

**DIVESTMENT OF CERTAIN RETIREMENT**

**INVESTMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Julie Fisher**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by restricting investments of retirement funds in Iran's petroleum sector.

**Highlighted Provisions:**

This bill:

- ▶ provides certain definitions;
- ▶ requires the Utah State Retirement Office to identify those companies with business operations in Iran’s petroleum sector in which the Utah State Retirement fund has direct holdings, and to make and update a list of all identified scrutinized companies on an annual basis;
  - ▶ requires the board to send a written notice informing scrutinized companies:
    - with inactive business operation to encourage the company to continue to refrain from initiating active business operations in Iran; or
    - with active business operations that they may be subject to divestment by the public fund, that the company may clarify its Iran-related activities, and to encourage the company to avoid qualifying for divestment by, within 180 days, ceasing its scrutinized business operations, or converting to inactive business operations;
- ▶ provides procedures for companies to be removed from the list of scrutinized



28 companies and to avoid divestment by the fund if they comply with certain requirements,  
29 including ceasing active business operations in Iran;  
30       ▶ requires the board to divest from holdings in a scrutinized company over an  
31 18-month period if the company continues active business operations after  
32 notification;  
33       ▶ prohibits the fund from acquiring securities of companies on the list of scrutinized  
34 companies if the companies have active business operations, with certain  
35 exceptions;  
36       ▶ requires the Utah State Retirement Office to annually submit letters to the managers  
37 of the investment funds containing companies with scrutinized active business  
38 operations requesting that they consider removing the companies from the fund or  
39 make alternative funds;  
40       ▶ requires the Utah State Retirement Office to submit a publicly available list of  
41 scrutinized companies to the United States attorney general, the Retirement and  
42 Independent Entities Committee, and the governor within 30 days after the list is  
43 first created and to make an annual report summarizing the divestment related  
44 activities of the fund;  
45       ▶ provides that all actions taken in good faith compliance with this act are immune  
46 from any liability;  
47       ▶ requires the Utah State Retirement Office and the board to notify the governor and  
48 the Retirement and Independent Entities Committee and to cease to implement the  
49 provisions of this section if the United States Congress or President of the United  
50 States revokes certain sanctions imposed against the government of Iran; and  
51       ▶ exempts monies invested in a defined contribution plan from the investment  
52 restrictions.

53 **Monies Appropriated in this Bill:**

54       None

55 **Other Special Clauses:**

56       None

57 **Utah Code Sections Affected:**

58 ENACTS:

59 49-11-306, Utah Code Annotated 1953



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

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

63 **49-11-306. Definitions -- Identification of scrutinized companies -- Required**  
64 **actions -- Reporting -- Reinvestment -- Conditions for ceasing provisions -- Exceptions.**

65 (1) As used in this section:

66 (a) "Active business operations" means all business operations that are not inactive  
67 business operations.

68 (b) (i) "Business operations" means investing, with actual knowledge on or after  
69 August 5, 1996, in Iran's petroleum sector which investment directly and significantly  
70 contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

71 (ii) "Business operations" does not include the retail sale of gasoline and related  
72 consumer products.

73 (c) "Company" means any foreign sole proprietorship, organization, association,  
74 corporation, partnership, joint venture, limited partnership, limited liability partnership, limited  
75 liability company, or any other foreign entity or business association, including all wholly  
76 owned subsidiaries, majority-owned subsidiaries or parent companies, or affiliates of these  
77 entities or business associations, that exist for the purpose of making a profit.

78 (d) "Direct holdings" means all publicly traded equity securities of a company that are  
79 held directly by the public fund or in an account or fund in which the public fund owns all  
80 shares or interests.

81 (e) "Government of Iran" means the government of Iran and its instrumentalities and  
82 companies owned or controlled by the government of Iran.

83 (f) "Inactive business operations" means the continued holding or renewal of rights to  
84 property previously operated for the purpose of generating revenues but not presently deployed  
85 for that purpose.

86 (g) (i) "Indirect holdings" means all investments held in an account or fund, including a  
87 mutual fund, a real estate fund, a private equity fund, or a commingled fund, managed by one  
88 or more persons who are not employed by the public fund, in which the public fund owns  
89 shares or interests together with other investors who are not subject to this section.

90 (ii) "Indirect holdings" includes private funds if the private funds are in an actively  
91 managed investment fund.

