



## **H.B. 151**

127th General Assembly  
(As Introduced)

**Reps. Mandel and Jones, Adams, Aslanides, Barrett, Brinkman, Bulp, Budish, Carmichael, Collier, Combs, DeGeeter, Dodd, Dolan, Flowers, Gibbs, Goyal, Hite, Latta, Mallory, J. McGregor, Patton, Peterson, Schindel, Setzer, Uecker, Wagner, Wagoner, Webster, Wolpert, Zehringer**

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### **BILL SUMMARY**

- Prohibits specified "public investors" (basically state officials or entities have custody or control of large amounts of money), from acquiring securities of a "forbidden entity" defined as a company with active business ties or operations in or with the Islamic Republic of Iran, or in certain mutual funds investing in forbidden entities.
- Requires the Treasurer of the State to approve "independent research provider" status to entities charged to independently evaluate whether a company, mutual fund, or other investment account has active business ties to Iran.
- Requires the Auditor of the State annually to verify that each public investor has complied with the requirements of this bill.
- Requires each non-publicly traded foreign company to provide an affidavit to the public investor or asset manager of a public investor that states the company does not have certain business ties with Iran in order to receive investment of public funds.
- Requires asset managers under contract with a public investor to submit certification reports to the public investor attesting to the asset manager's noninvolvement with investments in forbidden entities.
- Requires a public investor to divest or redeem, or direct any asset manager investing public funds, to divest or redeem any securities the

- public investor currently holds in a foreign company with active business ties or operations in or with the Islamic Republic of Iran.
- Absolves public investors of any liability incurred for breach of the investor's fiduciary duty by adherence to the investment restrictions of the bill.
  - Authorizes the Attorney General to enforce the provisions of the bill including bringing a court action if necessary.

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## CONTENT AND OPERATION

### Background

The Uniform Depository Act (R.C. §§ 135.01 et seq.) regulates the deposit and investment of public moneys by governmental entities including the Treasurer of State. The Act differentiates between three classifications of deposits: "active" deposits, "interim" deposits, and "inactive" deposits. "Active" deposits are those "necessary to meet current demands on the treasury," and primarily include funds that are available on demand. "Interim" deposits are funds that will not be needed immediately but "will be needed before the end of the period of designation." These types of deposits are eligible for investment in specified types of investment. An "inactive" deposit is a public deposit other than an interim deposit or an active deposit.

Current and continuing law specifies the types of investments in which the Treasurer of the State may invest interim funds (R.C. 135.143). The classifications of obligations specified in statute include United States treasury bills, bonds, notes, and various securities. The Treasurer also is authorized to invest in certain "debt interests" which include interests issued by foreign nations diplomatically recognized by the United States government. These direct investments into foreign nations are, however, subject to additional restrictions under state law including a requirement that any interest in a foreign nation be backed by the full faith and credit of that foreign nation, and that the states total such investments may not exceed in the aggregate 25% of the states total average portfolio (R.C. 135.143(A)(10)). (See **COMMENT** section for discussion of applicable federal law.)

**Prohibition on state investment in entities with ties or operations in or with Iran**

(R.C. 135.143(A)(10), 137.04, and 137.05)

The bill defines as a "public investor" the Treasurer of State, the State Board of Deposit, the Workers' Compensation Oversight Commission, the Administrator of Workers' Compensation, and the board of each of the five state retirement systems, and prohibits these officers or entities from investing any public funds with a forbidden entity. In the case of the Treasurer of State, this prohibition would apply to the interim moneys under the Treasurer's control.

The bill defines "forbidden entity" to include any of the following:

(1) Any "publicly traded foreign company" (see definition below) that has been identified by an independent research provider (see "**Independent research provider status**" below) as being a company that is one of the following: (a) a company that has active business ties or operations in or with Iran, (b) a company that has active business ties or operations with any company domiciled in Iran;

(2) Any non-publicly traded foreign company that fails to meet the requirements outlined in "**Non-publicly traded foreign company affidavit to receive investment of public funds**" (see below);

(3) Any mutual fund, separate account, index, index managed product, or compilation of stocks identified that is not certified by an independent research provider as "excluding" all forbidden entities. The bill does not identify whether the mutual fund must exclude forbidden entities from investing or whether "excluding" refers to the investments of the fund itself in forbidden entities.

A "social development company" is specifically exempt from being considered a forbidden entity (see "**Social development company exempt as forbidden entity**" below).

