

House Bill 3666

Sponsored by Representatives WEIDNER, HOYLE, Senator BOQUIST, Representative GREENLICK; Representatives BOONE, CAMERON, CONGER, DOHERTY, ESQUIVEL, FREEMAN, GILLIAM, HICKS, HUFFMAN, HUNT, JOHNSON, KENNEMER, KOTEK, KRIEGER, LINDSAY, MATTHEWS, NOLAN, OLSON, PARRISH, SHEEHAN, THOMPSON, WAND, WHISNANT, WINGARD, WITT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Encourages Oregon Investment Council and State Treasurer to divest investment funds invested in certain companies engaged in mineral-extraction or oil-related activities related to Iran. Directs council or treasurer to maintain list of companies. Specifies procedures for notice and possible divestment. Prohibits certain investments. Provides exceptions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to divestment from Iran; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS 293.701**
5 **to 293.820.**

6 **SECTION 2. As used in this section and section 3 of this 2011 Act:**

7 (1) **“Active business operations” means all business operations that are not inactive**
8 **business operations.**

9 (2) **“Business operations” means engaging in commerce in any form in Iran, including,**
10 **but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing or**
11 **operating equipment, facilities, personnel, products, services, personal property, real prop-**
12 **erty or any other apparatus of business or commerce.**

13 (3) **“Company” means any sole proprietorship, organization, association, corporation,**
14 **partnership, joint venture, limited partnership, limited liability partnership, limited liability**
15 **company or other entity or business association, including all wholly owned subsidiaries,**
16 **majority-owned subsidiaries, parent companies or affiliates of those entities or business as-**
17 **sociations, that exists for the purpose of making profit.**

18 (4) **“Direct holdings” means securities of a company that are held directly by this state,**
19 **or an account or fund in which this state owns all shares or interests.**

20 (5) **“Inactive business operations” means the mere continued holding or renewal of rights**
21 **to property previously operated for the purpose of generating revenues, but not presently**
22 **deployed for that purpose.**

23 (6) **“Indirect holdings” means securities of a company that are held in an account or**
24 **fund, such as a mutual fund, managed by one or more persons not employed by this state,**
25 **in which this state owns shares or interests together with other investors that are not sub-**
26 **ject to the provisions of section 3 of this 2011 Act.**

27 (7) **“Iran” means the Islamic Republic of Iran.**

28 (8) **“Mineral-extraction activities” means:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) Exploring, extracting, processing, transporting or wholesale selling or trading of ele-
2 mental minerals or associated metal alloys or oxides, including, but not limited to, gold,
3 copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium and zinc;
4 and

5 (b) Facilitating or otherwise providing supplies or services in support of the activities
6 described in paragraph (a) of this subsection.

7 (9)(a) "Oil-related activities" means:

8 (A) Owning rights to oil blocks;

9 (B) Exporting, extracting, producing, refining, processing, exploring for, transporting,
10 selling or trading of oil;

11 (C) Constructing, maintaining or operating a pipeline, refinery or other oil field
12 infrastructure; and

13 (D) Facilitating or otherwise providing supplies or services in support of the activities
14 described in this paragraph.

15 (b) "Oil-related activities" does not include the mere retail sale of gasoline and related
16 consumer products.

17 (10) "Petroleum resources" means petroleum, petroleum by-products or natural gas.

18 (11) "Private market fund" means any private equity fund, private equity fund of funds,
19 venture capital fund, hedge fund, hedge fund of funds, real estate fund or other investment
20 vehicle that is not publicly traded.

21 (12) "Scrutinized company" means a company:

22 (a)(A) That has business operations involving contracts with or provision of supplies or
23 services to the Government of Iran, a consortium or project commissioned by the Govern-
24 ment of Iran, or a company involved in a consortium or project commissioned by the Gov-
25 ernment of Iran; and

26 (B) In which more than 10 percent of the company's revenues or assets linked to Iran
27 involve oil-related activities or mineral-extraction activities, less than 75 percent of the
28 company's revenues or assets linked to Iran involve contracts with or provision of oil-related
29 or mineral-extraction products or services to the Government of Iran or a project or con-
30 sortium created exclusively by that government; and

31 (b)(A) That has failed to take substantial action; or

32 (B) That has, with actual knowledge, on or after August 5, 1996, made an investment of
33 \$20 million or more, or any combination of investments of at least \$10 million each that in
34 the aggregate equals or exceeds \$20 million in any 12-month period, that directly or signif-
35 icantly contributes to the enhancement of Iran's ability to develop the petroleum resources
36 of Iran.

37 (13) "Substantial action" means adopting, publicizing and implementing a formal plan to
38 cease engaging in business operations as a scrutinized company within one year and to re-
39 frain from any such new business operations.

40 **SECTION 3.** (1) The Oregon Investment Council and the State Treasurer, in the State
41 Treasurer's role as investment officer for the council, during the course of ordinary busi-
42 ness, stock analysis or routine performance reviews, shall make efforts to identify all scru-
43 tinized companies in which the council or treasurer has direct or indirect holdings of
44 investment funds. These efforts may include the following:

45 (a) Reviewing and relying, as appropriate in the judgment of the council and treasurer,

1 on publicly available information regarding companies having business operations in Iran,
 2 including information provided by nonprofit organizations, research firms, international or-
 3 ganizations and government entities;

4 (b) Contacting asset managers contracted by the council or treasurer; and

5 (c) Contacting other institutional investors that have divested from or engaged with
 6 companies that have business operations in Iran.