92 (h) "Iran" means the Islamic Republic of Iran.

93 (i) "List" means the scrutinized companies with activities in the Iran petroleum energy  
94 sector list that is established under this section.

95 (j) "Petroleum resources" means petroleum or natural gas.

96 (k) "Public fund" means the Utah State Retirement Investment Fund created under  
97 Section 49-11-301.

98 (l) "Scrutinized business operations" means any active business operations that:

99 (i) are subject to or liable for sanctions under Public Law 104-172, the Iran Sanctions  
100 Act of 1996, as amended; and

101 (ii) involve the maintenance of:

102 (A) the company's existing assets or investments in Iran; or

103 (B) the deployment of new investments to Iran that meet or exceed the threshold  
104 referred to in Public Law 104-172, the Iran Action Act of 1996, as amended.

105 (m) "Scrutinized company" means any company engaging in scrutinized business  
106 operations.

107 (n) "Substantial action specific to Iran" means adopting, publicizing, and implementing  
108 a formal plan to cease scrutinized business operations within one year and to refrain from any  
109 new business operations.

110 (2) (a) By October 10, 2009, the Utah State Retirement Office shall identify those  
111 scrutinized companies, as defined by this section, in which the public fund has direct holdings.  
112 In making the determination, the board shall review and rely on publicly available information  
113 regarding companies with business operations in Iran, including information provided by  
114 nonprofit organizations, research firms, international organizations, and government entities.

115 (b) Before the first meeting of the board on or after the date prescribed in Subsection  
116 (2)(a), the office shall assemble a list of all identified scrutinized companies.

117 (c) The office shall update the list, on an annual basis, with information provided and  
118 received from those entities listed in Subsection (2)(a).

119 (3) (a) At least annually, the board or the office shall do the following for companies  
120 on the list required by Subsection (2):

121 (i) make reasonable efforts to identify those companies on the list in which the public  
122 fund owns direct holdings;

123 (ii) for each company identified under Subsection (3)(a)(i) with only inactive business  
124 operations, send a written notice informing the company of this section and encouraging the  
125 company to continue to refrain from initiating active business operations in Iran until it is able  
126 to avoid scrutinized business operations;

127 (iii) for each company that is newly identified under Subsection (3)(a)(i) as having  
128 active business operations, send a written notice:

129 (A) informing the company of its scrutinized company status;

130 (B) that the company may become subject to divestment by the public fund;

131 (C) offering the company the opportunity to clarify its Iran-related activities; and

132 (D) encouraging the company to avoid qualifying for divestment by the public fund by,  
133 within 180 days:

134 (I) ceasing its active business operations; or

135 (II) converting the operations to inactive business operations;

136 (iv) (A) if, within 180 days following the office's first notice to a company under  
137 Subsection (3)(a)(iii), the company ceases scrutinized business operations or publicly  
138 announces its commitment to substantial action specific to Iran, the company shall be removed  
139 from the list and this section shall cease to apply to the company unless the company resumes  
140 scrutinized business operations; and

141 (B) if, within 180 days after the office's first notice to a company under Subsection  
142 (3)(a)(iii), the company converts its scrutinized active business operations to inactive business  
143 operations, the company is subject to the requirements of Subsection (3)(a)(ii); and

144 (v) (A) if, after 180 days following the office's first notice to a company under  
145 Subsection (3)(a)(iii), the company continues to have active business operations, and only  
146 while the company continues to have active business operations, the public fund shall sell,  
147 redeem, divest, or withdraw all publicly traded securities of the company according to the  
148 following schedule:

149 (I) at least 50% of assets shall be removed from the public fund's assets under  
150 management within 12 months after the company's most recent appearance on the list; and

151 (II) 100% of assets shall be removed from the public fund's assets under management

