

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2876

By: Roberts (Sean)

AS INTRODUCED

An Act relating to public finance; enacting the Public Funds Divestiture from Iran Act of 2016; making legislative findings; defining terms; prescribing procedures related to divestiture with respect to certain assets; defining terms; prohibiting state governmental entities from procuring certain goods or services; providing exceptions; imposing duties upon the Secretary of Finance, Administration and Information Technology; providing for termination of operative effect of statutory provisions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6101 of Title 62, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Public Funds Divestiture from Iran Act of 2016".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6102 of Title 62, unless there is created a duplication in numbering, reads as follows:

1 The Legislature finds and declares as follows:

2 1. The Securities and Exchange Commission has determined that  
3 business activities in foreign states such as Iran sponsoring  
4 terrorism and that are subject to sanctions by the United States may  
5 materially harm the share value of foreign companies. Shares in  
6 these foreign companies may be held in the portfolio of public  
7 retirement systems in this state;

8 2. Publicly traded companies in the United States are  
9 substantially restricted in doing business in or with foreign states  
10 such as Iran that the United States Department of State has  
11 identified as sponsoring terrorism;

12 3. Public retirement systems in this state currently invest on  
13 behalf of the citizens of Oklahoma in publicly traded companies that  
14 may be at risk due to business ties with foreign states such as Iran  
15 that sponsor terrorism and are involved in the proliferation of  
16 weapons of mass destruction;

17 4. Investments in publicly traded companies that have business  
18 operations in or with foreign states such as Iran may be liable for  
19 sanctions under United States law and risk the pensions of the  
20 dedicated public employees of this state;

21 5. Excluding companies with business activities in foreign  
22 states such as Iran that sponsor terrorism and divesting from public  
23 portfolios will help protect the public retirement systems in this  
24 state from investment losses related to these business activities

1 and may improve the investment performance of the public retirement  
2 systems;

3 6. Public Law 111-195, The Comprehensive Iran Sanctions,  
4 Accountability, and Divestment Act of 2010, specifically  
5 acknowledges the authority of states to divest or prohibit the  
6 investment of state assets in entities engaged in certain investment  
7 activities in Iran; and

8 7. It is unconscionable for this state to invest in companies  
9 with business activities benefiting foreign states such as Iran that  
10 commit egregious violations of human rights and sponsor terrorism,  
11 or to procure goods and/or services for state use from such  
12 companies.

13 SECTION 3. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 6103 of Title 62, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. As used in this section, the following definitions shall  
17 apply:

18 1. "Business operations" means maintaining, selling, or leasing  
19 equipment, facilities, personnel, or any other apparatus of business  
20 or commerce in Iran, including the ownership or possession of real  
21 or personal property located in Iran;

22 2. "Company" means a sole proprietorship, organization,  
23 association, corporation, partnership, venture, or other entity, its  
24 subsidiary or affiliate that exists for profitmaking purposes or to

1 otherwise secure economic advantage. "Company" also means a company  
2 owned or controlled, either directly or indirectly, by the  
3 government of Iran, or that is established or organized under the  
4 laws of or has its principal place of business in the Islamic  
5 Republic of Iran;

6 3. "Government of Iran" means the government of Iran or its  
7 instrumentalities or political subdivisions. "Government of Iran"  
8 also means an individual, company, or public agency located in Iran  
9 that provides material or financial support to the Islamic Republic  
10 of Iran;

11 4. "Invest" or "investment" means the purchase, ownership, or  
12 control of stock of a company, association, or corporation, the  
13 capital stock of a mutual company or corporation, bonds issued by  
14 the government or a political subdivision of Iran, corporate bonds  
15 or other debt instruments issued by a company, or the commitment of  
16 funds or other assets to a company, including a loan or extension of  
17 credit to that company;

18 5. "Investment manager" means the individual, board, panel, or  
19 other entity responsible for making investment decisions relative to  
20 Public Employee Retirement Funds;

21 6. "Iran" means the Islamic Republic of Iran or a territory  
22 under the administration or control of Iran;

23 7. "Military equipment" means weapons, arms, or military  
24 defense supplies;

1 8. "Public Employee Retirement Funds" means the assets of:

- 2 a. The Oklahoma Firefighters Pension and Retirement  
3 System,  
4 b. The Oklahoma Police Pension and Retirement System,  
5 c. The Uniform Retirement System for Justices and Judges,  
6 d. The Oklahoma Law Enforcement Retirement System,  
7 e. The Teachers' Retirement System of Oklahoma, and  
8 f. The Oklahoma Public Employees Retirement System; and

9 9. "Substantial action" means a boycott of the government of  
10 Iran, curtailing business in Iran until that time described in  
11 subsection M of this section, or selling company assets, equipment,  
12 or real and personal property located in Iran.