**Independent research provider status**

(R.C. 137.02)

A company that receives approval from the Treasurer of State is termed an "independent research provider." The company attains this status by submitting to the Treasurer an affidavit containing the name of the company and the name under which it is registered or organized in its home state, the state in which it is organized, the date of its formation, the name and address of its agent, and an address at which persons may request copies of charter documents of the company. The affidavit also must state all of the following:

(1) The company is headquartered, domiciled, or incorporated under the laws of this or any other state, or the United States.

(2) The company specializes in identifying and assessing companies that are exposed to global security risk.

(3) The company offers impartial research on companies' business ties or operations in Iran.

(4) The company has, for at least four consecutive calendar years prior to the date the affidavit is submitted, regularly maintained and provided to clients the information described in (2) and (3) above.

(5) The company does not engage in or provide investment banking, brokerage services, or corporate finance services.

The Treasurer must approve a company as an independent research provider if the statements contained in the affidavit are true and the company otherwise complies with the requirements of the law. The Treasurer must compile, make available to public investors, and update quarterly, a list of the companies approved as independent research providers.

**Non-publicly traded foreign company affidavit to receive investment of public funds**

(R.C. 137.03; Section 3)

Under the bill, a "non-publicly traded foreign company" (see definition below) that seeks investment of public funds by a public investor must submit to the investor, or to the investor's asset manager, an affidavit that states that the company does not own or control any property or assets located in Iran and that the company does not have business ties or operation in or with Iran. If public funds already are invested with a non-publicly traded foreign company, on the bill's effective date the company must submit the affidavit described above on an annual basis. The bill states that any company that fails to submit an accurate affidavit or fails to comply with the requirements of the law will be deemed a forbidden entity.

Any non-publicly traded foreign company in which a public investor's public funds are invested has six months of the bill effective date to submit to the public investor or asset manager the affidavit as described above.

**Asset managers certification reports to public investors**

(R.C. 137.05(B) and (C))

Any asset manager, defined as "any company that enters into a contract with a public investor for the investment of public funds" (R.C. 137.01), must submit to the public investor, on a form prescribed by the Treasurer, and at no cost to the investor, an "asset manager certification report" that certifies the following:

(1) That the asset manager has not loaned to, invested in, or otherwise transferred any of the public investor's public funds to a forbidden entity any time after the effective date of this section;

(2) That the asset manager has divested the public investor's public funds in accordance with the law.

A public investor that finds that an asset manager has not complied with the law must terminate the contract with the asset manager, who then is ineligible to conduct business with any public investor for one year thereafter.

**Public investors must divest or redeem any current investments in a forbidden entity**

(R.C. 137.06)

Under the bill, a public investor must divest or redeem any current investments in a forbidden entity, and must direct any asset manager with whom the investor has contracted for the investment of public funds to divest or redeem any securities held in a forbidden entity or withdraw from an account that includes such entities. Any such investors and asset managers must divest or redeem at least 60% of investments held in forbidden entities within six months after this bill becomes law, and 100% of such investments within 12 months after this bill becomes law.

**New duties for the Auditor of State**

(R.C. 117.103)

The bill requires the Auditor of State to verify that each public investor has complied with the limits on investing in operations tied to the Islamic Republic of Iran, and to submit a written report of the Auditor's findings to the Governor, the President of the Senate, the Speaker of the House, and the chairpersons of the standing committees with primary responsibility for legislation regarding public investors. Also, if the Auditor determines that a public investor has not complied

with the requirements of the bill, the Auditor must notify the Attorney General (R.C. 117.103).

**Social development company exempt as a forbidden entity**

(R.C. 137.04(B) and 137.01(K))

Under the bill, a "social development company" is not a "forbidden entity" and therefore investment in such companies is not restricted. "Social development company" is defined to include any of the following:

(1) Any company or entity that is not an agency of the government of Iran that holds a valid, current accreditation as a nongovernmental organization from the United Nations department of public information;

(2) A company that has been identified by an independent research provider as a company whose primary purpose in Iran is to provide to the people of Iran goods and services intended to relieve human suffering; to promote health, religious, or spiritual activities; and to provide education for humanitarian purposes;

(3) A company that has been identified by an independent research provider as a company whose primary purpose in Iran is to perform journalistic activities.

**Other provisions**

The bill specifically relieves a public investor of liability for a breach of fiduciary duty to the public fund under the investor's control provided that the public investor has complied with the requirements of the law restricting such investment.

