



**S.F. 131**  
(Bonoff)

**H.F. 111**  
(Winkler)

**Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* MSRS, PERA, TRA, and Plans Using Supplement Fund  
*Relevant Provisions of Law:* Minnesota Statutes, New Section 11A.244  
*General Nature of Proposal:* State Board of Investment; Requires Divestment of Certain Investments Relating to Iran  
*Date of Summary:* March 2, 2009

**Specific Proposed Change(s)**

Requires the State Board of Investment (SBI) to identify companies with active business operations in Iran which are subject to liability or sanctions under the Iran and Libya Sanctions Act of 1996, to divest of the securities of those companies unless doing so would be contrary to fiduciary duties, and to provide various reports to the Legislative Commission on Pensions and Retirement and legislative committees with jurisdiction over SBI.

**Policy Issues Raised by the Proposed Legislation**

1. Issues regarding reporting to the Legislative Commission on Pensions and Retirement.
2. Sufficient impact to justify the administrative burden.
3. Unclear application to passive investments.
4. Lack of inclusion of debt securities.
5. Lack of effective date.
6. Question regarding inclusion in omnibus pension bill.

**Potential Amendments**

**Technical Amendment**

**S0131-1A** adds an effective date to be determined by the Commission by filling in the blank. July 1, 2009, is one of several reasonable dates.

**Substantive Amendment**

**S0131-2A** adds debt investments to the investment types included as "direct holdings." This would expand the coverage beyond only equity investments.

**Alternative Amendments Dealing With Reporting Issues:**

**S0131-3A** leaves the reporting in the bill unchanged except for including the Commission's executive director in any reporting transmitted to the Commission chair and vice chair.

**S0131-4A** revises the reporting to have the Commission and its executive director receive all reports, removes the initial report of the list of scrutinized companies in subdivision 9, and does not alter reporting to other legislative committees.

**S0131-5A** removes all reporting to the Commission, and has all reports sent to the chairs of the legislative committees and divisions in the House and Senate with jurisdiction over the SBI. The amendment also removes the initial report of the list of scrutinized companies in subdivision 9.

**S0131-6A** requires all reports to be sent to the Commission chair, vice chair, and executive director, and all reports are also sent to the chairs of the legislative committees and divisions in the House and Senate with jurisdiction over the SBI.) The amendment also removes the initial report of the list of scrutinized companies in subdivision 9.

**S0131-7A** requires all reports to be sent to the Commission and to the chairs of committees with jurisdiction over the SBI. Reports to the Commission will be sent to the Commission's executive director only, not to the Commission chair and vice chair. The amendment also removes the initial report of the list of scrutinized companies.



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Ed Burek, Deputy Director **EB**  
RE: S.F. 131 (Bonoff); H.F. 111 (Winkler), the First Engrossment: State Board of Investment; Requiring Divestment of Certain Investments Relating to Iran  
DATE: March 2, 2009

General Summary of S.F. 131 (Bonoff); H.F. 111 (Winkler), the First Engrossment

S.F. 131 (Bonoff); H.F. 111 (Winkler), the first engrossment, requires the State Board of Investment (SBI) to identify companies with active business operations in Iran which are subject to liability or sanctions under the Iran and Libya Sanctions Act of 1996, to divest of the securities of those companies unless doing so would be contrary to fiduciary duties, and to provide various reports to the Legislative Commission on Pensions and Retirement and legislative committees with jurisdiction over SBI.

Public Law 104-172, Iran and Libya Sanctions Act of 1996

Public Law 104-172, the Iran and Libya Sanctions Act of 1996, states in its declaration of policy section a desire by the United States "to deny Iran the ability to support acts of international terrorism and to fund the development and acquisition of weapons of mass destruction and the means to deliver by limiting the development of Iran's ability to explore for, extract, refine, or transport by pipeline petroleum resources of Iran." Companies that provide equipment, material, or expertise which assists Iran in developing its oil reserves are subject to sanctions under the Iran and Libya Sanctions Act of 1996. Under this act, the President may impose a variety of sanctions against a person or company including prohibiting the Export-Import Bank from providing assistance or approval, prohibiting export of goods or technology, prohibiting banks from providing business loans, and prohibiting the federal government from purchasing goods or services from a sanctioned company.

A full copy of the Iran and Libya Sanctions Act of 1996 is attached.

Discussion and Analysis

S.F. 131 (Bonoff); H.F. 111 (Winkler), the first engrossment, requires the SBI to identify companies with active business operations in Iran which are subject to sanctions under the Iran and Libya Sanctions Act of 1996, to divest of the securities of those companies unless doing so would be contrary to fiduciary duties, and to make various reports to the Legislative Commission on Pensions and Retirement and the legislative committees with jurisdiction over SBI.

The proposed legislation raises several pension and related public policy issues for Commission consideration and potential discussion, as follows:

1. Issues Regarding Reporting to the Legislative Commission on Pensions and Retirement. There are three issues regarding reporting to the Legislative Commission on Pensions and Retirement.
  - a. Should there be any reporting to the Commission?
  - b. If there should be reporting to the Commission, which reports should be transmitted? As drafted, the Commission receives some but not all of the reports.
  - c. If the Commission is to receive any reports, a copy should also be sent to the Commission's executive director. As drafted, any reports to the Commission are sent to the chair and vice chair only.

Given the bill's drafting, two reports are sent to the Commission. One seems to be a one-time event. Page 4.31 to 4.33 requires the SBI to report to the chair and vice chair of the Commission the list of companies identified as a scrutinized company (a company with activities subject to or potentially subject to sanctions under the Iran and Libya Sanctions Act of 1996). Only the first list of these companies compiled by SBI is to be transmitted to the Commission. Later reports (see page 4.34) indicating the most recent list of scrutinized companies and actions taken by SBI regarding these companies are to be transmitted to the legislative committees with jurisdiction over the SBI, but not to the Commission. It is not clear what purpose is served by that one-time reporting to the Commission. If the Commission should receive any of these reports, presumably it should receive each annual report. This proposal, in its structure, bears some similarity to an investment in Sudan provision added to SBI law in 2007 (Minnesota Statutes, Section 11A.243). That provision requires reporting to

the committees with jurisdiction, but no reports are to be sent to the Commission. It is unclear why the current proposal differs from the procedures of the section added to SBI statute in 2007.

If the Commission receives any reports, it would be appropriate to include the Commission's executive director. As drafted, any reports sent to the Commission are transmitted to the chair and vice chair only.