152 within 18 months after the company's most recent appearance on the list; and  
153 (B) if a company that ceased active business operations following notice under  
154 Subsection (3)(a)(iii), resumes the active business operations:  
155 (I) the office shall send a written notice to the company;  
156 (II) the office shall immediately place the company on the list required under  
157 Subsection (2); and  
158 (III) the provisions of Subsection (3)(a)(v)(A)(I) shall immediately apply  
159 notwithstanding the 12 months provision, and the provisions of Subsection (3)(a)(v)(A)(II)  
160 shall apply six months later.  
161 (b) The public fund shall not acquire securities of companies on the list that have active  
162 scrutinized business operations, except as provided under Subsections (3)(c) and (d).  
163 (c) A company for whom if the president of the United States exercises the president's  
164 waiver of authority or the United States government affirmatively declares to be excluded from  
165 its present or any future federal sanctions regime relating to Iran is not subject to divestment or  
166 investment prohibition under Subsections (3)(a)(v) and (3)(b).  
167 (d) (i) Notwithstanding any other law, Subsections (3)(a)(v) and (3)(b) do not apply to  
168 indirect holdings in actively or passively managed investment funds or direct holdings in  
169 passively managed investment funds.  
170 (ii) The office shall annually submit letters to the managers of the investment funds  
171 containing companies with scrutinized active business operations requesting that they consider  
172 removing the companies from the fund or create a similar actively or passively managed fund  
173 devoid of the companies.  
174 (iii) If the manager creates a similar fund, the use of which would not require increased  
175 fees on the part of the public fund, the public fund shall replace all applicable investments with  
176 investments in the similar fund in a reasonable time frame consistent with prudent investing  
177 standards.  
178 (4) (a) The office shall submit a publicly available list to the United States attorney  
179 general, the Retirement and Independent Entities Committee, and the governor within 30 days  
180 after the list is first created.  
181 (b) On or before January 31 of each year, the office shall submit a publicly available  
182 report to the United States attorney general, the Retirement and Independent Entities

183 Committee of the Legislature, and the governor, that includes the following:

184 (i) a summary of correspondence with companies notified by the office under

185 Subsections (3)(a)(ii) and (iii);

186 (ii) investments sold, redeemed, divested or withdrawn under Subsection (3)(a)(v);

187 (iii) prohibited investments under Subsection (3)(b);

188 (iv) any progress made under Subsection (3)(d);

189 (v) any cessation of divestment, reinvestment, or subsequent ongoing investment under

190 Subsection (6); and

191 (vi) investment costs associated with compliance with this section.

192 (5) With respect to all actions taken in good faith compliance with this section, a public

193 fund, its board of directors, and individual board members, agents, attorneys, trustees, officers,

194 employees, custodians, fiduciaries, research firms, and investment managers under contract

195 with the public fund are immune from any liability associated with the requirements of this

196 section.

197 (6) Notwithstanding any other law, the public fund may cease divesting from certain

198 scrutinized companies under Subsection (3) or reinvest in certain scrutinized companies from

199 which it divested under Subsection (3) if a preponderance of the evidence shows that the value

200 of the assets of the affected account of the public fund becomes equal to or less than 99.5% of

201 the hypothetical value of the assets of the affected account of the public fund assuming no

202 divestment for any company had occurred under Subsection (3).

203 (7) The office and the board shall notify the governor and the Retirement and

204 Independent Entities Committee of the Legislature and shall cease to implement the provisions

205 of this section if any of the following occur:

206 (a) the United States Congress or President of the United States affirmatively and

207 unambiguously states, by means including legislation, executive order, or written certification

208 from the president to Congress, that the government of Iran has ceased to pursue the

209 capabilities to develop nuclear weapons and support international terrorism;

210 (b) the United States revokes all sanctions imposed against the government of Iran;

211 (c) the United States Congress or President of the United States affirmatively and

212 unambiguously states, by means including legislation, executive order, or written certification

213 from the president to Congress, that divestment of the type provided for in this act interferes

214 with the conduct of United States foreign policy; or  
215 (d) Public Law 104-172, the Iran Sanctions Act of 1996, and its amendments are  
216 repealed.  
217 (8) The provisions of this section do not apply to:  
218 (a) monies invested in a defined contribution plan as defined under Section 49-11-102;  
219 or  
220 (b) investments in a company that is primarily engaged in:  
221 (i) supplying goods or services intended to relieve human suffering in Iran; or  
222 (ii) promoting health, education, religious, welfare, or journalistic activities in Iran.

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**Legislative Review Note**  
**as of 12-22-08 1:01 PM**

**Office of Legislative Research and General Counsel**



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**H.B. 211 - Divestment of Certain Retirement Investments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill may result in ongoing administrative costs of \$30,000 beginning in FY 2010 and one-time costs of \$430,000 in FY 2011. Annual revenue losses to Utah Retirement System's current portfolio of investments is estimated at \$11,630,000. 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.