

House Study Bill 141 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON COWNIE)

A BILL FOR

1 An Act concerning investment of certain public funds in
2 companies doing business in 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:

1 Section 1. NEW SECTION. 12H.1 Legislative findings and
2 intent.

3 The general assembly is deeply concerned over the support
4 the country of Iran has provided for acts of international
5 terrorism. Therefore, the general assembly intends that state
6 funds and funds administered by the state, including public
7 employee retirement funds, should not be invested in companies
8 that provide power production-related services, mineral
9 extraction activities, oil-related activities, or military
10 equipment to the government of Iran.

11 Sec. 2. NEW SECTION. 12H.2 Definitions.

12 As used in this chapter, unless the context otherwise
13 requires:

14 1. "*Active business operations*" means all business
15 operations that are not inactive business operations.

16 2. "*Business operations*" means engaging in commerce in any
17 form in Iran, including by acquiring, developing, maintaining,
18 owning, selling, possessing, leasing, or operating equipment,
19 facilities, personnel, products, services, personal property,
20 real property, or any other apparatus of business or commerce.

21 3. "*Company*" means any sole proprietorship, organization,
22 association, corporation, partnership, joint venture, limited
23 partnership, limited liability partnership, limited liability
24 company, or other entity or business association, including
25 all wholly owned subsidiaries, majority-owned subsidiaries,
26 parent companies, or affiliates of such entities or business
27 associations, that exists for profit-making purposes.

28 4. "*Direct holdings*" in a company means all securities of
29 that company held directly by the public fund or in an account
30 or fund in which the public fund owns all shares or interests.

31 5. "*Inactive business operations*" means the mere continued
32 holding or renewal of rights to property previously operated
33 for the purpose of generating revenues but not presently
34 deployed for such purpose.

35 6. "*Indirect holdings*" in a company means all securities of

1 that company held in an account or fund managed by one or more
2 persons not employed by the public fund, in which the public
3 fund owns shares or interests together with other investors not
4 subject to the provisions of this chapter. Indirect holdings
5 include but are not limited to mutual funds, fund of funds,
6 private equity funds, hedge funds, and real estate funds.

7 7. "*Military equipment*" means weapons, arms, military
8 supplies, and equipment that readily may be used for military
9 purposes including but not limited to radar systems or
10 military-grade transport vehicles, or supplies or services
11 sold or provided directly or indirectly to any terrorist
12 organization.

13 8. "*Mineral extraction activities*" include exploring,
14 extracting, processing, transporting, or wholesale selling or
15 trading of elemental minerals or associated metal alloys or
16 oxides, including gold, copper, chromium, chromite, diamonds,
17 iron, iron ore, silver, tungsten, uranium, and zinc, as well as
18 facilitating such activities, including by providing supplies
19 or services in support of such activities.

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

29 10. "*Power production activities*" means any business
30 operation that involves a project commissioned by any
31 Iranian government entity whose purpose is to facilitate
32 power-generation and delivery including but not limited to
33 establishing power generating plants or hydroelectric dams,
34 selling or installing components for the project, providing
35 service contracts related to the installation or maintenance

1 of the project, as well as facilitating such activities,
2 including by providing supplies or services in support of such
3 activities.

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

10 12. "*Scrutinized company*" means any company that is not
11 a social development company that meets any of the following
12 criteria:

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

20 (1) More than ten percent of the company's revenues or
21 assets linked to Iran involve oil-related activities or mineral
22 extraction activities and the company has failed to take
23 substantial action.

24 (2) More than ten percent of the company's revenues or
25 assets linked to Iran involve power production activities and
26 the company has failed to take substantial action.

27 b. The company supplies military equipment to Iran, unless
28 it clearly shows that the military equipment cannot be used to
29 facilitate international acts of terrorism.

