

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

187R0100

SENATE BILL NO. 134

Introduced by: Senators Adelstein, Abdallah, Bradford, Fryslie, Gant, Heidepriem, Howie, Jerstad, Knudson, Maher, Merchant, Nesselhuf, Peterson, and Schmidt and Representatives Lederman, Blake, Bolin, Brunner, Curd, Deadrick, Engels, Feickert, Feinstein, Frerichs, Gibson, Gosch, Hamiel, Hoffman, Hunhoff (Bernie), Jensen, Killer, Kirkeby, Krebs, Lucas, Moser, Nygaard, Olson (Betty), Rave, Russell, Schlekeway, Schrempp, Solberg, Sorenson, Van Gerpen, and Verchio

1 FOR AN ACT ENTITLED, An Act to provide for divestiture of state investment funds in
2 certain companies liable to sanctions under the Iran Sanctions Act of 1996.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Active business operations," all business operations that are not inactive business
6 operations;

7 (2) "Company," any sole proprietorship, organization, association, corporation,
8 partnership, joint venture, limited partnership, limited liability partnership, limited
9 liability company, or other entity or business association, including all wholly owned
10 subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such
11 entities or business associations, that exists for profit-making purposes;

12 (3) "Direct holdings," all publicly traded debt and equity securities of a company that are



1 held directly by the State Investment Council or held in an account or fund in which
2 the State Investment Council owns all shares or interests;

3 (4) "Government of Iran," the government of the Islamic Republic of Iran or its
4 instrumentalities or political subdivisions and companies owned or controlled by the
5 Islamic Republic of Iran;

6 (5) "Inactive business operations," the continued holding or renewal of rights to property
7 previously operated for the purpose of generating revenues but not presently
8 deployed for such a purpose;

9 (6) "Indirect holdings," all investments held in an account or fund, including a mutual
10 fund, a real estate fund, a private equity fund, or a commingled fund, managed by one
11 or more persons who are not employed by the State Investment Council, in which the
12 public funds own shares or interests together with other investors who are not subject
13 to this Act;

14 (7) "Scrutinized company," any company engaging in scrutinized business operations;

15 (8) "Scrutinized business operations," all active business operations that are subject or
16 liable to sanctions under Public Law 104-172, as amended, the Iran Sanctions Act of
17 1996, and that involve the maintenance of a company's existing assets or investments
18 in Iran, or the deployment of new investments to Iran that meet or exceed the twenty
19 million dollar threshold referred to in Public Law 104-172, as amended, the Iran
20 Sanctions Act of 1996. The term does not include the retail sale of gasoline and
21 related products;

22 (9) "Substantial action specific to Iran," adopting, publicizing, and implementing a
23 formal plan to cease scrutinized business operations within one year and to refrain
24 from any such new business operations.

1 Section 2. Within ninety days following the effective date of this Act, the State Investment
2 Council shall make its best efforts to identify all scrutinized companies in which it has direct
3 holdings. These efforts shall include, as appropriate:

- 4 (1) Reviewing and relying, as appropriate, on publicly available information regarding
5 companies with business operations in Iran, including information provided by
6 nonprofit organizations, research firms, international organizations, and government
7 entities;
- 8 (2) Contacting asset managers contracting with the State Investment Council who invest
9 in companies with business operations in Iran; and
- 10 (3) Contacting other institutional investors that have divested from or engaged with
11 companies with business operations in Iran.

12 Section 3. At the first meeting of the State Investment Council after it has completed the
13 requirements of section 2 of this Act, the State Investment Council shall assemble a list of
14 scrutinized companies in which it has direct holdings.

15 Section 4. The State Investment Council shall update the scrutinized companies list each
16 quarter based on continuing information.

