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S.B. No. 1330

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the investment of state funds in certain private business entities doing business in Iran.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. PROHIBITION ON INVESTMENT IN IRAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Active business operations" means all business operations that are not inactive business operations.

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

(3) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of such entities or business associations, that exists for profit-making purposes.

1 (4) "Direct holdings in a company" means all
2 securities of that company held directly by the state in an account
3 or fund in which the state owns all shares or interests.

4 (5) "Inactive business operations" means the mere
5 continued holding or renewal of rights to property previously
6 operated for the purpose of generating revenues but not presently
7 deployed for such purpose.

8 (6) "Indirect holdings in a company" means all
9 securities of that company held in an account or fund, such as a
10 mutual fund, managed by one or more persons not employed by a state
11 governmental entity, in which the state governmental entity owns
12 shares or interests together with other investors not subject to
13 the provisions of this chapter.

14 (7) "Military equipment" means weapons, arms,
15 military supplies, and equipment that readily may be used for
16 military purposes, including radar systems and military-grade
17 transport vehicles.

18 (8) "Scrutinized company" means a company that engages
19 in scrutinized business operations described by Section 2264.002.

20 Sec. 2264.002. SCRUTINIZED BUSINESS OPERATIONS. A company
21 engages in scrutinized business operations if:

22 (1) the company has business operations that involve
23 contracts with or providing supplies or services to the government
24 of Iran, a company in which the government of Iran has any direct or
25 indirect equity share, a consortium or project commissioned by the
26 government of Iran, or a company involved in a consortium or project
27 commissioned by the government of Iran; or

1 (2) the company supplies military equipment to Iran.

2 Sec. 2264.003. OTHER LEGAL OBLIGATIONS. With respect to
3 actions taken in compliance with this chapter, including all good
4 faith determinations regarding companies as required by this
5 chapter, a state governmental entity is exempt from any conflicting
6 statutory or common law obligations, including any obligations with
7 respect to choice of asset managers, investment funds, or
8 investments for the state governmental entity's securities
9 portfolios.

10 [Sections 2264.004-2264.050 reserved for expansion]

11 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

12 Sec. 2264.051. LIST OF SCRUTINIZED COMPANIES. (a) In this
13 section, "system" means the Employees Retirement System of Texas.

14 (b) The system shall maintain a list of all scrutinized
15 companies. In preparing the list of scrutinized companies, the
16 system shall:

17 (1) review and rely, as appropriate in the system's
18 judgment, on publicly available information regarding companies
19 with business operations in Iran, including information provided by
20 nonprofit organizations, research firms, international
21 organizations, and governmental entities;

22 (2) contact asset managers under contract with the
23 system or another state governmental entity that invests in
24 companies with business operations in Iran; and

25 (3) contact other institutional investors that have
26 divested from or engaged with companies that have business
27 operations in Iran.

1 (c) The system shall update the scrutinized companies list
2 on a quarterly basis based on evolving information from, among
3 other sources, those listed in Subsection (b).

4 (d) Not later than the 30th day after the date the list of
5 scrutinized companies is created or updated, the system shall file
6 the list of scrutinized companies with the presiding officer of
7 each house of the legislature and the attorney general.

8 Sec. 2264.052. IDENTIFICATION OF INVESTMENT IN SCRUTINIZED
9 COMPANIES. Each state governmental entity shall immediately
10 identify the companies on the list of scrutinized companies in
11 which the state governmental entity owns direct or indirect
12 holdings.

13 Sec. 2264.053. NOTICE TO SCRUTINIZED COMPANY ENGAGED IN
14 INACTIVE BUSINESS OPERATIONS. For each company identified under
15 Section 2264.052 that is engaged in only inactive scrutinized
16 business operations, the state governmental entity shall send a
17 written notice informing the company of this chapter and
18 encouraging the company to continue to refrain from initiating
19 active business operations in Iran until it is able to avoid being
20 considered a scrutinized company. The state governmental entity
21 shall continue such correspondence on a semiannual basis.

22 Sec. 2264.054. ACTIONS RELATING TO SCRUTINIZED COMPANY
23 ENGAGED IN ACTIVE BUSINESS OPERATIONS. (a) For each company
24 identified under Section 2264.052 that is engaged in scrutinized
25 active business operations, the state governmental entity shall
26 send a written notice informing the company of its scrutinized
27 company status and warning the company that it may become subject to

1 divestment by the state governmental entity.

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

9 (c) If, during the time provided by Subsection (b), the
10 company ceases scrutinized business operations, the state
11 governmental entity shall remove the company from the scrutinized
12 companies list and this chapter will no longer apply to the company
13 unless it resumes scrutinized business operations.

