

**RETIREMENT SYSTEM DIVESTMENT**

2010 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 requiring the Utah State Retirement Office to restrict the investment of retirement funds in Iran's petroleum sector.

**Highlighted Provisions:**

This bill:

- ▶ provides certain definitions;
- ▶ requires the office 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 companies and to avoid divestment by the fund if they comply with certain requirements, including ceasing active business operations in Iran;
- ▶ requires the office to divest from holdings in a scrutinized company over an 18-month period if the company continues active business operations after



28 notification;

29       ▶ prohibits the fund from acquiring securities of companies on the list of scrutinized  
30 companies if the companies have active business operations, with certain  
31 exceptions;

32       ▶ requires the Utah State Retirement Office to annually submit letters to the managers  
33 of the investment funds containing companies with scrutinized active business  
34 operations requesting that they consider removing the companies from the fund or  
35 make alternative funds;

36       ▶ requires the Utah State Retirement Office to submit a publicly available list of  
37 scrutinized companies to the United States attorney general, the Retirement and  
38 Independent Entities Committee, and the governor within 30 days after the list is  
39 created and to make an annual report summarizing the divestment related activities  
40 of the fund;

41       ▶ provides that all actions taken in good faith compliance with this act are immune  
42 from any liability;

43       ▶ requires the Utah State Retirement Office to notify the governor and the Retirement  
44 and Independent Entities Committee and to cease to implement the provisions of  
45 this section if the United States Congress or president of the United States revokes  
46 certain sanctions imposed against the government of Iran; and

47       ▶ making technical changes.

48 **Monies Appropriated in this Bill:**

49       None

50 **Other Special Clauses:**

51       This bill takes effect on July 1, 2010.

52 **Utah Code Sections Affected:**

53 AMENDS:

54       **49-11-306**, as enacted by Laws of Utah 2009, Chapter 54



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

57       Section 1. Section **49-11-306** is amended to read:

58       **49-11-306. Definitions -- Identification of Scrutinized Companies Investment --**

59 **Required actions -- Reporting -- Reinvestment -- Conditions for ceasing restrictions --**  
60 **Reporting -- Exceptions.**

61 (1) As used in this section:

62 (a) "Active business operations" means all business operations that are not inactive  
63 business operations.

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

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

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

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

77 (e) "Inactive business operations" means the continued holding or renewal of rights to  
78 property previously operated for the purpose of generating revenues but not presently deployed  
79 for that purpose.

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

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

86 [~~f~~] (g) "Iran" means the Islamic Republic of Iran.

87 (h) "List" means the scrutinized companies with activities in the Iran petroleum energy  
88 sector list that is established under Subsection (2).

89 [~~g~~] (i) "Petroleum resources" means petroleum or natural gas.

90 ~~[(h)]~~ (j) "Public fund" means the Utah State Retirement Investment Fund created under  
91 Section 49-11-301.

92 ~~[(i)]~~ (k) "Scrutinized business operations" means any active business operations that:

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

95 (ii) involve the maintenance of:

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

97 (B) the deployment of new investments to Iran that meet or exceed the threshold

98 referred to in Public Law 104-172, the Iran Sanctions Act of 1996, as amended.

99 ~~[(j)]~~ (l) "Scrutinized company" means any company engaging in scrutinized business  
100 operations.

101 (m) "Substantial action specific to Iran" means adopting, publicizing, and  
102 implementing a formal plan to cease scrutinized business operations within one year and to  
103 refrain from any new business operations.

104 (2) (a) The Utah State Retirement Office shall identify those scrutinized companies in  
105 which the public fund has direct holdings. In making the determination, the board shall review  
106 and rely on publicly available information regarding companies with business operations in  
107 Iran, including information provided by nonprofit organizations, research firms, international  
108 organizations, and government entities.

109 (b) The office shall assemble a list of all identified scrutinized companies.

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

112 ~~[(3) The office shall prepare an annual report of public fund investments in scrutinized~~  
113 ~~companies.]~~

114 ~~[(4) The report shall include amounts and other data and statistics designed to explain~~  
115 ~~the past and current extent to which public fund investments in scrutinized companies are~~  
116 ~~present.]~~

117 ~~[(5) The report shall be provided to the governor, the board, the president of the~~  
118 ~~Senate, the speaker of the House of Representatives, and to each member and staff of the~~  
119 ~~Retirement and Independent Entities Committee created under Section 63E-1-201.]~~

120 (3) (a) At least annually, the office shall do the following for companies on the list

121 required by Subsection (2):

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

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

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

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

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

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

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

135 (I) ceasing its active business operations; or

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

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

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

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

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

152 (II) 100% of assets shall be removed from the public fund's assets under management  
153 within 18 months after the company's most recent appearance on the list; and

154 (B) if a company that ceased active business operations following notice under  
155 Subsection (3)(a)(iii), resumes the active business operations:

156 (I) the office shall send a written notice to the company;

157 (II) the office shall immediately place the company on the list; and

158 (III) the provisions of Subsection (3)(a)(v)(A)(I) shall immediately apply

159 notwithstanding the 12-month provision, and the provisions of Subsection (3)(a)(v)(A)(II) shall  
160 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 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 shall notify the governor and the Retirement and Independent Entities

204 Committee of the Legislature and shall cease to implement the provisions of this section if any

205 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) the Iran Sanctions Act of 1996, Pub. L. No. 104-172, and its amendments are  
216 repealed.  
217 [~~6~~] (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.  
223 Section 2. **Effective date.**  
224 This bill takes effect on July 1, 2010.

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**Legislative Review Note**  
as of 1-20-10 9:47 AM

**Office of Legislative Research and General Counsel**



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**H.B. 286 - Retirement System Divestment**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill may result in ongoing administrative costs of \$68,000 beginning in FY 2011 and one-time costs of \$489,000 in FY 2012. Annual revenue losses to Utah Retirement System's current portfolio of investments is estimated at \$13,000,000. 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.