

**DIVESTMENT OF CERTAIN RETIREMENT**

**FUND INVESTMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Julie Fisher**

Senate Sponsor: Margaret Dayton

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**LONG TITLE**

**Committee Note:**

The Retirement and Independent Entities Interim Committee recommended this bill.

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by restricting investment of funds in certain entities.

**Highlighted Provisions:**

This bill:

- ▶ provides certain definitions;
- ▶ requires the Utah State Retirement Board to ensure that the monies of the Utah State Retirement Investment Fund are not invested in any business operations with a publicly traded foreign company that has certain business operations with the country of Iran;

- ▶ exempts private equity ~~H→~~ [and] , ~~←H~~ alternative investments ~~H→~~ , and commingled funds ←H from application of the section;

- ▶ requires the board to make rules to implement certain provisions, including identifying scrutinized companies and providing notice of potential investment withdrawal;

- ▶ requires the board to divest of any investments in scrutinized companies provided that divestment is not at a loss;

- ▶ indemnifies board members when divesting in compliance with the section; and

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28           ▶ exempts monies invested in a defined contribution plan from the investment  
 29 restrictions.

30 **Monies Appropriated in this Bill:**

31           None

32 **Other Special Clauses:**

33           None

34 **Utah Code Sections Affected:**

35 ENACTS:

36           **49-11-306**, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39           Section 1. Section **49-11-306** is enacted to read:

40           **49-11-306. Definitions -- Investment prohibitions -- Rules -- Exceptions.**

41           (1) As used in this section:

42           (a) (i) "Business operations" means engaging in commerce in any form, including  
 43 acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating any  
 44 apparatus of business or commerce, which includes equipment, facilities, personnel, products,  
 45 services, personal property, and real property.

46           (ii) "Business operations" does not include providing humanitarian aid.

47           (b) ~~H~~→ ~~(H)~~ ←~~H~~ "Scrutinized company" means a publicly traded foreign company that:

48           ~~H~~→ ~~(A)~~ ~~(H)~~ ~~(Aa)~~ (i)(A) ←~~H~~ has business operations that involve a contract with or  
 48a1 provision of  
 48a supplies or  
 49 services to a scrutinized entity;

50           ~~H~~→ ~~(HH)~~ ~~(Bb)~~ (B) ←~~H~~ has any direct or indirect equity share, consortium, or project  
 50a commissioned by a  
 51 scrutinized entity; or

52           ~~H~~→ ~~(HH)~~ ~~(Cc)~~ (C) ←~~H~~ is involved in a consortium or project commissioned by a  
 52a1 scrutinized  
 52a entity; ~~H~~→ [and]

53           ~~(B)~~ ~~(H)~~ ~~(HH)~~ (ii)(A) ←~~H~~ has more than 5% of the company's total revenues or assets  
 53a linked to a  
 54 scrutinized entity; and

55           ~~H~~→ ~~(HH)~~ ~~(HH)~~ (B) ←~~H~~ has failed to adopt, publicize, and implement a formal plan to  
 55a reduce the  
 56 investment to 5% or below within one year; or

57           ~~H~~→ ~~(C)~~ ~~(B)~~ (iii) ←~~H~~ has, with actual knowledge, on or after August 5, 1996, made an  
 57a investment of \$20  
 58 million or more, or any combination of investments which in the aggregate exceeds \$20 million

59 in any 12-month period, in a scrutinized entity.

60 ~~Ĥ→ [(ii) "Scrutinized company" does not mean private equity and other alternative~~  
 61 ~~investments.] ←Ĥ~~

62 (c) (i) "Scrutinized entity" means the government of, the governmental  
 63 instrumentalities of, and any company or organization owned or controlled by the Islamic  
 64 Republic of Iran.

65 (ii) Notwithstanding Subsection (1)(c)(i), "scrutinized entity" does not include the  
 66 government of, the governmental instrumentalities of, or any company or organization owned  
 67 or controlled by a country or entity that:

68 (A) has been removed from the United States Department of State's list of countries  
 69 that have been determined to repeatedly provide support for acts of international terrorism; and

70 (B) pursuant to the Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, as  
 71 amended, has been determined and certified to have ceased its efforts to design, develop,  
 72 manufacture, or acquire a nuclear explosive device or related materials and technology.

73 (2) (a) Notwithstanding any other provision of this part and subject to federal  
 74 limitations, the board shall ensure that the monies of the Utah State Retirement Investment  
 75 Fund are not invested in a scrutinized company or a scrutinized entity in accordance with the  
 76 provisions of Subsections (2)(b) and (c).

77 (b) Subject to the provisions of Subsection (2)(c), any divestment of holdings required  
 78 under Subsection (2)(a) shall be completed in at least the following time frames which shall  
 79 begin on ~~Ĥ→ [May 5, 2008] July 1, 2009 ←Ĥ :~~

80 (i) 33% within 180 days;

81 (ii) 66% within 360 days; and

82 (iii) 100% within 540 days.

83 (c) Notwithstanding the provisions of Subsections (2)(a) and (b), the board ~~Ĥ→ :~~

83a (i) ←Ĥ is not

84 required to divest any holdings at a loss, to be calculated on cost basis ~~Ĥ→ [:] ; and~~

84a (ii) is not required to divest from investments in private equity, alternative investments,  
 84b or commingled funds. ←Ĥ

85 (d) The board, including present and former board members, is not liable for breach of  
 86 fiduciary duty by reason of any decision to avoid, restrict, reduce, or eliminate investments in a  
 87 scrutinized company in accordance with the requirements of this section.

88 (3) The board shall make rules to provide procedures for:

89 (a) identifying and maintaining a list of scrutinized companies;

90           (b) determining what investments are made in a scrutinized company or scrutinized  
91 entity;

92           (c) providing notice that the Utah State Retirement Investment Fund has identified a  
93 company as a scrutinized company and will withdraw its investment in the scrutinized  
94 company, which notice may provide up to 90 days for the company to provide evidence that it  
95 is not a scrutinized entity before divestment occurs; and

96           (d) implementing other provisions required by this section.

97           (4) The provisions of this section do not apply to monies invested in a defined  
98 contribution plan as defined in Section 49-11-102.

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**Legislative Review Note**  
**as of 11-14-07 12:56 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 39 - Divestment of Certain Retirement Fund Investments**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill may result in foregone revenue for the Utah Retirement Systems of \$2,200,000 in FY 2009 and \$2,700,000 in years thereafter based on URS's current portfolio of investments. This bill may limit future investments by the Utah Retirement Systems and as a result may affect its ability to maximize returns, which in turn may affect existing unfunded liabilities or future contribution rates.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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