Also all public investors, and all officers, board members, employees and agents of such boards are to be indemnified for all liabilities, losses, or damages that may be incurred by reason of any decision to restrict, reduce, or eliminate investments in forbidden entities (R.C. 137.07).

The bill empowers the Attorney General to enforce the provisions of the bill and to bring an action in court for such enforcement (R.C. 137.09).

The provisions of this bill, once enacted, will prevail over certain specified sections of the Revised Code, and all other laws that may conflict with the provisions of the bill or unless otherwise specified by the General Assembly (R.C. 137.08).

## **Other definitions**

(R.C. 137.01)

"Business ties or operations" means engaging in commerce in any form, including maintaining, selling, acquiring, developing, owning, possessing, operating, or leasing any equipment, facilities, personnel, products, services, personal or real property, or any other apparatus of business or commerce.

"Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, business association, or other entity, including any wholly owned subsidiary, parent company, or affiliate of any of those types of entities, that exists for the purpose of making a profit.

"Iran" means the Islamic Republic of Iran.

"Non-publicly traded foreign company" means any company that is headquartered, domiciled, or incorporated under the laws of any country other than the United States that does not do either of the following anywhere in the world: (1) issue securities to the public, (2) make available securities for public trade.

"Public fund" means the assets included in any fund or portfolio that is under the control of, or controlled on behalf of, a public investor.

"Publicly traded foreign company" means any company that is headquartered, domiciled, or incorporated under the laws of any country other than the United States that does either or both of the following anywhere in the world: (1) issues securities to the public, (2) makes available securities for public trade.

"State retirement system" means the public employees retirement system, Ohio police and fire pension fund, state teachers retirement system, school employees retirement system, and state highway patrol retirement system.

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## **COMMENT**

### **Federal regulation of trade with Iran**

The United States Treasury Department's Office of Foreign Assets Control (OFAC) administers and enforces federal policy regarding trade and investment in

Iran as provided in the Iranian Transactions Regulations,<sup>1</sup> promulgated under Section 505(c) of the International Security and Development Cooperation Act of 1985<sup>2</sup> and the International Emergency Economic Powers Act.<sup>3</sup> Under the Iranian Transactions Regulations, virtually all trade and investment activities with Iran by U.S. persons ("United States person" is defined in 31 C.F.R. 560.314 as any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States), are prohibited, with limited exceptions: carpets and certain food products, such as dried fruits, nuts, and caviar from Iran may be imported to the U.S.,<sup>4</sup> while certain medical and other humanitarian supplies may be exported. A person seeking to import or export approved goods must obtain a license to do so from OFAC.

OFAC also administers indirect trade activity with Iran through a third party. The U.S. embargo against Iran cannot be bypassed by shipping an item through a third country to a customer in Iran. According to Section 560.204 of the Iranian Transactions Regulations:

"...the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran is prohibited, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that:

(a) Such goods, technology, or services are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran; or

(b) Such goods, technology, or services are intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology, or services to be directly or indirectly

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<sup>1</sup> 31 Code of Federal Regulations 560.

<sup>2</sup> 22 United States Code 2349aa-9(c).

<sup>3</sup> 50 U.S.C. 1701 et seq.

<sup>4</sup> Pursuant to amendments to the Iranian Transactions Regulations adopted in April 2000.



supplied, transshipped, or reexported exclusively or predominantly to Iran or the Government of Iran."<sup>5</sup>

According to a 2006 report by the United States Department of Commerce, violations of the Iranian Transactions Regulations including the following:

- A U.S. company entered into a contract with the National Iranian Gas Company, and attempted to evade sanctions by subcontracting a large portion of the contract to a Canadian firm.
- Between 1997 and 1999, a Canadian company purchased U.S. oil-field and industrial equipment from the U.S. and had it exported to Iran through Canada.
- In 2003, a U.S. company attempted to ship interior window shade fabric to Iran through its parent company, located in France.
- Between 1998 and 2000, a U.S. company exported medical diagnostic kits to Iran through freight forwarders in the United Arab Emirates and Italy.
- In 1996 and 1997, a U.S. company exported pipe cutting machines and spare parts to the National Iranian Gas Company through Canada.<sup>6</sup>

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## HISTORY

ACTION	DATE
Introduced	04-12-07

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<sup>5</sup> 31 C.F.R. 560.204.

<sup>6</sup> U.S. Department of Commerce. *Don't Let This Happen to You! Actual Investigations of Export Control and Antiboycott Violations*, May 2006. Online at <http://www.bis.doc.gov/ComplianceAndEnforcement/>, last visited March 5, 2007.

