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(As Reported by H. Financial Institutions, Real Estate and Securities)

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BILL SUMMARY

- Prohibits certain public investors from acquiring direct holdings in publicly traded companies with scrutinized business operations tied to Iran or Sudan.
- Requires public investors to divest any direct holdings in companies with scrutinized business operations tied to Iran or Sudan.
- Requires public investors to replace investments, in actively managed investment funds containing indirect holdings in publicly traded companies that have scrutinized business operations, with a similar fund devoid of such companies if the manager of the fund creates such a similar fund.
- Establishes a 180-day time frame for public investors to screen their portfolios for scrutinized companies, to create lists of scrutinized companies with activities in Iran and Sudan, and to "engage" those companies in writing.
- Suspends the provisions of the bill if the President or the Congress of the United States take certain actions.
- Requires public investors to report on their activities related to this bill to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, the Ohio Retirement Study Council, and the Workers Compensation Council.

- Requires and authorizes the Attorney General to enforce the bill's provisions.
- Authorizes the Ohio Public Employees Deferred Compensation Board, any alternative retirement programs operated by a public institution of higher education, and the Ohio Tuition Trust Authority, to offer a terror-free investment option among the options offered to contributors to these various state authorized programs.
- Relieves a public investor of liability for a breach of fiduciary duty to the public fund under the investor's control if the public investor complies in good faith with the requirements of the bill and indemnifies public investors, board members, officers, employees and other agents through the public fund in which the public authority has the authority to invest for any losses due to claims or liability or damages resulting from compliance with the requirements of the bill.

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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)).

The bill requires specific public investors to identify all publicly traded companies involved in defined "scrutinized business operations" with Iran or Sudan in which the public investor has direct or indirect holdings, to develop scrutinized companies lists, to "engage" (see "Scrutinized companies lists, engagement and vetting process") companies on these lists in writing, and, in certain cases, to cease investment in these companies and to divest certain holdings in these companies.

The bill defines "public investor" as 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 state retirement systems. The investment prohibitions and divestment requirements of the bill, as described below, apply to all entities within the definition of public investor.

Other key definitions: (R.C. 137.01)

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

"Direct holdings" means all stocks or bonds of a company held directly by a public investor or held in an account or fund of which the public investor owns all of the shares or interests.

"Indirect holdings" means all stocks and bonds of a company that are not direct holdings and are held in an account or fund in which the public investor owns shares or interests together with other investors not subject to the provisions of this chapter, as well as any private equity fund, private equity fund-of-funds, venture capital fund, hedge fund, hedge fund-of-funds, real estate fund or other investment vehicle that is not publicly traded, mutual funds, and pooled or securitized investment vehicles.

"Scrutinized business operations" means business operations that have resulted in a company that meets any of the following criteria:

(1) The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan, and more than 10% of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75% of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action specific to Sudan; or more than 10% of the company's revenues or assets linked to Sudan involve power-production activities; less than 75% of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action specific to Sudan.

(2) The company is complicit in the Darfur genocide.

(3) The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

(4)(a) The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran, and one of the following apply:

(i) More than 10% of the company's total revenues or assets are linked to Iran and involve oil-related activities, mineral-extraction activities, or petroleum resources;

(ii) The company has, with actual knowledge, on or after August 5, 1996, made an investment of \$20,000,000 or more, or any combination of investments of at least \$10,000,000 each, which in the aggregate equals or exceeds \$20,000,000 in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran;

(iii) The company is engaged in business with an Iranian organization labeled as a terrorist organization by the United States government.

(b) Any company that takes substantial action specific to Iran with respect to divisions (T)(4)(a)(i) and (T)(4)(a)(ii) of this section shall not meet the criteria to be deemed a company involved in scrutinized business operations.

Scrutinized companies lists, engagement and vetting process

(R.C. 137.02)

The bill requires public investors, independently, within 90 days of the effective date of the bill, to identify all publicly traded companies involved in scrutinized business operations in which the public investor has direct or indirect holdings or could possibly have such holdings in the future, and to create a "scrutinized companies with activities in Iran list," and a "scrutinized companies with activities in Sudan list." The bill does not require divestment in indirect holdings, except as discussed in "**Required divestment**" below, but does require that such investments be added to the lists. These lists must be updated annually.

