

House File 2075 - Introduced

HOUSE FILE _____
BY CHAMBERS

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning investment of certain public funds in companies
2 doing business in Syria or Iran by the treasurer of state,
3 public retirement systems in Iowa, and the state board of
4 regents.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 5081YH 82
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1 1 Section 1. NEW SECTION. 12G.1 LEGISLATIVE FINDINGS AND
1 2 INTENT.
1 3 The general assembly is deeply concerned over the support
1 4 the countries of Iran and Syria have provided for acts of
1 5 international terrorism. Therefore, the general assembly
1 6 intends that state funds and funds administered by the state,
1 7 including public employee retirement funds, should not be
1 8 invested in companies that provide power production-related
1 9 services, mineral extraction activities, oil-related
1 10 activities, or military equipment to the governments of Iran
1 11 or Syria.
1 12 Sec. 2. NEW SECTION. 12G.2 DEFINITIONS.
1 13 As used in this chapter, unless the context otherwise
1 14 requires:
1 15 1. "Active business operations" means all business
1 16 operations that are not inactive business operations.
1 17 2. "Business operations" means engaging in commerce in any
1 18 form in Iran or Syria, including by acquiring, developing,
1 19 maintaining, owning, selling, possessing, leasing, or
1 20 operating equipment, facilities, personnel, products,
1 21 services, personal property, real property, or any other
1 22 apparatus of business or commerce.
1 23 3. "Company" means any sole proprietorship, organization,
1 24 association, corporation, partnership, joint venture, limited
1 25 partnership, limited liability partnership, limited liability
1 26 company, or other entity or business association, including
1 27 all wholly-owned subsidiaries, majority-owned subsidiaries,
1 28 parent companies, or affiliates of such entities or business
1 29 associations, that exists for profit-making purposes.
1 30 4. "Direct holdings" in a company means all securities of
1 31 that company held directly by the public fund or in an account
1 32 or fund in which the public fund owns all shares or interests.
1 33 5. "Inactive business operations" means the mere continued
1 34 holding or renewal of rights to property previously operated
1 35 for the purpose of generating revenues but not presently
2 1 deployed for such purpose.
2 2 6. "Indirect holdings" in a company means all securities
2 3 of that company held in an account or fund managed by one or
2 4 more persons not employed by the public fund, in which the
2 5 public fund owns shares or interests together with other
2 6 investors not subject to the provisions of this chapter.
2 7 Indirect holdings include but are not limited to mutual funds,
2 8 fund of funds, private equity funds, hedge funds, and real
2 9 estate funds.
2 10 7. "Military equipment" means weapons, arms, military
2 11 supplies, and equipment that readily may be used for military
2 12 purposes including but not limited to radar systems or
2 13 military-grade transport vehicles, or supplies or services
2 14 sold or provided directly or indirectly to any terrorist
2 15 organization.
2 16 8. "Mineral extraction activities" include exploring,
2 17 extracting, processing, transporting, or wholesale selling or
2 18 trading of elemental minerals or associated metal alloys or

2 19 oxides, including gold, copper, chromium, chromite, diamonds,
2 20 iron, iron ore, silver, tungsten, uranium, and zinc, as well
2 21 as facilitating such activities, including by providing
2 22 supplies or services in support of such activities.

2 23 9. "Oil-related activities" include but are not limited to
2 24 owning rights to oil blocks; exporting, extracting, producing,
2 25 refining, processing, exploring for, transporting, selling, or
2 26 trading of oil; constructing, maintaining, or operating a
2 27 pipeline, refinery, or other oil field infrastructure; and
2 28 facilitating such activities, including by providing supplies
2 29 or services in support of such activities, provided that the
2 30 mere retail sale of gasoline and related consumer products
2 31 shall not be considered oil-related activities.

2 32 10. "Power production activities" means any business
2 33 operation that involves a project commissioned by any Iranian
2 34 or Syrian government entity whose purpose is to facilitate
2 35 power generation and delivery including but not limited to
3 1 establishing power generating plants or hydroelectric dams,
3 2 selling or installing components for the project, providing
3 3 service contracts related to the installation or maintenance
3 4 of the project, as well as facilitating such activities,
3 5 including by providing supplies or services in support of such
3 6 activities.