7 (2) The council or treasurer may retain an independent research firm to identify scruti-
 8 nized companies in which the council or treasurer has direct or indirect holdings. The
 9 council or treasurer shall maintain a list of all scrutinized companies.

10 (3) The council or treasurer shall develop an engagement policy under which the council
 11 or treasurer notifies and requests information from scrutinized companies in which the
 12 council or treasurer has direct or indirect holdings. In adopting and implementing the policy,
 13 the council or treasurer shall adhere to the following procedures for companies on the
 14 scrutinized companies list:

15 (a) The council or treasurer shall determine the companies on the scrutinized companies
 16 list in which the council or treasurer has direct or indirect holdings.

17 (b) For each company identified in paragraph (a) of this subsection that has active or
 18 inactive business operations in Iran, the council or treasurer shall send a written notice in-
 19 forming the company of its scrutinized company status and of the provisions of this section.

20 (c) The written notice shall also advise the company that the company may become
 21 subject to divestment by the council or treasurer, inform the company of the opportunity to
 22 clarify the company's Iran-related activities or describe the company's plan to cease business
 23 operations as a scrutinized company, describe possible sanctions applicable under federal law
 24 to scrutinized companies and encourage the company to cease its business operations as a
 25 scrutinized company or convert the operations to inactive business operations.

26 (d) If a company ceases business operations as a scrutinized company, the council or
 27 treasurer shall remove the company from the scrutinized companies list and the provisions
 28 of this section do not apply to the company unless the company resumes business operations
 29 as a scrutinized company.

30 (4) If a company continues to have active business operations as a scrutinized company,
 31 the council or treasurer, subject to the standard set forth in ORS 293.726, is encouraged to
 32 sell, redeem, divest or withdraw all publicly traded securities of the company, except as
 33 provided in subsection (6) of this section, from the council's or treasurer's assets under
 34 management of the council or treasurer.

35 (5) Subject to the standard set forth in ORS 293.726 and except as provided in subsection
 36 (6) of this section, the council or treasurer may not acquire securities of companies on the
 37 scrutinized companies list that have active business operations in Iran.

38 (6) A company that the United States Government affirmatively declares to be excluded
 39 from present or any future federal sanctions relating to Iran is not subject to divestment
 40 or the investment prohibition pursuant to subsections (4) and (5) of this section.

41 (7) Notwithstanding the provisions of this section, subsections (4) and (5) of this section
 42 do not apply to indirect holdings in a private market fund. The council or treasurer may
 43 submit letters to the managers of those investment funds that are subject to Oregon In-
 44 vestment Council policies and that contain companies that engage in active business oper-
 45 ations as scrutinized companies requesting that they consider removing the companies from

1 the fund or create a similar actively managed fund having indirect holdings devoid of the
 2 companies. If the manager creates a similar fund, the council or treasurer is encouraged to
 3 replace all applicable investments with investments in the similar fund in an expedited time
 4 frame consistent with prudent investing standards.

5 (8) The council or treasurer shall publish on the treasurer’s website the list of scruti-
 6 nized companies that are identified during the ordinary course of business, stock analysis
 7 or routine performance reviews under subsection (1) of this section.

8 (9) The treasurer shall publish on the treasurer’s website an annual report that includes:

9 (a) A summary of correspondence with companies engaged by the council or treasurer
 10 under this section;

11 (b) A list of all investments sold, redeemed, divested or withdrawn in compliance with
 12 this section;

13 (c) A list of investments prohibited under subsection (5) of this section; and

14 (d) A summary of correspondence with private market funds under subsection (7) of this
 15 section.

16 (10) With respect to actions taken in compliance with this section, including all good faith
 17 determinations regarding companies as required by this section, the council and treasurer
 18 are exempt from any conflicting statutory or common law obligations, including any such
 19 obligations with respect to choice of asset managers, investment funds or investments for
 20 the council’s or treasurer’s securities portfolios.

21 (11)(a) Notwithstanding the provisions of this section, the council or treasurer may cease
 22 divesting from certain scrutinized companies pursuant to subsection (4) of this section or
 23 reinvest in certain scrutinized companies from which it divested pursuant to subsection (4)
 24 of this section if clear and convincing evidence shows that the value of all assets under
 25 management by the council or treasurer becomes equal to or less than 99.50 percent, or 50
 26 basis points, of the hypothetical value of all assets under management by the council or
 27 treasurer assuming no divestment for any company had occurred under subsection (4) of this
 28 section.

29 (b) Cessation of divestment, reinvestment or any subsequent ongoing investment au-
 30 thorized by this section is limited to the minimum steps necessary to avoid the contingency
 31 set forth in paragraph (a) of this subsection.

32 (c) This subsection does not apply to reinvestment in companies on the grounds that they
 33 have ceased to engage in active business operations as scrutinized companies.

34 **SECTION 4.** The Oregon Investment Council or State Treasurer shall produce the first
 35 list of scrutinized companies required by section 3 of this 2011 Act as soon as practicable
 36 after first identifying a scrutinized company during the ordinary course of business, stock
 37 analysis or routine performance reviews under section 3 (1) of this 2011 Act.

38 **SECTION 5.** (1) Sections 1 to 4 of this 2011 Act become operative January 1, 2012.

39 (2) The State Treasurer and the Oregon Investment Council may take any action before
 40 the operative date specified in subsection (1) of this section that is necessary for the council
 41 or treasurer to exercise, on and after the operative date specified in subsection (1) of this
 42 section, all the duties, functions and powers conferred on the council or treasurer by
 43 sections 1 to 4 of this 2011 Act.

44 **SECTION 6.** This 2011 Act being necessary for the immediate preservation of the public
 45 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect

1 **on its passage.**

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