The proposal also requires another set of reports (page 4.4 to 4.14). These reports are to be provided quarterly to the Commission chair and vice chair, and are to provide information regarding any decision by the SBI not to divest shares of a scrutinized company, because doing so would conflict with fiduciary duties. If that remains in the bill, it would be appropriate to include the Commission's executive director. Also, as drafted these reports are not sent to the policy committees. That may be a drafting omission requiring an amendment. No commission or committee receives all the reports, leaving each with an incomplete picture.

2. Sufficient Impact to Justify the Administrative Burden. The issue is whether the proposal will have sufficient impact to justify the administrative cost of implementing it. If the intention is to further punish companies subject to Iran and Libya Sanctions Act of 1996 sanctions, the proposal may have little if any impact. If the SBI divests of the company, others will purchase those shares. The end result may be little more than a different distribution of ownership with little or no impact on the value of the assets. Also, there may be no SBI divestment. Subdivision 7, Exemptions, on page 4.4, allows the SBI to not divest if the SBI concludes that divesting of the specified asset or assets is inconsistent with fiduciary responsibilities. Regarding administration, the SBI will need to devote time and resources to the reviews, company notifications, and reports required under this proposal. The Commission may wish to have Howard Bicker, Executive Director of the State Board of Investment, testify on the administrative burden this provision may cause, and from the bill's supporters regarding the intended impact or purpose for the proposal.
3. Lack of Clarity Regarding Applicable Securities, Investment Forms. The bill is not clear regarding the scope of investment arrangements to which the requirements of this provision will apply. The Commission may wish to hear from Mr. Bicker about whether he interprets this bill as applying to both actively managed assets and assets in passive portfolios. The majority of SBI assets are in passively managed portfolios. If these restrictions could impact passive portfolios (indexed investments), the Commission may wish to have Mr. Bicker comment on whether this will have a material impact on the indexed portfolios, including but not limited to requiring the use of a different index or target. Comments on the extent to which the SBI may decide that divestment is not appropriate due to conflict with fiduciary duty would also be helpful. The SBI may decide that no changes should be made in indexed portfolios to avoid harm to the fund and a breach of fiduciary duties. Similar arguments could be made about actively managed portfolios, or semi-passive portfolios. The Commission may also seek comments from Mr. Bicker regarding the impact the bill might have on investments in Supplemental Fund, which include some volunteer fire assets and the assets of the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified), and deferred compensation accounts.
4. Scope of Investments Covered. The issue is whether this bill is intended to apply only to equity investments, or to both fixed income and equity investments. The definition of "direct holdings" (page 1.16 to 1.18) refers only to equity investments. An issue for the Commission is whether to revise the bill to also include debt investments.
5. Lack of Effective Date. The bill does not have an effective date. The Commission may wish to consider adding one.
6. Question Regarding Inclusion in Omnibus Pension Bill. If the Commission does recommend the bill to pass, either as introduced or with amendments, an issue is whether to recommend inclusion in an omnibus pension bill or whether to refer the bill separately as a freestanding bill. The Commission may need to consider what other committees or divisions may need to review and consider this bill.

#### Amendments for Consideration

The Commission may wish to consider the following amendments:

- **Amendment S0131-1A** adds an effective date to be determined by the Commission by filling in the blank. July 1, 2009, is one of several reasonable dates.
- **Amendment S0131-2A** adds debt investments to the investment types included as "direct holdings." This would expand the coverage beyond only equity investments.

The following are all alternative amendments dealing with reporting issues. They differ in who receives the reports and which reports are sent to the various entities.

- **Amendment S0131-3A** leaves the reporting in the bill unchanged except for including the Commission's executive director in any reporting transmitted to the Commission chair and vice chair.
- **Amendment S0131-4A** revises the reporting to have the Commission and its executive director receive all reports, removes the initial report of the list of scrutinized companies in subdivision 9 on page 4.31 to 4.33, and does not alter reporting to other legislative committees.
- **Amendment S0131-5A** removes all reporting to the Commission, and has all reports sent to the chairs of the legislative committees and divisions in the House and Senate with jurisdiction over the SBI. The amendment also removes the initial report of the list of scrutinized companies in subdivision 9 on page 4.31 to 4.33.
- **Amendment S0131-6A** requires all reports to be sent to the Commission chair, vice chair, and executive director, and all reports are also sent to the chairs of the legislative committees and divisions in the House and Senate with jurisdiction over the SBI.) The amendment also removes the initial report of the list of scrutinized companies in subdivision 9 on page 4.31 to 4.33.
- **Amendment S0131-7A** requires all reports to be sent to the Commission and to the chairs of committees with jurisdiction over the SBI. Reports to the Commission will be sent to the Commission's executive director only, not to the Commission chair and vice chair. The amendment also removes the initial report of the list of scrutinized companies in subdivision 9 on page 4.31 to 4.33.

**Minnesota Statutes, Section 11A.243, INVESTMENT IN SUDAN.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following items have the meanings given them in this subdivision.

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

(c) "Business operations" means engaging in commerce in any form in Sudan, 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.

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

(e) "Complicit" means taking actions during any preceding 20-month period that have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(f) "Direct holdings" in a company means all securities of that company held directly by the State Board of Investment or in an account or fund in which the State Board of Investment owns all shares or interests.

(g) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the national congress party (formerly known as the national Islamic front) or any successor government formed on or after October 13, 2006, including the coalition national unity government agreed upon in the comprehensive peace agreement for Sudan, and does not include the regional government of southern Sudan.

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

(i) "Indirect holdings" in a company means all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the State Board of Investment, in which the State Board of Investment owns shares or interests together with other investors not subject to the provisions of this section.

(j) "Marginalized populations of Sudan" include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(k) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(l) "Mineral extraction activities" include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including the provision of supplies or services in support of such activities.

(m) "Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including the provision of supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(n) "Power production activities" means any business operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including the provision of supplies or services in support of such activities.

(o) "Scrutinized company" means any company that meets the criteria in clause (1), (2), or (3):

(1) the company has business operations that involve contracts with or provision of supplies or services to:

(i) the government of Sudan;

(ii) companies in which the government of Sudan has any direct or indirect equity share;

(iii) government of Sudan-commissioned consortiums or projects; or

(iv) companies involved in government of Sudan-commissioned consortiums or projects; and

(A) more than ten percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or

(B) more than ten percent of the company's revenues or assets linked to Sudan involve power production activities; less than 75 percent of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action;

(2) the company is complicit in the Darfur genocide; or

(3) the company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, for example, through postsale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

Notwithstanding any other provision to the contrary in this section, a social development company that is not complicit in the Darfur genocide shall not be considered a scrutinized company.

