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SESSION 2017

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HOUSE BILL 161
Committee Substitute Favorable 3/22/17
PROPOSED SENATE COMMITTEE SUBSTITUTE H161-PCS40621-BB-14

Short Title: Divestment From Companies That Boycott Israel.

(Public)

Sponsors:

Referred to:

February 22, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE STATE DIVESTMENT FROM, AND PROHIBIT STATE
3 AGENCIES FROM CONTRACTING WITH, COMPANIES THAT BOYCOTT ISRAEL
4 AND TO AMEND THE EXISTING SUDAN AND IRAN DIVESTMENT STATUTES.

5 Whereas, boycotts and related tactics have become a tool of economic warfare that
6 threaten the sovereignty and security of key allies and trade partners of the United States; and

7 Whereas, the State of Israel is the most prominent target of such boycott activity,
8 which began with, but has not been limited to, the Arab League Boycott adopted in 1945, even
9 before Israel's declaration of independence as the reestablished national state of the Jewish
10 people; and

11 Whereas, companies that refuse to deal with United States trade partners such as
12 Israel, or entities that do business with or in such countries, make discriminatory decisions on
13 the basis of national origin that impair those companies' commercial soundness; and

14 Whereas, it is the public policy of the United States, as enshrined in several federal
15 acts, to oppose boycotts against Israel, and Congress has concluded as a matter of national trade
16 policy that cooperation with Israel materially benefits United States companies and improves
17 American competitiveness; and

18 Whereas, Israel in particular is known for its dynamic and innovative approach in
19 many business sectors, and, therefore, a company's decision to discriminate against Israel,
20 Israeli entities, or entities that do business with or in Israel is an unsound business practice
21 making such a company an unduly risky contracting partner or vehicle for investment; Now,
22 therefore,

23 The General Assembly of North Carolina enacts:

24
25 **PART I. DIVESTMENT FROM COMPANIES BOYCOTTING ISRAEL**

26 **SECTION 1.1.** Chapter 147 of the General Statutes is amended by adding a new
27 Article to read:

28 "Article 6G.

29 "Divestment From Companies Boycotting Israel.

30 **"§ 147-86.80. Definitions.**

31 The following definitions apply in this Article:

- 32 (1) Boycott Israel or boycott of Israel. – Engaging in refusals to deal,
33 terminating business activities, or taking actions that are intended to
34 penalize, inflict economic harm, or otherwise limit commercial relations
35 specifically with Israel, or persons or entities doing business in Israel or in



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1 Israeli-controlled territories. This term does not apply to decisions made for
2 ordinary business purposes or for actions with an economic impact of less
3 than twenty million dollars (\$20,000,000) in a 12-month period.

4 (2) Company. – Any sole proprietorship, organization, association, corporation,
5 partnership, joint venture, limited partnership, limited liability partnership,
6 limited liability company, or other entity or business association, including
7 all wholly owned subsidiaries, majority-owned subsidiaries, parent
8 companies, or affiliates of those entities or business associations.

9 (3) Investment. – This term has the same meaning as G.S. 147-86.57(3).

10 (4) Restricted company. – A company that appears on the list of companies that
11 are engaged in a boycott of Israel developed by the State Treasurer under
12 G.S. 147-86.81(a)(1).

13 (5) State agency. – Any board, commission, department, executive department,
14 officer, institution, and any political subdivision of the State.

15 **"§ 147-86.81. Prohibitions on State investment.**

16 (a) No more than 30 days after October 1, 2017, the State Treasurer shall adopt a policy
17 prohibiting the North Carolina Retirement Systems or the Department of State Treasurer from
18 investing in any company engaged in a boycott of Israel. At a minimum, the policy shall
19 provide for the following:

20 (1) List of restricted companies. – Within 120 days of adoption of the policy, the
21 State Treasurer shall develop and make publicly available a list of
22 companies it determines to be engaged in a boycott of Israel. In the
23 development of this list, the State Treasurer shall use any other state lists of
24 restricted companies pursuant to similar laws and any federal information or
25 guidance on companies that boycott Israel and any other credible
26 information provided by nonprofit organizations, research firms, and
27 governmental entities, and generally publicly available information. The
28 State Treasurer shall make every effort to avoid erroneously including a
29 company on the list. Before finalizing an initial or updated list, the State
30 Treasurer must do all of the following before a company is included on the
31 list:

32 a. Provide 90 days' written notice of the State Treasurer's intent to
33 include the company on the list. The notice shall inform the company
34 that inclusion on the list would make the company ineligible for State
35 investment, may result in the company becoming subject to
36 divestment by the North Carolina Retirement Systems, and may
37 affect the company's ability to conduct business with the State and its
38 subdivisions. The notice shall specify that the company may be
39 removed from the list if the company ceases its engagement in a
40 boycott of Israel.