17 Section 5. The State Investment Council shall use the following procedures with respect to
18 companies on the scrutinized companies list:

- 19 (1) For each company newly identified with scrutinized business operations, the State
20 Investment Council shall, within ninety days following its assembly of the scrutinized
21 companies list, send a written notice informing the company of its scrutinized
22 company status and that it may become subject to divestment by the State Investment
23 Council. The notice shall offer the company the opportunity to clarify its scrutinized
24 business operations and shall encourage the company to cease, within ninety days of

1 the date of the notice, its scrutinized business operations, or to convert them to
2 inactive business operations in order to avoid divestment by the State Investment
3 Council; and

4 (2) If, within ninety days following the State Investment Council's first engagement with
5 a company, that company publicly announces its commitment to substantial action
6 specific to Iran, that company shall be removed from the scrutinized companies list
7 and the provisions of this Act cease to apply to it unless it resumes active business
8 operations in Iran.

9 Section 6. If, after ninety days following the State Investment Council's first engagement
10 with a company pursuant to section 5 of this Act, the company continues to have scrutinized
11 business operations, and only while the company continues to have scrutinized business
12 operations, the State Investment Council shall sell, redeem, divest, or withdraw all publicly
13 traded securities of the company, according to the following schedule:

14 (1) At least fifty percent of the holdings in the company shall be removed from the State
15 Investment Council's assets under management by nine months after the company's
16 initial appearance on the scrutinized companies list; and

17 (2) One hundred percent of the holdings in the company shall be removed from the State
18 Investment Council's assets under management within fifteen months after the
19 company's initial appearance on the scrutinized companies list.

20 If a company that ceased scrutinized business operations following engagement pursuant to
21 section 5 of this Act, resumes such operations, this Act immediately applies to the company and
22 the State Investment Council shall send a written notice to the company. The company shall also
23 be immediately reintroduced onto the scrutinized companies list.

24 Section 7. The State Investment Council may not acquire securities of companies on the

1 scrutinized companies list that have scrutinized business operations, except as provided in this
2 Act.

3 Section 8. If the federal government excludes a company from its present or any future
4 federal sanctions relating to Iran, that company is exempt from the divestment requirements and
5 the investment prohibitions in this Act.

6 Section 9. The provisions of this Act do not apply to any of the following:

- 7 (1) Investments in a company that is primarily engaged in supplying goods or services
8 intended to relieve human suffering in Iran;
- 9 (2) Investments in a company that is primarily engaged in promoting health, education,
10 or journalistic, religious, or welfare activities in Iran; and
- 11 (3) Investments in a United States company that is authorized by the federal government
12 to have active business operations in Iran.

13 Section 10. The provisions of this Act do not apply to indirect holdings in actively managed
14 investment funds. The State Investment Council shall submit letters to the managers of
15 investment funds containing companies with scrutinized active business operations requesting
16 the managers to consider removing such companies from the fund or to create a similar actively
17 managed fund with indirect holdings that do not include the companies. If a manager creates a
18 similar fund, the State Investment Council shall promptly replace all applicable investments
19 with investments in the similar fund consistent with prudent investing standards.

20 Section 11. By January fifteenth of each calendar year, the State Investment Council shall
21 submit a report to the Executive Board of the Legislative Research Council. The report shall
22 include:

- 23 (1) A copy of the most recent list of scrutinized companies;
- 24 (2) A summary of correspondence with companies engaged by the State Investment

1 Council pursuant to section 5 of this Act;

2 (3) A list of all investments sold, redeemed, divested, or withdrawn in compliance with
3 section 6 of this Act;

4 (4) A list of all prohibited investments pursuant to section 7 of this Act; and

5 (5) A description of any progress made pursuant to section 10 of this Act.

6 Section 12. The provisions of this Act cease to be operative if either of the following
7 occurs:

8 (1) Iran is removed from the United States Department of State's list of countries that
9 have been determined to repeatedly provide support for acts of international
10 terrorism; or

11 (2) The President of the United States determines and certifies that state legislation
12 similar to this Act interferes with the conduct of United States foreign policy.

13 Section 13. The State Investment Council is exempt from any statutory or common law
14 obligations that conflict with actions taken in compliance with this Act, including all good faith
15 determinations regarding companies as required by this Act, including any obligations regarding
16 the choice of asset managers, investment funds, or investments for the State Investment
17 Council's securities portfolios.