3 7 11. "Public fund" means the treasurer of state, the state
3 8 board of regents, the public safety peace officers' retirement
3 9 system created in chapter 97A, the Iowa public employees'
3 10 retirement system created in chapter 97B, the statewide fire
3 11 and police retirement system created in chapter 411, or the
3 12 judicial retirement system created in chapter 602.

3 13 12. "Scrutinized company" means any company that is not a
3 14 social development company that meets any of the following
3 15 criteria:

3 16 a. The company has business operations that involve
3 17 contracts with or provision of supplies or services to the
3 18 government of Iran or Syria, companies in which the government
3 19 of Iran or Syria has any direct or indirect equity share,
3 20 Iranian or Syrian government-commissioned consortiums or
3 21 projects, or companies involved in Iranian or Syrian
3 22 government-commissioned consortiums or projects; and meets any
3 23 of the additional following criteria:

3 24 (1) More than ten percent of the company's revenues or
3 25 assets linked to Iran or Syria involve oil-related activities
3 26 or mineral extraction activities and the company has failed to
3 27 take substantial action.

3 28 (2) More than ten percent of the company's revenues or
3 29 assets linked to Iran or Syria involve power production
3 30 activities and the company has failed to take substantial
3 31 action.

3 32 b. The company supplies military equipment to Iran or
3 33 Syria, unless it clearly shows that the military equipment
3 34 cannot be used to facilitate international acts of terrorism.

3 35 13. "Social development company" means a company whose
4 1 primary purpose in Iran or Syria is to provide humanitarian
4 2 goods or services, including medicine or medical equipment,
4 3 agricultural supplies or infrastructure, educational
4 4 opportunities, journalism-related activities, information or
4 5 information materials, spiritual-related activities, services
4 6 of a purely clerical or reporting nature, food, clothing, or
4 7 general consumer goods that are unrelated to oil-related
4 8 activities, mineral extraction activities, or power production
4 9 activities.

4 10 14. "Substantial action" means adopting, publicizing, and
4 11 implementing a formal plan to cease scrutinized business
4 12 operations within one year and to refrain from any such new
4 13 business operations.

4 14 Sec. 3. NEW SECTION. 12G.3 IDENTIFICATION OF COMPANIES
4 15 == NOTICE.

4 16 1. a. By July 1, 2008, the public fund shall make its
4 17 best efforts to identify all scrutinized companies in which
4 18 the public fund has direct or indirect holdings or could
4 19 possibly have such holdings in the future and shall create and
4 20 make available to the public a scrutinized companies list for
4 21 that public fund. The list shall further identify whether the
4 22 company has inactive business operations or active business
4 23 operations. The public fund shall review and update, if
4 24 necessary, the scrutinized companies list and the
4 25 determination of whether a company has inactive or active
4 26 business operations on a quarterly basis thereafter.

4 27 b. In making its best efforts to identify scrutinized
4 28 companies and companies with inactive business operations or
4 29 active business operations, the public fund may review and

4 30 rely, in the best judgment of the public fund, on publicly
4 31 available information regarding companies with business
4 32 operations in Iran or Syria, and including other information
4 33 that may be provided by nonprofit organizations, research
4 34 firms, international organizations, and government entities.
4 35 The public fund may also contact asset managers and
5 1 institutional investors for the public fund to identify
5 2 scrutinized companies based upon industry-recognized lists of
5 3 such companies that the public fund may have indirect holdings
5 4 in.

5 5 2. a. For each company on the scrutinized companies list
5 6 with only inactive business operations in which the public
5 7 fund has direct or indirect holdings, the public fund shall
5 8 send a written notice informing the company of the
5 9 requirements of this chapter and encouraging it to continue to
5 10 refrain from initiating active business operations in Iran or
5 11 Syria until it is able to avoid scrutinized business
5 12 operations. The public fund shall continue to provide such
5 13 written notice on an annual basis if the company remains a
5 14 scrutinized company with inactive business operations.