41 b. The State Treasurer shall provide a company with an opportunity to
42 comment in writing that the company is not engaged in a boycott of
43 Israel or has ceased its boycott of Israel. If the company demonstrates
44 to the State Treasurer that the company has not been engaged in a
45 boycott of Israel, the company shall not be placed on the list. If a
46 company had been engaged in a boycott of Israel but has ceased the
47 boycott, it must submit a written certification to the State Treasurer
48 that the company will not reengage in a boycott of Israel for the
49 duration of any business with the State. The State Treasurer shall
50 keep all written certifications from restricted and previously
51 restricted companies.

1 (2) Identification of investments. – Upon completion of the initial list of
2 restricted companies created pursuant to subdivision (1) of this subsection,
3 the State Treasurer shall identify any restricted companies in which the
4 North Carolina Retirement Systems has investments.

5 (3) Review of restricted companies list. – The State Treasurer shall review the
6 list of restricted companies created pursuant to subdivision (1) of this
7 subsection on an annual basis. This updated list shall be made publicly
8 available and any updates shall be distributed to the North Carolina
9 Retirement Systems.

10 (4) Investments prohibited. – Neither the North Carolina Retirement Systems
11 nor the State Treasurer may invest funds with a company that is identified on
12 a list created pursuant to subdivision (1) of this section as a company
13 engaging in restricted investment activities.

14 (5) Existing investments. – Any existing investment with a company that is
15 identified on a list created pursuant to subdivision (1) of this section as a
16 company engaging in restricted activities must be divested within 180 days
17 of the adoption of the list.

18 (b) Nothing in the policy or in this Article shall require the North Carolina Retirement
19 Systems or the State Treasurer to take action unless it is determined by the State Treasurer, in
20 good faith, that the action is consistent with the fiduciary responsibilities of the Retirement
21 Systems and the State Treasurer.

22 **"§ 147-86.82. Restrictions on contracts with the State or subdivisions of the State.**

23 (a) A company that is identified as a restricted company is ineligible to contract with
24 the State or any political subdivision of the State.

25 (b) Any contract entered into with a company that is identified as a restricted company
26 at the time of contract is void ab initio.

27 (c) Upon receiving information that a company that was not identified as a restricted
28 company at the time of contract has later been identified as a restricted company, the State
29 agency shall review the information and offer the company an opportunity to respond. If the
30 company fails to demonstrate that the company should not have been identified as a restricted
31 company within 90 days after notification by the State agency, then the State agency shall take
32 action as may be appropriate and provided for by law, rule, or contract.

33 (d) Contracts in existence on October 1, 2017, with restricted companies shall be
34 allowed to expire in accordance with the terms of the contract.

35 **"§ 147-86.83. Exceptions.**

36 G.S. 147-86.82 shall not apply to contracts valued at one thousand dollars (\$1,000) or less.

37 **"§ 147-86.84. Reporting.**

38 The State Treasurer shall report to the Joint Legislative Commission on Governmental
39 Operations annually by October 1 on information regarding investments sold, redeemed,
40 divested, or withdrawn in compliance with this Article."

41 **SECTION 1.2.(a)** Pursuant to G.S. 147-69.3(g), the State Treasurer is authorized
42 to retain the services of consultants, professional individuals, analysts, data collection firms, or
43 other persons possessing specialized skills or knowledge necessary for the proper
44 implementation and administration of the requirements of this act.

45 **SECTION 1.2.(b)** This section is effective when this act becomes law.
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47 **PART II. AMEND SUDAN (DARFUR) DIVESTMENT ACT**

48 **SECTION 2.1.** G.S. 147-86.42 reads as rewritten:

49 **"§ 147-86.42. Definitions.**

50 As used in this article, the following definitions apply:

- 1 (1) ~~"Active Business Operations" means all Business Operations that are not~~
2 ~~Inactive Business Operations.~~
- 3 (2) ~~"Business Operations" operations~~ means engaging in commerce in any
4 form in Sudan, including by acquiring, developing, maintaining, owning,
5 selling, possessing, leasing, or operating equipment, facilities, personnel,
6 products, services, personal property, real property, or any other apparatus of
7 business or commerce.
- 8 (3) "Company" means any sole proprietorship, organization, association,
9 corporation, partnership, joint venture, limited partnership, limited liability
10 partnership, limited liability company, or other entity or business
11 association, including all wholly-owned subsidiaries, majority-owned
12 subsidiaries, parent companies, or affiliates of such entities or business
13 associations, that exists for profit-making purposes.
- 14 (4) "Complicit" means taking actions during any preceding 20-month period
15 which have directly supported or promoted the genocidal campaign in
16 Darfur, including, but not limited to, preventing Darfur's victimized
17 population from communicating with each other, encouraging Sudanese
18 citizens to speak out against an internationally approved security force for
19 Darfur, actively working to deny, cover up, or alter the record on human
20 rights abuses in Darfur, or other similar actions.
- 21 (5) ~~"Direct Holdings" in a Company means all securities of that Company held~~
22 ~~directly by the Public Fund or in an account or fund in which the Public~~
23 ~~Fund owns all shares or interests.~~
- 24 (5a) "Investment" means a commitment or contribution of funds or property,
25 whatever the source, or a loan or other extension of credit. It does not
26 include indirect beneficial ownership through index funds, commingled
27 funds, limited partnerships, derivative instruments, or the like.
- 28 (6) "Government of Sudan" means the government in Khartoum, Sudan, which
29 is led by the National Congress Party (formerly known as the National
30 Islamic Front) or any successor government formed on or after October 13,
31 2006 (including the coalition National Unity Government agreed upon in the
32 Comprehensive Peace Agreement for Sudan), and does not include the
33 regional government of southern Sudan.
- 34 (7) ~~"Inactive Business Operations" means the mere continued holding or~~
35 ~~renewal of rights to property previously operated for the purpose of~~
36 ~~generating revenues but not presently deployed for such purpose.~~
- 37 (8) ~~"Indirect Holdings" in a Company means all securities of that Company held~~
38 ~~in an account or fund, such as a mutual fund, managed by one or more~~
39 ~~persons not employed by the Public Fund, in which the Public Fund owns~~
40 ~~shares or interests together with other investors not subject to the provisions~~
41 ~~of this Article and securities held through index funds, commingled funds,~~
42 ~~limited partnerships, derivative instruments, or any other similar investment~~
43 ~~instrument.~~
- 44 (9) "Marginalized Populations" populations of Sudan include, but are not
45 limited to, the portion of the population in the Darfur region that has been
46 genocidally victimized; the portion of the population of southern Sudan
47 victimized by Sudan's North-South civil war; the Beja, Rashidiya, and other
48 similarly underserved groups of eastern Sudan; the Nubian and other
49 similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and
50 Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other
51 similarly underserved groups of northern Sudan.

- 1 (10) "~~Military Equipment~~equipment" means weapons, arms, military supplies,
2 and equipment that readily may be used for military purposes, including, but
3 not limited to, radar systems or military-grade transport vehicles; or supplies
4 or services sold or provided directly or indirectly to any force actively
5 participating in armed conflict in Sudan.
- 6 (11) "~~Mineral Extraction Activities~~extraction activities" include exploring,
7 extracting, processing, transporting, or wholesale selling or trading of
8 elemental minerals or associated metal alloys or oxides (ore), including gold,
9 copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten,
10 uranium, and zinc, as well as facilitating such activities, including by
11 providing supplies or services in support of such activities.
- 12 (12) "~~Oil-Related Activities~~Oil-related activities" include, but are not limited
13 to, owning rights to oil blocks; exporting, extracting, producing, refining,
14 processing, exploring for, transporting, selling, or trading of oil;
15 constructing, maintaining, or operating a pipeline, refinery, or other oil-field
16 infrastructure; and facilitating such activities, including by providing
17 supplies or services in support of such activities, provided that the mere
18 retail sale of gasoline and related consumer products shall not be considered
19 Oil-Related Activities.
- 20 (13) "~~Power Production Activities~~production activities" means any ~~Business~~
21 ~~Operation~~business operation that involves a project commissioned by the
22 National Electricity Corporation (NEC) of Sudan or other similar
23 Government of Sudan entity whose purpose is to facilitate power generation
24 and delivery, including, but not limited to, establishing power-generating
25 plants or hydroelectric dams, selling or installing components for the project,
26 providing service contracts related to the installation or maintenance of the
27 project, as well as facilitating such activities, including by providing supplies
28 or services in support of such activities.
- 29 (14) "~~Public Fund~~fund" means any funds held by the State Treasurer to the
30 credit of:
31 a. The Teachers' and State Employees' Retirement System.
32 b. The Consolidated Judicial Retirement System.
33 c. The Firemen's and Rescue Workers' Pension Fund.
34 d. The Local Governmental Employees' Retirement System.
35 e. The Legislative Retirement System.
36 f. The Legislative Retirement Fund.
37 g. The North Carolina National Guard Pension Fund.
- 38 (14a) "~~Scrutinized Business Operations~~Restricted business operations" means
39 ~~Business Operations~~business operations that have resulted in a ~~Company~~
40 ~~company~~becoming a Scrutinized Company-restricted company.
- 41 (15) "~~Scrutinized Company~~Restricted company" means any ~~Company~~company
42 that meets the criteria in sub-subdivisions a., b., or c. below:
43 a. The ~~Company~~company has ~~Business Operations~~business operations
44 that involve contracts with and/or provision of supplies or services to
45 the Government of Sudan, to companies in which the Government of
46 Sudan has any direct or indirect equity share, Government of
47 Sudan-commissioned consortiums or projects, or to ~~Companies~~
48 companies involved in Government of Sudan-commissioned
49 consortiums or projects and at least one of the following conditions is
50 satisfied:

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1. More than ten percent (10%) of the ~~Company's~~ company's revenues or assets linked to Sudan involve ~~Oil-Related Activities or Mineral Extraction Activities;~~ oil-related activities or mineral extraction activities less than seventy-five percent (75%) of the ~~Company's~~ company's revenues or assets linked to Sudan involve contracts with and/or provision of ~~Oil-Related or Mineral Extracting~~ 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~~ company has failed to take ~~Substantial Action~~ substantial action.
 2. More than ten percent (10%) of the ~~Company's~~ company's revenues or assets linked to Sudan involve ~~Power Production Activities;~~ power production activities; less than seventy-five percent (75%) of the ~~Company's~~ company's ~~Power Production Activities~~ power production activities include projects whose intent is to provide power or electricity to the ~~Marginalized Populations~~ marginalized populations of Sudan; and the ~~Company~~ company has failed to take ~~Substantial Action~~ substantial action.
 - b. The ~~Company~~ company is ~~Complicit~~ complicit in the Darfur genocide.
 - c. The ~~Company~~ company supplies ~~Military Equipment~~ military equipment within Sudan, unless it clearly shows that the ~~Military Equipment~~ military equipment cannot be used to facilitate offensive military actions in Sudan or the ~~Company~~ company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, for example, through post-sale tracking of such equipment by the ~~Company~~ 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 anything herein to the contrary, a ~~Social Development Company~~ social development company which is not ~~Complicit~~ complicit in the Darfur genocide shall not be considered a ~~Scrutinized Company~~ restricted company.
- (16) "~~Social Development Company~~" development company" means a ~~Company~~ 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.~~ oil-related activities, mineral extraction activities, or power production activities.
 - (17) "~~Substantial Action~~" action" means adopting, publicizing, and implementing a ~~formal~~ detailed plan to cease ~~Scrutinized Business Operations~~ restricted business operations within one year and to refrain from any such new

1 ~~Business—Operations;~~business operations; undertaking significant
2 humanitarian efforts on behalf of one or more ~~Marginalized~~
3 ~~Populations~~marginalized populations of Sudan; or through engagement with
4 the Government of Sudan, materially improving conditions for the
5 genocidally victimized population in Darfur."

6 **SECTION 2.2.** G.S. 147-86.43 reads as rewritten:

7 **"§ 147-86.43. Identification of companies.**

8 (a) ~~Within 90 days of August 30, 2007, the Public Fund shall make its best efforts to~~
9 ~~identify all Scrutinized Companies in which the Public Fund has Direct or Indirect Holdings or~~
10 ~~could possibly have such holdings in the future. Such efforts shall include, as~~
11 ~~appropriate;~~public fund shall develop and make publicly available a list of companies it
12 determines to be engaged in restricted business activities. In the development of this list, the
13 public fund shall use any other state lists of restricted companies pursuant to similar laws and
14 any federal information or guidance on companies engaged in restricted business activities, and
15 any other credible information provided by nonprofit organizations, research firms, and
16 governmental entities. The public fund shall make every effort to avoid erroneously, including
17 a company on the list. Before finalizing an initial or update list, the public fund must do all of
18 the following before a company is included on the list:

19 (1) ~~Reviewing and relying, as appropriate in the Public Fund's judgment, on~~
20 ~~publicly available information regarding Companies with Business~~
21 ~~Operations in Sudan, including information provided by nonprofit~~
22 ~~organizations, research firms, international organizations, and government~~
23 ~~entities;~~Provide 90 days written notice of the public fund's intent to include
24 the company on the list. The notices shall inform the company that inclusion
25 on the list would make the company ineligible for State investment, may
26 result in the company becoming subject to divestment by the North Carolina
27 Retirement Systems, and may affect the company's ability to conduct
28 business with the State and its subdivisions. The notice shall specify that the
29 company may be removed from the list if the company ceases engagement in
30 the restricted business activities.

