



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB0145

Introduced 1/18/2011, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

40 ILCS 5/1-110.15

Amends the Illinois Pension Code. Provides that no assets of any retirement system shall be invested in any foreign company that has an equity tie to the government of Iran or its instrumentalities and that is engaged in specified business activities. Exempts any foreign company providing humanitarian aid to the Iranian people through either a governmental or non-governmental organization. Requires the retirement system to sell, redeem, divest, or withdraw any investment held in violation. Provides that these provisions shall not be construed to require the premature or otherwise imprudent sale, redemption, divestment, or withdrawal of an investment but requires such sale, redemption, divestment, or withdrawal to be completed no later than 3 years after the effective date of the amendatory Act. Requires, within 60 days after the effective date of the amendatory Act and annually thereafter, each retirement system to file with the Public Pension Division and the General Assembly a report of all investments that violate these provisions. Provides that these provisions shall be of no effect if (i) the Congress or the President of the United States declares that the government of Iran has ceased to acquire or develop weapons of mass destruction and to support international terrorism or (ii) the United States revokes all sanctions imposed against the government of Iran. Indemnifies trustees and employees of the retirement systems from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses and against all liability, losses, and damages of any nature resulting from any decision to restrict, reduce, or eliminate investments. Effective immediately.

LRB097 05708 JDS 45772 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

A BILL FOR

1 AN ACT concerning public employee benefits.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Pension Code is amended by changing
5 Section 1-110.15 as follows:

6 (40 ILCS 5/1-110.15)

7 Sec. 1-110.15. Transactions prohibited by retirement
8 systems; Iran.

9 (a) As used in this Section:

10 "Defense sector" means every industry or company, be it
11 private or owned in whole or in part by the government of Iran
12 or its instrumentalities, that is involved in the purchase,
13 sale, manufacturing, testing, or deployment of military
14 supplies and weapons, including every company that provides
15 military advisors and non-military personnel or that sells
16 strategic information or services to companies that purchase,
17 sell, manufacture, test, or deploy military supplies and
18 weapons, to the government of Iran or its instrumentalities.

19 "Equity tie" means manufacturing or mining plants,
20 employees or advisors, facilities, or an investment,
21 fiduciary, monetary, or physical presence of any kind,
22 including an ownership stake in one or more subsidiary or joint
23 venture with one or more companies in the country.

1 "Humanitarian aid" means the provision of goods and
2 services intended to relieve human suffering or to promote
3 general welfare and health.

4 "Natural gas or petroleum sectors" means those industries
5 and companies that have as their business the owning rights to
6 oil blocks or the exporting, extracting, producing, refining,
7 processing, transporting, selling, or trading of, or exploring
8 for, oil or natural gas or constructing, maintaining, or
9 operating a pipeline, refinery, or other infrastructure and
10 facilitating such activities, including supplies or services
11 in support of such activities.

12 "Nuclear sector" means every industry or company, be it
13 private or owned in whole or in part by the government of Iran
14 or its instrumentalities, that is involved in the purchase,
15 sale, development, testing, or deployment of nuclear
16 technology of any kind or that provides advisors, researchers,
17 scientists, or technicians who are involved in the purchase,
18 sale, development, testing, or deployment of nuclear
19 technology of any kind.

20 "Retirement system" means the State Employees' Retirement
21 System of Illinois, the Judges Retirement System of Illinois,
22 the General Assembly Retirement System, the State Universities
23 Retirement System, and the Teachers' Retirement System of the
24 State of Illinois.

25 (b) Notwithstanding any provision of law to the contrary,
26 no assets of any retirement system shall be invested in any

1 foreign company that has an equity tie to the government of
2 Iran or its instrumentalities and is engaged in business
3 operations with entities in the defense sector or nuclear
4 sector of Iran, or engaged in business operations with entities
5 involved in the natural gas or petroleum sectors of Iran, in or
6 with that government and its instrumentalities. This
7 prohibition shall not apply to the activities of any foreign
8 company providing humanitarian aid to the Iranian people
9 through either a governmental or non-governmental
10 organization.