30 13. "*Social development company*" means a company whose
31 primary purpose in Iran is to provide humanitarian goods or
32 services, including medicine or medical equipment, agricultural
33 supplies or infrastructure, educational opportunities,
34 journalism-related activities, information or information
35 materials, spiritual-related activities, services of a purely

1 clerical or reporting nature, food, clothing, or general
2 consumer goods that are unrelated to oil-related activities,
3 mineral extraction activities, or power production activities.

4 14. "*Substantial action*" means adopting, publicizing,
5 and implementing a formal plan to cease scrutinized business
6 operations within one year and to refrain from any such new
7 business operations.

8 Sec. 3. NEW SECTION. 12H.3 Identification of companies —
9 notice.

10 1. a. By July 1, 2011, the public fund shall make its best
11 efforts to identify all scrutinized companies in which the
12 public fund has direct or indirect holdings or could possibly
13 have such holdings in the future and shall create and make
14 available to the public a scrutinized companies list for that
15 public fund. The list shall further identify whether the
16 company has inactive business operations or active business
17 operations. The public fund shall review and update, if
18 necessary, the scrutinized companies list and the determination
19 of whether a company has inactive or active business operations
20 on a quarterly basis thereafter.

21 b. In making its best efforts to identify scrutinized
22 companies and companies with inactive business operations or
23 active business operations, the public fund may review and
24 rely, in the best judgment of the public fund, on publicly
25 available information regarding companies with business
26 operations in Iran, and including other information that
27 may be provided by nonprofit organizations, research firms,
28 international organizations, and government entities. The
29 public fund may also contact asset managers and institutional
30 investors for the public fund to identify scrutinized companies
31 based upon industry-recognized lists of such companies that the
32 public fund may have indirect holdings in.

33 2. a. For each company on the scrutinized companies list
34 with only inactive business operations in which the public fund
35 has direct or indirect holdings, the public fund shall send a

1 written notice informing the company of the requirements of
2 this chapter and encouraging it to continue to refrain from
3 initiating active business operations in Iran until it is
4 able to avoid scrutinized business operations. The public
5 fund shall continue to provide such written notice on an
6 annual basis if the company remains a scrutinized company with
7 inactive business operations.

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

23 Sec. 4. NEW SECTION. **12H.4 Prohibited investments —**
24 **divestment.**

25 1. The public fund shall not acquire publicly traded
26 securities of a company on the public fund's most recent
27 scrutinized companies list with active business operations so
28 long as such company remains on the public fund's scrutinized
29 companies list as a company with active business operations as
30 provided in this section.

31 2. *a.* The public fund shall sell, redeem, divest, or
32 withdraw all publicly traded securities of a company on
33 the public fund's list of scrutinized companies with active
34 business operations, so long as the company remains on that
35 list, no sooner than ninety days, but no later than eighteen

1 months, following the first written notice sent to the
2 scrutinized company with active business operations as required
3 by section 12H.3.

4 *b.* This subsection shall not be construed to require the
5 premature or otherwise imprudent sale, redemption, divestment,
6 or withdrawal of an investment, but such sale, redemption,
7 divestment, or withdrawal shall be completed as provided by
8 this subsection.

9 3. The requirements of this section shall not apply to the
10 following:

11 *a.* A company which the United States government
12 affirmatively declares to be excluded from its present or any
13 future federal sanctions regime relating to Iran.

14 *b.* Indirect holdings of a scrutinized company with active
15 business operations. The public fund shall, however, submit
16 letters to the managers of such investment funds containing
17 companies with scrutinized active business operations
18 requesting that they consider removing such companies from the
19 fund or create a similar fund with indirect holdings devoid of
20 such companies. If the manager creates a similar fund, the
21 public fund is encouraged to replace all applicable investments
22 with investments in the similar fund consistent with prudent
23 investing standards.

24 **Sec. 5. NEW SECTION. 12H.5 Reports.**

25 1. *Scrutinized companies list.* Each public fund shall,
26 within thirty days after the scrutinized companies list is
27 created or updated as required by section 12H.3, make the list
28 available to the public.