(p) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

(q) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations; undertaking significant humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity that has been evaluated and certified by an independent third party to be in substantial relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

Subd. 2. **Identification of companies.** (a) Within 90 days following May 23, 2007, the State Board of Investment shall make its best efforts to identify all scrutinized companies in which the State Board of Investment has direct or indirect holdings or could possibly have such holdings in the future. Such efforts shall include, as appropriate:

(1) reviewing and relying, as appropriate in the State Board of Investment's judgment, on publicly available information regarding companies with business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) contacting asset managers contracting with the State Board of Investment who invest in companies with business operations in Sudan; or

(3) contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

(b) At the first meeting of the State Board of Investment after it has completed the requirements of paragraph (a), the State Board of Investment shall assemble a list of scrutinized companies.

(c) The State Board of Investment shall update the scrutinized companies list each quarter based on continuing information, including, but not limited to, information from sources identified in paragraph (a).

Subd. 3. **Engagement of scrutinized companies.** The State Board of Investment shall use the following procedure for companies on the scrutinized companies list:

(a) After completing the list required under subdivision 2, paragraph (a), the State Board of Investment shall immediately identify the companies on the list in which the State Board of Investment owns direct or indirect holdings.

(b) For each company identified in paragraph (a) with only inactive business operations, the State Board of Investment shall send a written notice to the company with information about this section and encourage it to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations. The State Board of Investment shall continue such correspondence on a semiannual basis.

(c) For each company newly identified in paragraph (a) with active business operations, the State Board of Investment shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the State Board of Investment. The notice shall offer the company the opportunity to clarify its Sudan-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the State Board of Investment.

(d) If, within 90 days following the State Board of Investment's first engagement with a company under paragraph (c), that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and the provisions of this section shall cease to apply to it unless it resumes scrutinized business operations. If, within 90 days following the State Board of Investment's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to all provisions of this section relating to inactive business operations.

Subd. 4. **Divestment.** (a) If, after 90 days following the State Board of Investment's first engagement with a company under subdivision 3, paragraph (c), the company continues to have scrutinized active business operations, and only while the company continues to have scrutinized active business operations, the State Board of Investment shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except as provided in subdivisions 5 to 11, according to the following schedule:

(1) at least 50 percent of the assets in the company shall be removed from the State Board of Investment's assets under management by nine months after the company's most recent appearance on the scrutinized companies list; and

(2) 100 percent of the assets in the company shall be removed from the State Board of Investment's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(b) If a company that ceased scrutinized active business operations following engagement under subdivision 3, paragraph (c), resumes such operations, paragraph (a) shall immediately apply to the company and the State Board of Investment shall send a written notice to the company. The company shall also be immediately reintroduced onto the scrutinized companies list.

Subd. 5. **Prohibition on acquisition of certain securities.** At no time shall the State Board of Investment acquire securities of companies on the scrutinized companies list that have active business operations, except as provided in this section.

Subd. 6. **Exemption.** If the federal government affirmatively excludes a company from its present or any future federal sanctions regime relating to Sudan, the company is exempt from the divestment and investment requirements of subdivisions 4 and 5.

Subd. 7. **Excluded securities.** Notwithstanding any other provision in this section to the contrary, subdivisions 4 and 5 do not apply to indirect holdings in actively managed investment funds. The State Board of Investment shall submit letters to the managers of investment funds containing companies with scrutinized active business operations requesting the managers to consider removing such companies from the fund or to create a

similar actively managed fund with indirect holdings that do not include the companies. If a manager creates a similar fund, the State Board of Investment shall promptly replace all applicable investments with investments in the similar fund consistent with prudent investing standards. For the purposes of this section, "private equity" funds shall be deemed to be actively managed investment funds.

**Subd. 8. Reporting.** (a) Within 30 days after creating the scrutinized companies list, the State Board of Investment shall submit the list to the chairs of the legislative committees and divisions with jurisdiction over the State Board of Investment.

(b) By January 15, 2008, and on January 15 of each year thereafter, the State Board of Investment shall submit a report to the chairs of the legislative committees and divisions with jurisdiction over the State Board of Investment and send a copy of that report to the United States Presidential Special Envoy to Sudan or the appropriate designee or successor for the envoy. The report must include:

(1) a summary of correspondence with companies engaged by the State Board of Investment under subdivision 3, paragraphs (b) and (c);

(2) a list of all investments sold, redeemed, divested, or withdrawn in compliance with subdivision 4;

(3) a list of all prohibited investments under subdivision 5; and

(4) a description of any progress made under subdivision 7.

**Subd. 9. Expiration.** This section shall expire upon the occurrence of any of the following:

(1) the Congress or president of the United States declares that the Darfur genocide has been halted for at least 12 months;

(2) the United States revokes all sanctions imposed against the government of Sudan;

(3) the Congress or president of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or

(4) the Congress or president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this section interferes with the conduct of United States foreign policy.

**Subd. 10. Other legal obligations.** The State Board of Investment is exempt from any statutory or common law obligations that conflict with actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, including any obligations regarding the choice of asset managers, investment funds, or investments for the State Board of Investment's securities portfolios.

**Subd. 11. Reinvestment in certain companies with scrutinized active business operations.**

Notwithstanding any provision of this section to the contrary, the State Board of Investment shall be permitted to cease divesting from certain scrutinized companies under subdivision 4 or to reinvest in certain scrutinized companies from which it divested under subdivision 4 if clear and convincing evidence shows that the value for all assets under management by the State Board of Investment is equal to or less than 99.5 percent (50 basis points) of the hypothetical value of all assets under management by the State Board of Investment without any divestment for any company under subdivision 4. Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this subdivision shall be strictly limited to the minimum steps necessary to avoid the contingency. For any cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this subdivision, the State Board of Investment shall provide a written report to the chairs of the legislative committees and divisions with jurisdiction over the State Board of Investment in advance of initial reinvestment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain invested in companies with scrutinized active business operations. This subdivision does not apply to reinvestment in companies because they have ceased scrutinized active business operations.

**History:** 2007 c 117 s 1

# Congressional Record

IRAN AND LIBYA SANCTIONS ACT OF 1996 (House of Representatives - June 18, 1996)

[Page: H6469]

Mr. GILMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3107) to impose sanctions on persons exporting certain goods or technology that would enhance Iran's ability to explore for, extract, refine, or transport by pipeline petroleum resources, and for other purposes, as amended.

The Clerk read as follows:

## H.R. 3107

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### SECTION 1. SHORT TITLE.

This Act may be cited as the 'Iran and Libya Sanctions Act of 1996'.

