

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 455
Commerce Committee Substitute Adopted 4/15/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S455-PCS35290-RO-17

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, as amended (Public Law 104-172; 50 U.S.C. 1701 §
20 note).
21 (3) "Investment" means a commitment or contribution of funds or property,
22 whatever the source, a loan or other extension of credit, and the entry into or
23 renewal of a contract for goods or services. It does not include indirect
24 beneficial ownership through index funds, commingled funds, limited
25 partnerships, derivative instruments, or the like.
26 (4) "Investment activities in Iran" means a person engages in investment
27 activities in Iran if:
28 a. The person provides goods or services of twenty million dollars
29 (\$20,000,000) or more within any 12-month period in the energy
30 sector of Iran, including a person that provides oil or liquefied natural
31 gas tankers, or products used to construct or maintain pipelines used
32 to transport oil or liquefied natural gas, for the energy sector of Iran;
33 or
34 b. The person is a financial institution that extends twenty million
35 dollars (\$20,000,000) or more in credit to another person, for 45 days
36 or more, if (i) the financial institution knows, or reasonably should
37 know, that person will use the credit to provide goods or services in
38 the energy sector in Iran, and (ii) the person receiving credit is
39 identified on a list created pursuant to G.S. 143C-6A-6 as a person
40 engaging in investment activities in Iran as described in this section.
41 (5) "Iran" includes the Government of Iran and any agency or instrumentality of
42 Iran.
43 (6) "Person" means any of the following:
44 a. A natural person, corporation, company, limited liability company,
45 business association, partnership, society, trust, or any other
46 nongovernmental entity, organization, or group.
47 b. Any governmental entity or instrumentality of a government,
48 including a multilateral development institution, as defined in section
49 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. §
50 262r(c)(3)).

1 c. Any successor, parent entity owning more than 20%, or
2 majority-owned subunit or subsidiary of any entity described in
3 sub-subdivisions (a) and (b) of this subdivision.

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

6 **"§ 143C-6A-4. Prohibitions on State investment.**

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

11 (1) List of persons engaged in investment. – Within 120 days of adoption of the
12 policy, the State Treasurer shall develop and make publically available,
13 using federal sanctions lists and any other credible information available to
14 the public, a list of persons it determines engage in investment activities in
15 Iran. The State Treasurer shall make every effort to avoid erroneously
16 including a person on the list. The State Treasurer shall update the list every
17 180 days. Before finalizing an initial list or an updated list, the State
18 Treasurer must do all of the following before a person is included on the list:

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

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

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

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

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

44 (5) Exceptions. – Notwithstanding the policy, an investment may be made in a
45 person engaged in investment activities in Iran if:

46 a. The person is eligible to contract with the State under the exception
47 in G.S. 143C-6A-7(b).

48 b. The State Treasurer makes a good-faith determination, on a
49 case-by-case basis, that the investments are necessary to perform its
50 functions.

51 **"§ 143C-6A-5. Certification required.**

1 (a) A State agency shall require a person that attempts to contract with the State or
2 political subdivision of the State, including a contract renewal or assumption, to certify, at the
3 time the bid is submitted or the contract is entered into, renewed, or assigned, that the person or
4 the assignee is not identified on a list created by the State Treasurer pursuant to
5 G.S. 143C-6A-4. A State agency shall include certification information in the procurement
6 record.

7 (b) A person that contracts with the State or a political subdivision of the State,
8 including a contract renewal or assumption, shall not utilize on the contract with the State
9 agency any subcontractor that is identified on a list created pursuant to G.S. 143C-6A-4.

10 (c) Upon receiving information that a person who has made the certification required by
11 subsection (a) of this section is in violation thereof, the State agency shall review the
12 information and offer the person an opportunity to respond. If the person fails to demonstrate
13 that the person should not have been identified on the list created pursuant to G.S. 143C-6A-4
14 within 90 days after the determination of the violation, then the State agency shall take action
15 as may be appropriate and provided for by law, rule, or contract.

16 **"§ 143C-6A-6. Restrictions on contracts with the State or subdivisions of the State.**

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

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

22 (c) Existing contracts with persons made ineligible to contract with the State or any
23 political subdivision of the State under this Article shall be allowed to expire in accordance
24 with the terms of the contract.

25 **"§ 143C-6A-7. Exceptions.**

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

28 (b) Persons engaged in substantial positive action. – Notwithstanding any other
29 provision of this Article, a person engaged in investment activities in Iran may contract with the
30 State or a political subdivision of the State if the State Treasurer determines, using U.S.
31 government statements and any other credible information available to the public, that the
32 person's investment activities in Iran were made before the effective date of this act, the
33 investment activities in Iran have not been expanded or renewed after the effective date of this
34 act, and the person has adopted, publicized, and is implementing a detailed plan to cease the
35 investment activities in Iran and to refrain from engaging in any new investments in Iran. The
36 State Treasurer shall develop and make publically available a "Substantial Positive Action
37 Exception List" of these persons. The State Treasurer shall update the list every 180 days. Once
38 a person has not engaged in investment activities in Iran within the previous five years, the
39 State Treasurer shall remove that person from the list created pursuant to G.S. 143C-6A-4.

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

47 **"§ 143C-6A-8. Report; application.**

48 (a) The State Treasurer shall report to the Joint Legislative Commission on
49 Governmental Operations and the Governor annually by October 1 on the status of the federal
50 "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010" (Public Law
51 111-195), the "Iran Divestment Act of 2015," and any rules or regulations adopted thereunder.

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

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

9 (2) Congress revokes authority to divest in the manner provided for in this
10 Article.

11 **"§ 143-C-6A-9. No private right of action.**

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

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

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

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

24 **SECTION 4.(a)** Pursuant to G.S. 147-69.3(g), the State Treasurer is authorized to
25 retain the services of consultants, professional individuals, analysts, data collection firms, or
26 other persons possessing specialized skills or knowledge necessary for the proper
27 implementation and administration of the requirements of this act.

28 **SECTION 4.(b)** This section is effective when it becomes law.

29 **SECTION 5.** Except as otherwise provided, this act becomes effective October 1,
30 2015.