

Introduced by

Representatives Grande, Headland, Heller, Kasper, Nathe, Thoreson

Senators Burckhard, Dever, Kilzer, Laffen, O'Connell

1 A BILL for an Act to create and enact chapter 21-13 of the North Dakota Century Code, relating  
2 to the divestiture of state investment funds in certain companies liable to sanctions under the  
3 Iran Sanctions Act of 1996; and to provide an expiration date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 21-13 of the North Dakota Century Code is created and enacted as  
6 follows:

7 **21-13-01. Definitions.**

8 In this chapter unless the context otherwise requires:

- 9 1. "Active business operation" means any business operation that is not an inactive  
10 business operation.
- 11 2. "Company" means any organization that exists for a profit-making purpose.
- 12 3. "Direct holdings" means any publicly traded debt and equity security of a company  
13 which is held directly by the state investment board or held in an account or fund in  
14 which the state investment board owns all shares or interests.
- 15 4. "Inactive business operation" means the continued holding or renewal of rights to  
16 property previously operated for the purpose of generating revenues but not presently  
17 deployed for such a purpose.
- 18 5. "Indirect holdings" means any investment held in an account or fund, including a  
19 mutual fund, a real estate fund, a private equity fund, or a commingled fund, managed  
20 by any person not employed by the state investment board in which the public funds  
21 own shares or interests together with other investors not subject to this chapter.
- 22 6. "Scrutinized company" means any company engaging in a scrutinized business  
23 operation.

1       7. "Scrutinized business operation" means any active business operation subject or liable  
2       to sanctions under the Iran Sanctions Act of 1996, as amended, [Pub. L. 104-172],  
3       and which involve the maintenance of a company's existing assets or investments in  
4       Iran, or the deployment of new investments to Iran which meet or exceed the twenty  
5       million dollar threshold under the Iran Sanctions Act of 1996, as amended, [Pub. L.  
6       104-172]. The term does not include the retail sale of gasoline and related products.

7       **21-13-02. Identification and engagement of scrutinized company.**

- 8       1. By November 1, 2013, the state investment board shall identify any scrutinized  
9       company in which it has any direct holdings. At the first meeting of the board after it  
10      has completed the scrutinized company identification, the board shall assemble a list  
11      that includes the name of each scrutinized company in which the board has direct  
12      holdings. The board shall update the list each quarter based on continuing information.
- 13      2. Within ninety days after adding a company to the list provided for under subsection 1,  
14      the state investment board shall send a written notice informing the company of its  
15      scrutinized company status and that it may become subject to divestment by the  
16      board. The notice must offer the company the opportunity to clarify any scrutinized  
17      business operation and must encourage the company to cease, within ninety days of  
18      the date of the notice, the scrutinized business operation or to convert the scrutinized  
19      operation to an inactive business operation to avoid divestment by the board.
- 20      3. The board shall remove a company from the scrutinized company list if, within ninety  
21      days following the first engagement by the state investment board with the company  
22      under subsection 2, the company publicly announces its commitment to adopting,  
23      publicizing, and implementing a formal plan to cease any scrutinized business  
24      operation within one year and to refrain from any such new business operation.

25      **21-13-03. Divestment.**

- 26      1. If the company continues to have any scrutinized business operation after ninety days  
27      following the first engagement of the state investment board with the company under  
28      section 21-13-02, the board shall sell, redeem, divest, or withdraw all publicly traded  
29      securities of the company according to the following schedule:

- 1           a. The board shall remove at least fifty percent of the holdings in the company from  
2           the board's assets under management within nine months after the initial  
3           appearance of the company on the scrutinized company list; and  
4           b. The board shall remove one hundred percent of the holdings in the company  
5           from the board's assets under management within fifteen months after the initial  
6           appearance of the company on the scrutinized company list.  
7           2. If a company that ceases a scrutinized business operation following engagement  
8           under section 21-13-02 but resumes any scrutinized business operation, subsection 1  
9           immediately applies to the company and the state investment board shall send a  
10           written notice to the company indicating the company will be immediately included on  
11           the scrutinized company list.

12           **21-13-04. Prohibition on new acquisitions.**

13           Unless otherwise allowed under this chapter, the state investment board may not acquire  
14           securities of any company on the scrutinized company list which has any scrutinized business  
15           operation.

16           **21-13-05. Relation to federal action.**

17           If the federal government excludes a company from its sanctions relating to Iran, the state  
18           investment board may exempt the company from the divestment requirements and the  
19           investment prohibitions in this chapter.

20           **21-13-06. Exemptions.**

21           Sections 21-13-03 and 21-13-04 do not apply to:

- 22           1. An investment in a company that is primarily engaged in supplying goods or services  
23           intended to relieve human suffering in Iran.  
24           2. An investment in a company that is primarily engaged in promoting health, education,  
25           or journalistic, religious, or welfare activities in Iran.  
26           3. An investment in a United States company that is authorized by the federal  
27           government to have active business operations in Iran.

28           **21-13-07. Excluded securities.**

29           Sections 21-13-03 and 21-13-04 do not apply to indirect holdings in an actively managed  
30           investment fund. The state investment board shall forward the scrutinized company list to the  
31           manager of any investment fund that includes any company with a scrutinized business

1 operation and request the manager to consider removing any such company from the fund or to  
2 create a similar actively managed fund with indirect holdings that does not include the company.  
3 If a manager creates a similar fund, the board shall replace any applicable investment with an  
4 investment in the similar fund consistent with prudent investing standards. For the purposes of  
5 this section, private equity funds are deemed to be actively managed investment funds.

6 **21-13-08. Reporting.**

7 By January fifteenth of each calendar year, the state investment board shall submit a report  
8 to the legislative management which includes:

- 9 1. A copy of the most recent scrutinized company list.
- 10 2. A summary of correspondence with each company engaged under section 21-13-02  
11 by the board.
- 12 3. A list of any investment divested under section 21-13-03.
- 13 4. A list of any prohibited investment under section 21-13-04.
- 14 5. A description of any action with respect to excluded securities under section 21-13-07.

15 **21-13-09. Exemption from other legal obligations.**

16 The state investment board is exempt from any statutory or common-law obligation that  
17 conflicts with any action required under this chapter, including any good-faith determination  
18 regarding a company and any obligation regarding the choice of an asset manager or  
19 investment fund or other investment.

20 **21-13-10. Divestment of public employee retirement funds.**

21 Notwithstanding any other law to the contrary, the state investment board shall apply the  
22 exclusive benefit rule in investing any public employees retirement system fund created by the  
23 laws of this state. The state investment board is not required to engage a scrutinized company  
24 under section 21-13-02 or proceed with divestment under section 21-13-03 if the board  
25 determines doing so would violate the exclusive benefit rule.

26 **SECTION 2. EXPIRATION DATE.** This Act is effective until the attorney general certifies to  
27 the legislative council that Iran has been removed from the United States department of state's  
28 list of countries that have been determined to repeatedly provide support for acts of  
29 international terrorism or that the president of the United States has determined and certified  
30 that state legislation similar to this section interferes with the conduct of United States foreign  
31 policy.