days of the adoption of the policy.

37 (4) Fiduciary duties. – Nothing in the policy shall require the North Carolina
38 Retirement Systems or the State Treasurer to take action unless it is
39 determined by the State Treasurer, in good faith, that the action is consistent
40 with the fiduciary responsibilities of the Retirement Systems and the State
41 Treasurer.

42 (5) Exceptions. – Notwithstanding the policy, an investment may be made in a
43 person engaged in investment activities in Iran, on a case-by-case basis, if:

44 a. The investment activities in Iran were made before the effective date
45 of this act, the investment activities in Iran have not been expanded
46 or renewed after the effective date of this act, and the person has
47 adopted, publicized, and is implementing a formal plan to cease the
48 investment activities in Iran and to refrain from engaging in any new
49 investments in Iran; or

50 b. The State Treasurer makes a good-faith determination that the
51 investments are necessary to perform its functions.

"§ 143C-6A-5. 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. 143C-6A-4. 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. 143C-6A-4.

(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 it has ceased its engagement in the investment which is in violation of this act 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.

"§ 143C-6A-6. 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. 143C-6A-4 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.

"§ 143C-6A-7. Exceptions.

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

(b) Notwithstanding G.S. 143C-6A-6, 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:

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

"§ 143C-6A-8. 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
- (2) Congress revokes authority to divest in the manner provided for in this Article."

1 **SECTION 2.** Nothing in this act is intended to create a fiduciary relationship
2 between the State Treasurer and any party who uses the list or any fiduciary duty on the part of
3 the State Treasurer where one does not otherwise exist by law.

4 **SECTION 3.** The State Treasurer shall submit to the Attorney General of the
5 United States a written notice describing this act within 30 days after the effective date of this
6 act.

7 **SECTION 4.** This act becomes effective October 1, 2015.