Via written notice, public investors must "engage" any company on either list, and provide the company with the opportunity to clarify its activities or to cease its scrutinized business operations in order for the public investor to give consideration to removing the company's name from the list(s). In the case of active business operations, the notice must warn that refusal to cease such operations or failure to convert them to inactive operations may require the public investor to divest its holdings in such company. Any company that ceases such

activities within 90 days after the lists are created (or 180 days after the effective date of the bill) may be removed from the list.

Under the bill, public investors also must submit letters to the managers of actively managed investment funds containing indirect holdings in companies identified on the scrutinized companies list(s) requesting that the managers create a similar actively managed fund having indirect holdings devoid of such companies.

Divestment requirements

(R.C. 137.03(A), (C), and (D))

The bill requires each public investor to sell, redeem, divest, or withdraw any direct holdings in publicly traded securities of companies with scrutinized business operations within 12 months following the 180-day list creation and engagement process.

The bill requires public investors to replace, in an expedited time frame consistent with prudent investing standards, investments in actively managed investment funds containing indirect holdings in publicly traded companies that have scrutinized business operations, with a similar fund devoid of such companies if the manager of the fund creates such a similar fund.

The bill allows a public investor to cease any divestment required by the bill and to reinvest in companies on the scrutinized companies lists from which it divested if clear and convincing evidence shows that the value of all assets under management by the public investor becomes equal to or less than 99.5% or at least less than "fifty basis points" of the hypothetical value of all assets under management by the public investor assuming no divestment for any company had occurred under this bill.

Prohibition on investment

(R.C. 137.03(B))

The bill prohibits a public investor from acquiring direct holdings in publicly traded companies on the scrutinized companies list(s).

Exceptions

(R.C. 137.04)

The bill does not apply to:

(1) A company that is headquartered in the United States and that complies with all relevant United States foreign trade controls relating to Iran or Sudan is not subject to divestment requirements or the investment prohibitions.

(2) Any private holdings of a public investor.

Reports

(R.C. 137.05)

The bill requires each public investor to file a report with the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, the Ohio Retirement Study Council, and the Workers Compensation Council. The report must include the scrutinized companies with activities in Iran list and the scrutinized companies with activities in Sudan list and must be delivered within 30 days after it is created and within 30 days after it is updated annually. Each public investor also must file a report, to the same entities listed above, as well as to the United States Presidential envoys to Iran and Sudan, which includes (1) a summary of correspondence with companies engaged by the public investor, (2) a list of all investments sold, redeemed, divested, or withdrawn in compliance with the bill, (3) a list of investments prohibited by the bill, (4) any progress made with respect to transferring indirect holdings into newly created funds that are devoid of scrutinized companies, and (5) a list of all publicly traded securities held directly by the public investor.

Federal action may require cessation

(R.C. 137.06)

The bill requires public investors to cease assembling the scrutinized companies with activities in Sudan list and the scrutinized companies with activities in Iran list, and to cease engagement and divestment of companies on the lists, if the federal government takes certain specified actions. Also, a public investor may reinvest in such companies as long as the company does not appear on either list.

With respect to Sudan, the federal government actions requiring cessation are as follows:

(1) Congress or the president of the United States determines that the government of Sudan has sufficiently halted the genocide in the Darfur region for at least 12 months.

(2) The federal government revokes all sanctions imposed against the government of Sudan.

(3) Congress or the president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of United States foreign policy.

(4) Congress or the president of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons.

With respect to Iran, the federal government actions requiring cessation are as follows:

(1) Congress or the president of the United States determines that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;

(2) The federal government revokes all sanctions imposed against the government of Iran.

(3) Congress or the president of the United States declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

Enforcement

(R.C. 137.07)

The bill requires the Attorney General to enforce its provisions, and for that purpose, authorizes that officer or his designee to bring necessary actions in a court.

Liability and indemnification

(R.C. 137.08)

The bill relieves a public investor of liability for a breach of fiduciary duty to the public fund under the investor's control if the public investor complies in good faith with the requirements of the bill. Also, a public investor is not liable in an action for libel or slander when determining, in good faith, that a company belongs on one of the scrutinized lists. All former, present, or future public investors and members of any boards of all public investors and all officers,

employees, and agents of such boards are indemnified, through the public fund in which the public authority has the authority to invest, jointly or severally, for all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including court costs and attorney's fees, and against all liability, losses, and damages that may be incurred by reason of any decision to restrict, reduce, or eliminate investments in companies doing business with Sudan or Iran.

In any action pursuant to the provisions in this bill, a state retirement board has any right granted to it in existing section 109.98 of the Revised Code (not in the bill), including the right to hire outside council, and the Workers' Compensation Oversight Commission has similar rights pursuant to existing section 109.981 of the Revised Code (not in the bill).