5 15 b. For each company on the scrutinized companies list with
5 16 active business operations in which the public fund has direct
5 17 or indirect holdings, the public fund shall send a written
5 18 notice informing the company of its status as a scrutinized
5 19 company with active business operations and that it may become
5 20 subject to divestment and restrictions on investing in the
5 21 company by the public fund. The notice shall offer the
5 22 company the opportunity to clarify its Iran or Syria-related
5 23 activities and shall encourage the company to either cease its
5 24 scrutinized business operations or convert such operations to
5 25 inactive business operations in order to avoid becoming
5 26 subject to divestment and restrictions on investment in the
5 27 company by the public fund. The public fund shall continue to
5 28 provide such written notice on an annual basis if the company
5 29 remains a scrutinized company with active business operations.

5 30 Sec. 4. NEW SECTION. 12G.4 PROHIBITED INVESTMENTS ==
5 31 DIVESTMENT.

5 32 1. The public fund shall not acquire publicly traded
5 33 securities of a company on the public fund's most recent
5 34 scrutinized companies list with active business operations so
5 35 long as such company remains on the public fund's scrutinized
6 1 companies list as a company with active business operations as
6 2 provided in this section.

6 3 2. a. The public fund shall sell, redeem, divest, or
6 4 withdraw all publicly traded securities of a company on the
6 5 public fund's list of scrutinized companies with active
6 6 business operations, so long as the company remains on that
6 7 list, no sooner than ninety days, but no later than eighteen
6 8 months, following the first written notice sent to the
6 9 scrutinized company with active business operations as
6 10 required by section 12G.3.

6 11 b. This subsection shall not be construed to require the
6 12 premature or otherwise imprudent sale, redemption, divestment,
6 13 or withdrawal of an investment, but such sale, redemption,
6 14 divestment, or withdrawal shall be completed as provided by
6 15 this subsection.

6 16 3. The requirements of this section shall not apply to the
6 17 following:

6 18 a. A company which the United States government
6 19 affirmatively declares to be excluded from its present or any
6 20 future federal sanctions regime relating to Iran or Syria.

6 21 b. Indirect holdings of a scrutinized company with active
6 22 business operations. The public fund shall, however, submit
6 23 letters to the managers of such investment funds containing
6 24 companies with scrutinized active business operations
6 25 requesting that they consider removing such companies from the
6 26 fund or create a similar fund with indirect holdings devoid of
6 27 such companies. If the manager creates a similar fund, the
6 28 public fund is encouraged to replace all applicable
6 29 investments with investments in the similar fund consistent
6 30 with prudent investing standards.

6 31 Sec. 5. NEW SECTION. 12G.5 REPORTS.

6 32 1. SCRUTINIZED COMPANIES LIST. Each public fund shall,
6 33 within thirty days after the scrutinized companies list is
6 34 created or updated as required by section 12G.3, make the list
6 35 available to the public.

7 1 2. ANNUAL REPORT. On October 1, 2009, and each October 1
7 2 thereafter, each public fund shall make available to the
7 3 public, and file with the general assembly, an annual report
7 4 covering the prior fiscal year that includes the following:

7 5 a. The scrutinized companies list as of the end of the

7 6 fiscal year.

7 7 b. A summary of all written notices sent as required by
7 8 section 12G.3 during the fiscal year.

7 9 c. All investments sold, redeemed, divested, or withdrawn
7 10 as provided in section 12G.4 during the fiscal year.

7 11 Sec. 6. NEW SECTION. 12G.6 LEGAL OBLIGATIONS.

7 12 With respect to actions taken in compliance with this
7 13 chapter, including all good faith determinations regarding
7 14 companies as required by this chapter, the public fund shall
7 15 be exempt from any conflicting statutory or common law
7 16 obligations, including any such obligations in respect to
7 17 choice of asset managers, investment funds, or investments for
7 18 the public fund's securities portfolios.

7 19 Sec. 7. NEW SECTION. 12G.7 APPLICABILITY.