29 2. *Annual report.* On October 1, 2012, and each October
30 1 thereafter, each public fund shall make available to the
31 public, and file with the general assembly, an annual report
32 covering the prior fiscal year that includes the following:

33 *a.* The scrutinized companies list as of the end of the
34 fiscal year.

35 *b.* A summary of all written notices sent as required by

1 section 12H.3 during the fiscal year.

2 c. All investments sold, redeemed, divested, or withdrawn as
3 provided in section 12H.4 during the fiscal year.

4 Sec. 6. NEW SECTION. 12H.6 Legal obligations.

5 With respect to actions taken in compliance with this
6 chapter, including all good faith determinations regarding
7 companies as required by this chapter, the public fund
8 shall be exempt from any conflicting statutory or common law
9 obligations, including any such obligations in respect to
10 choice of asset managers, investment funds, or investments for
11 the public fund's securities portfolios.

12 Sec. 7. NEW SECTION. 12H.7 Applicability.

13 1. The requirements of sections 12H.3, 12H.4, and 12H.5
14 shall not apply upon the occurrence of any of the following:

15 a. The Congress or president of the United States, through
16 legislation or executive order, declares that mandatory
17 divestment of the type provided for in this chapter interferes
18 with the conduct of United States foreign policy.

19 b. A controlling circuit or district court of the United
20 States issues an opinion that declares the mandatory divestment
21 of the type provided for in this chapter or similar statutes
22 of other states is preempted by the federal law of the United
23 States.

24 2. The requirements of sections 12H.3, 12H.4, and 12H.5
25 shall not apply to Iran if the United States revokes all
26 sanctions imposed against the government of Iran.

27 Sec. 8. Section 12.8, unnumbered paragraph 1, Code 2011, is
28 amended to read as follows:

29 The treasurer of state shall invest or deposit, subject to
30 ~~chapter~~ chapters 12F and 12H and as provided by law, any of
31 the public funds not currently needed for operating expenses
32 and shall do so upon receipt of monthly notice from the
33 director of the department of administrative services of the
34 amount not so needed. In the event of loss on redemption or
35 sale of securities invested as prescribed by law, and if the

1 transaction is reported to the executive council, neither the
2 treasurer nor director of the department of administrative
3 services is personally liable but the loss shall be charged
4 against the funds which would have received the profits or
5 interest of the investment and there is appropriated from the
6 funds the amount so required.

7 Sec. 9. Section 97A.7, subsection 1, Code 2011, is amended
8 to read as follows:

9 1. The board of trustees shall be the trustees of the
10 retirement fund created by this chapter as provided in section
11 97A.8 and shall have full power to invest and reinvest funds
12 subject to the terms, conditions, limitations, and restrictions
13 imposed by subsection 2 of this section and ~~chapter~~
14 chapters 12F and 12H, and subject to like terms, conditions,
15 limitations, and restrictions said trustees shall have full
16 power to hold, purchase, sell, assign, transfer, or dispose of
17 any of the securities and investments of the retirement fund
18 which have been invested, as well as of the proceeds of said
19 investments and any moneys belonging to the retirement fund.
20 The board of trustees may authorize the treasurer of state to
21 exercise any of the duties of this section. When so authorized
22 the treasurer of state shall report any transactions to the
23 board of trustees at its next monthly meeting.

24 Sec. 10. Section 97B.4, subsection 5, Code 2011, is amended
25 to read as follows:

26 5. *Investments.* The system, through the chief investment
27 officer, shall invest, subject to ~~chapter~~ chapters 12F and 12H
28 and in accordance with the investment policy and goal statement
29 established by the board, the portion of the retirement fund
30 which, in the judgment of the system, is not needed for
31 current payment of benefits under this chapter subject to the
32 requirements of section 97B.7A.