11 (c) The retirement system, after reviewing the
12 recommendations of and consulting with an independent research
13 firm that specializes in global security risk for portfolio
14 determinations selected by the State Treasurer, shall take
15 appropriate action to sell, redeem, divest, or withdraw any
16 investment held in violation of subsection (b) of this Section.
17 This Section shall not be construed to require the premature or
18 otherwise imprudent sale, redemption, divestment, or
19 withdrawal of an investment, but such sale, redemption,
20 divestment, or withdrawal shall be completed not later than 3
21 years following the effective date of this amendatory Act of
22 the 97th General Assembly.

23 (d) Within 60 days after the effective date of this
24 amendatory Act of the 97th General Assembly, the retirement
25 system shall file with the Public Pension Division and the
26 General Assembly a report of all investments held on the

1 effective date of this amendatory Act of the 97th General
2 Assembly that are in violation of subsection (b) of this
3 Section. Every year thereafter, the retirement system shall
4 report on all investments sold, redeemed, divested, or
5 withdrawn in compliance with subsection (b) of this Section.
6 Each report after the initial report shall provide a
7 description of the progress that the retirement system has made
8 since the previous report and since the enactment of this
9 amendatory Act of the 97th General Assembly in implementing
10 subsection (c) of this section.

11 (e) Notwithstanding the other provisions of this Section to
12 the contrary, this Section shall be of no effect if:

13 (1) the Congress or the President of the United States,
14 affirmatively and unambiguously, declares, by means
15 including, but not limited to, legislation, executive
16 order, or written certification from the President to
17 Congress, that the government of Iran has ceased to acquire
18 or develop weapons of mass destruction and to support
19 international terrorism; or

20 (2) the United States revokes all sanctions imposed
21 against the government of Iran.

22 (f) Trustees and employees of the retirement systems shall
23 be indemnified and held harmless by the State of Illinois from
24 all claims, demands, suits, actions, damages, judgments,
25 costs, charges, and expenses, including court costs and
26 attorney's fees, and against all liability, losses, and damages

1 of any nature whatsoever that these trustees and employees
2 shall or may at any time sustain by reason of any decision to
3 restrict, reduce, or eliminate investments pursuant to this
4 Section.

5 ~~(a) As used in this Section:~~

6 ~~"Active business operations" means all business operations~~
7 ~~that are not inactive business operations.~~

8 ~~"Business operations" means engaging in commerce in any~~
9 ~~form in Iran, including, but not limited to, acquiring,~~
10 ~~developing, maintaining, owning, selling, possessing, leasing,~~
11 ~~or operating equipment, facilities, personnel, products,~~
12 ~~services, personal property, real property, or any other~~
13 ~~apparatus of business or commerce.~~

14 ~~"Company" means any sole proprietorship, organization,~~
15 ~~association, corporation, partnership, joint venture, limited~~
16 ~~partnership, limited liability partnership, limited liability~~
17 ~~company, or other entity or business association, including all~~
18 ~~wholly owned subsidiaries, majority owned subsidiaries, parent~~
19 ~~companies, or affiliates of those entities or business~~
20 ~~associations, that exists for the purpose of making profit.~~

21 ~~"Direct holdings" in a company means all securities of that~~
22 ~~company that are held directly by the retirement system or in~~
23 ~~an account or fund in which the retirement system owns all~~
24 ~~shares or interests.~~

25 ~~"Inactive business operations" means the mere continued~~
26 ~~holding or renewal of rights to property previously operated~~

1 ~~for the purpose of generating revenues but not presently~~
2 ~~deployed for that purpose.~~

3 ~~"Indirect holdings" in a company means all securities of~~
4 ~~that company which are held in an account or fund, such as a~~
5 ~~mutual fund, managed by one or more persons not employed by the~~
6 ~~retirement system, in which the retirement system owns shares~~
7 ~~or interests together with other investors not subject to the~~
8 ~~provisions of this Section.~~

9 ~~"Mineral extraction activities" include exploring,~~
10 ~~extracting, processing, transporting, or wholesale selling or~~
11 ~~trading of elemental minerals or associated metal alloys or~~
12 ~~oxides (ore), including gold, copper, chromium, chromite,~~
13 ~~diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.~~