14 (d) If, during the time provided by Subsection (b), the
15 company converts its scrutinized active business operations to
16 inactive business operations, the company is subject to all
17 provisions of this chapter relating to inactive business
18 operations.

19 (e) If, after the time provided by Subsection (b) expires,
20 the company continues to have scrutinized active business
21 operations, the state governmental entity shall sell, redeem,
22 divest, or withdraw all publicly traded securities of the company,
23 except securities described by Section 2264.056, according to the
24 timetable provided by Section 2264.055.

25 Sec. 2264.055. DIVESTMENT OF ASSETS. (a) A state
26 governmental entity required to sell, redeem, divest, or withdraw
27 all publicly traded securities of a scrutinized company shall

1 comply with the following schedule:

2 (1) at least 50 percent of those assets shall be
3 removed from the state governmental entity's assets under
4 management not later than the 270th day after the date the company
5 receives notice under Section 2264.054 or Subsection (b); and

6 (2) 100 percent of those assets shall be removed from
7 the state governmental entity's assets under management not later
8 than the 450th day after the date the company receives notice under
9 Section 2264.054 or Subsection (b).

10 (b) If a company that ceased scrutinized active business
11 operations after receiving notice under Section 2264.054 resumes
12 scrutinized active business operations, the state governmental
13 entity shall send a written notice to the company informing it that
14 the state governmental entity will sell, redeem, divest, or
15 withdraw all publicly traded securities of the scrutinized company
16 according to the schedule in Subsection (a).

17 Sec. 2264.056. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
18 state governmental entity is not required to divest from any
19 indirect holdings in actively managed investment funds or private
20 equity funds. The state governmental entity shall submit letters
21 to the managers of investment funds containing scrutinized
22 companies with scrutinized active business operations requesting
23 that they consider removing those companies from the fund or create
24 a similar actively managed fund with indirect holdings devoid of
25 scrutinized companies. If the manager creates a similar fund, the
26 state governmental entity shall replace all applicable investments
27 with investments in the similar fund in an expedited time frame

1 consistent with prudent investing standards.

2 Sec. 2264.057. AUTHORIZED INVESTMENT IN COMPANIES WITH
3 SCRUTINIZED ACTIVE BUSINESS OPERATIONS. (a) A state governmental
4 entity may cease divesting from or may reinvest in a scrutinized
5 company if clear and convincing evidence shows that the value for
6 all assets under management by the state governmental entity
7 becomes equal to or less than 99.5 percent of the hypothetical value
8 of all assets under management by the state governmental entity had
9 the state governmental entity not divested from any scrutinized
10 company.

11 (b) A state governmental entity may invest in a scrutinized
12 company as provided by this section only to the extent necessary to
13 ensure that the value of the assets managed by the state
14 governmental entity does not fall below the value described by
15 Subsection (a).

16 (c) Before a state governmental entity may invest in a
17 scrutinized company under this section, the state governmental
18 entity must provide a written report to the presiding officer of
19 each house of the legislature and the attorney general setting
20 forth the reason and justification, supported by clear and
21 convincing evidence, for its decisions to cease divestment, to
22 reinvest, or to remain invested in a company engaged in scrutinized
23 active business operations.

24 (d) The state governmental entity shall update the report
25 required by Subsection (c) semiannually, as applicable.

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

1 Sec. 2264.058. PROHIBITED INVESTMENTS. Except as provided
2 by Section 2264.057, a state governmental entity may not acquire
3 securities of a company on the list of scrutinized companies that
4 has scrutinized active business operations.

5 [Sections 2264.059-2264.100 reserved for expansion]

6 SUBCHAPTER C. EXPIRATION; REPORT; ENFORCEMENT

7 Sec. 2264.101. EXPIRATION OF CHAPTER. This chapter expires
8 on the date the United States Congress or the president of the
9 United States, through legislation or executive order, declares
10 that mandatory divestment of the type provided for in this chapter
11 interferes with the conduct of United States foreign policy.

12 Sec. 2264.102. REPORT. Not later than December 31 of each
13 year, each state governmental entity shall file a publicly
14 available report with the presiding officer of each house of the
15 legislature and the attorney general, that:

16 (1) summarizes the correspondence with scrutinized
17 companies under Subchapter B;

18 (2) identifies all investments sold, redeemed,
19 divested, or withdrawn in compliance with Section 2264.055;

20 (3) identifies all prohibited investments under
21 Section 2264.058; and

22 (4) summarizes any changes made under Section
23 2264.056.

24 Sec. 2264.103. ENFORCEMENT. The attorney general may bring
25 any action necessary to enforce this chapter.

26 SECTION 2. Not later than the 90th day after the effective
27 date of this Act, the Employees Retirement System of Texas shall

1 prepare the list of scrutinized companies required by Section
2 2264.051, Government Code, as added by this Act.

3 SECTION 3. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2007.