

Senate File 418 - Introduced

SENATE FILE 418
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SF 98)

A BILL FOR

1 An Act relating to the investment of certain public funds in
2 certain companies, concerning companies that are owned or
3 controlled by Chinese military or government services and
4 public fund review requirements.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 12.8, subsection 1, Code 2023, is amended
2 to read as follows:

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

16 Sec. 2. Section 12F.3, subsection 1, paragraph a, Code 2023,
17 is amended to read as follows:

18 a. By July 1, 2007, the public fund shall make its best
19 efforts to identify all scrutinized companies in which the
20 public fund has direct or indirect holdings or could possibly
21 have such holdings in the future and shall create and make
22 available to the public a scrutinized companies list for that
23 public fund. The list shall further identify whether the
24 company has inactive business operations or active business
25 operations. The public fund shall review and update, if
26 necessary, the scrutinized companies list and the determination
27 of whether a company has inactive or active business operations
28 on ~~a quarterly~~ an annual basis thereafter.

29 Sec. 3. Section 12H.3, subsection 1, paragraph a, Code 2023,
30 is amended to read as follows:

31 a. By March 1, 2012, the public fund shall make its
32 best efforts to identify or have identified all scrutinized
33 companies in which the public fund has direct or indirect
34 holdings or could possibly have such holdings in the future and
35 shall create and make available to the public a scrutinized

1 companies list for that public fund. The list shall further
2 identify whether the company has inactive business operations
3 or active business operations. The public fund shall review
4 and update, if necessary, the scrutinized companies list and
5 the determination of whether a company has inactive or active
6 business operations on a ~~quarterly~~ annual basis thereafter.

7 Sec. 4. NEW SECTION. 12K.1 **Definitions.**

8 As used in this chapter, unless the context otherwise
9 requires:

10 1. "*Company*" means any business or business entity that is
11 publicly traded and that is not based in the United States.

12 2. "*Direct holdings*" in a company means all securities of
13 a company held directly by the public fund or in an account or
14 fund in which the public fund owns all shares or interests.

15 3. "*Indirect holdings*" in a company means all securities
16 of a company held in an account or fund managed by one or more
17 persons not employed by the public fund, in which the public
18 fund owns shares or interests together with other investors not
19 subject to the provisions of this chapter. Indirect holdings
20 include but are not limited to mutual funds, fund of funds,
21 private equity funds, hedge funds, and real estate funds.

22 4. "*Prohibited company*" means a company that is owned or
23 controlled by Chinese military or government services and has
24 been designated by the United States government as a company
25 that citizens of the United States are restricted or prohibited
26 from entering into transactions with, limited to companies on
27 any of the following lists:

28 a. The bureau of industry and security's entity list.

29 b. The bureau of industry and security's military end user
30 list.

31 c. The department of defense's communist Chinese military
32 companies list.

33 d. The office of foreign assets control's foreign sanctions
34 evaders list.

35 e. The office of foreign assets control's list of foreign

1 financial institutions subject to correspondent account or
2 payable-through account sanctions.

3 *f.* The office of foreign assets control's non-SDN Iran
4 sanctions list.

5 *g.* The office of foreign assets control's non-SDN
6 Palestinian legislative council list.

7 *h.* The office of foreign assets control's sectoral sanctions
8 identifications list.

9 *i.* The office of foreign assets control's specially
10 designated nationals and blocked persons list.

11 *j.* "Public fund" means the treasurer of state, the state
12 board of regents, the public safety peace officers' retirement
13 system created in chapter 97A, the Iowa public employees'
14 retirement system created in chapter 97B, the statewide fire
15 and police retirement system created in chapter 411, or the
16 judicial retirement system created in chapter 602.

17 Sec. 5. NEW SECTION. **12K.2 Identification of companies —**
18 **notice.**

19 1. *a.* By January 1, 2024, a public fund shall identify or
20 have identified all prohibited companies in which the public
21 fund has direct or indirect holdings and shall create and make
22 available to the public a prohibited companies list for that
23 public fund. The public fund shall review and update, if
24 necessary, the prohibited companies list on an annual basis
25 thereafter.

26 *b.* In identifying or having identified prohibited companies,
27 the public fund may review and rely, in the best judgment of
28 the public fund, on publicly available information and other
29 information that may be provided by nonprofit organizations,
30 research firms, international organizations, and government
31 entities. The public fund may also contact asset managers
32 and institutional investors for the public fund to identify
33 prohibited companies based upon industry-recognized lists of
34 such companies that the public fund may have indirect holdings
35 in.