### SEC. 2. FINDINGS.

The Congress makes the following findings:

- (1) The efforts of the Government of Iran to acquire weapons of mass destruction and the means to deliver them and its support of acts of international terrorism endanger the national security and foreign policy interests of the United States and those countries with which the United States shares common strategic and foreign policy objectives.
- (2) The objective of preventing the proliferation of weapons of mass destruction and acts of international terrorism through existing multilateral and bilateral initiatives requires additional efforts to deny Iran the financial means to sustain its nuclear, chemical, biological, and missile weapons programs.
- (3) The Government of Iran uses its diplomatic facilities and quasi-governmental institutions outside of Iran to promote acts of international terrorism and assist its nuclear, chemical, biological, and missile weapons programs.
- (4) The failure of the Government of Libya to comply with Resolutions 731, 748, and 883 of the Security Council of the United Nations, its support of international terrorism, and its efforts to acquire weapons of mass destruction constitute a threat to international peace and security that endangers the national security and foreign policy interests of the United States and those countries with which it shares common strategic and foreign policy objectives.

### SEC. 3. DECLARATION OF POLICY.

(a) **Policy With Respect to Iran:** The Congress declares that it is the policy of the United States to deny Iran the ability to support acts of international terrorism and to fund the development and acquisition of weapons of mass destruction and the means to deliver them by limiting the development of Iran's ability to explore for, extract, refine, or transport by pipeline petroleum resources of Iran.

(b) **Policy With Respect to Libya:** The Congress further declares that it is the policy of the United States to seek full compliance by Libya with its obligations under Resolutions 731, 748, and 883 of the Security Council of the United Nations, including ending all support for acts of international terrorism and efforts to develop or acquire weapons of mass destruction.

### SEC. 4. MULTILATERAL REGIME.

(a) **Multilateral Negotiations:** In order to further the objectives of section 3, the Congress urges the President to commence immediately diplomatic efforts, both in appropriate international fora such as the United Nations, and bilaterally with allies of the United States, to establish a multilateral sanctions regime against Iran, including provisions limiting the development of petroleum resources, that will inhibit Iran's efforts to carry out activities described in section 2.

(b) **Reports to Congress:** The President shall report to the appropriate congressional committees, not later than 1 year after the date of the enactment of this Act, and periodically thereafter, on the extent that diplomatic efforts described in subsection (a) have been successful. Each report shall include--

(1) the countries that have agreed to undertake measures to further the objectives of section 3 with respect to Iran, and a description of those measures; and

(2) the countries that have not agreed to measures described in paragraph (1), and, with respect to those countries, other measures (in addition to that provided in subsection (d)) the President recommends that the United States take to further the objectives of section 3 with respect to Iran.

(c) **Waiver:** The President may waive the application of section 5(a) with respect to nationals of a country if--

(1) that country has agreed to undertake substantial measures, including economic sanctions, that will inhibit Iran's efforts to carry out activities described in section 2 and information required by subsection (b)(1) has been included in a report submitted under subsection (b); and

(2) the President, at least 30 days before the waiver takes effect, notifies the appropriate congressional committees of his intention to exercise the waiver.

(d) **Enhanced Sanction:**

(1) **Sanction:** With respect to nationals of countries except those with respect to which the President has exercised the waiver authority of subsection (c), at any time after the first report is required to be submitted under subsection



(b), section 5(a) shall be applied by substituting '\$20,000,000' for '\$40,000,000' each place it appears, and by substituting '\$5,000,000' for '\$10,000,000'.

(2) **Report to congress:** The President shall report to the appropriate congressional committees any country with respect to which paragraph (1) applies.

(e) **Interim Report on Multilateral Sanctions; Monitoring:** The President, not later than 90 days after the date of the enactment of this Act, shall report to the appropriate congressional committees on--

(1) whether the member states of the European Union, the Republic of Korea, Australia, Israel, or Japan have legislative or administrative standards providing for the imposition of trade sanctions on persons or their affiliates doing business or having investments in Iran or Libya;

(2) the extent and duration of each instance of the application of such sanctions; and

(3) the disposition of any decision with respect to such sanctions by the World Trade Organization or its predecessor organization.

#### SEC. 5. IMPOSITION OF SANCTIONS.

(a) **Sanctions With Respect to Iran:** Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, made an investment of \$40,000,000 or more (or any combination of investments of at least \$10,000,000 each, which in the aggregate equals or exceeds \$40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Iran's ability to develop petroleum resources of Iran.

(b) **Sanctions With Respect to Libya:**

(1) **Trigger of Mandatory sanctions:** Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, exported, transferred, or otherwise provided to Libya any goods, services, technology, or other items the provision of which is prohibited under paragraph 4(b) or 5 of Resolution 748 of the Security Council of the United Nations, adopted March 31, 1992, or under paragraph 5 or 6 of Resolution 883 of the Security Council of the United Nations, adopted November 11, 1993, if the provision of such items significantly and materially--

(A) contributed to Libya's ability to acquire chemical, biological, or nuclear weapons or destabilizing numbers and types of advanced conventional weapons or enhanced Libya's military or paramilitary capabilities;

(B) contributed to Libya's ability to develop its petroleum resources; or

(C) contributed to Libya's ability to maintain its aviation capabilities.

(2) **Trigger of discretionary sanctions:** Except as provided in subsection (f), the President may impose 1 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, made an investment of \$40,000,000 or more (or any combination of investments of at least \$10,000,000 each, which in the aggregate equals or exceeds \$40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Libya's ability to develop its petroleum resources.

(c) **Persons Against Which the Sanctions Are To Be Imposed:** The sanctions described in subsections (a) and (b) shall be imposed on--

(1) any person the President determines has carried out the activities described in subsection (a) or (b); and

(2) any person the President determines--

(A) is a successor entity to the person referred to in paragraph (1);

(B) is a parent or subsidiary of the person referred to in paragraph (1) if that parent or subsidiary, with actual knowledge, engaged in the activities referred to in paragraph (1); or

(C) is an affiliate of the person referred to in paragraph (1) if that affiliate, with actual knowledge, engaged in the activities referred to in paragraph (1) and if that affiliate is controlled in fact by the person referred to in paragraph (1).

For purposes of this Act, any person or entity described in this subsection shall be referred to as a 'sanctioned person'.

(d) **Publication in Federal Register:** The President shall cause to be published in the Federal Register a current list of persons and entities on whom sanctions have been imposed under this Act. The removal of persons or entities from, and the addition of persons and entities to, the list, shall also be so published.

(e) **Publication of Projects:** The President shall cause to be published in the Federal Register a list of all significant projects which have been publicly tendered in the oil and gas sector in Iran.