13 B. The investment managers shall not invest Public Employee  
14 Retirement Funds in a company which has business operations in Iran  
15 as identified by the investment managers through, as they deem  
16 appropriate, publicly available information including, but not  
17 limited to, information provided by nonprofit and other  
18 organizations and government entities, that meets either of the  
19 following criteria:

20 1. The company (A) is invested in or engaged in business  
21 operations with entities in the defense or nuclear sectors of Iran  
22 or (B) is invested in or engaged in business operations with  
23 entities involved in the development of petroleum or natural gas  
24 resources of Iran; or

1           2. The company has demonstrated complicity with an Iranian  
2 organization that has been labeled as a terrorist organization by  
3 the United States government.

4           C. On or before January 1, 2017, the investment managers shall  
5 determine which companies are subject to divestment.

6           D. After the determination described in subsection C of this  
7 section, the investment managers shall determine if a company meets  
8 the criteria described in subsection B of this section. If the  
9 investment managers plan to invest or have investments in a company  
10 that meets the criteria described in subsection B of this section,  
11 that planned or existing investment shall be subject to subsections  
12 G and H of this section.

13           E. Investments in a company that does not meet the criteria  
14 described in subsection B of this section are not subject to  
15 subsection H of this section if the company does not subsequently  
16 meet the criteria described in subsection B of this section. The  
17 investment managers shall identify the reasons why that company does  
18 not satisfy the criteria described in subsection B of this section  
19 in the report to the Legislature described in subsection I of this  
20 section.

21           F. 1. Notwithstanding subsections D and E of this section, if  
22 the investment managers' investment in a company described in  
23 subsection B of this section is limited to investment via an  
24 externally and actively managed commingled fund, the investment

1 managers shall contact that fund manager in writing and request that  
2 the fund manager remove that company from the fund as described in  
3 subsection H of this section. On or before January 1, 2017, if the  
4 fund or account manager creates a fund or account devoid of  
5 companies described in subsection B of this section, the transfer of  
6 investments from the prior fund or account to the fund or account  
7 devoid of companies with business operations in Iran shall be deemed  
8 to satisfy subsection H of this section.

9       2. If the investment managers' investment in a company  
10 described in subsection B of this section is limited to an  
11 alternative fund or account, the alternative fund or account manager  
12 creates an actively managed commingled fund that excludes companies  
13 described in subsection B of this section, and the new fund or  
14 account is deemed to be financially equivalent to the existing fund  
15 or account, the transfer of investments from the existing fund or  
16 account to the new fund or account shall be deemed to satisfy  
17 subsection H of this section. If the investment managers determine  
18 that the new fund or account is not financially equivalent to the  
19 existing fund, the investment managers shall include the reasons for  
20 that determination in the report described in subsection I of this  
21 section.

22       3. The investment managers shall make a good-faith effort to  
23 identify any private equity investments that involve companies  
24 described in subsection B of this section, or are linked to the

1 government of Iran. If the investment managers determine that a  
2 private-equity investment clearly involves a company described in  
3 subsection B of this section, or is linked to the government of  
4 Iran, they shall consider if those private-equity investments shall  
5 be subject to subsection H of this section. If the investment  
6 managers determine that a private-equity investment clearly involves  
7 a company described in subsection B of this section, or is linked to  
8 the government of Iran, and they do not take action as described in  
9 subsection H of this section, they shall include the reasons for  
10 that decision in the report described in subsection I of this  
11 section.