14 ~~"Oil-related activities" include, but are not limited to,~~
15 ~~owning rights to oil blocks; exporting, extracting, producing,~~
16 ~~refining, processing, exploring for, transporting, selling, or~~
17 ~~trading of oil; and constructing, maintaining, or operating a~~
18 ~~pipeline, refinery, or other oil field infrastructure. The~~
19 ~~mere retail sale of gasoline and related consumer products is~~
20 ~~not considered an oil-related activity.~~

21 ~~"Petroleum resources" means petroleum, petroleum~~
22 ~~byproducts, or natural gas.~~

23 ~~"Private market fund" means any private equity fund,~~
24 ~~private equity fund of funds, venture capital fund, hedge fund,~~
25 ~~hedge fund of funds, real estate fund, or other investment~~
26 ~~vehicle that is not publicly traded.~~

1 ~~"Retirement system" means the State Employees' Retirement~~
2 ~~System of Illinois, the Judges Retirement System of Illinois,~~
3 ~~the General Assembly Retirement System, the State Universities~~
4 ~~Retirement System, and the Teachers' Retirement System of the~~
5 ~~State of Illinois.~~

6 ~~"Scrutinized business operations" means business~~
7 ~~operations that have caused a company to become a scrutinized~~
8 ~~company.~~

9 ~~"Scrutinized company" means the company has business~~
10 ~~operations that involve contracts with or provision of supplies~~
11 ~~or services to the Government of Iran, companies in which the~~
12 ~~Government of Iran has any direct or indirect equity share,~~
13 ~~consortiums or projects commissioned by the Government of Iran,~~
14 ~~or companies involved in consortiums or projects commissioned~~
15 ~~by the Government of Iran and:~~

16 ~~(1) more than 10% of the company's revenues produced in~~
17 ~~or assets located in Iran involve oil related activities or~~
18 ~~mineral extraction activities; less than 75% of the~~
19 ~~company's revenues produced in or assets located in Iran~~
20 ~~involve contracts with or provision of oil related or~~
21 ~~mineral extraction products or services to the Government~~
22 ~~of Iran or a project or consortium created exclusively by~~
23 ~~that government; and the company has failed to take~~
24 ~~substantial action; or~~

25 ~~(2) the company has, on or after August 5, 1996, made~~
26 ~~an investment of \$20 million or more, or any combination of~~

1 ~~investments of at least \$10 million each that in the~~
2 ~~aggregate equals or exceeds \$20 million in any 12-month~~
3 ~~period, that directly or significantly contributes to the~~
4 ~~enhancement of Iran's ability to develop petroleum~~
5 ~~resources of Iran.~~

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

10 ~~(b) Within 90 days after the effective date of this~~
11 ~~Section, a retirement system shall make its best efforts to~~
12 ~~identify all scrutinized companies in which the retirement~~
13 ~~system has direct or indirect holdings.~~

14 ~~These efforts shall include the following, as appropriate~~
15 ~~in the retirement system's judgment:~~

16 ~~(1) reviewing and relying on publicly available~~
17 ~~information regarding companies having business operations~~
18 ~~in Iran, including information provided by nonprofit~~
19 ~~organizations, research firms, international~~
20 ~~organizations, and government entities;~~

21 ~~(2) contacting asset managers contracted by the~~
22 ~~retirement system that invest in companies having business~~
23 ~~operations in Iran; and~~

24 ~~(3) Contacting other institutional investors that have~~
25 ~~divested from or engaged with companies that have business~~
26 ~~operations in Iran.~~

1 ~~The retirement system may retain an independent research~~
2 ~~firm to identify scrutinized companies in which the retirement~~
3 ~~system has direct or indirect holdings. By the first meeting of~~
4 ~~the retirement system following the 90-day period described in~~
5 ~~this subsection (b), the retirement system shall assemble all~~
6 ~~scrutinized companies identified into a scrutinized companies~~
7 ~~list.~~