7 20 1. The requirements of sections 12G.3, 12G.4, and 12G.5 of
7 21 this chapter shall not apply upon the occurrence of any of the
7 22 following:

7 23 a. The Congress or president of the United States, through
7 24 legislation or executive order, declares that mandatory
7 25 divestment of the type provided for in this chapter interferes
7 26 with the conduct of United States foreign policy.

7 27 b. A controlling circuit or district court of the United
7 28 States issues an opinion that declares the mandatory
7 29 divestment of the type provided for in this chapter or similar
7 30 statutes of other states is preempted by the federal law of
7 31 the United States.

7 32 2. a. The requirements of sections 12G.3, 12G.4, and
7 33 12G.5 of this chapter shall not apply to Iran if the United
7 34 States revokes all sanctions imposed against the government of
7 35 Iran.

8 1 b. The requirements of sections 12G.3, 12G.4, and 12G.5 of
8 2 this chapter shall not apply to Syria if the United States
8 3 revokes all sanctions imposed against the government of Syria.

8 4 Sec. 8. Section 12.8, unnumbered paragraph 1, Code
8 5 Supplement 2007, is amended to read as follows:

8 6 The treasurer of state shall invest or deposit, subject to
8 7 ~~chapter chapters~~ 12F and 12G and as provided by law, any of
8 8 the public funds not currently needed for operating expenses
8 9 and shall do so upon receipt of monthly notice from the
8 10 director of the department of administrative services of the
8 11 amount not so needed. In the event of loss on redemption or
8 12 sale of securities invested as prescribed by law, and if the
8 13 transaction is reported to the executive council, neither the
8 14 treasurer nor director of the department of administrative
8 15 services is personally liable but the loss shall be charged
8 16 against the funds which would have received the profits or
8 17 interest of the investment and there is appropriated from the
8 18 funds the amount so required.

8 19 Sec. 9. Section 97A.7, subsection 1, Code Supplement 2007,
8 20 is amended to read as follows:

8 21 1. The board of trustees shall be the trustees of the
8 22 several funds created by this chapter as provided in section
8 23 97A.8 and shall have full power to invest and reinvest such
8 24 funds subject to the terms, conditions, limitations, and
8 25 restrictions imposed by subsection 2 of this section and
8 26 ~~chapter chapters~~ 12F and 12G, and subject to like terms,
8 27 conditions, limitations, and restrictions said trustees shall
8 28 have full power to hold, purchase, sell, assign, transfer, or
8 29 dispose of any of the securities and investments in which any
8 30 of the funds created herein shall have been invested, as well
8 31 as of the proceeds of said investments and any moneys
8 32 belonging to said funds. The board of trustees may authorize
8 33 the treasurer of state to exercise any of the duties of this
8 34 section. When so authorized the treasurer of state shall
8 35 report any transactions to the board of trustees at its next
9 1 monthly meeting.

9 2 Sec. 10. Section 97B.4, subsection 5, Code Supplement
9 3 2007, is amended to read as follows:

9 4 5. INVESTMENTS. The system, through the chief investment
9 5 officer, shall invest, subject to ~~chapter chapters~~ 12F and 12G
9 6 and in accordance with the investment policy and goal
9 7 statement established by the board, the portion of the
9 8 retirement fund which, in the judgment of the system, is not
9 9 needed for current payment of benefits under this chapter
9 10 subject to the requirements of section 97B.7A.

9 11 Sec. 11. Section 262.14, unnumbered paragraph 1, Code
9 12 Supplement 2007, is amended to read as follows:

9 13 The board may invest funds belonging to the institutions,
9 14 subject to ~~chapter chapters~~ 12F and 12G and the following
9 15 regulations:

9 16 Sec. 12. Section 411.7, subsection 1, Code Supplement

9 17 2007, is amended to read as follows:

9 18 1. The board of trustees is the trustee of the fire and
9 19 police retirement fund created in section 411.8 and shall
9 20 annually establish an investment policy to govern the
9 21 investment and reinvestment of the moneys in the fund, subject
9 22 to the terms, conditions, limitations, and restrictions
9 23 imposed by subsection 2 and ~~chapter~~ chapters 12F and 12G.
9 24 Subject to like terms, conditions, limitations, and
9 25 restrictions the system has full power to hold, purchase,
9 26 sell, assign, transfer, or dispose of any of the securities
9 27 and investments in which the fund has been invested, as well
9 28 as of the proceeds of the investments and any moneys belonging
9 29 to the fund.