(f) **Exceptions:** The President shall not be required to apply or maintain the sanctions under subsection (a) or (b)--

(1) in the case of procurement of defense articles or defense services--

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines in writing that the person to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(C) if the President determines in writing that such articles or services are essential to the national security under defense coproduction agreements;

(2) in the case of procurement, to eligible products, as defined in section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b)(1) of that Act (19 U.S.C. 2511(b)(1));

(3) to products, technology, or services provided under contracts entered into before the date on which the President publishes in the Federal Register the name of the person on whom the sanctions are to be imposed;

(4) to--

(A) spare parts which are essential to United States products or production;

(B) component parts, but not finished products, essential to United States products or production; or

(C) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(6) to information and technology essential to United States products or production; or

(7) to medicines, medical supplies, or other humanitarian items.

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## SEC. 6. DESCRIPTION OF SANCTIONS.

The sanctions to be imposed on a sanctioned person under section 5 are as follows:

(1) **Export-import bank assistance for exports to sanctioned persons:** The President may direct the Export-Import Bank of the United States not to give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to any sanctioned person.

(2) **Export sanction:** The President may order the United States Government not to issue any specific license and not to grant any other specific permission or authority to export any goods or technology to a sanctioned person under--

(i) the Export Administration Act of 1979;

(ii) the Arms Export Control Act;

(iii) the Atomic Energy Act of 1954; or

(iv) any other statute that requires the prior review and approval of the United States Government as a condition for the export or re-export of goods or services.

(3) **Loans from United States financial institutions:** The United States Government may prohibit any United States financial institution from making loans or providing credits to any sanctioned person totaling more than \$10,000,000 in any 12-month period unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

(4) **Prohibitions on financial institutions:** The following prohibitions may be imposed against a sanctioned person that is a financial institution:

(A) **Prohibition on designation as primary dealer:** Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, such financial institution as a primary dealer in United States Government debt instruments.

(B) **Prohibition on service as a repository of government funds:** Such financial institution may not serve as agent of the United States Government or serve as repository for United States Government funds.

The imposition of either sanction under subparagraph (A) or (B) shall be treated as 1 sanction for purposes of section 5, and the imposition of both such sanctions shall be treated as 2 sanctions for purposes of section 5.

(5) **Procurement sanction:** The United States Government may not procure, or enter into any contract for the procurement of, any goods or services from a sanctioned person.

(6) **Additional sanctions:** The President may impose sanctions, as appropriate, to restrict imports with respect to a sanctioned person, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 and following).

## SEC. 7. ADVISORY OPINIONS.

The Secretary of State may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this Act. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, will not be made subject to such sanctions on account of such activity.

## SEC. 8. TERMINATION OF SANCTIONS.

(a) **Iran:** The requirement under section 5(a) to impose sanctions shall no longer have force or effect with respect to Iran if the President determines and certifies to the appropriate congressional committees that Iran--

(1) has ceased its efforts to design, develop, manufacture, or acquire--

(A) a nuclear explosive device or related materials and technology;

(B) chemical and biological weapons; and

(C) ballistic missiles and ballistic missile launch technology; and

(2) has been removed from the list of countries the governments of which have been determined, for purposes of section 6(j) of the Export Administration Act of 1979, to have repeatedly provided support for acts of international terrorism.

(b) **Libya:** The requirement under section 5(b) to impose sanctions shall no longer have force or effect with respect to Libya if the President determines and certifies to the appropriate congressional committees that Libya has fulfilled the requirements of United Nations Security Council Resolution 731, adopted January 21, 1992, United Nations Security Council Resolution 748, adopted March 31, 1992, and United Nations Security Council Resolution 883, adopted November 11, 1993.

#### SEC. 9. DURATION OF SANCTIONS; PRESIDENTIAL WAIVER.

##### (a) Delay of Sanctions:

(1) **Consultations:** If the President makes a determination described in section 5(a) or 5(b) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions under this Act.

(2) **Actions by government of jurisdiction:** In order to pursue consultations under paragraph (1) with the government concerned, the President may delay imposition of sanctions under this Act for up to 90 days. Following such consultations, the President shall immediately impose sanctions unless the President determines and certifies to the Congress that the government has taken specific and effective actions, including, as appropriate, the imposition of appropriate penalties, to terminate the involvement of the foreign person in the activities that resulted in the determination by the President under section 5(a) or 5(b) concerning such person.

(3) **Additional delay in imposition of sanctions:** The President may delay the imposition of sanctions for up to an additional 90 days if the President determines and certifies to the Congress that the government with primary jurisdiction over the person concerned is in the process of taking the actions described in paragraph (2).

(4) **Report to congress:** Not later than 90 days after making a determination under section 5(a) or 5(b), the President shall submit to the appropriate congressional committees a report on the status of consultations with the appropriate foreign government under this subsection, and the basis for any determination under paragraph (3).

(b) **Duration of Sanctions:** A sanction imposed under section 5 shall remain in effect--

(1) for a period of not less than 2 years from the date on which it is imposed; or

(2) until such time as the President determines and certifies to the Congress that the person whose activities were the basis for imposing the sanction is no longer engaging in such activities and that the President has received reliable assurances that such person will not knowingly engage in such activities in the future, except that such sanction shall remain in effect for a period of at least 1 year.

##### (c) Presidential Waiver:

(1) **Authority:** The President may waive the requirement in section 5 to impose a sanction or sanctions on a person described in section 5(c), and may waive the continued imposition of a sanction or sanctions under subsection (b) of this section, 30 days or more after the President determines and so reports to the appropriate congressional committees that it is important to the national interest of the United States to exercise such waiver authority.

(2) **Contents of report:** Any report under paragraph (1) shall provide a specific and detailed rationale for the determination under paragraph (1), including--

(A) a description of the conduct that resulted in the determination under section 5(a) or (b), as the case may be;

(B) in the case of a foreign person, an explanation of the efforts to secure the cooperation of the government with primary jurisdiction over the sanctioned person to terminate or, as appropriate, penalize the activities that resulted in the determination under section 5(a) or (b), as the case may be;

(C) an estimate as to the significance--

(i) of the provision of the items described in section 5(a) to Iran's ability to develop its petroleum resources, or

(ii) of the provision of the items described in section 5(b)(1) to the abilities of Libya described in subparagraph (A), (B), or (C) of section 5(b)(1), or of the investment described in section 5(b)(2) on Libya's ability to develop its petroleum resources, as the case may be; and

(D) a statement as to the response of the United States in the event that the person concerned engages in other activities that would be subject to section 5(a) or (b).

(3) **Effect of report on waiver:** If the President makes a report under paragraph (1) with respect to a waiver of sanctions on a person described in section 5(c), sanctions need not be imposed under section 5(a) or (b) on that person during the 30-day period referred to in paragraph (1).