8 ~~The retirement system shall update the scrutinized~~
9 ~~companies list annually based on evolving information from,~~
10 ~~among other sources, those listed in this subsection (b).~~

11 ~~(c) The retirement system shall adhere to the following~~
12 ~~procedures for companies on the scrutinized companies list:~~

13 ~~(1) The retirement system shall determine the~~
14 ~~companies on the scrutinized companies list in which the~~
15 ~~retirement system owns direct or indirect holdings.~~

16 ~~(2) For each company identified in item (1) of this~~
17 ~~subsection (c) that has only inactive business operations,~~
18 ~~the retirement system shall send a written notice informing~~
19 ~~the company of this Section and encouraging it to continue~~
20 ~~to refrain from initiating active business operations in~~
21 ~~Iran until it is able to avoid scrutinized business~~
22 ~~operations. The retirement system shall continue such~~
23 ~~correspondence semiannually.~~

24 ~~(3) For each company newly identified in item (1) of~~
25 ~~this subsection (c) that has active business operations,~~
26 ~~the retirement system shall send a written notice informing~~

1 ~~the company of its scrutinized company status and that it~~
2 ~~may become subject to divestment by the retirement system.~~
3 ~~The notice must inform the company of the opportunity to~~
4 ~~clarify its Iran-related activities and encourage the~~
5 ~~company, within 90 days, to cease its scrutinized business~~
6 ~~operations or convert such operations to inactive business~~
7 ~~operations in order to avoid qualifying for divestment by~~
8 ~~the retirement system.~~

9 ~~(4) If, within 90 days after the retirement system's~~
10 ~~first engagement with a company pursuant to this subsection~~
11 ~~(c), that company ceases scrutinized business operations,~~
12 ~~the company shall be removed from the scrutinized companies~~
13 ~~list and the provisions of this Section shall cease to~~
14 ~~apply to it unless it resumes scrutinized business~~
15 ~~operations. If, within 90 days after the retirement~~
16 ~~system's first engagement, the company converts its~~
17 ~~scrutinized active business operations to inactive~~
18 ~~business operations, the company is subject to all~~
19 ~~provisions relating thereto.~~

20 ~~(d) If, after 90 days following the retirement system's~~
21 ~~first engagement with a company pursuant to subsection (c), the~~
22 ~~company continues to have scrutinized active business~~
23 ~~operations, and only while such company continues to have~~
24 ~~scrutinized active business operations, the retirement system~~
25 ~~shall sell, redeem, divest, or withdraw all publicly traded~~
26 ~~securities of the company, except as provided in paragraph (f),~~

1 ~~from the retirement system's assets under management within 12~~
2 ~~months after the company's most recent appearance on the~~
3 ~~scrutinized companies list.~~

4 ~~If a company that ceased scrutinized active business~~
5 ~~operations following engagement pursuant to subsection (c)~~
6 ~~resumes such operations, this subsection (d) immediately~~
7 ~~applies, and the retirement system shall send a written notice~~
8 ~~to the company. The company shall also be immediately~~
9 ~~reintroduced onto the scrutinized companies list.~~

10 ~~(e) The retirement system may not acquire securities of~~
11 ~~companies on the scrutinized companies list that have active~~
12 ~~business operations, except as provided in subsection (f).~~

13 ~~(f) A company that the United States Government~~
14 ~~affirmatively declares to be excluded from its present or any~~
15 ~~future federal sanctions regime relating to Iran is not subject~~
16 ~~to divestment or the investment prohibition pursuant to~~
17 ~~subsections (d) and (e).~~

18 ~~(g) Notwithstanding the provisions of this Section,~~
19 ~~paragraphs (d) and (e) do not apply to indirect holdings in a~~
20 ~~private market fund. However, the retirement system shall~~
21 ~~submit letters to the managers of those investment funds~~
22 ~~containing companies that have scrutinized active business~~
23 ~~operations requesting that they consider removing the~~
24 ~~companies from the fund or create a similar actively managed~~
25 ~~fund having indirect holdings devoid of the companies. If the~~
26 ~~manager creates a similar fund, the retirement system shall~~