12 G. Except as described in subsections E and F of this section,  
13 the investment managers, in their capacity as shareholder or  
14 investor, shall notify any company described in subsection D of this  
15 section that the company is subject to subsection H of this section  
16 and permit that company to respond to the investment managers. The  
17 investment managers shall request that the company take substantial  
18 action no later than ninety (90) days from the date they notified  
19 the company under this subsection. If the investment managers  
20 determine that a company has taken substantial action or has made  
21 sufficient progress toward substantial action before the expiration  
22 of that 90-day period, that company shall not be subject to  
23 subsection H of this section. The investment managers shall, at  
24 intervals not to exceed ninety (90) days, continue to monitor and



1 review the progress of the company until that company has taken  
2 substantial action in Iran. A company that fails to complete  
3 substantial action within one (1) year from the date of the initial  
4 notice by the investment managers shall be subject to subsection H  
5 of this section.

6 H. If a company described in subsection D of this section fails  
7 to complete substantial action by the time described in subsection  
8 G of this section, the investment managers shall take the following  
9 actions:

10 1. They shall not make additional or new investments or renew  
11 existing investments in that company; and

12 2. They shall liquidate the investments in that company no  
13 later than eighteen (18) months after this subsection applies to  
14 that company. The investment managers shall liquidate those  
15 investments in a manner to address the need for companies to take  
16 substantial action in Iran and consistent with their fiduciary  
17 responsibilities.

18 I. On or before January 1, 2017, and every year thereafter, the  
19 investment managers shall file a report with the Legislature and the  
20 Governor. The report shall describe the following:

21 1. A list of investments they have in companies with business  
22 operations that satisfy the criteria in subsection B of this  
23 section, including, but not limited to, the issuer, by name, of the  
24 stock, bonds, securities, and other evidence of indebtedness;

1        2. A detailed summary of the business operations a company  
2 described in paragraph 1 of this subsection has in Iran;

3        3. Whether they have reduced investments in a company that  
4 satisfies the criteria in subsection B of this section;

5        4. If they have not completely reduced investments in a company  
6 that satisfies the criteria in subsection B of this section, when  
7 they anticipate that they will reduce all investments in that  
8 company or the reasons why a sale or transfer of investments is  
9 inconsistent with their fiduciary responsibilities;

10       5. Any information described in subsections D and E of this  
11 section;

12       6. A detailed summary of investments that were transferred to  
13 funds or accounts devoid of companies with business operations in  
14 Iran as described in subsection F of this section; and

15       7. An annual calculation of any costs or investment losses or  
16 other financial results incurred in compliance with the provisions  
17 of this section.

18       J. If the investment managers voluntarily sell or transfer all  
19 investments in a company with business operations in Iran, this  
20 section shall not apply except that they shall file a report with  
21 the Legislature and the Governor related to that company as  
22 described in subsection I of this section.

23       K. Nothing in this section shall require the investment  
24 managers to take action as described in this section unless they

1 determine, in good faith, that the action described in this section  
2 is consistent with their fiduciary responsibilities.

3 L. Subsection H shall not apply to any of the following:

4 1. Investments in a company that is primarily engaged in  
5 supplying goods or services intended to relieve human suffering in  
6 Iran;

7 2. Investments in a company that promotes health, education, or  
8 journalistic, religious, or welfare activities in Iran; and

9 3. Investments in a United States company that is licensed by  
10 the federal government to have business operations in Iran.

11 M. This section shall cease to be operative if both of the  
12 following apply:

13 1. Iran is removed from the United States Department of State's  
14 list of countries that have been determined to repeatedly provide  
15 support for acts of international terrorism; and

16 2. The President of the United States determines and certifies  
17 to the appropriate committee of the Congress of the United States  
18 that Iran has ceased its efforts to design, develop, manufacture, or  
19 acquire a nuclear explosive device or related materials and  
20 technology.

21 SECTION 4. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 6104 of Title 62, unless there  
23 is created a duplication in numbering, reads as follows:

24 A. As used in this section:

1 1. "Doing business with Iran" means:

2 a. having a principal place of business, place of  
3 incorporation or corporate headquarters in Iran or  
4 having any operations, leases, franchises,  
5 subsidiaries, distribution agreements, or any other  
6 similar agreements in Iran, or being a subsidiary,  
7 affiliate, licensee, franchisee or having any other  
8 contractual relationship with such a person,

9 b. providing financial services to the government of  
10 Iran, including providing direct loans, underwriting  
11 government securities, providing any consulting advice  
12 or assistance, providing brokerage services, acting as  
13 a trustee or escrow agent, or otherwise acting as an  
14 agent pursuant to a contractual agreement,

15 c. promoting the development and/or export of petroleum  
16 or natural gas resources in or from Iran,

17 d. providing any goods or services to the government of  
18 Iran.