33 Sec. 11. Section 262.14, unnumbered paragraph 1, Code 2011,
34 is amended to read as follows:

35 The board may invest funds belonging to the institutions,

1 subject to ~~chapter~~ chapters 12F and 12H and the following
2 regulations:

3 Sec. 12. Section 411.7, subsection 1, Code 2011, is amended
4 to read as follows:

5 1. The board of trustees is the trustee of the fire
6 and police retirement fund created in section 411.8 and
7 shall annually establish an investment policy to govern the
8 investment and reinvestment of the moneys in the fund, subject
9 to the terms, conditions, limitations, and restrictions imposed
10 by subsection 2 and ~~chapter~~ chapters 12F and 12H. Subject
11 to like terms, conditions, limitations, and restrictions
12 the system has full power to hold, purchase, sell, assign,
13 transfer, or dispose of any of the securities and investments
14 in which the fund has been invested, as well as of the proceeds
15 of the investments and any moneys belonging to the fund.

16 Sec. 13. Section 602.9111, subsection 1, Code 2011, is
17 amended to read as follows:

18 1. So much of the judicial retirement fund as may not be
19 necessary to be kept on hand for the making of disbursements
20 under this article shall be invested by the treasurer of
21 state in any investments authorized for the Iowa public
22 employees' retirement system in section 97B.7A and subject
23 to the requirements of ~~chapter~~ chapters 12F and 12H, and
24 the earnings therefrom shall be credited to the fund. The
25 treasurer of state may execute contracts and agreements with
26 investment advisors, consultants, and investment management and
27 benefit consultant firms in the administration of the judicial
28 retirement fund.

29

EXPLANATION

30 This bill restricts the treasurer of state, the state
31 board of regents, the Iowa public employees' retirement
32 system (IPERS), the public safety peace officers' retirement
33 system, the statewide fire and police retirement system, and
34 the judicial retirement system, defined as public funds, from
35 directly investing in certain companies with active business

1 operations in Iran. The bill also adds notice requirements
2 as to the public funds relative to companies with inactive
3 business operations in Iran.

4 The bill requires each public fund to develop and maintain a
5 list of scrutinized companies with active and inactive business
6 operations in Iran that the fund has direct or indirect
7 holdings in or in which the fund may invest in the future. Each
8 public fund shall determine this list by July 1, 2011, and
9 update it on a quarterly basis. The bill defines "scrutinized
10 companies" as those companies that have contracts with the
11 government of Iran and involve some oil-related or power
12 production activities, or supply military equipment to Iran.
13 Once a company is listed on the scrutinized companies list of a
14 public fund, the bill requires the public fund to send a notice
15 to that company relative to the requirements of the bill. If
16 the company has inactive business operations, the notice shall
17 describe the requirements of the bill and encourage the company
18 not to engage in active business operations. If the company
19 has active business operations, the notice shall provide that
20 the company may qualify for divestment and other investment
21 restrictions by the public fund.

22 New Code section 12H.4 requires that a public fund not invest
23 in, and shall divest from, holdings in a scrutinized company
24 with active business operations. If the public fund has direct
25 holdings in the company, the public fund shall proceed to
26 divest all assets with that company in 18 months so long as the
27 company continues active business operations in Iran. The bill
28 provides that a public fund shall not be required to divest or
29 refrain from investing in a company if the federal government
30 so provides or the public fund has indirect holdings, and not
31 direct holdings, in that company. However, public funds are
32 encouraged to move their indirect holdings to funds that do not
33 include scrutinized companies with active business operations.
34 The bill defines indirect holdings to include shares in an
35 account or fund managed by persons not employed by the public

1 fund, including mutual funds, private equity funds, and other
2 similar funds.

3 The bill further requires each public fund to prepare
4 and make available to the public, and file with the general
5 assembly, an annual report, beginning October 1, 2012,
6 concerning actions taken by the public fund relative to the
7 requirements of this new Code chapter in the previous fiscal
8 year.

9 The bill provides that the requirements of the bill cease
10 to be applicable to Iran if the United States revokes all
11 sanctions imposed against Iran, or if Congress or the president
12 of the United States declares that mandatory divestment is
13 contrary to United States foreign policy or a controlling
14 federal court declares the divestment requirements of the bill
15 or similar statutes from other states is preempted by federal
16 law.