

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 77

Introduced by Avery, 28.

Read first time January 10, 2013

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to state investments; to adopt the Nebraska Iran

2 Divestment Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Nebraska Iran Divestment Act.

3 Sec. 2. The Legislature finds and declares that it is
4 deeply concerned over the support the government of Iran has provided
5 for acts of international terrorism. Therefor, the Legislature
6 intends that state funds and funds administered by the state,
7 including public employee retirement funds, should not be invested in
8 companies that provide power production-related services, mineral
9 extraction activities, or military equipment to the government of
10 Iran.

11 Sec. 3. For purposes of the Nebraska Iran Divestment Act:

12 (1) Active business operations means all business
13 operations that are not inactive business operations;

14 (2) Business operations means commercial activity in any
15 form including acquiring, developing, maintaining, owning, selling,
16 possessing, leasing, or operating equipment, facilities, personnel,
17 products, services, personal property, real property, or any other
18 apparatus of business or commerce;

19 (3) Company means any sole proprietorship, organization,
20 association, corporation, partnership, joint venture, limited
21 partnership, limited liability partnership, limited liability
22 company, or other entity or business association, including any
23 wholly owned subsidiary, majority-owned subsidiary, parent company,
24 or affiliate of such entity or business association, that exists for
25 profit-making purposes;

1 (4) Direct holdings means all publicly traded debt and
2 equity securities of a company that are held directly by the Nebraska
3 Investment Council or held in an account in which the Nebraska
4 Investment Council owns all shares or interests;

5 (5) Government of Iran means the government of Iran or
6 its instrumentalities or political subdivisions and companies owned
7 or controlled by Iran;

8 (6) Inactive business operations means the continued
9 holding or renewal of rights to property previously operated for
10 profit-making purposes but not presently deployed for such a purpose;

11 (7) Indirect holdings means all investments held in an
12 account or fund, including a mutual fund, a real estate fund, a
13 private equity fund, or a commingled fund, managed by one or more
14 persons who are not employed by the state investment officer, in
15 which the Nebraska Investment Council owns shares or interests
16 together with other investors who are not subject to the act;

17 (8) Iran means the Islamic Republic of Iran;

18 (9) Scrutinized company means any company that is not a
19 social development company and that meets any of the following
20 criteria:

21 (a) The company has business operations that involve
22 contracts with or provision of supplies or services to the government
23 of Iran, companies in which the government of Iran has any holding,
24 in whole or in part, consortiums or projects commissioned by the
25 government of Iran, or companies involved in consortiums or projects

1 commissioned by the government of Iran and meets any of the
2 additional following criteria:

3 (i) More than ten percent of the company's revenue or
4 assets linked to Iran involve oil-related activities or mineral
5 extraction activities and the company has failed to take substantial
6 action specific to Iran; or

7 (ii) More than ten percent of the company's revenue or
8 assets linked to Iran involve power production activities and the
9 company has failed to take substantial action specific to Iran; or

10 (b) The company supplies military equipment to the
11 government of Iran unless the company clearly shows that the military
12 equipment cannot be used to facilitate international acts of
13 terrorism;

14 (10) Social development company means a company whose
15 primary purpose in Iran is to provide humanitarian goods or services,
16 including medicine or medical equipment, agricultural supplies or
17 infrastructure, educational opportunities, journalism-related
18 activities, information or informational materials, spiritual-related
19 activities, services of a purely clerical or reporting nature, or
20 food, clothing, or general consumer goods that are unrelated to oil-
21 related activities, mineral extraction activities, or power
22 production activities; and

23 (11) Substantial action specific to Iran means adopting,
24 publicizing, and implementing a formal plan to cease scrutinized
25 business operations within one year and to refrain from any such new

1 business operations.

2 Sec. 4. Within ninety days following the effective date
3 of this act, the Attorney General shall use his or her best efforts
4 to assemble a comprehensive list of scrutinized companies. These
5 efforts shall include, as appropriate:

6 (1) Reviewing and relying, as appropriate, on publicly
7 available information regarding companies with business operations
8 with the government of Iran, including information provided by
9 nonprofit organizations, research firms, international organizations,
10 and governmental entities;

11 (2) Contacting asset managers contracting with the
12 Nebraska Investment Council; and

13 (3) Contacting institutional investors that have divested
14 from or engaged with companies with business operations in Iran.

15 The Attorney General shall transmit the completed
16 comprehensive scrutinized companies list to the state investment
17 officer for further action in accordance with the Nebraska Iran
18 Divestment Act.

19 Sec. 5. The Attorney General shall update the scrutinized
20 companies list annually based on continuing information.

21 Sec. 6. The Nebraska Investment Council shall not acquire
22 any direct holding in a company on the most current scrutinized
23 companies list assembled by the Attorney General, except as provided
24 in the Nebraska Iran Divestment Act and unless such prohibition
25 would, in the good faith judgment of the state investment officer,

1 result in a breach of fiduciary duty of the state investment officer
2 or the members of the Nebraska Investment Council.

3 Sec. 7. If the federal government excludes a scrutinized
4 company from present or future sanctions relating to the government
5 of Iran, that scrutinized company is exempt from the divestment
6 requirements and investment prohibitions of the Nebraska Iran
7 Divestment Act.

8 Sec. 8. The Nebraska Iran Divestment Act does not apply
9 to any of the following:

- 10 (1) Direct holdings in a social development company; and
11 (2) Direct holdings in a United States company that is
12 authorized by the United States Government to have active business
13 operations in Iran.

14 Sec. 9. (1) The Nebraska Iran Divestment Act does not
15 apply to indirect holdings. The Attorney General shall annually
16 submit letters to the managers of all indirect holdings of the
17 Nebraska Investment Council stating the policy set forth in section 1
18 of this act and requesting the managers to consider avoiding
19 acquiring direct holdings in scrutinized companies or removing such
20 scrutinized companies from the fund or to create a similar investment
21 fund with holdings that do not include the scrutinized companies.

22 (2) This section shall not be deemed to require the state
23 investment officer or the Nebraska Investment Council to invest in
24 indirect holdings that do not contain scrutinized companies.

25 (3) The state investment officer shall transmit to the

1 Attorney General all information necessary for the Attorney General
2 to carry out the requirements of this section.

3 Sec. 10. The Nebraska Iran Divestment Act terminates if
4 either of the following occurs:

5 (1) Iran is removed from the United States Department of
6 State's list of countries that have been determined to repeatedly
7 provide support for acts of international terrorism; or

8 (2) The President of the United States determines and
9 certifies that state legislation similar to the act interferes with
10 the conduct of United States' foreign policy.

11 Sec. 11. The state investment officer, the Nebraska
12 Investment Council, and the Attorney General are exempt from any
13 statutory or common law obligations that conflict with actions taken
14 in compliance with the Nebraska Iran Divestment Act, including all
15 good faith scrutinized company status determinations regarding
16 companies as required by the act, and any obligations regarding the
17 choice of asset managers, investment funds, or investments made by or
18 on behalf of the state investment officer or the Nebraska Investment
19 Council.