1 *c.* The Iowa public employees' retirement system, acting
2 on behalf of the system and other public funds subject to
3 this section, may develop and issue a request for proposals
4 for third-party services to complete the identification of
5 prohibited companies and the compilation of a prohibited
6 companies list. The request for proposals may request bids for
7 optional services related to this purpose, including but not
8 limited to provision of notice of such prohibited companies
9 as required in subsection 2. The Iowa public employees'
10 retirement system shall consult with all other public funds
11 regarding the development of the request for proposals, however
12 selection of a successful proposal and the final scope of
13 services to be provided shall be determined only by those
14 public funds that have agreed to utilize the third-party
15 services. If more than one public fund decides to utilize the
16 third-party services, the participating public funds shall
17 equally share the costs of such services.

18 2. If a public fund determines that a company may be subject
19 to inclusion on the prohibited companies list, the public fund
20 shall scrutinize and engage the company for a period of not
21 more than twelve months and shall include the company on the
22 prohibited companies list if the public fund determines that
23 the company is a prohibited company.

24 Sec. 6. NEW SECTION. 12K.3 Divestment.

25 1. A public fund shall not acquire any direct holdings in
26 publicly traded securities of a prohibited company.

27 2. *a.* A public fund shall sell, redeem, divest, or
28 withdraw all direct holdings in publicly traded securities of
29 a prohibited company no later than one hundred eighty days
30 following the date the company is included on the prohibited
31 companies list.

32 *b.* This subsection shall not be construed to require the
33 premature or otherwise imprudent sale, redemption, divestment,
34 or withdrawal of an investment, but such sale, redemption,
35 divestment, or withdrawal shall be completed as provided by

1 this subsection.

2 Sec. 7. NEW SECTION. 12K.4 Reports.

3 1. Each public fund shall, within thirty days after the
4 prohibited companies list is created or updated as required by
5 section 12K.2, make the list available to the public.

6 2. On October 1, 2024, and each October 1 thereafter, each
7 public fund shall make available to the public, and file with
8 the general assembly, an annual report covering the prior
9 fiscal year that includes all of the following:

10 a. The prohibited companies list as of the end of the fiscal
11 year.

12 b. All investments sold, redeemed, divested, or withdrawn as
13 provided in section 12K.3 during the fiscal year.

14 c. A list of indirect holdings of the public fund in
15 publicly traded securities of prohibited companies and the
16 percentage of the total portfolio of the public fund the
17 indirect holdings of securities in prohibited companies
18 represent.

19 Sec. 8. NEW SECTION. 12K.5 Legal obligations.

20 With respect to actions taken in compliance with this
21 chapter, including all good-faith determinations regarding
22 companies as required by this chapter, the public fund
23 shall be exempt from any conflicting statutory or common law
24 obligations, including any such obligations with respect to
25 choice of asset managers, investment funds, or investments for
26 the public fund's securities portfolios.

27 Sec. 9. NEW SECTION. 12K.6 Applicability.

28 The requirements of sections 12K.2, 12K.3, and 12K.4 shall
29 not apply if the United States Congress or president of the
30 United States, through legislation or executive order, declares
31 that mandatory divestment of the type provided for in this
32 chapter interferes with the conduct of United States foreign
33 policy.

34 Sec. 10. Section 97A.7, subsection 1, Code 2023, is amended
35 to read as follows:

1 1. The board of trustees shall be the trustees of the
2 retirement fund created by [this chapter](#) as provided in section
3 97A.8 and shall have full power to invest and reinvest funds
4 subject to the terms, conditions, limitations, and restrictions
5 imposed by [subsection 2](#) and [chapters 12F, 12H, and 12J](#), and
6 [12K](#) and subject to like terms, conditions, limitations, and
7 restrictions said trustees shall have full power to hold,
8 purchase, sell, assign, transfer, or dispose of any of the
9 securities and investments of the retirement fund which have
10 been invested, as well as of the proceeds of said investments
11 and any moneys belonging to the retirement fund. The board
12 of trustees may authorize the treasurer of state to exercise
13 any of the duties of [this section](#). When so authorized the
14 treasurer of state shall report any transactions to the board
15 of trustees at its next monthly meeting.

16 Sec. 11. Section 97B.4, subsection 5, Code 2023, is amended
17 to read as follows:

18 5. *Investments.* The system, through the chief investment
19 officer, shall invest, subject to [chapters 12F, 12H, and 12J](#),
20 [and 12K](#) and in accordance with the investment policy and
21 goal statement established by the board, the portion of the
22 retirement fund which, in the judgment of the system, is not
23 needed for current payment of benefits under [this chapter](#)
24 subject to the requirements of [section 97B.7A](#).