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#### SEC. 10. REPORTS REQUIRED.

(a) **Report on Certain International Initiatives:** Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the President shall transmit a report to the appropriate congressional committees describing--

(1) the efforts of the President to mount a multilateral campaign to persuade all countries to pressure Iran to cease its nuclear, chemical, biological, and missile weapons programs and its support of acts of international terrorism;

(2) the efforts of the President to persuade other governments to ask Iran to reduce the presence of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran and to withdraw any such diplomats or representatives who participated in the takeover of the United States embassy in Tehran on November 4, 1979, or the subsequent holding of United States hostages for 444 days;

(3) the extent to which the International Atomic Energy Agency has established regular inspections of all nuclear facilities in Iran, including those presently under construction; and

(4) Iran's use of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran to promote acts of international terrorism or to develop or sustain Iran's nuclear, chemical, biological, and missile weapons programs.

(b) **Other Reports:** The President shall ensure the continued transmittal to the Congress of reports describing--

(1) the nuclear and other military capabilities of Iran, as required by section 601(a) of the Nuclear Non-Proliferation Act of 1978 and section 1607 of the National Defense Authorization Act for Fiscal Year 1993; and

(2) the support provided by Iran for acts of international terrorism, as part of the Department of State's annual report on international terrorism.

#### SEC. 11. DETERMINATIONS NOT REVIEWABLE.

A determination to impose sanctions under this Act shall not be reviewable in any court.

#### SEC. 12. EXCLUSION OF CERTAIN ACTIVITIES.

Nothing in this Act shall apply to any activities subject to the reporting requirements of title V of the National Security Act of 1947.

#### SEC. 13. EFFECTIVE DATE; SUNSET.

(a) **Effective Date:** This Act shall take effect on the date of the enactment of this Act.

(b) **Sunset:** This Act shall cease to be effective on the date that is 5 years after the date of the enactment of this Act.

#### SEC. 14. DEFINITIONS.

As used in this Act:

(1) **Act of international terrorism:** The term 'act of international terrorism' means an act--

(A) which is violent or dangerous to human life and that is a violation of the criminal laws of the United States or of any State or that would be a criminal violation if committed within the jurisdiction of the United States or any State; and

(B) which appears to be intended--

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(2) **Appropriate congressional committees:** The term 'appropriate congressional committees' means the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Foreign Relations of the Senate and the Committee on Ways and Means, the Committee on Banking and Financial Services, and the Committee on International Relations of the House of Representatives.

(3) **Component part:** The term 'component part' has the meaning given that term in section 11A(e)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2410a(e)(1)).

(4) **Develop and development:** To 'develop', or the 'development' of, petroleum resources means the exploration for, or the extraction, refining, or transportation by pipeline of, petroleum resources.

(5) **Financial institution:** The term 'financial institution' includes--

(A) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

(B) a credit union;

(C) a securities firm, including a broker or dealer;

(D) an insurance company, including an agency or underwriter; and

(E) any other company that provides financial services.

(6) **Finished product:** The term 'finished product' has the meaning given that term in section 11A(e)(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2410a(e)(2)).

(7) **Foreign person:** The term 'foreign person' means--

(A) an individual who is not a United States person or an alien lawfully admitted for permanent residence into the United States; or

(B) a corporation, partnership, or other nongovernmental entity which is not a United States person.

(8) **Goods and technology:** The terms 'goods' and 'technology' have the meanings given those terms in section 16 of the Export Administration Act of 1979 (50 U.S.C. app. 2415).

(9) **Investment:** The term 'investment' means any of the following activities if such activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Iran or a nongovernmental entity in Iran, or with the Government of Libya or a nongovernmental entity in Libya, on or after the date of the enactment of this Act:

(A) The entry into a contract that includes responsibility for the development of petroleum resources located in Iran or Libya (as the case may be), or the entry into a contract providing for the general supervision and guarantee of another person's performance of such a contract.

(B) The purchase of a share of ownership, including an equity interest, in that development.

(C) The entry into a contract providing for the participation in royalties, earnings, or profits in that development, without regard to the form of the participation.

The term 'investment' does not include the entry into, performance, or financing of a contract to sell or purchase goods, services, or technology.

(10) **Iran:** The term 'Iran' includes any agency or instrumentality of Iran.

(11) **Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran:** The term 'Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran' includes employees, representatives, or affiliates of Iran's--

(A) Foreign Ministry;

(B) Ministry of **Intelligence** and Security;

(C) Revolutionary Guard Corps;

(D) Crusade for Reconstruction;

(E) Qods (Jerusalem) Forces;

(F) Interior Ministry;

(G) Foundation for the Oppressed and Disabled;

(H) Prophet's Foundation;

(I) June 5th Foundation;

(J) Martyr's Foundation;

(K) Islamic Propagation Organization; and

(L) Ministry of Islamic Guidance.

(12) **Libya:** The term 'Libya' includes any agency or instrumentality of Libya.

(13) **Nuclear explosive device:** The term 'nuclear explosive device' means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material (as defined in section 11aa. of the Atomic Energy Act of 1954) that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).

(14) **Person:** The term 'person' means--

(A) a natural person;

(B) a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(C) any successor to any entity described in subparagraph (B).

(15) **Petroleum resources:** The term 'petroleum resources' includes petroleum and natural gas resources.

(16) **United States or State:** The term 'United States' or 'State' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

(17) **United States person:** The term 'United States person' means--

(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States; and

(B) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, if natural persons described in subparagraph (A) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity.

1.1 ..... moves to amend S.F. No. 131; H.F. No. 111, the first engrossment,  
1.2 as follows:

1.3 Page 5, after line 22, insert:

1.4 "EFFECTIVE DATE. This section is effective ....."

