

BILL ANALYSIS

Senate Research Center
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S.B. 1330
By: Patrick, Dan
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Iran's economy is almost wholly dependant upon its oil and gas industry. Lacking sufficient infrastructure to achieve economic success in this industry, however, causes Iran to rely heavily on the investment of foreign companies. Thus, by helping Iran profit, foreign companies contribute to Iran's ability to fund international terrorism, develop nuclear weapons, and threaten United States (U.S.) service men and women in Iraq.

The Teacher Retirement System and the Employees Retirement System (retirement systems) have investments in international companies that invest in Iran's energy sector or that are owned or operated by Iranian entities and are at risk due to sanctions and diplomatic isolation imposed upon Iran by both the United States and the United Nations. As the United States and international sanctions continue to erode Iran's economic well-being, it becomes necessary to not only protect the retirement systems from dramatic changes in market conditions but to ensure that Texas does not invest in companies whose financial support of Iran's oil and gas industry allow Iran to threaten national security through its nuclear program designed to produce nuclear weapons, support international terrorism, and threaten United States soldiers. The best means to encourage these international companies to eliminate their investments in Iran is to provide financial disincentives for such investments through divestment.

As proposed, S.B. 1330 enhances national security and allows the legislature to perform its fiduciary duty to protect the assets of its retirement systems by causing the divestment from those funds of investments in international companies that invest \$20 million or more in Iran's energy sector or that are owned or operated by Iranian entities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle F, Title 10, Government Code, by adding Chapter 2264, as follows:

CHAPTER 2264. PROHIBITION ON INVESTMENT IN IRAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. Defines "active business operations," "business operations," "company," "direct holdings in a company," "inactive business operations," "indirect holdings in a company," "military equipment," and "scrutinized company."

Sec. 2264.002. SCRUTINIZED BUSINESS OPERATIONS. Provides that a company engages in scrutinized business operations if the company has business operations that involve certain acts.

Sec. 2264.003. OTHER LEGAL OBLIGATIONS. Exempts a state governmental entity (entity) from any conflicting statutory or certain common law obligations with respect to certain actions taken in compliance with this chapter.

[Reserves Sections 2264.004-2264.050 for expansion.]

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

Sec. 2264.051. LIST OF SCRUTINIZED COMPANIES. (a) Defines "system."

(b) Requires the Employees Retirement System of Texas (ERS) to maintain a list of all scrutinized companies (list). Requires ERS to take certain actions in preparing the list.

(c) Requires ERS to update the list on a quarterly basis based on evolving information from, among other sources, those listed in Subsection (b).

(d) Requires ERS to file the list with the presiding officer of each house of the legislature and the attorney general not later than the 30th day after the date the list is created or updated.

Sec. 2264.052. IDENTIFICATION OF INVESTMENT IN SCRUTINIZED COMPANIES. Requires each entity to immediately identify the companies on the list in which the entity owns direct or indirect holdings.

Sec. 2264.053. NOTICE TO SCRUTINIZED COMPANY ENGAGED IN INACTIVE BUSINESS OPERATIONS. Requires the entity to send a written notice informing each company identified under Section 2264.052 that is engaged in only inactive scrutinized business operations of this chapter and encouraging the company to continue to refrain from initiating active business operations in Iran until it is able to avoid being considered a scrutinized company. Requires the entity to continue such correspondence on a semiannual basis.

Sec. 2264.054. ACTIONS RELATING TO SCRUTINIZED COMPANY ENGAGED IN ACTIVE BUSINESS OPERATIONS. (a) Requires the entity to send a written notice informing each company identified under Section 2264.052 that is engaged in scrutinized active business operations of its status and warning the company that it may become subject to divestment by the entity.

(b) Requires the notice to offer the company the opportunity to clarify its Iran-related activities and to encourage the company, not later than the 90th day after the date the company receives notice under this section, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the entity.

(c) Requires the entity to remove a company from the list if, during the time provided by Subsection (b), the company ceases scrutinized business operations, and this chapter will no longer apply to the company unless it resumes scrutinized business operations.

(d) Provides that a company is subject to all provisions of this chapter relating to inactive business operations if, during the time provided by Subsection (b), the company converts its scrutinized active business operations to inactive business operations.

(e) Requires the entity to sell, redeem, divest, or withdraw all publicly traded securities of the company, except securities described by Section 2264.056, according to the timetable provided by Section 2264.055, if, after the time provided by Subsection (b) expires, the company continues to have scrutinized active business operations.

Sec. 2264.055. DIVESTMENT OF ASSETS. (a) Sets forth a specific schedule that an entity required to sell, redeem, divest, or withdraw all publicly traded securities of a scrutinized company is required to comply with.

(b) Requires the entity to send a written notice to a company that resumed scrutinized active business operations, informing it that the entity will sell, redeem, divest, or withdraw all publicly traded securities of the scrutinized company according to the schedule in Subsection (a).

Sec. 2264.056. INVESTMENTS EXEMPTED FROM DIVESTMENT. Provides that an entity is not required to divest from any indirect holdings in actively managed investment funds or private equity funds. Requires the entity to submit letters to the managers of investment funds containing companies with scrutinized active business operations requesting that they consider removing those companies from the fund or create a similar actively managed fund with indirect holdings devoid of scrutinized companies. Requires the entity to replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards if the manager creates a similar fund.

Sec. 2264.057. AUTHORIZED INVESTMENT IN COMPANIES WITH SCRUTINIZED ACTIVE BUSINESS OPERATIONS. (a) Authorizes an entity to cease divesting from or reinvesting in a scrutinized company if clear and convincing evidence shows that the value for all assets under management by the entity becomes equal to or less than 99.5 percent of the hypothetical value of all assets under management by the entity had the entity not divested from any scrutinized company.

(b) Authorizes an entity to invest in a scrutinized company as provided by this section only to the extent necessary to ensure that the value of the assets managed by the entity does not fall below the value described by Subsection (a).

(c) Requires an entity, before investing in a scrutinized company under this section, to provide a written report to the presiding officer of each house of the legislature and the attorney general setting forth the reason and justification, supported by clear and convincing evidence, for its decisions to cease divestment, to reinvest, or to remain invested in a company engaged in scrutinized business operations.

(d) Requires the entity to update the report required by Subsection (c) semiannually, as applicable.

(e) Provides that this section does not apply to reinvestment in a company that has ceased to have scrutinized active business operations.

Sec. 2264.058. PROHIBITED INVESTMENTS. Prohibits an entity from acquiring securities of a company on the list that has scrutinized active business operations, except as provided by Section 2264.057.

[Reserves Sections 2264.059-2264.100 for expansion.]

SUBCHAPTER C. EXPIRATION; REPORT; ENFORCEMENT

Sec. 2264.101. EXPIRATION OF CHAPTER. Provides that this chapter expires on the date the United States 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.

Sec. 2264.102. REPORT. Requires each entity to file a publicly available report with the presiding officer of each house of the legislature, not later than December 31 of each year, that contains certain information.

Sec. 2264.103. ENFORCEMENT. Authorizes the attorney general to bring any action necessary to enforce this chapter.

SECTION 2. Requires ERS to prepare the list required by Section 2264.051, Government Code, as added by this Act, not later than the 90th day after the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2007.