25 Sec. 12. Section 262.14, unnumbered paragraph 1, Code 2023,
26 is amended to read as follows:

27 The board may invest funds belonging to the institutions,
28 subject to [chapters 12F, 12H, and 12J](#), and [12K](#) and the
29 following regulations:

30 Sec. 13. Section 411.7, subsection 1, Code 2023, is amended
31 to read as follows:

32 1. The board of trustees is the trustee of the fire
33 and police retirement fund created in [section 411.8](#) and
34 shall annually establish an investment policy to govern the
35 investment and reinvestment of the moneys in the fund, subject

1 to the terms, conditions, limitations, and restrictions
2 imposed by [subsection 2](#) and [chapters 12F, 12H, and 12J](#), and
3 [12K](#). Subject to like terms, conditions, limitations, and
4 restrictions the system has full power to hold, purchase, sell,
5 assign, transfer, or dispose of any of the securities and
6 investments in which the fund has been invested, as well as of
7 the proceeds of the investments and any moneys belonging to the
8 fund.

9 Sec. 14. Section 602.9111, subsection 1, Code 2023, is
10 amended to read as follows:

11 1. So much of the judicial retirement fund as may not be
12 necessary to be kept on hand for the making of disbursements
13 under [this article](#) shall be invested by the treasurer of
14 state in any investments authorized for the Iowa public
15 employees' retirement system in [section 97B.7A](#) and subject to
16 the requirements of [chapters 12F, 12H, and 12J](#), and [12K](#), and
17 the earnings therefrom shall be credited to the fund. The
18 treasurer of state may execute contracts and agreements with
19 investment advisors, consultants, and investment management and
20 benefit consultant firms in the administration of the judicial
21 retirement fund.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill relates to restrictions on the investment in
26 certain companies by public funds.

27 The bill amends Code chapters 12F and 12H relating to
28 Sudan-related and Iran-related investments to provide that
29 public funds are required to review their lists of scrutinized
30 companies on an annual and not a quarterly basis.

31 The bill also creates new Code chapter 12K concerning the
32 investment of public funds in companies owned by the Chinese
33 military or government.

34 The bill defines "company" as any business or business
35 entity that is publicly traded and that is not based in the

1 United States. The bill defines "direct holdings" in a company
2 as all securities of a company held directly by the public
3 fund or in an account or fund in which the public fund owns
4 all shares or interests. The bill defines "indirect holdings"
5 in a company as all securities of a company held in an account
6 or fund managed by one or more persons not employed by the
7 public fund, in which the public fund owns shares or interests
8 together with other investors not subject to the provisions
9 of this new Code chapter 12K. The bill defines "prohibited
10 company" as a company that is owned or controlled by Chinese
11 military or government services and designated by the United
12 States government as a company that citizens are restricted
13 or prohibited from entering into transactions with. The bill
14 defines "public fund" as the treasurer of state, the state
15 board of regents, the public safety peace officers' retirement
16 system, the Iowa public employees' retirement system (IPERS),
17 the statewide fire and police retirement system, or the
18 judicial retirement system.

19 The bill requires a public fund to identify all prohibited
20 companies in which the public fund has direct or indirect
21 holdings by January 1, 2024. Additionally, the bill requires
22 a public fund to create and make available to the public a
23 prohibited companies list and review and update the list on
24 an annual basis. The bill authorizes a public fund to review
25 and rely on publicly available information and information
26 from other sources when identifying prohibited companies. The
27 bill also authorizes IPERS to develop and issue a request
28 for proposals for third-party services to complete the
29 identification of prohibited companies and the compilation of
30 the prohibited companies list. The bill requires public funds
31 to scrutinize and engage with companies the fund identifies for
32 possible inclusion as a prohibited company for a period of not
33 more than 12 months.

34 The bill prohibits a public fund from acquiring direct
35 holdings in publicly traded securities of a prohibited company.

1 The bill requires a public fund to sell, redeem, divest, or
2 withdraw all direct holdings in publicly traded securities of a
3 prohibited company no later than 180 days following the date
4 the company becomes a prohibited company.

5 The bill requires each public fund, within 30 days after the
6 prohibited companies list is created or updated, to make the
7 list available to the public. Additionally, the bill requires
8 a public fund to make available to the public and file with the
9 general assembly an annual report beginning October 1, 2024,
10 and each October 1 thereafter.

11 The bill provides that, with respect to actions taken
12 in compliance with the Code chapter, the public fund shall
13 be exempt from any conflicting statutory or common law
14 obligations, including any such obligations in respect to
15 choice of asset managers, investment funds, or investments for
16 the public fund's securities portfolios.

17 The bill provides that the provisions related to the
18 creation of a prohibited companies list, divestment of publicly
19 traded securities of a prohibited company, and reporting shall
20 not apply if the United States Congress or president of the
21 United States declares that mandatory divestment of the type
22 provided for in the Code chapter interferes with the conduct of
23 United States foreign policy.

24 The bill makes conforming changes to Code sections 12.8,
25 97A.7, 97B.4, 262.14, 411.7, and 602.9111.