- 1.1 ..... moves to amend S.F. No. 131; H.F. No. 111, the first engrossment,
- 1.2 as follows:
  
- 1.3 Page 1 line 16, after "traded" insert "debt and"

1.1 ..... moves to amend S.F. No. 131; H.F. No. 111, the first engrossment,  
1.2 as follows:

1.3 Page 4, line 7, delete "and" and insert "₂"

1.4 Page 4, line 8, after "vice-chair" insert ", and executive director"

1.5 Page 4, line 12, delete "to the chair and"

1.6 Page 4, line 13, delete everything before the period

1.7 Page 4, line 32, delete "and" and insert "₂" and after "vice-chair" insert ", and  
1.8 executive director"



1.1 ..... moves to amend S.F. No. 131; H.F. No. 111, the first engrossment,  
1.2 as follows:

1.3 Page 4, line 7, delete "and" and insert "₂"

1.4 Page 4, line 8, after "vice-chair" insert ", and executive director"

1.5 Page 4, line 12, delete "to the chair and"

1.6 Page 4, line 13, delete everything before the period

1.7 Page 4, line 31, delete everything after "Reporting."

1.8 Page 4, delete lines 32 to 33

1.9 Page 4, line 34, delete "(b)"

1.10 Page 4, line 35, before "chairs" insert "chair, vice-chair, and executive director of the  
1.11 Legislative Commission on Pensions and Retirement, and to the"

1.1 ..... moves to amend S.F. No. 131; H.F. No. 111, the first engrossment,  
1.2 as follows:

1.3 Page 4, line 7, delete "in writing to the chair and"

1.4 Page 4, line 8, delete everything before "report" and insert "through quarterly  
1.5 written reports submitted to the chairs of the legislative committees and the divisions with  
1.6 jurisdiction over the State Board of Investment. Each"

1.7 Page 4, line 11, delete everything after the period

1.8 Page 4, delete line 12

1.9 Page 4, line 13, delete everything before "Any"

1.10 Page 4, line 31, delete everything after "Reporting."

1.11 Page 4, delete lines 32 to 33

1.12 Page 4, line 34, delete "(b)"

1.1 ..... moves to amend S.F. No. 131; H.F. No. 111, first engrossment,  
1.2 as follows:

1.3 Page 4, line 7, delete "and" and insert a comma

1.4 Page 4, line 8, after "vice-chair" insert ", and executive director" and after "

1.5 Retirement" insert ", and to the chairs of the legislative committees and divisions with  
1.6 jurisdiction over the State Board of Investment"

1.7 Page 4, line 12, delete "to the chair and"

1.8 Page 4, line 13, delete everything before the period

1.9 Page 4, line 31, delete everything after "Reporting."

1.10 Page 4, delete lines 32 to 33

1.11 Page 4, line 34, delete "(b)"

1.12 Page 4, line 35, before "chairs" insert "chair, vice-chair, and executive director of the  
1.13 Legislative Commission on Pensions and Retirement, and to the"

1.1 ..... moves to amend S.F. No. 131; H.F. No. 111, the first engrossment,  
1.2 as follows:

1.3 Page 4, line 7, delete "chair and"

1.4 Page 4, line 8, delete "vice-chair" and insert "executive director" and after "

1.5 Retirement" insert ", and to the chairs of the legislative committees and divisions with  
1.6 jurisdiction over the State Board of Investment"

1.7 Page 4, line 12, delete "to the chair and"

1.8 Page 4, line 13, delete everything before the period

1.9 Page 4, line 31, delete everything after "Reporting."

1.10 Page 4, delete lines 32 to 33

1.11 Page 4, line 34, delete "(b)"

1.12 Page 4, line 35, before "chairs" insert "executive director of the Legislative  
1.13 Commission on Pensions and Retirement, and to the"

SENATE  
STATE OF MINNESOTA  
EIGHTY-SIXTH LEGISLATURE

S.F. No. 131

(SENATE AUTHORS: BONOFF, Limmer, Latz, Robling and Rest; Companion to H.F. No. 111)

DATE	D-PG	OFFICIAL STATUS
01/15/2009	80	Introduction and first reading
01/15/2009		Referred to State and Local Government Operations and Oversight
02/02/2009		Committee report: To pass as amended
02/02/2009		Second reading

1.1 A bill for an act  
 1.2 relating to the State Board of Investment; requiring divestment from certain  
 1.3 investments relating to Iran; requiring a report; proposing coding for new law  
 1.4 in Minnesota Statutes, chapter 11A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. 11A.244 INVESTMENT IN IRAN.

1.7 Subdivision 1. Definitions. For the purposes of this section, the following terms  
 1.8 have the meanings given them in this subdivision.

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

1.11 (2) "Company" means any sole proprietorship, organization, association,  
 1.12 corporation, partnership, joint venture, limited partnership, limited liability partnership,  
 1.13 limited liability company, or other entity or business association, including all wholly  
 1.14 owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such  
 1.15 entities or business associations, that exists for profit-making purposes.

1.16 (3) "Direct holdings" means all publicly traded equity securities of a company that  
 1.17 are held directly by the State Board of Investment or held in an account or fund in which  
 1.18 the State Board of Investment owns all shares or interests.

1.19 (4) "Government of Iran" means the government of the Islamic Republic of Iran or  
 1.20 its instrumentalities or political subdivisions and companies owned or controlled by the  
 1.21 Islamic Republic of Iran.

1.22 (5) "Inactive business operations" means the continued holding or renewal of rights  
 1.23 to property previously operated for the purpose of generating revenues but not presently  
 1.24 deployed for such a purpose.

2.1 (6) "Indirect holdings" means all investments held in an account or fund, including a  
2.2 mutual fund, a real estate fund, a private equity fund, or a commingled fund, managed by  
2.3 one or more persons who are not employed by the State Board of Investment, in which  
2.4 the public funds own shares or interests together with other investors who are not subject  
2.5 to this section.

2.6 (7) "Scrutinized company" means any company engaging in scrutinized business  
2.7 operations.

2.8 (8) "Scrutinized business operations" means any and all active business operations  
2.9 that are subject or liable to sanctions under Public Law 104-172, as amended, the Iran  
2.10 Sanctions Act of 1996, and that involve the maintenance of a company's existing assets or  
2.11 investments in Iran, or the deployment of new investments to Iran that meet or exceed  
2.12 the \$20,000,000 threshold referred to in Public Law 104-172, as amended, the Iran  
2.13 Sanctions Act of 1996. "Scrutinized business operations" does not include the retail sale  
2.14 of gasoline and related products.

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

2.18 Subd. 2. **Identification of scrutinized companies.** (a) Within 90 days following  
2.19 the effective date of this section, the State Board of Investment shall make its best efforts  
2.20 to identify all scrutinized companies in which it has direct holdings. These efforts shall  
2.21 include, as appropriate:

2.22 (1) reviewing and relying, as appropriate, on publicly available information regarding  
2.23 companies with business operations in Iran, including information provided by nonprofit  
2.24 organizations, research firms, international organizations, and government entities;

2.25 (2) contacting asset managers contracting with the State Board of Investment who  
2.26 invest in companies with business operations in Iran; and

2.27 (3) contacting other institutional investors that have divested from or engaged with  
2.28 companies with business operations in Iran.

2.29 (b) At the first meeting of the State Board of Investment after it has completed the  
2.30 requirements of paragraph (a), the State Board of Investment shall assemble a list of  
2.31 scrutinized companies in which it has direct holdings.