31 (2) ~~Contacting asset managers contracted by the Public Fund that invest in~~
32 ~~Companies with Business Operations in Sudan; or~~The public fund shall
33 provide a company with an opportunity to comment in writing that it is not
34 engaged in restricted activities in Sudan. If the company demonstrates to the
35 public fund that the company is not engaged in restricted activities, the
36 company shall not be included on the list.

37 (3) ~~Contacting other institutional investors that have divested from and/or~~
38 ~~engaged with Companies that have Business Operations in Sudan.~~

39 (b) ~~By the first meeting of the Public Fund following the 90-day period described in~~
40 ~~subsection (a), the Public Fund shall assemble all Scrutinized Companies identified into a~~
41 ~~"Scrutinized Companies List."~~

42 (c) ~~The Public Fund~~public fund shall update the ~~Scrutinized Companies List~~list on a
43 ~~quarterly~~an annual basis based on evolving information from, among other sources, those listed
44 in subsection (a) of this section."

45 **SECTION 2.3.** G.S. 147-86.44 reads as rewritten:

46 **"§ 147-86.44. Required actions.**

47 (a) ~~General.—The Public Fund shall adhere to the procedure for Companies on the~~
48 ~~Scrutinized Companies List as provided in this section:~~

49 (b) ~~Engagement.—~~

- 1 (1) ~~The Public Fund shall immediately determine the Companies on the~~
2 ~~Scrutinized Companies List in which the Public Fund owns Direct or~~
3 ~~Indirect Holdings.~~
- 4 (2) ~~For each Company identified in subdivision (1) of this section with only~~
5 ~~Inactive Business Operations, the Public Fund shall send a written notice~~
6 ~~informing the Company of this article and encouraging it to continue to~~
7 ~~refrain from initiating Active Business Operations in Sudan until it is able to~~
8 ~~avoid Scrutinized Business Operations. The Public Fund shall continue such~~
9 ~~correspondence on a semiannual basis.~~
- 10 (3) ~~For each Company newly identified in subdivision (1) of this section with~~
11 ~~Active Business Operations, the Public Fund shall send a written notice~~
12 ~~informing the Company of its Scrutinized Company status and that it may~~
13 ~~become subject to divestment by the Public Fund. The notice shall offer the~~
14 ~~Company the opportunity to clarify its Sudan related activities and shall~~
15 ~~encourage the Company, within 90 days, to either cease its Scrutinized~~
16 ~~Business Operations or convert such operations to Inactive Business~~
17 ~~Operations in order to avoid qualifying for divestment by the Public Fund.~~
- 18 (4) ~~If, within 90 days following the Public Fund's first engagement with a~~
19 ~~Company pursuant to subdivision (3) of this section that Company ceases~~
20 ~~Scrutinized Business Operations, the Company shall be removed from the~~
21 ~~Scrutinized Companies List and the provisions of this Section shall cease to~~
22 ~~apply to it unless it resumes Scrutinized Business Operations. If, within 90~~
23 ~~days following the Public Fund's first engagement, the Company converts its~~
24 ~~Scrutinized Active Business Operations to Inactive Business Operations, the~~
25 ~~Company shall be subject to all provisions relating thereto.~~
- 26 (e) ~~Divestment.—~~
- 27 (1) ~~If, after 90 days following the Public Fund's first engagement with a~~
28 ~~Company pursuant to subdivision (b)(3) of this section, the Company~~
29 ~~continues to have Scrutinized Active Business Operations, and only while~~
30 ~~such Company continues to have Scrutinized Active Business Operations,~~
31 ~~the Public Fund shall sell, redeem, divest, or withdraw all publicly traded~~
32 ~~securities of the Company within 15 months after the Company's most recent~~
33 ~~appearance on the Scrutinized Companies List.~~
- 34 (2) ~~If a Company that ceased Scrutinized Active Business Operations following~~
35 ~~engagement pursuant to subdivision (b)(3) of this section resumes such~~
36 ~~operations, subdivision (1) of this subsection shall immediately apply, and~~
37 ~~the Public Fund shall send a written notice to the Company. The Company~~
38 ~~shall also be immediately reintroduced onto the Scrutinized Companies List.~~
- 39 (d) ~~Prohibition Investments Prohibited.~~ – At no time shall the Public Fund acquire
40 securities of Companies on the Scrutinized Companies List that have Active Business
41 Operations, except as provided below. public fund invest with companies on the list created
42 pursuant to G.S. 147-86.43.
- 43 (d1) Existing Investments. – Any existing investment with a company that is identified
44 on a list created pursuant to G.S. 147-86.43 as a company engaging in restricted business
45 activities must be divested within 180 days of the adoption of the list.
- 46 (e) Exemption. – No ~~Company~~ company which the United States Government
47 affirmatively declares to be excluded from its present or any future federal sanctions regime
48 relating to Sudan shall be subject to divestment or investment prohibition pursuant to
49 subsections (c) and (d) of this section.
- 50 (e1) Nothing in this Article shall require the North Carolina Retirement Systems or the
51 State Treasurer to take action unless it is determined by the State Treasurer, in good faith, that

1 the action is consistent with the fiduciary responsibilities of the Retirement Systems and the
2 State Treasurer.

