

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**March 9, 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.), **As Introduced**

**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) and the Teachers Retirement System (TRS) 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 ERS and TRS, a list of all "scrutinized companies" that engage in business activities in Iran. ERS and TRS 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, ERS and TRS 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, ERS and TRS would have to divest their assets of the scrutinized company.

The bill would provide that ERS or TRS 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 ERS, TRS, 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.

ERS and TRS 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**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 323 Teacher Retirement System, 327 Employees Retirement System

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