9 30 Sec. 13. Section 602.9111, subsection 1, Code Supplement
9 31 2007, is amended to read as follows:

9 32 1. So much of the judicial retirement fund as may not be
9 33 necessary to be kept on hand for the making of disbursements
9 34 under this article shall be invested by the treasurer of state
9 35 in any investments authorized for the Iowa public employees'
10 1 retirement system in section 97B.7A and subject to the
10 2 requirements of ~~chapter~~ chapters 12F and 12G, and the earnings
10 3 therefrom shall be credited to the fund. The treasurer of
10 4 state may execute contracts and agreements with investment
10 5 advisors, consultants, and investment management and benefit
10 6 consultant firms in the administration of the judicial
10 7 retirement fund.

10 8 EXPLANATION

10 9 This bill restricts the treasurer of state, the state board
10 10 of regents, the Iowa public employees' retirement system
10 11 (IPERS), the public safety peace officers' retirement system,
10 12 the statewide fire and police retirement system, and the
10 13 judicial retirement system, defined as public funds, from
10 14 directly investing in certain companies with active business
10 15 operations in Iran or Syria. The bill also adds notice
10 16 requirements as to the public funds relative to companies with
10 17 inactive business operations in Iran or Syria.

10 18 The bill requires each public fund to develop and maintain
10 19 a list of scrutinized companies with active and inactive
10 20 business operations in Iran or Syria that the fund has direct
10 21 or indirect holdings in or in which the fund may invest in the
10 22 future. Each public fund shall determine this list by July 1,
10 23 2008, and update it on a quarterly basis. The bill defines
10 24 scrutinized companies as those companies that have contracts
10 25 with the government of Iran or Syria and involve some
10 26 oil-related or power production activities, or supply military
10 27 equipment to Iran or Syria. Once a company is listed on the
10 28 scrutinized companies list of a public fund, the bill requires
10 29 the public fund to send a notice to that company relative to
10 30 the requirements of the bill. If the company has inactive
10 31 business operations, the notice shall describe the
10 32 requirements of the bill and encourage the company not to
10 33 engage in active business operations. If the company has
10 34 active business operations, the notice shall provide that the
10 35 company may qualify for divestment and other investment

11 1 restrictions by the public fund.
11 2 New Code section 12G.4 requires that a public fund not
11 3 invest in, and shall divest from, holdings in a scrutinized
11 4 company with active business operations. If the public fund
11 5 has direct holdings in the company, the public fund shall
11 6 proceed to divest all assets with that company in 18 months so
11 7 long as the company continues active business operations in
11 8 Iran or Syria. The bill provides that a public fund shall not
11 9 be required to divest or refrain from investing in a company
11 10 if the federal government so provides or the public fund has
11 11 indirect holdings, and not direct holdings, in that company.
11 12 However, public funds are encouraged to move their indirect
11 13 holdings to funds that do not include scrutinized companies
11 14 with active business operations. The bill defines indirect
11 15 holdings to include shares in an account or fund managed by
11 16 persons not employed by the public fund, including mutual
11 17 funds, private equity funds, and other similar funds.

11 18 The bill further requires each public fund to prepare and
11 19 make available to the public, and file with the general
11 20 assembly, an annual report, beginning October 1, 2009,
11 21 concerning actions taken by the public fund relative to the
11 22 requirements of this new Code chapter in the previous fiscal
11 23 year.

11 24 The bill provides that the requirements of the bill cease
11 25 to be applicable to Iran or Syria if the United States revokes
11 26 all sanctions imposed against Iran or Syria, or if Congress or
11 27 the president of the United States declares that mandatory

11 28 divestment is contrary to United States foreign policy or a
11 29 controlling federal court declares the divestment requirements
11 30 of the bill or similar statutes from other states is preempted
11 31 by federal law.
11 32 LSB 5081YH 82
11 33 ec/nh/8