3 (f) ~~Excluded Securities.—Notwithstanding anything herein to the contrary, subsections~~
4 ~~(e) and (d) of this section shall not apply to Indirect Holdings. The Public Fund shall, however,~~
5 ~~submit letters to the managers of such investment funds containing Companies with Scrutinized~~
6 ~~Active Business Operations requesting that they consider removing such Companies from the~~
7 ~~fund or create a similar actively managed fund with Indirect Holdings devoid of such~~
8 ~~Companies. If the manager creates a similar fund, the Public Fund shall replace all applicable~~
9 ~~investments with investments in the similar fund in an expedited time frame consistent with~~
10 ~~prudent investing standards. For the purposes of this section, "private equity" funds shall be~~
11 ~~deemed to be actively managed investment funds."~~

12 **SECTION 2.4.** G.S. 147-86.45 reads as rewritten:

13 **"§ 147-86.45. Reporting.**

14 (a) ~~The Public Fund shall file a publicly available report to the General Assembly that~~
15 ~~includes the Scrutinized Companies List annually.~~ public fund shall report to the Joint
16 Legislative Commission on Governmental Operations annually on October 1 on information
17 regarding investments sold, redeemed, divested, or withdrawn in compliance with this Article.

18 (b) ~~Annually thereafter, the Public Fund shall file a publicly available report to the~~
19 ~~General Assembly and send a copy of that report to the United States Presidential Special~~
20 ~~Envoy to Sudan (or an appropriate designee or successor) that includes:~~

- 21 (1) ~~A summary of correspondence with Companies engaged by the Public Fund~~
22 ~~under G.S. 147-86.44(b)(2) and (b)(3).~~
23 (2) ~~All investments sold, redeemed, divested, or withdrawn in compliance with~~
24 ~~G.S. 147-86.44(e).~~
25 (3) ~~All prohibited investments under G.S. 147-86.44(d); and~~
26 (4) ~~Any progress made under G.S. 147-86.44(f)."~~

27 **SECTION 2.5.** G.S. 147-86.47 and G.S. 147-86.48 are repealed.
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29 **PART III. AMEND IRAN DIVESTMENT ACT**

30 **SECTION 3.1.** G.S. 147-86.56 reads as rewritten:

31 **"§ 147-86.56. Findings.**

32 The General Assembly finds that:

- 33 ...
34 (7) In order to effectively address the need for this State to respond to the
35 policies of Iran in a uniform fashion, prohibiting contracts with ~~persons~~
36 companies engaged in investment activities in the energy sector of Iran must
37 be accomplished on a statewide basis.

38"

39 **SECTION 3.2.** G.S. 147-86.57 reads as rewritten:

40 **"§ 147-86.57. Definitions.**

41 As used in this Article:

- 42 (1) "Company" means any sole proprietorship, organization, association,
43 corporation, partnership, joint venture, limited partnership, limited liability
44 partnership, limited liability company, or other entity or business
45 association, including all wholly owned subsidiaries, majority-owned
46 subsidiaries, parent companies, or affiliates of those entities or business
47 associations.

- 48 (1a) "Energy sector of Iran" means activities to develop petroleum or natural gas
49 resources or nuclear power in Iran.