2.32 (c) The State Board of Investment shall update the scrutinized companies list each  
2.33 quarter based on continuing information, including but not limited to information from  
2.34 sources identified in paragraph (a).

3.1 Subd. 3. Engagement of scrutinized companies. The State Board of Investment  
3.2 shall use the following procedures with respect to companies on the scrutinized companies  
3.3 list:

3.4 (1) for each company newly identified in subdivision 2 with scrutinized business  
3.5 operations, the State Board of Investment shall, within 90 days following its assembly  
3.6 of the scrutinized companies list, send a written notice informing the company of its  
3.7 scrutinized company status and that it may become subject to divestment by the State  
3.8 Board of Investment. The notice shall offer the company the opportunity to clarify its  
3.9 scrutinized business operations and shall encourage the company to cease, within 90 days  
3.10 of the date of the notice, its scrutinized business operations, or to convert them to inactive  
3.11 business operations in order to avoid divestment by the State Board of Investment; and

3.12 (2) if, within 90 days following the State Board of Investment's first engagement  
3.13 with a company under clause (1), that company publicly announces its commitment to  
3.14 substantial action specific to Iran, that company shall be removed from the scrutinized  
3.15 companies list and the provisions of this section shall cease to apply to it unless it resumes  
3.16 active business operations in Iran.

3.17 Subd. 4. Divestment. (a) If, after 90 days following the State Board of Investment's  
3.18 first engagement with a company under subdivision 3, clause (2), the company continues  
3.19 to have scrutinized business operations, and only while the company continues to have  
3.20 scrutinized business operations, the State Board of Investment shall sell, redeem, divest,  
3.21 or withdraw all publicly traded securities of the company, according to the following  
3.22 schedule:

3.23 (1) at least 50 percent of the holdings in the company shall be removed from the  
3.24 State Board of Investment's assets under management by nine months after the company's  
3.25 initial appearance on the scrutinized companies list; and

3.26 (2) 100 percent of the holdings in the company shall be removed from the State  
3.27 Board of Investment's assets under management within 15 months after the company's  
3.28 initial appearance on the scrutinized companies list.

3.29 (b) If a company that ceased scrutinized business operations following engagement  
3.30 under subdivision 3, clause (2), resumes such operations, paragraph (a) immediately  
3.31 applies to the company and the State Board of Investment shall send a written notice to  
3.32 the company. The company shall also be immediately reintroduced onto the scrutinized  
3.33 companies list.

3.34 Subd. 5. Prohibition on new acquisitions. The State Board of Investment may not  
3.35 acquire securities of companies on the scrutinized companies list that have scrutinized  
3.36 business operations, except as provided in this section.

4.1 Subd. 6. **Relation to federal action.** If the federal government excludes a company  
4.2 from its present or any future federal sanctions relating to Iran, that company is exempt  
4.3 from the divestment requirements and the investment prohibitions in this section.

4.4 Subd. 7. **Exemptions.** (a) If the State Board of Investment determines, in good faith,  
4.5 that the action required by this section is inconsistent with the fiduciary responsibilities  
4.6 of the board, the board is not required to make any divestment required by this section.  
4.7 The board must report a determination under this subdivision in writing to the chair and  
4.8 vice-chair of the Legislative Commission on Pensions and Retirement. The report must  
4.9 include information with respect to each scrutinized company for which the board did not  
4.10 take all actions prescribed under this section, and must also specify any and all other  
4.11 actions that the board intends to take in compliance with this section. The report required  
4.12 by this subdivision must be updated continually and submitted quarterly to the chair and  
4.13 vice-chair of the Legislative Commission on Pensions and Retirement. Any report filed  
4.14 under this subdivision does not eliminate the reporting requirements under subdivision 9.

4.15 (b) Subdivisions 4 and 5 do not apply to any of the following:

4.16 (1) investments in a company that is primarily engaged in supplying goods or  
4.17 services intended to relieve human suffering in Iran;

4.18 (2) investments in a company that is primarily engaged in promoting health,  
4.19 education, or journalistic, religious, or welfare activities in Iran; and

4.20 (3) investments in a United States company that is authorized by the federal  
4.21 government to have active business operations in Iran.

4.22 Subd. 8. **Excluded securities.** Subdivisions 4 and 5 do not apply to indirect  
4.23 holdings in actively managed investment funds. The State Board of Investment shall  
4.24 submit letters to the managers of investment funds containing companies with scrutinized  
4.25 active business operations requesting the managers to consider removing such companies  
4.26 from the fund or to create a similar actively managed fund with indirect holdings that  
4.27 do not include the companies. If a manager creates a similar fund, the State Board of  
4.28 Investment shall promptly replace all applicable investments with investments in the  
4.29 similar fund consistent with prudent investing standards. For the purposes of this section,  
4.30 "private equity" funds shall be deemed to be actively managed investment funds.

4.31 Subd. 9. **Reporting.** (a) Within 30 days after creating the scrutinized companies  
4.32 list, the State Board of Investment shall submit the list to the chair and vice-chair of the  
4.33 Legislative Commission on Pensions and Retirement.

4.34 (b) By January 15 of each calendar year, the State Board of Investment shall submit  
4.35 a report to the chairs of the legislative committees and divisions with jurisdiction over  
4.36 the State Board of Investment. The report must include:



5.1 (1) a copy of the most recent list of scrutinized companies;

5.2 (2) a summary of correspondence with companies engaged by the State Board of  
5.3 Investment under subdivision 3;

5.4 (3) a list of all investments sold, redeemed, divested, or withdrawn in compliance  
5.5 with subdivision 4;

5.6 (4) a list of all prohibited investments under subdivision 5; and

5.7 (5) a description of any progress made under subdivision 8.

5.8 Subd. 10. **Expiration.** This section ceases to be operative if either of the following  
5.9 apply:

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

5.12 (2) the president of the United States determines and certifies that state legislation  
5.13 similar to this section interferes with the conduct of United States foreign policy.

5.14 Subd. 11. **Other legal obligations.** The State Board of Investment is exempt from  
5.15 any statutory or common law obligations that conflict with actions taken in compliance  
5.16 with this section, including all good faith determinations regarding companies as required  
5.17 by this section, including any obligations regarding the choice of asset managers,  
5.18 investment funds, or investments for the State Board of Investment's securities portfolios.

5.19 Subd. 12. **Severability.** The provisions of this section are severable. If any  
5.20 provision of this section or its application is held invalid, that invalidity does not affect  
5.21 other provisions or applications that can be given effect without the invalid provision  
5.22 or application.