

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 4, 2013

TO: Honorable Bill Callegari, Chair, House Committee on Pensions

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB819 by Taylor, Van (Relating to prohibiting the investment of retirement system funds in certain private business entities doing business in Iran.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code to add new Chapter 807, regarding a prohibition on the investment of retirement system funds in certain private entities doing business in Iran.

The bill would prohibit the Employees Retirement System (ERS), Teachers Retirement System (TRS), Texas Municipal Retirement System (TMRS), Texas County and District Retirement System (TCDRS), and Texas Emergency Services Retirement System ("state governmental entities") from being invested in, or remaining invested in, publicly traded securities of certain companies that engage in business operations in Iran.

The bill would require the Comptroller to prepare and maintain, and provide to the state governmental entities, a list of all "scrutinized companies" that engage in business activities in Iran. The state governmental entities would have to identify any scrutinized companies in which they owned direct or indirect holdings. Depending on the type of business operations a scrutinized company was engaged in, the state governmental entities would have to send written notice to the scrutinized company encouraging that company to refrain from business activities in Iran. If the company continued scrutinized active business operations in Iran, the state governmental entities would have to divest their assets of the scrutinized company.

The bill would provide that the state governmental entities would not be subject to a requirement of the new chapter if either entity determined that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets. The bill would also provide that the state governmental entities, or the Comptroller could rely on a company's response to a notice or communication made under the chapter without conducting any further investigation, research, or inquiry.

The state governmental entities would have to file annually a public report summarizing their compliance with these provisions. The new chapter would expire on the earlier of 1) the date the United States Congress or the President of the United States, through legislation or executive order, declared that mandatory divestment of the type provided for in the proposed chapter would interfere with the conduct of United States foreign policy, or 2) the date the United States revoked

its sanctions against the government of Iran.

The Office of the Attorney General (OAG) reports that the bill explicitly prohibits a private cause of action under the provisions set forth therein. Furthermore, the bill grants the Attorney General the authority to bring any action necessary to enforce this chapter.

The OAG's General Litigation Division anticipates potential litigation based on First Amendment claims by targeted businesses or other claims challenging the breadth of the statutory language employed by the bill. However, the OAG anticipates any legal work resulting from the passage of this bill could be reasonably absorbed with current resources.

TRS reports that the bill would have no fiscal impact on the TRS pension fund because TRS is in compliance with the Governor's Executive Order that required divestment from Iran.

ERS reports that the bill establishes that ERS may cease divesting from or may reinvest in listed companies if ERS provides clear and convincing evidence that ERS has suffered or will suffer a loss in the hypothetical value of assets under management resulting from the divestment. Therefore, ERS may cease divesting from or may reinvest in listed companies to the extent necessary that it does not suffer a loss in value.

Currently, ERS reviews the list of scrutinized companies doing business with Sudan that is provided by the Comptroller and sends notification of any ERS securities. The bill would require the Comptroller to send ERS a similar list of scrutinized companies for Iran and have ERS respond in the same manner. Additional reporting for any scrutinized companies engaging in business with Iran would result in some additional administrative costs to implement, but these could be absorbed with existing resources.

The bill would take effect on January 1, 2014.

Local Government Impact

According to the Texas Municipal League, no significant fiscal impact to cities is anticipated.

According to the Texas Municipal Retirement System (TMRS), currently, all of TMRS investments in publicly traded equity securities are passively managed by external managers in index strategies through commingled funds. Under the provisions of the bill, these strategies and structures would not be subject to the investment requirements. In addition, TMRS has also reviewed its bond portfolio and does not own prohibited securities in that asset class. While TMRS cannot estimate the cost of implementing the provisions of the bill, the cost is not anticipated to be significant based on fiscal impact criteria.

According to the Texas Association of Counties, no fiscal impact to counties is anticipated.

According to the Texas County and District Retirement System (TCDRS), because TCDRS may cease divesting from or may reinvest in listed companies to the extent necessary to comply with its fiduciary responsibilities, no significant fiscal impact is anticipated. In addition, the increased administrative duties imposed by the bill will result in some additional costs, but these costs are not anticipated to be significant.

Source Agencies: 325 Fire Fighters' Pension Commissioner, 327 Employees Retirement System, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 323 Teacher Retirement System

LBB Staff: UP, SJS, TP, RB, SD