Priority of laws

(R.C. 137.09)

The bill stipulates that its provisions, once enacted, prevail over certain specified existing sections of the Revised Code, which generally describe the investment authority of various public investors, and all other laws that conflict with the provisions of the bill.

Deferred compensation, alternative retirement, and Ohio college savings program terror-free investment option

(R.C. 148.04, 3305.01, 3305.02, and 3334.02)

The bill authorizes the Ohio Public Employees Deferred Compensation Board, any alternative retirement program of a public institution of higher education,¹ and the Ohio Tuition Trust Authority for the College Savings program, to offer a terror-free investment option among the options offered to contributors. Also, the bill requires the Ohio Public Employees Deferred Compensation Board and the Ohio Tuition Trust Authority to annually prepare and deliver to the President of the Senate and the Speaker of the House of Representatives a report regarding the entity's efforts to identify and provide a terror-free investment option.

¹ "Public institution of higher education" is defined as any of the state universities, the Northeastern Ohio Universities College of Medicine, a university branch, technical college, state community college, community college or municipal university. (R.C. 3305.01.)

"Terror-free investment option" is defined as an account or fund that excludes from its portfolio any company that is involved in "scrutinized business operations" as defined by the bill (see definition in "Background" above).

Severability

(Section 3)

The bill contains a severability clause that states "If any section or item of law contained in the act, or if any application of any section or item of law contained in this act, is held invalid, the invalidity does not affect other sections or items of law contained in this act and their application that can be given effect without the invalid section or item of law or application."

Legislative finding

(Section 4)

The bill includes, in an uncodified section of law, a legislative finding that reads as follows:

It is the finding of the General Assembly of the state of Ohio that the Islamic Republic of Iran and the Republic of the Sudan are guilty of advocating genocide, and are unstable and high risk investment locations, and therefore, the General Assembly of the state of Ohio establishes the requirements of this act.

Other definitions

(R.C. 137.01)

"Complicit" means taking actions during any preceding twenty-month period that directly support or promote the genocidal campaign in the Darfur region of Sudan, including, but not limited to, preventing members of the population of the Darfur region of Sudan negatively affected by genocide from communicating with each other; encouraging Sudanese citizens to speak against the internationally approved security force that provides aide to the Darfur region; actively working to deny, cover up, or alter the record on human rights abuses in Darfur; or other similar actions.

"Government of Iran" means the Islamic republic of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

"Government of Sudan" means the government in Khartoum, Sudan, that is led by the national congress party, formerly known as the national Islamic front, or any successor government formed on or after October 13, 2006, including the coalition national unity government agreed upon in the "2005 Comprehensive Peace Agreement," and does not include the regional government of southern Sudan.

"Iran" means the Islamic republic of Iran.

"Military equipment" means weapons, arms, military supplies, and equipment including, but not limited to, radar systems, or military-grade transport vehicles, that readily may be used for military purposes; or supplies or services sold or directly or indirectly provided to any force actively participating in armed conflict in Sudan.

"Mineral extraction activities" include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, also known as ore, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc; and includes facilitating such activities, including by providing supplies or services in support of such activities.

"Oil-related activities" includes, but is not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; or facilitating such activities, including by providing supplies or services in support of such activities. "Oil-related activities" does not mean engaging in only the retail sale of gasoline and related consumer products.

"Petroleum resource" means petroleum, petroleum byproducts, or natural gas.

"Power production activities" means any business operation that involves a project commissioned by the national electricity corporation of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for a project, providing service contracts related to the installation or maintenance of a project, or facilitating any of these activities, including by providing supplies or services in support of such activities.

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

"Social development company" means a company whose primary purpose in Sudan is to provide only the following humanitarian goods or services to the people of Sudan:

- (1) Medicine or medical equipment;
- (2) Agricultural supplies or infrastructure;
- (3) Educational opportunities;
- (4) Journalistic activities;
- (5) Information or information materials;
- (6) Spiritual-related activities;
- (7) Services of a purely clerical or reporting nature;
- (8) Food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

"Substantial action specific to Iran" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations.

"Substantial action specific to Sudan" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations; undertaking humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity evaluated and certified by an independent third party to be substantially in a relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

"Sudan" means the republic of the Sudan.

The bill also defines the terms "active business operations," "company," "inactive business operations," "marginalized populations of Sudan," and "scrutinized active business operation."

HISTORY

ACTION

DATE

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