- 1 (2) "Financial institution" means the term as used in Section 14 of the Iran
2 Sanctions Act of 1996, as amended (Public Law 104-172; 50 U.S.C. 1701 §
3 note).
- 4 (3) "Investment" means a commitment or contribution of funds or property,
5 whatever the source, a loan or other extension of credit, and the entry into or
6 renewal of a contract for goods or services. It does not include indirect
7 beneficial ownership through index funds, commingled funds, limited
8 partnerships, derivative instruments, or the like.
- 9 (4) "Investment activities in Iran" means a ~~person~~company engages in
10 investment activities in Iran if:
- 11 a. The ~~person~~company provides goods or services of twenty million
12 dollars (\$20,000,000) or more within any 12-month period in the
13 energy sector of Iran, including a ~~person~~company that provides oil
14 or liquefied natural gas tankers, or products used to construct or
15 maintain pipelines used to transport oil or liquefied natural gas, for
16 the energy sector of Iran; or
- 17 b. The ~~person~~company is a financial institution that extends twenty
18 million dollars (\$20,000,000) or more in credit to another
19 ~~person~~company, for 45 days or more, if (i) the financial institution
20 knows, or reasonably should know, that ~~person~~company will use the
21 credit to provide goods or services in the energy sector in Iran, and
22 (ii) the ~~person~~company receiving credit is identified on a list created
23 pursuant to G.S. 147-86.60 as a ~~person~~company engaging in
24 investment activities in Iran as described in this section.
- 25 (5) "Iran" includes the Government of Iran and any agency or instrumentality of
26 Iran.
- 27 (6) "Person" means any of the following:
- 28 a. A natural person, corporation, company, limited liability company,
29 business association, partnership, society, trust, or any other
30 nongovernmental entity, organization, or group.
- 31 b. Any governmental entity or instrumentality of a government,
32 including a multilateral development institution, as defined in section
33 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. §
34 262r(c)(3)).
- 35 c. Any successor, parent entity owning more than 20%, or
36 majority-owned subunit or subsidiary of any entity described in
37 sub-subdivisions (a) and (b) of this subdivision.
- 38 (7) "State agency" means any board, commission, department, executive
39 department, officer, institution, and any political subdivision of the State."

40 **SECTION 3.3.** G.S. 147-86.58 reads as rewritten:

41 **"§ 147-86.58. Prohibitions on State investment.**

42 No more than 30 days after October 1, 2015, the State Treasurer shall adopt a policy
43 prohibiting the North Carolina Retirement Systems or the Department of the State Treasurer
44 from investing funds with a ~~person~~company engaging in investment activities in Iran. At a
45 minimum, the policy shall provide:

- 46 (1) ~~List of persons engaged in investment-restricted companies.~~ – Within 120
47 days of adoption of the policy, the State Treasurer shall develop and make
48 publically available, ~~using federal sanctions lists and any other credible~~
49 ~~information available to the public,~~ a list of ~~persons~~companies it determines
50 engage in investment activities in Iran. The State Treasurer shall use any
51 other state lists of restricted companies pursuant to similar laws and any

1 federal information or guidance on companies engaged in investment
2 activities in Iran and any other credible information provided by nonprofit
3 organizations, research firms, governmental entities, and generally public
4 information. The State Treasurer shall make every effort to avoid
5 erroneously including a ~~person-company~~ on the list. The State Treasurer
6 shall update the list ~~every 180 days annually.~~ Before finalizing an initial list
7 or an updated list, the State Treasurer must do all of the following before a
8 ~~person-company~~ is included on the list:

9 a. Provide 90 days' written notice of the State Treasurer's intent to
10 include the ~~person-company~~ on the list. The notice shall inform the
11 ~~person-company~~ that inclusion on the list would make the ~~person~~
12 ~~company~~ ineligible for State investment and may affect the ~~person's~~
13 ~~company's~~ ability to conduct other business with the State and its
14 subdivisions. The notice shall specify that the ~~person, if it ceases its~~
15 ~~engagement in investment activities in Iran, company~~ may be
16 removed from the ~~list.~~ list if it ceases its investment activities in Iran.
17 b. The State Treasurer shall provide a ~~person-company~~ with an
18 opportunity to comment in writing that it is not engaged in
19 investment activities in Iran. If the ~~person-company~~ demonstrates to
20 the State Treasurer that the ~~person-company~~ is not engaged in
21 investment activities in Iran, the ~~person-company~~ shall not be
22 included on the list.

23 (2) Investments prohibited. – Neither the North Carolina Retirement Systems
24 nor the State Treasurer may invest funds with a ~~person-company~~ that is
25 identified on a list created pursuant to subdivision (1) of this section as a
26 ~~person-company~~ engaging in investment activities in Iran.

27 (3) Existing investments. – Any existing investment with a ~~person-company~~ that
28 is identified on a list created pursuant to subdivision (1) of this section as a
29 ~~person-company~~ engaging in investment activities in Iran must be divested
30 within 180 days of ~~the adoption of the policy.~~ being placed on the list created
31 pursuant to subdivision (1) of this section.

32 (4) Fiduciary duties. – Nothing in the policy or in this Article shall require the
33 North Carolina Retirement Systems or the State Treasurer to take action
34 unless it is determined by the State Treasurer, in good faith, that the action is
35 consistent with the fiduciary responsibilities of the Retirement Systems and
36 the State Treasurer.

37 (5) Exceptions. – Notwithstanding the policy, an investment may be made in a
38 ~~person-company~~ engaged in investment activities in Iran if:

39 a. The ~~person-company~~ is eligible to contract with the State under the
40 exception in G.S. 147-86.61.