19 2. "Essential" means necessary in order that a state agency may  
20 perform its mission, there being no substitute, to avoid irreparable  
21 harm to agency or authority programs;

22 3. "Government of Iran" means the government of Iran or its  
23 instrumentalities or political subdivisions. "Government of Iran"  
24 also means an individual, company, or public agency located in Iran

1 that provides material or financial support to the Islamic Republic  
2 of Iran;

3 4. "Person" means any individual and any partnership, firm,  
4 association, corporation, or other entity, or their subsidiaries;

5 5. "Secretary" means the Secretary of Finance, Administration  
6 and Information Technology; and

7 6. "State agency" means all awarding authorities of the state,  
8 including, but not limited to, all executive offices, agencies,  
9 departments, commissions, and public institutions of higher  
10 education, and any office, department or division of the judiciary.

11 B. Except as otherwise provided in this section, a state agency  
12 may not procure goods or services from any person listed on the  
13 restricted purchase list maintained by the Secretary, or who is  
14 determined through affidavit or through other reliable methods to  
15 meet the criteria for so being listed.

16 C. A state agency may procure goods or services from a person  
17 who is on or who is so determined to meet the criteria of the  
18 restricted purchase list only after certifying in writing to the  
19 Secretary or, in the case of a state authority, to the chief  
20 operating officer that:

21 1. The procurement is essential; and

22 2. Compliance with subsection B would eliminate the only bid or  
23 offer, or would result in inadequate competition.

24

1 D. In any solicitation, a state agency shall provide notice of  
2 the requirements of this section. Prior to reviewing responses to  
3 bid documents for any procurements, or, if there are none, prior to  
4 entering into any contractual arrangement, the awarding authority  
5 shall obtain from such person seeking a contract a certification,  
6 under penalty of perjury, declaring the nature and extent to which  
7 said person is engaging in activities which would subject said  
8 person to inclusion on the restricted purchase list.

9 E. A person with operations in Iran for the sole purpose of  
10 reporting the news, or solely for the purpose of providing goods or  
11 services for the provision of international telecommunications shall  
12 not be subject to the provisions of this section.

13 F. Notwithstanding the provisions of this section, a state  
14 agency may purchase medical supplies, including hospital,  
15 nutritional, diagnostic, pharmaceutical and nonprescription products  
16 specifically manufactured to satisfy identified health care needs,  
17 or for which there is no medical substitute. The determination of  
18 whether no medical substitute exists shall be made by the state  
19 agency requiring the supply.

20 G. The Secretary shall establish and maintain a restricted  
21 purchase list of persons doing business with Iran. This list shall  
22 be updated at least once every three (3) months and shall be  
23 provided to all state agencies. The Secretary is hereby authorized  
24

1 and directed to promulgate regulations to ensure the timely and  
2 effective implementation of this section.

3 H. Any contract entered into in violation of this section shall  
4 be void.

5 SECTION 5. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 6105 of Title 62, unless there  
7 is created a duplication in numbering, reads as follows:

8 The provisions of this act shall cease to be operative if both  
9 of the following apply:

10 1. Iran is removed from the United States Department of State's  
11 list of countries that have been determined to repeatedly provide  
12 support for acts of international terrorism; and

13 2. The President of the United States determines and certifies  
14 to the appropriate committee of the Congress of the United States  
15 that Iran has ceased its efforts to design, develop, manufacture, or  
16 acquire a nuclear explosive device or related materials and  
17 technology.

18 SECTION 6. This act shall become effective November 1, 2016.

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20 55-2-7710 MAH 01/17/16

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January 20, 2016

Representative Sean Roberts  
Room 250

Re: RBH No. 7710

RBH No. 7710 would prevent the State's retirement plans asset from being invested in and require divestiture of assets currently held in companies doing business activities in foreign states such as Iran that sponsor terrorism.

RBH No. 7710 is a non fiscal retirement bill as defined by the Oklahoma Pension Legislation Analysis Act because the bill does not contain a benefit increase nor create liability for any of the State's Retirement Systems.

I am a member of the American Academy of Actuaries and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion herein.

*Thomas E. Cummins*

Thomas E. Cummins, MAAA