1 ~~replace all applicable investments with investments in the~~
2 ~~similar fund in an expedited timeframe consistent with prudent~~
3 ~~investing standards.~~

4 ~~(h) The retirement system shall file a report with the~~
5 ~~Public Pension Division of the Department of Financial and~~
6 ~~Professional Regulation that includes the scrutinized~~
7 ~~companies list within 30 days after the list is created. This~~
8 ~~report shall be made available to the public.~~

9 ~~The retirement system shall file an annual report with the~~
10 ~~Public Pension Division, which shall be made available to the~~
11 ~~public, that includes all of the following:~~

12 ~~(1) A summary of correspondence with companies engaged~~
13 ~~by the retirement system under items (2) and (3) of~~
14 ~~subsection (c).~~

15 ~~(2) All investments sold, redeemed, divested, or~~
16 ~~withdrawn in compliance with subsection (d).~~

17 ~~(3) All prohibited investments under subsection (e).~~

18 ~~(4) A summary of correspondence with private market~~
19 ~~funds notified under subsection (g).~~

20 ~~(i) This Section expires upon the occurrence of any of the~~
21 ~~following:~~

22 ~~(1) The United States revokes all sanctions imposed~~
23 ~~against the Government of Iran.~~

24 ~~(2) The Congress or President of the United States~~
25 ~~declares that the Government of Iran has ceased to acquire~~
26 ~~weapons of mass destruction and to support international~~

1 ~~terrorism.~~

2 ~~(3) The Congress or President of the United States,~~
3 ~~through legislation or executive order, declares that~~
4 ~~mandatory divestment of the type provided for in this~~
5 ~~Section interferes with the conduct of United States~~
6 ~~foreign policy.~~

7 ~~(j) With respect to actions taken in compliance with this~~
8 ~~Act, including all good faith determinations regarding~~
9 ~~companies as required by this Act, the retirement system is~~
10 ~~exempt from any conflicting statutory or common law~~
11 ~~obligations, including any fiduciary duties under this Article~~
12 ~~and any obligations with respect to choice of asset managers,~~
13 ~~investment funds, or investments for the retirement system's~~
14 ~~securities portfolios.~~

15 ~~(k) Notwithstanding any other provision of this Section to~~
16 ~~the contrary, the retirement system may cease divesting from~~
17 ~~scrutinized companies pursuant to subsection (d) or reinvest in~~
18 ~~scrutinized companies from which it divested pursuant to~~
19 ~~subsection (d) if clear and convincing evidence shows that the~~
20 ~~value of investments in scrutinized companies with active~~
21 ~~scrutinized business operations becomes equal to or less than~~
22 ~~0.5% of the market value of all assets under management by the~~
23 ~~retirement system. Cessation of divestment, reinvestment, or~~
24 ~~any subsequent ongoing investment authorized by this Section is~~
25 ~~limited to the minimum steps necessary to avoid the contingency~~
26 ~~set forth in this subsection (k). For any cessation of~~

1 ~~divestment, reinvestment, or subsequent ongoing investment~~
2 ~~authorized by this Section, the retirement system shall provide~~
3 ~~a written report to the Public Pension Division in advance of~~
4 ~~initial reinvestment, updated semiannually thereafter as~~
5 ~~applicable, setting forth the reasons and justification,~~
6 ~~supported by clear and convincing evidence, for its decisions~~
7 ~~to cease divestment, reinvest, or remain invested in companies~~
8 ~~having scrutinized active business operations. This Section~~
9 ~~does not apply to reinvestment in companies on the grounds that~~
10 ~~they have ceased to have scrutinized active business~~
11 ~~operations.~~

12 ~~(1) If any provision of this Section or its application to~~
13 ~~any person or circumstance is held invalid, the invalidity does~~
14 ~~not affect other provisions or applications of the Act which~~
15 ~~can be given effect without the invalid provision or~~
16 ~~application, and to this end the provisions of this Section are~~
17 ~~severable.~~

18 (Source: P.A. 95-616, eff. 1-1-08; 95-876, eff. 8-21-08.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.