41 b. The State Treasurer makes a good-faith determination, on a
42 case-by-case basis, that the investments are necessary to perform its
43 functions."

44 **SECTION 3.4.** G.S. 147-86.59 is repealed.

45 **SECTION 3.5.** G.S. 147-86.60 reads as rewritten:

46 **"§ 147-86.60. Restrictions on contracts with the State or subdivisions of the State.**

47 (a) A ~~person-company~~ that is identified on a list created by the State Treasurer pursuant
48 to G.S. 147-86.58 as a ~~person-company~~ engaging in investment activities in Iran is ineligible to
49 contract with the State or any political subdivision of the State.

50 (b) Any contract entered into with a ~~person-company~~ that is ineligible to contract with
51 the State or any political subdivision of the State is void ab initio.

1 (c) Existing contracts with ~~persons-companies~~ made ineligible to contract with the State
2 or any political subdivision of the State under this Article shall be allowed to expire in
3 accordance with the terms of the contract."

4 **SECTION 3.6.** G.S. 147-86.61 reads as rewritten:

5 **"§ 147-86.61. Exceptions.**

6 (a) G.S. 147-86.60 does not apply to contracts valued at one thousand dollars (\$1,000)
7 or less.

8 (b) ~~Persons-Companies~~ engaged in substantial positive action. – Notwithstanding any
9 other provision of this Article, a ~~person-company~~ engaged in investment activities in Iran may
10 ~~contract with the State or a political subdivision of the State~~ not be placed on the list developed
11 pursuant to G.S. 147-86.58(1) if the State Treasurer determines, using U.S. government
12 statements and any other credible information available to the public, that the ~~person's~~
13 ~~company's~~ investment activities in Iran were made before October 1, 2015, the investment
14 activities in Iran have not been expanded or renewed after October 1, 2015, and the ~~person~~
15 ~~company~~ has adopted, publicized, and is implementing a detailed plan to cease the investment
16 activities in Iran and to refrain from engaging in any new investments in Iran. The State
17 Treasurer shall develop and make publically available a "Substantial Positive Action Exception
18 List" of these ~~persons-companies~~. The State Treasurer shall update the list ~~every 180~~
19 ~~days-annually~~. Once a person has not engaged in investment activities in Iran within the
20 previous five years, the State Treasurer shall remove that person from the list created pursuant
21 to G.S. 147-86.58.

22 (c) Necessary commodities or services. – Notwithstanding any other provision of this
23 Article, a ~~person-company~~ engaged in investment activities in Iran may contract with the State
24 or a political subdivision of the State, on a case-by-case basis, if the State agency or political
25 subdivision makes a good-faith determination that the commodities or services are necessary to
26 perform its functions and that, absent such an exemption, the State agency would be unable to
27 obtain the commodities or services for which the contract is offered. The determination shall be
28 entered into the procurement record."

29 **SECTION 3.7.** G.S. 147-86.62 reads as rewritten:

30 **"§ 147-86.62. Report; application.**

31 (a) The State Treasurer shall report to the Joint Legislative Commission on
32 Governmental Operations ~~and the Governor~~ annually by October 1 on ~~the status of the federal~~
33 ~~"Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010" (Public Law~~
34 ~~111-195), the "Iran Divestment Act of 2015," and any rules or regulations adopted~~
35 ~~thereunder~~ information regarding investments sold, redeemed, divested, or withdrawn in
36 compliance with this Article.

37 (b) ~~The restrictions provided for in this Article apply only until:~~

- 38 (1) ~~The President or Congress of the United States, by means including, but not~~
39 ~~limited to, legislation, executive order, or written certification, declares that~~
40 ~~divestment of the type provided for in this Article interferes with the conduct~~
41 ~~of United States foreign policy; or with respect to restrictions on any~~
42 ~~particular investment activities in Iran, those activities have been specifically~~
43 ~~exempted from U.S. government sanctions by an affirmative declaration~~
44 ~~authorized by the Congress of the United States; or~~
45 (2) ~~Congress revokes authority to divest in the manner provided for in this~~
46 ~~Article."~~

47 **SECTION 3.8.** G.S. 147-86.63 reads as rewritten:

48 **"§ 147-86.63. No private right of action.**

49 (a) This Article does not create or authorize a private right of action to enforce the
50 provisions of the Article.

1 (b) A ~~person-company~~ may challenge being included on the lists established in this
2 Article using the procedures in Article 3 of Chapter 150B of the General Statutes, except that
3 no ~~person-company~~ may file a contested case more than once every 365 days, and no attorneys'
4 fees may be awarded under G.S. 150B-33(b)(11)."

5 **SECTION 4.** Except as otherwise provided, this act becomes effective October 1,
6 2017.